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[G.R. Nos. 149382-149383, March 05, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO BODOSO Y BOLOR, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

TRIAL COURTS MUST TAKE HEED that in criminal cases involving capital offenses the waiver of the right to present evidence and be heard should not be considered haphazardly, perfunctorily, lightly or trivially, because the right is inherent in due process, but must at all times be scrutinized by means of a test and procedure to ascertain that the waiver was done voluntarily, knowingly and intelligently with sufficient awareness of its relevant circumstances and likely consequences.

In Crim. Cases Nos. T-3285 and T-3286 the Regional Trial Court of Tabaco City, found Ricardo Bodoso y Bolor guilty of raping his fourteen (14)-year old daughter on two (2) occasions. He was sentenced to death on each count and ordered to pay ₱50,000.00 for moral damages and another ₱50,000.00 as civil indemnity also for every count.[1]

On 10 January 2000 Jenny Rose Bausa Bodoso filed a complaint-affidavit accusing her father Ricardo Bodoso of qualified rape committed on 14 July 1999 by means of force and intimidation and repeated sometime the following September. Accused-appellant was arrested and detained by virtue of a warrant of arrest issued by the Municipal Circuit Trial Court of Malilipot and Bacacay, Albay. He was subjected by the same court to preliminary investigation where he failed to submit counter affidavit/rebuttal evidence against his daughter's complaint-affidavit.[2]

On 10 March 2000 two (2) Informations charging accused-appellant with qualified rape were filed as to which he pleaded not guilty.

On 4 July 2000 the trial court called the parties to a pre-trial conference. The prosecution and the defense stipulated that Jenny Rose was the daughter of accused-appellant and that she was fourteen (14) years old during the alleged incidents of rape. The admitted facts were stated in the pre-trial order that was signed by accused-appellant and his counsel *de oficio* from the Public Attorney's Office and by the public prosecutor.

On 3 October 2000 the trial court commenced the consolidated trial of Crim. Cases Nos. T-3285 and T-3286. The prosecution presented only two (2) witnesses, namely, the private complainant herself who affirmed the contents of her complaint-affidavit, and Dr. Arsenia L. Manosca-Moran who physically examined the complaining witness and issued the pertinent medical certificate. Subsequently, the defense counsel cross-examined the prosecution witnesses. Incidentally, Jenny Rose did not

substantiate the allegation that she was only fourteen (14) years old when the crimes of rape were supposedly perpetrated.

On 19 March 2001, after offering its documentary evidence and the admission thereof by the trial court for whatever it may be worth, the prosecution rested its case against accused-appellant. However, upon the manifestation of the counsel *de oficio*, reception of the evidence for the defense was deferred to 2 April 2001.

A sudden twist of events changed the complexion of the otherwise orderly proceedings. On 2 April 2001, as booked in the trial calendar, the defense was summoned to present its evidence. Lamentably, unlike in the previous settings of the trial court, the consolidated records of Crim. Cases Nos. T-3285 and T-3286 do not indicate whether accused-appellant was present on the scheduled trial date. There were also no transcript of stenographic notes nor minutes of the proceedings on that date that would have elucidated on the cryptic order of the trial judge of even date tersely stating –

> Upon the manifestation of counsel for the accused, Atty. Danilo Brotamonte, that the defense is not intending to present any evidence and now resting its case today, this case therefore is now submitted for decision (*underscoring supplied*). SO ORDERED.

On 9 July 2001 the trial court promulgated its judgment convicting accused-appellant of two (2) counts of qualified rape against his fourteen (14)-year old daughter; hence, this automatic review.

In the *Appellant's Brief* now before us, counsel *de oficio* for accused-appellant suggests that the charges against him were trumped up by the purported boyfriend of his daughter, and further claims that no evidence proved beyond reasonable doubt the elements of force, intimidation or moral ascendancy exerted by him during their sexual trysts, assuming these had taken place. It was also argued by way of an alternative defense that the victim's minority was not sufficiently corroborated by any evidence. Clearly, the attorneys of accused-appellant assail the findings of fact of the lower court but do not seek relief from the *Order* of 2 April 2001 that inexplicably waived their client's constitutional right to present evidence and be heard.

We are not about to jump willy-nilly over the issues raised by the Public Attorney's Office that cut deeply into the merits of accused-appellant's culpability simply because these were the only questions that the counsel *de oficio* found worthy of our review. In the automatic review of cases, this Court has the concomitant power to review and sift through the entire case to correct any error, even if unassigned, since the transcendental matter of life and liberty, especially of a person who possesses nothing but life and liberty, is at stake. As we have emphasized quite frequently, "*there can be no stake higher and no penalty more severe than the termination of human life*."[3] Thus, although there was not even the slightest protestation by counsel regarding the issue of accused-appellant's waiver, we shall consider the same in the interest of justice.

The rules on the validity or invalidity of a waiver are not something we have crafted overnight to suit the instant case. They have been extant since time that is now immaterial to recall. In civil cases, we overturn decisions because the waiver of

certain rights was not done in accordance with the requisites. Hence, in *Intestate Estate of the Late Vito Borromeo v. Borromeo*,[4] this Court set aside the waiver of hereditary rights because it was not clearly and convincingly shown that the heir had the intention to waive his right or advantage voluntarily. In criminal cases where life, liberty and property are all at stake, obviously, the rule on waiver cannot be any less. In this light, we are at a loss why counsel *de oficio* for accused-appellant did not touch upon this point when something more valuable than any property that a person could ever inherit in his lifetime is in danger of being taken away eternally.

It is elementary that the existence of waiver must be positively demonstrated since a waiver by implication cannot be presumed.[5] The standard of waiver requires that it "*not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences*."[6] There must thus be persuasive evidence of an actual intention to relinquish the right. Mere silence of the holder of the right should not be easily construed as surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver.[7] Necessarily, where there is a reservation as to the nature of any manifestation or proposed action affecting the rights of the accused to be heard before he is condemned, certainly, the doubt must be resolved in his favor to be allowed to proffer evidence in his behalf.

Our criminal rules of procedure strictly provide the step-by- step formula to be followed by courts in cases punishable by death. The reason for this is to ensure that the constitutional presumption of innocence in favor of the accused is preserved and the State makes no mistake in taking life and liberty except that of the guilty. Hence, any deviation from the regular course of trial should always take into consideration that such a different or extraordinary approach has been undertaken voluntarily and intelligently. For otherwise, as in the instant case, denial of due process can be successfully invoked since no valid waiver of rights has been made. [8]

This Court notes with deep regret the failure of the trial court to inquire from accused-appellant himself whether he wanted to present evidence; or submit his memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any; or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. The inquiry is simply part and parcel of the determination of the validity of the waiver, i.e., "*not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences*," which ought to have been done by the trial court not only because this was supposed to be an uncomplicated and routine task on its part, but more importantly since accused-appellant himself did not personally, on a person-to-person basis, manifest to the trial court the waiver of his own right.

As things stand, both this Court and the trial court are being asked hook, line and sinker to take the word of counsel *de oficio* whose own concern in that particular phase of the proceedings *a quo* may have been compromised by pressures of his other commitments. For all we know, the statutory counsel of the indigent accused at that time of the trial, although not evident in the other aspects of his representation, only wanted to get rid of dreary work rather than protect the rights of his client.[9] Of course, it may be stretching the argument too much to ascribe

fatal incompetence upon herein accused's counsel for this solitary instance of *faux pas*. But, for sure, we must inquire if the waiver was validly done.

Worse, the consolidated records of Crim. Cases Nos. T-3285 and T-3286 do not contain any instructive summary of the proceedings which would have clarified counsel de oficio's inscrutable action to unceremoniously waive his client's constitutional right to be heard. In the same deplorable manner, absolutely no transcripts of stenographic account for what had transpired at that pivotal moment. Hence, whether accused-appellant really intended to relinquish his own right to be heard, as manifested by the public defender, is something we must determine with absolute certainty in the interest of complete and compassionate justice.[10]

The inquiry sought herein is not unprecedented. In *People v. Bernas*,[11] the trial court found it necessary after the prosecution had rested its case to satisfy itself that the representation of defense counsel that his client was waiving the presentation of his evidence constituted a voluntary and intelligent waiver of an important constitutional right. It was only after being convinced of the validity of the waiver that the lower court considered the case submitted for decision. In the automatic review that followed the trial court's decision, no one in this Court ever thought that the apparently prudent and sensible action of the trial court in *Bernas* to determine the legitimacy of the waiver was a new procedure impetuously concocted for the satisfaction of over-eager civil libertarians, and was in fact adjudged by us to be still lacking in assiduity according to the standards of a "*searching inquiry*" as used in cases where there is a plea of guilty to a capital offense.

In *People v. Court of Appeals*,[12] the colloquy between magistrate and accused centered into the latter's voluntariness and intelligence to make the waiver of his right to present evidence, an undemanding ceremony which did not intrude into precious court time nor upset judicial economy to deal with and dispose of criminal cases at optimum speed –

> There is no question that per the record of the hearing of July 10, 1979, respondents-accused affirmed personally and through counsel that they categorically waived their right to present their evidence in the trial of the criminal case. Thus, Justice de la Fuente expressly asked: "You have to be consistent. If the case is denied and returned to the court of origin, you want to present witnesses" of their counsel, Atty. Balgos, who replied "No more," and "so that our position is this — inasmuch as Mr. Justice de la Fuente asked whether if the petition were denied and the case were returned to the court of origin whether we will still present evidence. We are not presenting already." Their counsel further replied to Justice Gaviola: "Precisely I asked my client to come here today and for the record make manifest that they are not presenting any further evidence." Respondent-accused affirmed their counsel's manifestations to respondent court as reproduced in respondent court's September 18, 1979 Resolution quoted hereinabove, wherein they expressed undertook that if a verdict were found against them, "they could no longer go back to the court of origin for a new trial" and that their "only area of relief is with the Supreme Court." Such express waiver is binding upon them and

> the trial court "has no alternative but to decide the case upon the evidence presented by the prosecution alone."[13]

People v. Flores[14] is indubitably in point and on all fours with the instant case to correct the injustice resulting from the improvident waiver of the right to present defense evidence. In that case we ruled –

> The lower court, in view of the severity of the imposable penalty, ought to have inquired into the voluntariness and full knowledge of the consequences of accused-appellants' waiver. Though the Rules require no such inquiry to be undertaken by the court for the validity of such waiver or any judgment made as result of the waiver, prudence however requires the Court to ascertain the same to avoid any grave miscarriage of justice. Although accused-appellants' waiver amazed the lower court, nevertheless, the record is devoid of any facts which would indicate that the lower court took steps to assure itself of accused-appellants' voluntariness and full knowledge of the consequences of their waiver. Besides, counsel's waiver should have put the court on guard x x x x [A] counsel who files a demurrer with leave of court, but at the same time expressly waives his right to present evidence should put a judge on guard that said counsel may not entirely comprehend the consequences of the waiver. The trial court should have exercised prudence by warning counsel about the prejudicial effects of their waiver, that with such a waiver, the case would be deemed submitted for decision, and their leave to file motion for demurrer to evidence will have no effect.[15]

The above-quoted portion of the *Flores* case is plain enough for us to see clear similarities with the instant criminal case so as to be considered an authority for our decision herein. To emphasize, the lower court ought to have inquired into the voluntariness and full knowledge of the consequences of accused-appellant's waiver, and prudence requires this Court to ascertain the same if only to avoid any grave miscarriage of justice.

Sure enough, there are precedents where the accused was correctly denied the right to present defense evidence after he had waived his right to be heard. These cases however involved a *valid, verified, clear* and *convincing* renunciation of an accused's right to offer contrary proof, circumstances that are sorely missing in the instant case.

In these cases, it was indubitably shown that the express waiver made by accused of his right to rebut the prosecution evidence was done after he had *personally* manifested to the trial court his belated desire to change his plea of not guilty to guilty, thus indicating his wholehearted willingness to forego reception of his evidence and uncompromised admission of complicity in the crimes charged therein;[16] or that the waiver was made only after the trial court informed accused-appellant of the consequences if he failed to present evidence in his defense, specifically that the prosecution was able to establish his guilt beyond reasonable doubt but accused-appellant nonetheless insisted that he had no intention of presenting evidence in his behalf;[17] or that his waiver was inferred from a valid and enforceable stipulation of facts in the pre-trial order signed by him and his counsel, which amounted to a surrender of his right to present evidence to