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[G.R. Nos. 130411-14, October 13, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO BELLO, ACCUSED-APPELLANT.

D E C I S I O N

MELO, Acting C.J.:

In a highly conservative and religious society like ours, no crime is perhaps more repulsive and disgusting than incestuous rape, and much more so, rape by fathers of their minor daughters. As such, our Legislature has declared such offense undeserving of society's mercy, compassion, and leniency, providing, that the offense should rightfully carry with it the supreme penalty of death. Regrettably, the imposition of said penalty in the case at bar cannot be properly sustained due to the requirements of substantial justice and procedural rules not having been fully satisfied.

Accused-appellant was charged with four (4) counts of rape committed against his own legitimate daughter, Jenalyn A. Bello, committed on August 13, 14, 19, and 24, 1995. The first information alleged:

> That on or about the 13th day of August, 1995, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of Jenalyn A. Bello, a minor, twelve (12) years of age, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with Jenalyn A. Bello against her will, and consent, with the aggravating circumstance of relationship.
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> CONTRARY TO LAW.
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> (p. 9, *Rollo*.)

The three other informations were identically worded as the above information, except that they respectively charged that the rape therein committed occurred on August 14, 19, and 24, 1995.

At the arraignment on February 13, 1996, accused-appellant pleaded not guilty. Thereafter, the prosecution presented its side through the lone testimony of the victim which was summarized by the Office of the Solicitor General as follows:

> THE RAPE OF AUGUST 13, 1995
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> Around 3 o'clock in the early morning of August 13, 1995, while Jenalyn was soundly sleeping in the bedroom of their house together with her two younger brothers, her drunken father woke her up and ordered her to go to the kitchen. She walked to the kitchen and he followed her. In the kitchen, he angrily ordered her to undress, promising to give her money.

Realizing the evil intent of her father, she gently pleaded: "Do not do that". Gripped with fear, however, Jenalyn followed his command. Naked, he made her lie on a bench, laid on top of her and inserted his erect penis into her vagina. Feeling intense pain, she continued her plea: "Do not do that." But he paid no heed. She called for her mother, who was then sleeping at the sala, but to no avail. Jenalyn could not do anything but submit herself to the evil desires of the man whom she feared and from whose hands she suffered several punishments. Appellant succeeded in having carnal knowledge of his own daughter.

(pp. 2-3, Appellee's Brief.)

THE RAPE OF AUGUST 14, 1995

Around 1 o'clock in the early morning of August 14, 1995, appellant woke up Jenalyn and sternly whispered: "Do not say anything. Do not tell your mother. Anyway, you are not a virgin anymore." He, thereafter, ordered her to undress. At that time, Jenalyn's mother was at the public market selling fish to the early fish buyers.

When she was already naked, appellant placed himself on top of her and inserted his private organ into hers. Jenalyn repeatedly pleaded: "Father, do not do that!" He did not mind her. Instead, and in a jeer his father remarked: "Why are you saying that, anyway you are no longer a virgin like your elder sister" (appellant was obviously referring to his daughter Juliet Bello who was also victimized by him, but lucky to escape his clutches). After he was through with his sexual carnage, appellant just left the room.

Jenalyn cried the whole day, but her mother did not even ask what was bothering her. Sensing that her mother knew what was happening, Jenalyn lost the courage to approach and tell her about the matter.

(pp. 3-4, Appellee's Brief.)

THE RAPE OF AUGUST 19, 1995

Around 3 o'clock in the morning of August 19, 1995, appellant replayed the sexual assault upon Jenalyn at the kitchen of their abode while his wife was sleeping at the sala. After threatening her, he compelled her to lie on the floor. Appellant positioned himself and inserted his erect organ into her vagina enjoying his bestial act. Unable to bear the pain, she repeated her plea: "Father, do not do it anymore." Appellant bluntly replied: "Do not say anything." Her mother's lack of concern and her own fear for her father, muted Jenalyn from crying for help.

(p. 4, Appellee's Brief.)

THE RAPE OF AUGUST 24, 1995

Around 9 o'clock in the morning of August 24, 1995, Jenalyn was at Sankalan Elementary school to attend her first periodical examination. Realizing that she did not have enough paper for the examination, she returned home to ask money from her mother to buy paper. When she reached home, she saw her father and brother J.R. She went straight to

> their comfort room as she had then her menstrual period. From there, she proceeded to their bedroom to get something. Her father followed her and asked if she still had classes. She answered in the affirmative. Thereafter, he ordered her to undress. She refused, saying "Father, don't do that because I have my menstruation, besides, we are having now our periodical tests." Appellant insisted that she undress. Afraid of his usual maltreatment, Jenalyn gave in. After satisfying his lust, appellant just left his devastated daughter.
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> (p. 5, Appellee's Brief.)

On April 16, 1996, the scheduled date of the cross-examination of the complainant, accused-appellant, through his counsel *de oficio*, manifested that he wished to withdraw his earlier plea of not guilty and to substitute the same with one of guilty. Convinced that accused-appellant understood the consequences of his change of plea, the Honorable Mateo M. Leanda, presiding judge of Branch 8 of the Regional Trial Court of the 8th Judicial Region stationed in Tacloban City, allowed the same to be entered in the record of the four rape cases. The defense proceeded to cross-examine complainant and thereafter presented accused-appellant for the purpose of proving mitigating circumstances. Later, accused-appellant moved for the reinstatement of his plea of not guilty, but this was denied by the trial court in its order dated October 4, 1996.

On November 21, 1996, the trial court rendered judgment finding accused-appellant guilty of four counts of rape, and disposed as follows:

> WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING, this Court finds accused RODRIGO BELLO, alias "Rudy", guilty beyond reasonable doubt, as principal, of the consummated four counts of RAPE, as defined and penalized under Art. 225 of the Revised Penal Code, as amended by Republic Act No. 7659, and he is hereby sentenced accordingly to suffer the supreme penalty of DEATH, for each count. In addition thereto, the accused's estate, if any, is ordered to indemnify the offended party, JENALYN A. BELLO, the sum of fifty thousand (P50,000.00) pesos, for each count of rape, as the subjects of this case, or the total amount of two hundred thousand pesos (P200,000.00). The accused's properties is also condemned to pay exemplary damages to the complainant in the sum of P20,000.00 per count, or a total of eighty thousand (P80,000.00) pesos, in all.
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> With costs *de oficio*.
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> (pp. 35-36, *Rollo*.)

Accused-appellant assails said judgment, arguing that the trial court erred in: (a) convicting accused-appellant despite the failure of the prosecution to prove his guilt beyond reasonable doubt, and (b) in not allowing him to present additional evidence.

After a meticulous and objective evaluation of the record of this case, this Court is of the carefully considered opinion that the court *a quo* failed to observe the required procedure for cases where the accused pleads guilty to a capital offense.

Section 3, Rule 116 of the Revised Rules on Criminal Procedure is explicit that "when the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf." Under this Rule, three things are enjoined upon the trial court when a plea of guilty to a capital offense is entered: (1) the court must conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) the court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) the court must ask the accused if he desires to present evidence on his behalf and allow him to do so if he desires (*Pamaran, Manuel,* R., 1995 Rules on Criminal Procedure, Annotated, Rules 110-127, 1998 Edition, p. 307, citing *People vs. Camay*, 152 SCRA 401 [1987]). This procedure is mandatory and a judge who fails to observe it commits grave abuse of discretion (*People vs. Dayot*, 187 SCRA 637 [1990]).

In *People vs. Albert* (251 SCRA 293 [1995]), we pointed out that the rationale behind the aforequoted rule is that courts must prove with more care wherever the possible punishment is in its severest form — death — for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.

A careful perusal of the record of this case reveals a measure of shortcoming on the part of the trial court to explain fully to accused-appellant the consequences of his plea of guilty, the trial court failing as it did to conduct the requisite searching inquiry so as to determine whether accused-appellant's plea possessed all the requirements of an acceptable one. The proceedings below on this point transpired as follows:

> ATTY. ESBER:
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> For the accused. Before I proceed to cross-examine the witness, the accused intimated to me that he be allowed to change his previous plea of not guilty to "yes guilty."
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> COURT:
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> ORDER
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> Before the cross-examination of the complainant in her joint testimony for all the four (4) rape cases, the defense counsel moved the Court that the accused be allowed to withdraw his former plea of "Not Guilty" to the charge of "Rape" and substitute the same with that of "Yes Guilty."
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> There being no objection from the prosecution, let the accused be re-arraigned.
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> SO ORDERED.
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> INTERPRETER:
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> Accused pleading guilty, Your Honor.
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> ATTY. ESBER: