

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JAIME JOSE AND GEORGE TILLMAN, DEFENDANT AND APPELLANT.

G.R. No. L-28397. June 17, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Automatic review of the decision of the Court of First Instance of Rizal (Branch VII, Pasay City) in Criminal Case No. 7511-P for Robbery and Criminal Case No. 7525-P for Forcible Abduction With Rape, entitled "People of the Philippines vs. Jaime Jose, et al.", the dispositive part of which reads:

"In view of all the foregoing, the Court

(1) Finds Jaime Jose and George Tillman not guilty of the crime of robbery charged in Criminal Case No. 7511-P;

(2) Finds Jaime Jose and George Tillman guilty beyond reasonable doubt of the complex crime of forcible abduction with rape charged in Criminal Case No. 7525-P, and sentences them to the penalty of death, with the recommendation, however, that the same commuted to life imprisonment;

(3) Orders Jaime Jose and George Tillman, jointly and severally, to pay Zenaida de la Cruz, as moral and exemplary damages, the sum of P6,000.00;

(4) Orders the forfeiture in favor of the Philippine Government of the Mercedes Benz of Jaime Jose, which car bears Plate No. 9978; and

(5) Orders Jaime Jose and George Tillman to pay the costs."

In this Court's resolution dated January 2, 1973, it was stated:

"Considering further that appellant Jaime Jose has already been executed pursuant to the decision rendered in L-28232, the Court Resolved to DISMISS the case against appellant but only insofar as his criminal liability is concerned."

There is no need to discuss Criminal Case No. 7511-P, for Robbery, because both accused Jaime Jose and George Tillman were acquitted of the charge. It is readily noted, however, that in this criminal case the original information filed on July 12, 1967, mentioned of P1,000 worth of jewelry and cash allegedly robbed from Zenaida de la Cruz (supposed victim of abduction with multiple rape in Criminal Case No. 7525-P) and P573.00 worth of jewelry and cash allegedly robbed from Araceli Sy. But the amended information that gave rise to Criminal Case No. 7511-P mentioned only the alleged robbery of P573.00 from Araceli Sy alone.

In Criminal Case No. 7525-P, Jaime Jose and George Tillman, with John Doe and Roy, Peter Roe, and Richard Roe, the latter four being unidentified and whose whereabouts are unknown, were charged by virtue of a complaint dated July 20, 1967, with crime of Forcible Abduction With Rape, allegedly committed against Zenaida de la Cruz, as follows:

"That on or about the 4th day of July, 1966, at nighttime, a circumstance deliberately sought to insure success in the commission of the offense, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with deadly weapons, by means and use of a motor vehicle, and prompted by lewd designs, did then and there willfully, unlawfully and feloniously abduct, take and carry away the undersigned while on her way home, against her will and consent; and thereafter the accused Jaime Jose y Gomez, George Tillman, John Doe and Peter Doe, in accordance with and pursuant to their conspiracy aforesaid and with malice aforethought, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of and sexual intercourse with the undersigned, in succession and one after the other, against her will and consent."

By agreement between the Prosecution and the Defense, Criminal Case No. 7511-P for Robbery and Criminal Case No. 7525-P for Forcible Abduction With Rape were jointly tried. Upon arraignment on July 28, 1967, Jaime Jose and George Tillman, represented by counsel, pleaded "not guilty".

The trial court summed up the evidence presented by both the Prosecution and the Defense, principally the testimonies of offended parties Zenaida de la Cruz and Araceli Sy together with those of accused Jaime Jose and George Tillman, unquestionably as follows: (1) that in the early morning hours of July 4, 1966, the two offended parties and the five accused were together; (2) that they were at Roxas Boulevard, and later at the Queen's Court Motel, both in Pasay City.

Prosecution's version of what happened that early morning hour of July 4, 1966, is that Zenaida de la Cruz, while riding a Golden Taxicab driven by Osmundo de la Cruz, was forcibly taken by five armed men riding in a Mercedes Benz car with plate no. 9978; that one of the five divested her of her wrist watch, ring and necklace; that she was brought to the "Golden Gate" Motel, but there was no vacancy, so she was taken to the "Queen's Court" Motel; that inside room no. 3 of said motel she was raped by four of the accused, one at a time, when alone in the room; that during the time three of the accused left the place and when they returned they brought with them Araceli Sy who was also taken by force by three of the group from a Golden Taxi while on her way home to Makati, Rizal, and Zenaida de la Cruz was being held by two others in the room of the "Queen's Court" Motel; that Araceli Sy was likewise divested of jewelry and cash by the "short fellow" sitting beside her; that Araceli Sy was crying and vomiting at the time while she pretended to have a "heart condition"; that the group did not further molest Araceli Sy; that the two (Zenaida and Araceli) were subsequently taken by the five men to Epifanio de los Santos Avenue from the "Queen's Court" Motel in the Mercedes Benz car from where a taxi was hailed for them; that the alleged kidnapping was immediately reported to the Pasay City Police by the taxi driver; Osmundo de la Cruz; that Zenaida de la Cruz and Araceli Sy immediately reported the crime to the authorities after they were released by the accused.

The Defense's version of the incident, on the other hand, is that on the night of July 3, 1966, Vincent Crisologo with two companions went to the house of accused Jaime Jose, where George Tillman was temporarily staying, to borrow the car of Jaime Jose; that Jaime Jose could not lend his car because he and George had to go to a party; that they agreed that the five of them would go to the party first and afterwards they would use the car to go to Bayside nightclub where Vincent Crisologo had a date with a girl; that after the party, they went to Bayside but Crisologo's friend was not there, so they went to eat at the barbecue stand after which, when they were on their way home, a taxi wherein rode Zenaida de la Cruz and Araceli Sy overtook their car at the Roxas Boulevard; that the two girls hailed them and joined them in the Mercedes Benz car of Jaime Jose; that they proceeded to the "Queen's Court" Motel where Vincent Crisologo and Zenaida de la Cruz went inside a room; that afterwards the two had an altercation because Vincent Crisologo had no money to pay Zenaida de la Cruz; that the other four persons could not contribute money because they had no money; that there was no abduction nor rape because

Zenaida de la Cruz and Vincent Crisologo were the only ones who entered the room at the "Queen's Court" Motel.

As the Hon. Francisco de la Rosa, trial judge, gave so much emphasis and importance to the credibility of Zenaida de la Cruz, the only witness on the supposed multiple rape committed against her, in convicting the accused Jose and Tillman, necessarily We have to subject her sworn statements to a searching scrutiny to determine if she really told the whole truth in her narrations supporting the prosecution's version of the incident.

In her sworn statement Exh. "B", taken on July 4, 1966, at 10:00 A.M. or shortly after the supposed crime was committed, she stated that she was filing a case of rape and robbery against Jaime Jose, George Tillman, Roy and two others because her "Zandoz" watch, pearl necklace and P300 cash were forcibly taken from her; that four persons who were armed alighted from a Mercedes Benz car and forced her to ride with them to "Queen's Court" motel where she was taken by force inside Room 3; that while in Room 3, three of her abductors left with the car, while two were left in the room with her; that one of the two persons with her in the room went outside while the other one raped her; that after the man who was left with her in the room had raped her, the other man entered and raped her also; that the car returned and Araceli Sy was brought inside the room; that the car left again and Araceli Sy was brought to the bathroom after which a small man (Vincent Crisologo) raped Zenaida; that the car arrived and again George (Tillman) raped her; that Jaime raped her first, followed by the man with glasses and by the small man who turned out to be Crisologo, and then again by George (Tillman); that Jaime was the one who removed her panties while she was struggling; that her jewelry was taken from her in the car while her bag was taken from her before she was forced inside the motel room; that the guns used were a 22 caliber, black held by Jaime; a 38 caliber black held by the man with glasses; a 38 caliber black held by the small man (Crisologo) while she did not notice if Roy had a gun.

As previously stated, the original information in Criminal Case No. 7511-P, for Robbery, mentioned P1,000 worth of jewelry and cash allegedly robbed from Zenaida de la Cruz, while the amended information mentioned only P573.00 worth of jewelry and cash allegedly robbed from Araceli Sy. As to why Zenaida de la Cruz did not press her charge of robbery is not at all explained.

When Zenaida de la Cruz testified in court on August 4, 1967, she stated, that after she was brought inside Room 3 of "Queen's Court" motel by the five men, she was told to wash; one was guarding her and three of them went out and she heard the sound of the engine when the Mercedes Benz car left; that the two who were left in the room were George Tillman and Jaime Jose, that one of the two (Tillman) left the room and Jaime Jose was left behind in the room alone with her and Jaime Jose raped her (pp. 9-12, t.s.n. Hearing of August 4, 1967); that after she was raped by Jaime Jose, the man with eyeglasses (not Tillman) entered the room and with Jaime Jose outside; raped her in turn (pp. 12-14, t.s.n. Hearing of August 4, 1967); that when the man with eyeglasses (not Tillman) was still on top of her, she heard the sound of gun, the man stood up and dressed, then Araceli Sy was pushed into the room (p. 14, t.s.n. Hearing of August 4, 1967); that the small man (Crisologo) talked with her to have "intercourse with me", and Araceli Sy was brought to the bathroom, after which the small man raped her (pp. 16-18, t.s.n. Hearing of August 4, 1967); and that George Tillman was the next to rape her (pp. 20-21, t.s.n. Hearing of August 4, 1967).

In her sworn statement (Exh. 1-Jose, Exh. 1-Tillman) given in the fiscal's office during the preliminary investigation of the case (Joint investigation of I.S. No. 50116, Zenaida de la Cruz vs. Jaime Jose, et al., for Kidnapping with multiple rape and robbery; I.S. No. 50116-X, Araceli Sy vs. Jaime Jose, et al., for Kidnapping with Robbery, and I.S. No. 50345, Osmundo de la Cruz vs. Vincent Crisologo, et al., for Grave Threats), Zenaida de la Cruz stated that in the garage of the Queen's Court Motel, the small man (Vincent Crisologo) got her bag (p. 14, t.s.n., Hearing of September 5, 1966); that when she was inside the room, she heard the car leave; that after the car had left, two persons remained inside the room with her, Jaime Jose and another person she did not know (p.

15, t.s.n. Hearing of Sept. 5, 1966); then the one wearing glasses (not George Tillman) left the room and Jaime Jose raped her (pp. 16-19, t.s.n. Hearing of Sept. 5, 1966); then the man wearing glasses (not George Tillman) entered the room and also raped her (pp. 20-22, t.s.n. Hearing of Sept. 5, 1966); that the car returned and George, Vincent Crisologo and Roy entered the room together with Araceli Sy (pp. 22-23, t.s.n. Hearing of Sept. 5, 1966); that Vincent Crisologo told Araceli Sy to lie down on the sofa and then to go inside the bathroom (pp. 25-26, t.s.n. Hearing of Sept. 5, 1966); the car left again and then Vincent Crisologo raped her (pp. 26-28, t.s.n. Hearing of Sept. 5, 1966); then George Tillman raped her (pp. 31-33, t.s.n. Hearing of Sept. 5, 1966); she was very sure Vincent Crisologo was the third man who raped her and she filed a complaint against Vincent Crisologo (pp. 60-62, t.s.n. Hearing of Sept. 5, 1966). (The charges against Crisologo were however later dropped on grounds of mistaken identity upon statements of desistance executed by both Zenaida and Araceli.)

While certain discrepancies or inaccuracies may be noted from the foregoing sworn statements of complainant due perhaps as shown by experience to confusion or an imperfect memory or deficiencies in the questions propounded to her or in the transcribing of her answers, the record satisfies Us as it did the trial judge who heard and observed the prosecution witnesses testify, that "the substance of the testimony of Zenai-da de la Cruz and the manner she testified also argue favorably to the truth of her testimony" and "that what Zenaida de la Cruz told was the whole truth when she testified. The fact that there are minor discrepancies, pointed out by the Defense, in her testimony, does not materially affect its intrinsic value."

We cannot see Our way clear as urged by the defense to alter the trial court's conclusion since whatever weight may be given to the testimonies of Jaime Jose and George Tillman, testimonies which are uncorroborated and contain improbabilities, cannot prevail over the prosecution's evidence ably presented by the Prosecutor especially as the defense failed to present available corroborating evidence, a situation giving rise to the presumption that had the same been presented, such evidence would have been adverse. A thorough scrutiny of the evidence shows Us no reason for altering or reversing the findings and conclusion of the trial court for its judgment of conviction, founded as it is on the trial judge's superior vantage point for the ascertainment of truth and the detection of falsehood from direct observation of the witnesses on the stand.

But even on the hypothesis that George Tillman is guilty of the offense charged, the death sentence cannot be imposed upon him as there is in his favor the circumstance of minority or being less than eighteen (18) years of age when he allegedly committed the offense (See Manifestation & Ex Parte Motion, dated October 20, 1975, submitted by Francisco R. Sotto, one of the counsels for accused George Tillman, pp. 283-289, Record). Although the Solicitor General objects to the consideration of this piece of evidence, consisting of the duly authenticated birth certificate of George Tillman showing that he was born on January 18, 1949, as it was not offered and formally presented in evidence during the trial, this Court resolved in its Resolution of January 8, 1976, to consider the circumstance of George Tillman's minority in the imposition of the penalty on him. In the exercise of Our sound discretion and so as not to allow sheer technicality to overcome Our sense of justice in considering the merits of this case, We hereby admit in evidence the birth certificate showing that George Tillman was a minor of seventeen (17) years, five (5) months and sixteen (16) days at the time of the commission of the crime in question since there is no doubt as to its veracity.

Under Article 68, par. 2, of the Revised Penal Code, a person who is less than eighteen years old at the time of the commission of the crime is entitled to a penalty one degree lower than that provided by law (People vs. Moises Sanidad, et al., L-32495, August 13, 1975; 66 SCRA pp. 151, 163-164; People vs. Li Bun Juan, L-11077, August 23, 1966; 17 SCRA, pp. 934, 945; People vs. Boduso, L-30450-51, September 30, 1974; 60 SCRA pp. 60, 71). The penalty for the complex crime of forcible abduction with rape is reclusion perpetua to death because it was committed with the use of a deadly weapon and by two or more persons. Considering all the aggravating

circumstances that attended the commission of the crime, the penalty of death should be imposed on him. But because of his minority, the next lower penalty to be imposed on George Tillman should be, as it is hereby, reduced to reclusion temporal which is the next lower penalty to reclusion perpetua to death which is the penalty prescribed by law for rape under Article 335, par. 3, of the Revised Penal Code. (Art. 61, par. 2, and Art. 71, Revised Penal Code). Applying the Indeterminate Sentence Law, the proper penalty to be imposed on George Tillman should be, as it is hereby, reduced to ten (10) years and one (1) day, as minimum to seventeen (17) years and one (1) day as maximum. In all other respects the penalties and liabilities imposed by the trial court are affirmed.

In view of the death of Jaime Jose during the pendency of this case which was imposed as his penalty for another similar capital offense previously committed by him, the case against him is dismissed and said accused is relieved in this case of all personal and pecuniary penalties attendant to his crime, his death occurring before rendition of final judgment herein. (Art. 89, par. 1, Revised Penal Code).

Costs against George Tillman.

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Antonio, Muñoz Palma, Aquino, and Martin, JJ., concur.

Makasiar, J., took no part.

Concepcion, Jr., J., is on leave.

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