

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCIO AMISCUA Y OJEDA, DEFENDANT-APPELLANT.

G.R. No. L-31238. February 27, 1971

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PER CURIAM:

This is an automatic review of the decision of the Court of First Instance of Leyte in its Criminal Case No. 12646 dated October 6, 1969, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court, finding the accused Lucio Amiscua guilty beyond reasonable doubt of the crime of Rape, defined and penalized by Article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111, and there being aggravating circumstances of the commission of the offense in the dwelling of the offended party by two persons and with the use of deadly weapons (bolos), without the attendance of any mitigating circumstance, hereby imposes upon the accused the extreme penalty of death by electrocution to be meted upon the accused in accordance with existing law, rules and regulations governing the same and to pay the costs. The accused is directed to acknowledge any offspring which Leonora Padero might bear by reason of the commission of this act."

The facts, as established by the evidence for the prosecution, are as follows:

The spouses Florencio Padero and Felisa Badiang had two houses in Abuyog, Leyte: one at Bo. Cadac-an, which was their usual place of sojourn and where their five minor children, namely, Leonora, 15, Norma, 13, Ester, 12, Jose, 10, and Myriam, 6, also stayed, and another, about one kilometer away, at Bo. Buenavista. Every now and then the couple had to go to Bo. Buenavista for a few days to attend to their crops.

In the morning of March 1, 1968, the Padero spouses departed from Bo. Cadac-an, leaving their children there, for Bo. Buenavista where they stayed over the night. At about midnight of that same day, the Padero children were awakened by two flashes of light beamed upon their faces. By means of a lighted vigil kerosene lamp near the doorway leading to the room, as well as of the flashlights, the two oldest children, Leonora and Norma, recognized the nocturnal intruders as Lucio Amiscua, single, whose house was only about one hundred meters from the Paderos' house, and Demetrio Perez, who was a resident of Bo. Buenavista. The children had known Amiscua for about four years, and Perez for some time.

Leonora was then dragged by Amiscua to the sala, which adjoined the room. The other children, stricken with fear, huddled together on top of a trunk near the doorway connecting the room to the sala. When already in the sala not more than two meters away from the trunk, Amiscua struck the back of Leonora's head with his hand, causing her to fall on the floor, face downward. The other children could do no more than cry because Perez, with a bolo in hand, was blocking the doorway between the room and the sala and threatening them with harm. Amiscua turned over Leonora's body, placed himself on top of her, unsheathed his bolo, and, threatening her with death if she shouted, placed the bolo by her side. Leonora struggled by moving her body from one side to another; she did not, however, shout, for fear of death. In spite of Leonora's resistance, Amiscua succeeded in having carnal intercourse with her. After warning her not to report the matter to the authorities, Amiscua stood up and left her lying on the floor.

The two men exchanged places. Perez approached Leonora, turned her face in an upward direction, threatened her with his bolo, and placed himself on top of her. Although Leonora resisted his attempts by kicking him on the stomach, Perez was able to consummate the sexual act. In the meantime, Amiscua, bolo in hand, was blocking the doorway.

After committing the dastardly crimes, Amiscua and Perez left the house of the Paderos.

The following morning Leonora and Norma proceeded to Bo. Buenavista and informed their parents of the incident. All four of them went to the municipal hall in Abuyog and reported the matter to the police. Afterwards they went to the Rural Health Center of Abuyog where the Municipal Health Officer, Dr. Lorenzo S. Tionson, conducted a physical examination of Leonora. He found her in mental shock and suffering from a slight swelling on the back of her head. The girl was later taken to a hospital for a vaginal examination, after which Dr. Tionson executed a medical certificate (Exh. "C") which contains the following findings:

"1. Slight swelling at the occipital area, tense and tender on pressure.

"2. Vaginal examination reveals laceration at 6:00 o'clock and at 10:00 o'clock. A yellowish fluid is seen in the vulvar cavity.

"3. Microscopic examination of smear taken from the vaginal cavity reveals presence of motile and non-motile spermatozoa under the low-powered and high-powered lens."

Later, the doctor was to explain on the witness stand that the vaginal laceration was fresh on the day of the examination; that something, possibly a male organ, was inserted in the vaginal cavity; and that some of the spermatozoa he had found were highly motile, i.e., alive and moving.

After the medical examination the four members of the Padero family went back to the police headquarters, but they were told to come back later because the police were quite busy with other matters. They returned several days later, during which they were interrogated by the police.

On March 7, 1968, a complaint for rape, subscribed and sworn by Leonora Padero before the Municipal Judge of Abuyog, was filed against Lucio Amiscua and Demetrio Perez; and on the same day a warrant for their arrest was issued. On March 8, 1968, policeman Anastacio Laher, whose wife was a cousin of Amiscua, went to the house of the latter to serve the warrant; but Amiscua was not there. His mother told the policeman that Amiscua was not at home, and, upon further inquiry by the policeman, she said that she did not know where her son was that day or the day before. After March 8, 1968, policeman Laher would pass by Amiscua's place hoping to be able to serve the warrant, but Amiscua was invariably not at home. He inquired of Amiscua's whereabouts from other persons in the barrio, who told him that his quarry had already left the place. It was not until May 1, 1969, or one year and two months after the incident, that Lucio Amiscua was arrested in his house at Bo. Cadac-an by policeman Laher. As to Demetrio Perez, the record shows that he was never arrested. In spite of the fact that the sworn complaint for rape filed by the offended party charged not only Lucia Amiscua but also Demetrio Perez, the Provincial Fiscal's information charged only the former, thus:

"The undersigned Provincial Fiscal of Leyte accuses Lucio Amiscua of the crime of Rape, committed as follows:

"That on or about the 1st day of March, 1968, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one Demetrio Perez who is presently at large and whose present whereabouts is still unknown, and mutually helping each other, with the use of deadly weapons and by means of force, violence and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with Leonora

Padero, a minor of thir-teen years of age; committed in the dwelling of the latter, against her will and to her damage and prejudice.

"Contrary to Article 335 of the Revised Penal Code as amended by Republic Acts Nos. 2632 and 4111."

About one week after Amiscua's arrest, Sgt. Leo-poldo Cepeda of the police force of Abuyog, who was a godfather of Amiscua, together with another policeman, the barrio captain and Amiscua himself, went to the Padero house at Bo. Cadac-an. Sgt. Cepeda had with him P200.00, which he offered in behalf of Amiscua to Flo-rencio Padero in amicable settlement of the rape case. Leonora's father refused the offer. So did Leonora, who cried upon learning of the proposition.

The facts narrated above were established on the witness stand by the testimonies of Leonora Padero, Norma Padero, Felisa Badiang, Florencio Padero, Dr. Lorenzo S. Tiongson and Anastacio Laher.

The defense presented two witnesses: defendant Lucio Amiscua and Brigido Baltazar, the barrio captain of Cadac-an. The defense version was this: Defendant Amiscua and Leonora were sweethearts; in fact they lived together as husband and wife at the Paderos' house at Bo. Cadac-an for about two months until Feb-ruary 1967. Leonora's parents, like Amiscua's parents, both knew of the relationship; indeed, once in a while Leonora's parents would stay in their house at Bo. Cadac-an where they would find Amiscua and Leo-nora living as husband and wife. At one time in the course of the two-month amorous relationship, Leonora's parents brought up before the two lovers the subject of marriage. Amiscua asked for time within which to se-cure the necessary funds to be used for the wedding. The parents did not say anything to this. Amiscua and Leonora thereafter agreed that he would go to Ormoc City to look for work so he could save the necessary amount. Pursuant to the agreement, Amiscua left at dawn one day in February 1967. He later found work in a sugar plantation in Ormoc City where he was paid P2.00 a day. After working in the plantation for about a year and saving P200.00, he left for Anahawan, Leyte, for a visit with a cousin. He stayed at the said place for about two months, after which he went home to Bo. Cadac-an at about the end of April 1969, proceeding directly to his mother's house. Having learned of the complaint filed against him and Perez, he went to the Paderos' house, but he was not allowed into the house by Florencio Padero because the latter was mad at him, telling him that there would be no more wedding because a complaint for rape had already been filed against him. The day after his arrival at Bo. Cadac-an, Amiscua was arrested. It was the defendant's theory that the complaint for rape was filed against him because Leonora's parents had presumed that when he left the Paderos' house at dawn one day in February 1967, and failed to return for a con-siderable length of time, he had abandoned their daugh-ter. The defendant denied ever going to the Paderos' house with Sgt. Cepeda, the barrio captain and another policeman.

Appellant's defense of alibi is palpably and mi-serably weak. He was positively identified by the offended party and her sister who had a full view of the entire incident. Both sisters had known him for four years because he was a neighbor; and on the night in question there was sufficient light emanating from the kerosene lamp and the flashlights to enable them to identify the two men. In addition, it is a natural reaction for victims of criminal violence to strive to know the identity of their assailants, and the sole testimony of the offended party would have sufficed to sustain a conviction (*People v. Selfaison, et al.*, L-14732, January 28, 1961, 1 SCRA 235). Appellant would want the court to believe that he left for Ormoc City about a year before March 1, 1968, and stayed there continuously after that date. His testimony on this point is wholly uncorroborated. His life being endangered by the peril of possible conviction of a grave crime and of the imposition of its conse-quent penalty, it would have been worth the trouble to secure the testimony of someone with whom he alle-gedly worked in the sugar plantation, if not the plan-tation owner or the manager, who must have paid him his wages or supervised him in his work. What has been sufficiently established was appellant's flight from Bo. Cadac-an shortly after his commission of the crime, which indicates a guilty mind (*People v. Berganio*, L-10121, December 29, 1960).

We now come to appellant's story that he and the offended party lived as husband and wife. Again, we have only appellant's word for it. On rebuttal the offended party's father denied that there was any re-relationship between his daughter and appellant. No one - not even appellant's own mother - came to court to give substance to appellant's statement. Surely, a thing like this would have been known in the barrio by at least a handful of people. As it is, the only person called upon to corroborate appellant's allegation - the barrio captain - merely said that he was of the belief that Leonora and Amiscua were friends, and that there were times that he saw Amiscua and his (the barrio cap-tain's) nephew in Leonora's house, but that he could not tell if on those occasions Leonora was also there. At any rate, if the alleged cohabitation for about two months were true, there should have been old or healed lacerations of the hymen, which Dr. Tiongson could not have failed to notice. Yet, nothing of the sort is men-tioned in the medical certificate, nor has that fact been testified to by him in court.

Appellant has not advanced a single satisfactory reason why the Padero family would fabricate a tale to tie the noose around his neck. To be sure, he at-tempted to give a motive, namely, that Leonora's pa-rents got angry with him for maintaining intimate relations with their daughter without the benefit of marriage and later abandoning her. If this were the motive of the Pa-deros, what need would there be for them to include another person (Demetrio Perez) in the complaint for rape? And when appellant finally returned from his alleged sojourn in Ormoc City and Anahawan, the first thing Leonora's parents would have confronted him with was the subject of marriage, using the complaint which had already been filed as a sword of Da-mocles hanging above appellant's head. They would have given appellant a chance to redeem their daughter's honor which had been blemished by two months of extra-marital relation-ship before exposing her honor and dignity to public contempt to satisfy a feeling of revenge. (See *People v. Peñafiel, et al.*, L-17669, December 30, 1961, 3 SCRA 911.) Besides, if, as declared by appellant, it was his agreement with Leonora that he would work in Ormoc City to earn money for their wedding, what reason was there for Leonora to accuse him of rape? The absence of evidence as to an improper motive actuating the offended party and the principal prosecution witnesses tends to sustain the conclusion that no such improper motive existed and that their testimonies are worthy of full faith and credit (*People v. Imam Sawah, et al.*, L-15333, June 29, 1962, 5 SCRA 385).

Appellant stated that he never went to the house of the Paderos with Sgt. Cepeda, another policeman and the barrio captain of Cadac-an. In short, he denied the truth of Flo-rencio Padero's testimony that sometime after his arrest, appellant, thru Sgt. Cepeda, offered P200.00 to him and to Leonora as a consideration for the dropping of the case. Ironically, appellant's own witness, Brigido Baltazar, the barrio captain referred to, declared in court that the group really went to Padero's house to settle the case, but that Florencio Padero did not accede to any settlement. The offer of compromise having been in effect made by appellant, who was then present, the same constitutes an implied admission of guilt under Sec. 24 of Rule 130. (See *People v. Sope, et al.*, 75 Phil., 810.) While it is true that in a rape case the rule could be different because said offense may be com-promised (Art. 344, last paragraph, Revised Penal Code), in this particular instance, the offer, which was made when the case was already pending in court, was for a monetary consi-deration and not to marry the offended party.

The crime committed by appellant is rape penalized under the third paragraph of Article 335 of the Revised Penal Code, as amended by Republic Act No. 4111, to wit:

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death."

It was attended by the aggravating circumstances of nighttime, dwelling and abuse of superior strength, without any mitigating circumstance to offset them. The provision of law quoted above is applied in view of the use by appel-lant of a deadly weapon, and not because the crime was committed by two or more persons; hence, abuse of superior strength may be considered as a generic aggravating circumstance. Although the court below failed to

consider nighttime, which, as can be clearly inferred from the evidence, was purposely sought to facilitate the commission of the crime, the penalty imposed by it is nevertheless correct in view of the second paragraph of Article 63 of the Revised Penal Code, which calls for the imposition of the greater penalty in those cases where the law prescribes a penalty composed of two indivisible penalties and there is present one aggravating circumstance.

We notice that no indemnity was awarded in favor of the offended party, for which reason we make such an award based on Articles 21, 2216, 2219, 2229 and 2230 of the Civil Code. We hereby fix the same in the sum of P12,000.00 in view of the greatly diminished purchasing power of the peso.

The court a quo directed appellant "to acknowledge any offspring which Leonora Padero might bear by reason of the commission of this act." In view of the absence of evidence in the record to show that the offended party gave birth by reason of the rapes committed by appellant and his companion, although when the trial began on September 16, 1969, the full period for possible gestation from the date of the incident on March 1, 1968, had already elapsed, we believe that that part of the judgment should be deleted.

WHEREFORE, the judgment under review is affirmed with the modifications indicated above. Appellant is accordingly sentenced to the extreme penalty of death and ordered to indemnify Leonora Padero in the sum of P12,000.00, with costs.

Let a copy of this decision be furnished the Secretary of Justice for whatever action he may deem necessary and proper in connection with Demetrio Perez, who appears to be still at large.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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