

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMITERIO PASCUAL, JR., Y DOMINGO, ACCUSED-APPELLANT.

G.R. No. L-53403. November 12, 1981

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PER CURIAM:

Automatic review of the death sentence imposed by the Circuit Criminal Court of the First Judicial District at Tuguegarao, Cagayan on the accused Emitterio Pascual, Jr. y Domingo for the crime of rape with homicide.

It appears that appellant, on being arraigned, on November 15, 1979, pleaded not guilty with the assistance of Atty. Oscar Lorenzo as counsel de oficio.[1] When the case was called for hearing on February 5, 1980, appellant, assisted by the same counsel, withdrew his plea of not guilty and entered a plea of guilty (pp. 55-56, Record). The proceedings taken on that day are recorded as follows:

"ATTY. LORENZO:

For the accused your Honor. If your Honor please, this representation upon conferring with the accused your Honor, the accused has agreed to enter a plea of guilty and that he will withdraw his former plea of not guilty your Honor.

"COURT:

Are you ready with your witness Mr. Fiscal?

"FISCAL TABLANG:

Your Honor please, we are ready to prosecute this case because of the presence of our witnesses and one of them is an eye witness to the incident. If it is to expedite this case, the plea of guilty is offered, we have no objections but we only would like to go on record that the proper safeguard should be clearly told to the accused so that later on, even the Supreme Court cannot blame us for doing this.

"COURT:

That is why I am asking if you are ready with the witnesses even with the plea of guilty, the imposable penalty being death, then, the Court has to hear the evidence for the prosecution.

"FISCAL TABLANG:

We are ready only we would like to point out to this Court, to the accused and to the defense counsel that there is such a thing in the records of the case, a confessional statement wherein the accused clearly described how he committed the crime.

"COURT:

That is it, even then with that confessional state-ment, the Court will still hear the witnesses for the prosecution.

"COURT:

"Q - Tell him that his lawyer has manifested that you are prepared to withdraw your plea of not guilty to plea of guilty. Please ask him that if he under-stand.

"A - Yes, sir.

"Q - And the crime charged against you is punishable by death?

"A - I understand, sir.

"Q - And in the event that the Court will find you guilty as charged, it is an evitable (sic) that you will be hunged (sic) or you will be electrocuted, do you understand that?

"A - Yes, sir.

"Q - That the Court is not satisfied with your plea of guilty. And if the prosecution can prove that you have actually committed the crime which were charged against you under the circumstances, is that read to you in the information?

"A - Yes, sir.

"COURT:

O R D E R. . . . When this case was called for initial hearing, Asst. Prov'l. Fiscal Valentino G. Tablang appeared for the government. The accused is in Court assisted and represented by Atty. Oscar C. Lorenzo as his counsel de oficio. From the records of the case, the accused was arraigned on November 15, 1979, assisted and represented by his same counsel and to which the information having been translated in the Ilocano dialect which he informed the Court that he very well speaks and understands, he entered a plea of not guilty.

This case is now called for initial hearing with the prosecution being represented by Asst. Prov'l. Fiscal Valentino G. Tablang and Atty. Oscar Lorenzo as the counsel de oficio of the accused. The latter orally manifested to this Court of his desire to with-draw his plea of not guilty earlier entered, that he will substitute the same to plea of guilty. In the light of this development, the Court meticulously informed the accused that the crime of which he is charged, that of Rape with Homicide, under the law is punishable by death. And with his intention of withdrawing his plea of not guilty and substituting it with the plea of guilty, it might be inevitable that he will be meted the penalty of death as provided by law. Even with these explanations of the Court, of his own counsel and of the interpreter of this Court, the said accused still insisted in withdrawing his plea of not guilty, and to substitute it with that of guilty! Accordingly, as manifested by his counsel and as he himself for several times personally confirmed even he would be inevitably sentenced to death, the Court hereby reluctantly orders the plea of not guilty en-tered by him when arraigned on November 15, 1979 be withdrawn, that he maybe arraigned anew.

SO ORDERED.

"NOTE:

The accused is being arraigned anew with the Information being read and translated to him in the Ilocano dialect by the Interpreter.

"INTERPRETER:

The accused EMITERIO PASCUAL, JR. Y DOMINGO pleaded guilty, sir". (tsn., pp. 3-7, February 5, 1980).[2]

The prosecution thereafter presented evidence, notwithstanding the plea of guilty and appellant's assurance through counsel, that he understood the meaning and consequences of such a plea which is, as explained by the court a quo the inevitable imposition of the penalty of death.

From the evidence of the prosecution, the following facts, as quoted from Appellee's brief, appear duly established:

"At about 4:00 p.m. on August 17, 1979, Renato Pavo, who was sixteen (16) years old and an elementary graduate at the time he testified on February 5, 1980, was astride a carabao after having gathered peanuts from a cornfield. While thus situated, he saw from a distance of about one hundred (100) meters Emeterio D. Pascual, Jr., appellant herein, dragging thirteen (13)-year old Nida Caranguian from a cornfield to a place where tall grasses grew.

"Pascual then had a sheathed bolo at his waist. He dragged Nida to the tall grasses by stepping backwards, with his left arm around her body and his right hand covering her mouth. Renato Pavo could see Nida struggling and heard her weak voice as she protested appellant's attack.

"Young Renato Pavo, however, did not intervene. He feared the appellant who was known as a man of violence. Hence Renato proceeded home and, restrained by that fear, did not inform his parents, or those of Nida, what he had witnessed. (tsn., pp. 30-41, February 5, 1980).

"When Nida Caranguian failed to return home on the afternoon of that day, her father searched for her and found her body amid tall grasses beside a cornfield. Upon reporting her death to the barangay authorities, he was told not to remove her body before the incident was investigated by the police.

"The following day, August 18, 1979, Baggao police-men, including Pfc. Celso Sorita and Patrolman Abraham Cudal, went to the place where the body of Nida Caranguian lay, to conduct an investigation. They saw that her body lay on its back, near a canal. Her dress was raised and her panty drawn down to her thighs, such that her private part was completely exposed. On her neck was an open wound (tsn., pp. 46-50, February 5, 1980; Exhibit E, Rec. p. 12).

"Upon questioning the parents of the victim, her mother pointed to appellant as the suspect. Whereupon, the policemen proceeded to look for him and found him at the house of his aunt. He denied any knowledge of or participation in the incident. However, when invited to the police station he willingly went with the policemen (tsn., p. 5, February 5, 1980).

"Appellant was investigated at the Baggao police station by Patrolman Dominador Suriaga. Pat. Suriaga informed him (appellant) that he was suspected of having raped Nida Caranguian and asked him if he was willing to give a statement. Appellant signified his willingness to give a statement. He was, therefore, informed that he had the right to remain silent and to be assisted by counsel of his choice. Appellant stated that he understood that any statement he would give may be used against him and he was not interested in the assistance of counsel. Pat. Suriaga then took his statement (Exhibits A and A-1; Rec; pp. 7-8) by questioning him in the Ilocano dialect. Appellant's answers were typed in English which, however, were duly translated to him (tsn., pp. 12-13, February 5, 1980).

"In his statement (Exhibits A and A-1; Rec. pp. 7--8), he confessed to having seen Nida Caranguian gathering peanuts in a cornfield at about 4:00 p.m. on August 17, 1979. He approached her, engaged her in conversation and suddenly embraced her. He then took her by force to a place where tall grasses grew and there, threatening her with his bolo, subdued her and had sexual intercourse with her. The victim told him that she would expose him to the authorities. Hearing that, appellant hacked her on the neck with his bolo. After that, he fled from the crime scene and threw away the bolo along the way (tsn., pp. 14-16, 25-26, February 5, 1980).

"The following day, August 19, 1980, appellant was taken to the Municipal Judge of Baggao, Natividad Sabater-Donato, who read the statement to him line-by-line, translating them into the Ilocano dialect in the process, and asked him if the contents thereof were true. Appellant said they were and his statement was subscribed before the Municipal Judge (tsn., pp. 17-20, February 5, 1980).

"Dr. Salvador C. Pallagao, Municipal Health Officer of Baggao, autopsied the body of Nida Caranguian. He

issued a Post-Mortem Report (Exhibit C; Rec. p. 9) and her Certificate of Death (Exhibit D; Rec. p. 12). The following were the findings of Dr. Pallagao in his Post-Mortem Report:

'1. Neck - Incised wound at the left side of the neck, 4 inches long and 3 inches deep cutting the big blood vessels of the neck.

'2. Genitalia - Internal Examination - Presence of hymenal lacerations at 1:00 o'clock, 7 o'clock and 3:00 o'clock positions.

Introitus - Admits 2 fingers with a little difficulty.

Cause of death - Hemorrhage due to Incised Wound of the neck, left side."[3]

In this appeal, appellant assigns as errors of the trial court (1) its improvidently accepting appellant's substitute plea of guilty; (2) its admission of the alleged confession (Exhibit "A") of the accused; (3) in giving credence to the testimony of Renato Pavo; and (4) in not acquitting him.

Appellant, finally, contends that even supposing *arguendo* the guilt of said appellant, he is entitled to the reduction, by this Court, of the penalty from death to reclusion perpetua.[4]

From the proceedings as duly recorded and reproduced earlier in this decision, We are satisfied that the trial court has not accepted improvidently appellant's plea of guilty. It has exercised that patience and circumspection which is enjoined of trial judges in explaining to the accused the nature and meaning of the accusation and the full import of their plea of guilty. This injunction on trial judges in hearing a capital offense where the accused enter a plea of guilty, reiterated in the case of *People vs. Baluyot*[5] relied upon by appellant, appears fully complied with in the instant case. The record speaks for itself, and nothing more need hardly be said on this score.

To begin with, appellant was all along assisted by counsel. Notwithstanding appellant's assurance of his complete comprehension of the meaning, import and dire consequence of his plea of guilty, the trial court was not satisfied. Hence, it required the presentation of evidence by the prosecution as if trial proceeded on a plea of not guilty. In no way at all then may the trial judge be faulted of having improvidently accepted appellant's plea of guilty. He has taken all appropriate proceedings as this Court has enjoined upon judges trying cases where a plea of guilty entered by the accused would impel the court to impose no other penalty than death.

As to the admission of his extra-judicial confession (Exhibit "A"), appellant would also impute error to the trial court, on the ground that the statement was taken without previous waiver to his right to counsel. He is invoking the safeguard contained in Section 20, Article IV, of the Constitution which reads:

"Section 20. xxx Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel and to be informed of such right."

What is pointed to as the defect or infirmity of the extra-judicial confession with reference to its admissibility is that appellant was not informed that if he cannot get a lawyer, the State will provide him one, to assist him in the investigation.

The omission is a grave one, considering the very intention of the above cited provision of the Constitution, which by unanimous view in the case of *Magtoto vs. Manguera*,[6] embodies the very principles so clearly expressed in the case of *Miranda vs. Arizona*. [7] Thus in the *Magtoto* case this Court said:

"The Constitutional Convention at the time it deliberated on Section 20, Article IV of the New Constitution was aware of the *Escobedo* and *Miranda* rule which had been rejected in the case of *Jose*. That is the reason why the *Miranda-Escobedo* rule was expressly included as a new right to a detained person in the present provision of Section 20, Article IV of the New Constitution."

With the infirmity just noted, We rule that the extra-judicial confession of appellant (Exhibit "A") was not properly admitted by the trial court. We fail to see in appellant's statement that he is not interested in the assistance of counsel as a waiver of the right counsel, if that statement is not prefaced with the offer to secure for or give him a counsel at the instance of the State. A constitutional safeguard accorded to a person must meticulously be made available to him before a waiver may be declared to foreclose the availment of the right.

We, however, cannot agree that, as appellant contends, the trial court erred in giving credence to the testimony of Renato Pavo, an eye-witness to highly inculpatory facts against appellant.

In attempting to impugn Pavo's credibility, appellant stated in his brief as follows:

"Under the Statement of the Facts, the conflicting versions given by Renato Pavo initially at the police investigation on August 22, 1979, later at the preliminary investigation before the Baggao municipal judge on September 10, 1979, and lastly at the trial of this case on February 5, 1980, have been related.

"It will be recalled that on August 22, all that Renato swore to about the accused was that he met him at about 4:00 p.m. on August 17, 1979 on his (Renato's) way home ---- accompanied by no one ----- from the peanut field as the accused was going to their cornfield, and all that he swore to about Nida was that when he (Renato) was about 100 meters from the peanut field, he saw Nida still harvesting peanuts. It will be recalled also that at the preliminary investigation on September 10, 1979, all that Renato Pavo said about the accused was that he --- with companions this time --- while on their way home from the peanut field at about 4:00 p.m., met the accused on his way to his cornfield, the accused asked peanuts from them, and Teresa Pavo --- apparently a sister or very close relative --- the accused two bundles. At neither the police investigation of August 22 nor at the preliminary investigation of September 10, however, did Renato give any indication that he saw Nida with the accused, much less that he saw the accused embrace and pull Nida towards the bushes.

"At the trial of February 5, 1980, Renato had an entirely different story to tell. He said that a week after the August 17 incident, he told Nida's father (Silvino) that he saw the accused embrace and pull Nida to the bushes on August 17."[8]

Renato was a young boy, and his silence prior to February 5, 1980 is easily explainable, as he so explained, by his fear of the appellant whom he knew to be a man of violence.[9] The fear of reprisal, as the cause of his failure to mention the name of appellant as the suspect, is certainly a natural feeling, specially in a young witness as Pavo. His silence just after the commission of the dastardly crime for which appellant was a strong and the sole suspect is, therefore, not a reasonable ground to discredit his testimony.

With the testimony of Pavo, there remains sufficient evidence with which to convict appellant, independently of his plea of guilty, and even without admitting in evidence his supposed extra-judicial confession. He was an eye-witness to appellant dragging and pulling the victim away from where she was working on a corn-field, uprooting peanuts. He stated that appellant was armed with a "badang", a big bolo which evidently caused the gaping wound on the victim's neck. The victim was dragged to where tall grasses grew, and it was in the same place where the body of the girl was found the following day, lying on its back. That appellant is the author of the heinous crime is thus placed beyond doubt, taking also into account his voluntary surrender as he himself admitted[10] in an effort to lower the penalty from death to life imprisonment, the subject of his fifth assignment of error, not to mention his plea of guilty.

While appellant contends that he should have been acquitted (4th assignment of error) after discussing his first three assigned errors, he also states that assuming he is guilty, his penalty should not be death but reclusion perpetua. In so contending he would give as basis his voluntary surrender and plea of guilty, as two mitigating circumstances. Unknowingly perhaps, he has by this submission all the more strengthened moral certainty in his guilt. Both circumstances he has invoked to lower the penalty are clear indications of an awareness of guilt.

Under the circumstances of the case at bar the fact that the victim was a helpless and a harmless young girl precludes invocation by appellant of any circumstance to justify his act of raping and killing, for which he surrendered voluntarily. In using his plea of guilty as another ground for lowering his penalty, he also thereby weakened, if not nullified, his claim of the trial court having improvidently accepted his plea of guilty.

In any case, appellant's contention as regards the proper penalty to be imposed, may not be sustained. The penalty for the crime committed is death as prescribed in the last paragraph of Article 335 of the Revised Penal Code, as amended by Republic Act No. 2632 and Republic Act No. 4111, which being indivisible, has to be imposed, regardless of the presence of mitigating circumstance.[11] This is obviously so because the prescribed penalty is death and none other, considering the extraordinary gravity of the offenses committed.[12]

WHEREFORE, there being sufficient evidence, aside from appellant's plea of guilty which We find not to have been improvidently accepted, the judgment appealed from imposing the death penalty is affirmed. No costs.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.
Fernando, C.J., no part.

[1] p. 36, Record.

[2] pp. 6-10, Appellee's Brief, p. 42, Rollo.

[3] pp. 1-5, Appellee's Brief.

[4] p. 21, Appellant's Brief.

[5] 75 SCRA 148, 154.

[6] 63 SCRA 4, 18.

[7] 384 U.S., 436.

[8] pp. 16-17, Appellee's Brief.

[9] pp. 40-41, t.s.n.

[10] p. 20, Appellant's Brief.

[11] Article 63, Revised Penal Code, first paragraph.

[12] See *People vs. Amit*, 32 SCRA 95.

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