

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSDADO EGOT, ACCUSED-APPELLANT.

G.R. No. L-35775. June 29, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Automatic review of the decision rendered by the defunct Court of First Instance of Zamboanga del Sur in Criminal Case No. 72 because of the imposition of the death penalty.

In an information dated July 15, 1970, DIOSDADO EGOT was accused of rape said to have been committed as follows:

"That on February 4, 1970, at about 5:00 o'clock in the afternoon, in the cemetery of barrio Pangi, municipality of Ipil, pro-vince of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, in order to facilitate the commission of the crime, did, then and there wilfully and feloniously bring one Liberty Siodora, an eleven year old girl to the cemetery an isolated place, with the pretext that they will look for his lost horse, upon reaching the cemetery, with his bolo intimidated the young girl and by force have carnal knowledge with her against her will." (Expediente, p. 1.)

EGOT pleaded "not guilty" when he was arraigned and after trial the court rendered the following sentence:

"WHEREFORE, this Court hereby finds the accused DIOSDADO EGOT guilty beyond reasonable doubt of the crime of RAPE penalized under Article 333 of the Revised Penal Code, as amended, and pursuant to said article, sentences him to suffer the supreme penalty of DEATH, and to pay to the offended party Liberty Siodora the SUM OF EIGHT THOUSAND (P8,000.00) PESOS as moral damages, with Costs against the accused." (Id., pp. 62-63.)

In imposing the death penalty the trial court said:

"Under Article 333 of the Revised Penal Code the crime of rape committed either by force or intimidation or even without such force or intimidation, where the woman raped is below 12 years old, the penalty shall be reclusion perpetua (life imprisonment) and where the rape was committed with the use of deadly weapon, as in this case, since there is evidence that the accused Egot used a sharp-pointed bolo in the commission of the offense, the penalty shall be reclusion perpetua to death. Considering that the offense was attended with the aggravating circumstance of uninhabited place as it was committed in a cemetery which is uninhabited and isolated and far from the road and grassy, the penalty imposable on the accused is the supreme penalty of death." (Id., p. 62.)

The People's version of the facts is as follows:

"At around 4:00 o'clock in the afternoon of February 4, 1970, at barrio of Pangi, Municipality of Ipil, Zamboanga del Sur, Pelagia Siodora left her house and went to her neighbor's farm (p. 28, tsn., February 22, 1972), leaving her daughter Liberty who was eleven years old (Exhibits C, C-1 and C-3; p. 79, tsn., March 23,

1972) and her other younger children (p. 28 tsn., February 22, 1972). Before she left her house that afternoon, she saw appellant Diosdado Egot riding on horseback and alighting at the house of his aunt Candida Ramos, whose house is about ten meters from her house (pp. 28-30, tsn., February 22, 1972).

"At about 5:00 o'clock of the same afternoon appellant went to the house of Pelagia Siodora who was no longer there at that time. He talked to complainant Liberty asking her to 'accompany me look for my horse, if we find it I will give you biscuit' (p. 75, tsn., March 23, 1972). Liberty unsuspectingly agreed to accompany appellant ostensibly to look for his horse. Upon reaching the cemetery, which was about one hundred fathoms from Liberty's house (p. 31, tsn., February 22, 1972), appellant pointed a bolo at her (p. 72, tsn., March 23, 1972) and told her to lie down (p. 71, tsn., March 23, 1972). Appellant then removed her panty and after opening the front part of his pants let his penis come out (p. 72, tsn., March 23, 1972). Then appellant went on top of her and inserted his penis into Liberty's vagina and had sexual intercourse (p. 74, tsn., March 23, 1972).

"After the incident Liberty went home and reported the matter to her mother (p. 67, tsn., March 23, 1972). The following day the mother reported the incident to the police (p. 33, tsn., February 22, 1972). She could not report the incident on the same date to the police as it was already nighttime and barrio Pangi is about three kilometers from the town proper (p. 73, tsn., February 22, 1972). The police told her to secure a medical certificate (p. 32, tsn., February 22, 1972). She submitted her daughter for physical examination to Dr. Henry de Villa, Rural Health Officer of Ipil, Zamboanga del Sur (p. 34, tsn., February 22, 1972), who issued a medical certificate (Exhibit A) which reads:

'I. General data:

Liberty Siodora, 11 years old, female child, residing at Pangi, Zamboanga del Sur;

'II. Time and place of commission of offense:

About 5:00 P.M., February 4, 1970, at Pangi, Ipil, Zbga Sur;

'III. Time and place of examination:

About 11:00 A.M. Feb. 7, 1970 at Ipil, Zbga. Sur;

'IV. Findings:

1. Laceration, one cm., fourchette, posterior;
2. Hymen - lacerated at 10:00, 2:00, and 6:00 o'clock; admits one finger; Urethral opening irritated, Abrasion deltoid area, left.

'V. Conclusion -

The findings are compatible with history of the victim.'" (Brief, pp. 1-4.)

EGOT denied the rape. He interposed the defense of alibi. He said that he could not have raped Liberty as alleged because at that time he was in the cornfield of Pelagia Siodora, Liberty's mother, together with his aunt Candida Ramos; they were there to retrieve his horse which strayed after it got freed from its tether.

In this review, the appellant is represented by counsel de oficio, Atty. Salvador B. Britanico, who made the following assignment of errors:

"A. THAT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF RAPE; and,

"B. THAT, ASSUMING ARGUENDO THAT THE EVIDENCE ARE ADEQUATE TO SUPPORT THE CONVICTION OF THE HEREIN ACCUSED, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY. THE APPRO-PRiate PENALTY SHOULD HAVE BEEN RECLUSION PERPETUA." (Brief,

p. 1.)

According to the trial court, "At the time of the sexual intercourse Liberty was only 11 years and 7 months old, having been born on July 4, 1958." (Expediente, p. 53.) The trial court relied on the testimony of Pelagia Siodora that Liberty was born on July 4, 1958. (TSN, Feb. 22, 1972, p. 27.) It also relied on Exhibit C, the supposed birth certificate of Liberty where her date of birth is given as July 4, 1958. (Expediente, p. 33.)

The appellant questions the authenticity of Exhibit C; it "is being disputed by the defense on the ground that she could not have been born on that date considering that the Birth Certificate (Exhibit "C") was filed and registered on April 14, 1958 (Exhibit "1") or three (3) months before the alleged birth." (Brief, p. 3.)

Indeed, Exhibit C is of doubtful authenticity. For aside from the circumstance cited by the appellant, Exhibit C does not have the signature of the Local Civil Registrar. But the testimony of Pelagia Siodora in respect of the date when her daughter Liberty was born has not been substantially impugned. Liberty must be deemed to have been below 12 years old on February 4, 1970. Moreover, Liberty's age becomes unimportant in the light of the allegation in the information that the appellant used a bolo to intimidate her to submit to his carnal desire.

The first assignment of error questions the appreciation of the evidence by the trial court. To be sure this raises a problem albeit not insurmountable. "The difficulty, recognized and acknowledged, in the decision-making process where the prosecution is for rape, arises from the fact that usually only the participants can testify as to the alleged sexual abuse. The accused may deny such an occurrence, put up the defense that he was somewhere else, or allege the consent on the part of the complainant. The court then is left with no choice but to exert the utmost effort to determine the likelihood that a sexual act did take place and under what circumstances. Such choice is not always easy." (People vs. Imbo, G.R. No. L-36759, Aug. 31, 1982, 116 SCRA 355, 357.)

The appellant questions the credibility of Liberty Siodora. He claims that she was not a reliable witness "because of her proven retarded mentality." (Brief, p. 8.) He quotes from the decision which states: "The Court which had the opportunity to observe the offended party Liberty Siodora, had noticed her stunted growth and somewhat retarded personality and mentality." (Expediente, pp. 56-57.) But the appellant ignores completely the other statements of the trial court that: "According to the prosecution's evidence, as a consequence of the rape committed by accused Egot on the person of Liberty, she became somewhat mentally deranged and from the time of the incident up to the present, she shivers and gets scared whenever she sees the accused Egot or a male person. x x x But at the trial, she positively demonstrated in open court how the accused Egot raped her on that unfortunate afternoon of February 4, 1970, stating that he (Egot) told her to lie down and, armed with a sharp-pointed bolo, went on top of her and forced his penis into her vagina and had sexual intercourse with her. She positively identified accused Egot in open court as the man who ravished her." (Id., pp. 56-57.)

Liberty's tender age lends credibility to her testimony. For as this Court said: "Moreover, if there is anything apparent from our past decisions on rape cases, with the offended parties being young and immature girls from the ages of twelve to sixteen, it is that there is considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control." (People vs. Molina, G.R. No. L-30191, Oct. 27, 1973, 53 SCRA 495, 500-501.)

There is circumstantial evidence to support the testimony of Liberty that she was raped by the appellant: when Liberty came home and was asked by her mother why she was crying she replied that she had been raped by Egot at the cemetery; and then there was the physical examination conducted by Dr. Henry de Villa which showed that

Liberty's sexual organ had lacerations, irritation and abrasion.

The appellant's alibi must fail because of the positive identification made by Liberty that he was the culprit and also because it was not phy-sically impossible for him to be at the cemetery when the rape was com-mitted.

The second assignment of error assumes the guilt of the appellant but seeks to mitigate his liability.

The appellant claims that the use of a bolo had not been legally established; hence the aggravating circumstance of use of a deadly weapon cannot be considered. Suffice it to say that Liberty categorically stated that Egot "used his bolo." (TSN, March 23, 1972, p. 72.)

The appellant also claims that the aggravating circumstance of despoblado was not present. He asserts:

"By the very evidence of the prosecution, the cemetery was merely 100 meters away from the house of Siodoras, that is, within the hearing distance when one shouts for assistance. This is therefore not an uninhabited place in the contemplation of law (People vs. Laoto, et al. 52 Phil. 401). As one authority puts it, 'An uninhabited place is one where there are no houses at all, a place at a considerable distance from town, or where the houses are scattered at a great distance from each other' (Reyes, Ibid, page 318). In this case, the houses of the Siodoras and the Ramoses are merely 10 meters apart from one another and only 100 meters away from the cemetery. What the Supreme Court considered as uninhabited is a place about a kilometer from the nearest house or other inhabited place (People vs. Aguinaldo, 55 Phil. 610; People vs. Mendoza, et al., 100 Phil. 818). The cemetery of Barrio Pangi, Ipil, Zamboanga del Sur was therefore not an uninhabited place." (Brief, pp. 13-14.)

Pelagia did not say that her house is only 100 meters from the cemetery. What she said was that the cemetery is about "100 fathoms more or less from our house." (TSN, Feb. 22, 1972, p. 31.) A fathom is equal to 6 feet so that 100 fathoms is equal to 600 feet which is equal to 200 yards or 180 meters. A distance of 200 yards to the nearest house is sufficient to make the scene of the crime uninhabited. (See People vs. Pulido, 85 Phil. 695 [1950].)

The appellant likewise claims despoblado "is not present even if the crime was committed in an uninhabited place, if the offended party was casually encountered by the accused and the latter did not take advantage of the place or it can not be shown that it facilitated the com-mission of the crime (People vs. Luneta, et al., 79 Phil. 815, cited in Reyes, Ibid, page 320)." (Brief, pp. 14-15.) He forgets that he did not meet Liberty at the cemetery; he purposely brought her there to facilitate the commission of the crime.

There is no evidence that the appellant surrendered voluntarily. In fact, according to his own testimony, the police went to his house and they brought him to the municipal jail. Neither can it be conceded that he should be accorded the mitigating circumstance of voluntary surrender because "while the case was already pending in the Court of First Instance of Zamboanga del Sur, notwithstanding that he had all the opportunity to do so while in the house of provincial guard Minsay." (Brief, p. 17.) Suffice it to say that such a claim has no legal or jurisprudential basis.

WHEREFORE, the judgment under review is hereby modified in the sense that for lack of the necessary number of votes DIOSDADO EGOT is sentenced to suffer the penalty of reclusion perpetua instead of death and moral damages to be paid to Liberty Siodora shall be in the amount of P20, 000.00. Costs against the appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

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