

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUFINO MIRANDILLA BERMAS, ACCUSED-APPELLANT.

*G.R. No. 120420. April 21, 1999*

Ponente: VITUG, J.

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### VITUG, J.:

In convicting an accused, it is not enough that proof beyond reasonable doubt has been adduced; it is also essential that the accused has been duly afforded his fundamental rights.

Rufino Mirandilla Bermas pleaded not guilty before the Regional Trial Court of Parañaque, Branch 274, Metro Manila, to the crime of rape under a criminal complaint, which read:

### "COMPLAINT

"The undersigned complainant as assisted by her mother accuses Rufino Mirandilla Bermas, of the crime of Rape, committed as follows:

"That on or about the 3rd day of August 1994, in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, while armed with a knife and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will.

"CONTRARY TO LAW

"Parañaque, Metro Manila

"August 8, 1994

"(SGD) MANUEL P. BERMAS

Complainant

"Assisted by:

"(SGD) ROSITA BERMAS

Mother"[1]

Evidence was adduced during trial by the parties at the conclusion of which the lower court, presided over by Hon. Amelita G. Tolentino, rendered its decision, dated 02 May 1995, finding the accused guilty of the offense charged and sentencing him to suffer the extreme penalty of death.

The death penalty having been imposed, the case has reached this Court by way of automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659 (otherwise known as An Act To Impose Death Penalty on Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, as amended, Other Special Penal Laws, and For Other Purposes, which took effect on 31 December 1993).

The prosecution, through the Office of the Solicitor General, gave an account, rather briefly, of the evidence

submitted by the prosecution.

"On August 3, 1994, complainant Manuela Bermas, 15 years old, was raped by her own father, appellant Rufino Bermas, while she was lying down on a wooden bed inside their house at Creek Drive II, San Antonio Valley 8, Parañaque, Metro Manila (pp. 6-7, TSN, Oct. 19, 1994). Armed with a knife, appellant removed the victim's shorts and panty, placed himself above her, inserted his penis in her vagina and conducted coital movements (pp. 7-8, *ibid.*). After the appellant satisfied his lustful desire, he threatened the victim with death if she reports the incident to anyone. (p. 9, *ibid.*)

"On August 9, 1994, complainant was medically examined at the NBI, which yielded the following findings:

"The findings concluded: 1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination; 2. Hymen, intact but distensible and its orifice wide (2.7 cm. In diameter) as to allow complete penetration by an average sized, adult, Filipino male organ in full erection without producing any hymenal laceration."[2]

The defense proffered the testimony of the accused, who denied the charge, and that of his married daughter, Luzviminda Mendez, who attributed the accusation made by her younger sister to a mere resentment by the latter. The trial court gave a summary of the testimony given by the accused and his daughter Luzviminda; viz:

"The accused vehemently denied that he has ever committed the crime of rape on her daughter, the complainant. He told the Court that he could not do such a thing because he loves so much his daughter and his other children. In fact, he said that he even performed the dual role of a father and a mother to his children since the time of his separation from his wife. The accused further told the Court that in charging him of the crime of rape, the complainant might have been motivated by ill-will or revenge in view of the numerous scoldings that she has received from him on account of her frequent coming home late at night. The accused stressed that he knew of no other reason as to why his daughter, the complainant, would ever charge him of the crime of rape except probably in retaliation for being admonished by him whenever she comes home late in the night.

"The married daughter of the accused, who testified in his behalf, denied that the complainant was raped by the accused. She said that the complainant did not come home in the night of August 3, 1994, and that, she is a liar. She told the Court that the concoction by the complainant of the rape story is probably due to the resentment by the latter of the frequent scoldings that she has been receiving from the accused. She further added that she was told by the previous household employer of the complainant that the latter is a liar. She went on to testify further that she does not believe that the accused, who is her father, raped the complainant, who is her younger sister."[3]

The trial court, in its decision of 02 May 1995, found the case of the prosecution against the accused as having been duly established and so ruled out the defense theory of denial and supposed ill-will on the part of private complainant that allegedly had motivated the filing of the complaint against her father. The court adjudged:

"WHEREFORE, this Court finds the accused guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the DEATH PENALTY, to indemnify the complainant in the amount of P75,000.00, Philippine Currency, and to pay the costs.

"SO ORDERED."[4]

In their 61-page brief, defense counsel Fernandez & Kasilag-Villanueva (in collaboration with the Anti-Death Penalty Task Force), detailed several errors allegedly committed by the court a quo; thus:

"I. THE ACCUSED WAS DEPRIVED OF DUE PROCESS.

"A. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE AND VIGILANT

## COUNSEL

- The trial court did not observe the correct selection process in appointing the accused's counsel de officio;
- The Public Attorney could not give justice to the accused;
- Negligent in not moving to quash the information on the ground of illegal arrest;
- Negligent in not moving to quash the information on the ground of invalid filing of the information;
- Negligent in not moving for a preliminary investigation;
- Negligent in not pointing out the unexplained change in the case number;
- Negligent in not moving to inhibit the judge;
- Negligent in her conduct at the initial trial.
- The Vanishing Second Counsel de Officio
- He was not dedicated nor devoted to the accused;
- His work was shoddy;
- The Reluctant Third Counsel de Officio
- The performance of all three counsels de officio was ineffective and prejudicial to the accused.

"B. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE TRIED BY AN IMPARTIAL JUDGE AND TO BE PRESUMED INNOCENT.

"C. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE HEARD AND FOR WITNESSES TO TESTIFY IN HIS BEHALF.

"D. THE ARRAIGNMENT OF THE ACCUSED WAS INVALID.

"E. THE ACCUSED WAS DENIED THE EQUAL PROTECTION OF THE LAW.

"II. THE TRIAL COURT DID NOT 'SCRUTINIZE WITH EXTREME CAUTION' THE PROSECUTION'S EVIDENCE, MISAPPRECIATED THE FACTS AND THEREFORE ERRED IN FINDING THE ACCUSED GUILTY OF RAPE BEYOND REASONABLE DOUBT." [5]

The Court, after a painstaking review of the records, finds merit in the appeal enough to warrant a remand of the case for new trial.

It would appear that on 08 August 1994 Manuela P. Bermas, then 15 years of age, assisted by her mother Rosita Bermas, executed a sworn statement before SPO1 Dominador Nipas, Jr., of the Parañaque Police Station, stating, in sum, that she had been raped by accused Rufino Mirandilla Bermas, her own father, in 1991 and 1993, as well as on 03 August 1994, particularly the subject matter of the complaint, hereinbefore quoted, duly signed and filed conformably with Section 7, Rule 112, of the Rules of Court. The Second Assistant Prosecutor, issued a certification to the effect that the accused had waived his right to a preliminary investigation.

On the day scheduled for his arraignment on 03 October 1994, the accused was brought before the trial court without counsel. The court thereupon assigned Atty. Rosa Elmira C. Villamin of the Public Attorney's Office to be the counsel de officio. Accused forthwith pleaded not guilty. The pre-trial was waived.

The initial reception of evidence was held on 19 October 1994. The prosecution placed complainant Manuela

Bermas at the witness stand. She testified on direct examination with hardly any participation by defense counsel who, inexplicably, later waived the cross-examination and then asked the court to be relieved of her duty as counsel de officio.

"ATTY. VILLARIN:

And I am requesting if this Honorable Court would allow me and my pañero besides me, would accede to my request that I be relieved as counsel de officio because I could not also give justice to the accused because as a lady lawyer . . . if my pañero here and if this Honorable Court will accede to my request.

"COURT:

It is your sworn duty to defend the helpless and the defenseless. That is your sworn duty, Mrs. Counsel de Officio. Are you retracting?

"ATTY. VILLARIN:

That is why I am asking this Honorable Court."[6]

Counsel's request was granted, and Atty. Roberto Gomez was appointed the new counsel de officio. While Atty. Gomez was ultimately allowed to cross-examine the complainant, it should be quite evident, however, that he barely had time, to prepare therefor. On this score, defense counsel Fernandez & Kasilag-Villanueva in the instant appeal would later point out:

"To substitute for her, the Public Attorney recommended Atty. Roberto Gomez to be appointed as defense counsel de officio. And so the trial court appointed him.

"Atty. Gomez asked for a ten minute recess before he began his cross examination, presumably to prepare. But a ten minute preparation to cross examine the complainant upon whose testimony largely rests the verdict on the accused who stands to be meted the death penalty if found guilty, is far too inadequate. He could not possibly have familiarized himself with the records and surrounding circumstances of the case, read the complaint, the statement of the complainant, the medico-legal report, memos of the police, transcripts and other relevant documents and confer with the accused and his witnesses, all in ten minutes."[7]

The prosecution abruptly rested its case after the medico-legal officer had testified.

The reception of the defense evidence was scheduled for 12 December 1994; it was later reset to 09 January 1995. When the case was called on 09 January 1995, the following transpired:

"COURT:

Where is the counsel for the accused?

"COURT:

Did he file his withdrawal in this case? It is supposed to be the turn of the defense to present its evidence.

"PROSECUTOR GARCIA:

Yes, Your Honor. The prosecution had already rested its case.

"COURT:

Last time he asked for the continuance of this case and considering that the accused is under detention ... it seems he cannot comply with his obligation.

"COURT:

(To the accused) Nasaan ang abogado mo?

"ACCUSED R. BERMAS:

Wala po.

"COURT:

It is already the turn of the defense to present its evidence in this case. In view of the fact that the defense counsel is not interested anymore in defending the accused because last time he moved for the continuance of the hearing of this case and since this time he did not appear, he is unduly delaying the proceedings of this case and considering the accused here is under detention, I think it would be better if the Court appoints another lawyer. He should file his withdrawal if he is not interested anymore.

In view of the fact that the counsel de officio has repeatedly failed to appear in this Court to defend his client-accused, the Court is hereby constrained to appoint another counsel de officio to handle the defense of the accused. For this purpose, Atty. Nicanor Lonzame is hereby appointed as the counsel de officio for accused Rufino Mirandilla Bermas."<sup>[8]</sup>

The hearing scheduled for that day was reset to 16 January 1995 upon the request of Atty. Lonzame. On even date, Atty. Lonzame himself asked to be relieved as counsel de officio but later, albeit reluctantly, retracted; thus:

"COURT:

Where is the accused? Where is the counsel de officio?

"ATTY. NICANOR LONZAME:

As counsel de officio, Your Honor. The lawyer from the PAO is here, may I be allowed to give her my responsibility as counsel de officio considering that the lawyer from the PAO ...

"COURT:

What about?

"ATTY. LONZAME:

I was appointed because the PAO lawyer was not around. If the Court will allow us to be relieved from our responsibility as appointed counsel de officio of the accused ...

"COURT:

You want to be relieved of your responsibility as appointed counsel de officio? As an officer of the Court you don't want to handle the defense of the accused in this case?

"ATTY. LONZAME:

I will be withdrawing my previous manifestation that I be relieved of my responsibility as counsel de officio.

"COURT:

So, therefore, counsel, are you now ready?

"ATTY. LONZAME:

Yes, Your Honor."<sup>[9]</sup>

Trial proceeded with the accused being the first to be put at the witness stand. He denied the accusation against him. The next witness to be presented was his married daughter who corroborated her father's claim of innocence.

The defense counsel in the instant appeal took over from Atty. Lonzame who himself, for one reason or another, had ceased to appear for and in behalf of accused-appellant.

This Court finds and must hold, most regrettably, that accused-appellant has not properly and effectively been accorded the right to counsel. So important is the right to counsel that it has been enshrined in our fundamental law and its precursor laws. Indeed, even prior to the advent of the 1935 Constitution, the right to counsel of an accused has already been recognized under General Order No. 58, dated 23 April 1900, stating that a defendant in all criminal prosecutions is entitled to counsel at every stage of the proceedings,[10] and that if he is unable to employ counsel, the court must assign one to defend him.[11] The 1935 Constitution has no less been expressive in declaring, in Article III, Section 17, thereof, that -

"(17) In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face

to face, and to have compulsory process to secure the attendance of witnesses in his behalf."

Except for a proviso allowing trial in absentia, the right to counsel under the 1973 Constitution, essentially, has remained unchanged. Under the 1987 Constitution, a worthwhile innovation that has been introduced is the provision from which prevailing jurisprudence on the availability of the right to counsel as early as the stage of custodial interrogation can be deemed to be predicated. The rule, found in Sections 12 and 14, Article III, of the 1987 Constitution, states -

"Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

"x x x x x x x x

"Sec. 14. x x x x x x x x

"(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

The constitutional mandate is reflected in the 1985 Rules of Criminal Procedures which declares in Section 1, Rule 115, thereof, that it is a right of the accused at the trial to be present in person and by counsel at every stage of the proceedings from the arraignment to the promulgation of the judgment.

The presence and participation of counsel in the defense of an accused in criminal proceedings should never be taken lightly.[12] Chief Justice Moran in *People vs. Holgado*,[13] explained:

"In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it so implemented that under our rules of procedure it is not enough for the Court to

apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one de oficio for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own." [14]

In *William vs. Kaiser*, [15] the United States Supreme Court, through the late Justice Douglas, has rightly observed that the accused "needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity or of his own ignorance or bewilderment." An accused must be given the right to be represented by counsel for, unless so represented, there is great danger that any defense presented in his behalf will be as inadequate considering the legal perquisites and skills needed in the court proceedings. [16] The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.

The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation. [17]

It is never enough that accused be simply informed of his right to counsel; he should also be asked whether he wants to avail himself of one and should be told that he can hire a counsel of his own choice if he so desires or that one can be provided to him at his request. [18] Section 7, Rule 116, of the Rules of Criminal Procedure provides:

"Sec. 7. Appointment of counsel de oficio. - The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel de oficio only such members of the bar in good standing who, by reason of their experience and ability may adequately defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused."

A counsel de oficio is expected to do his utmost. [19] A mere pro-forma appointment of de oficio counsel who fails to genuinely protect the interests of the accused merits disapprobation. [20] The exacting demands expected of a lawyer should be no less than stringent when one is a counsel de oficio. He must take the case not as a burden but as an opportunity to assist in the proper dispensation of justice. No lawyer is to be excused from this responsibility except only for the most compelling and cogent reasons. [21]

Just weeks ago, in *People vs. Sevileno*, G.R. No. 129058, promulgated on 29 March 1999, this Court has said:

"We cannot right finis to this discussion without making known our displeasure over the manner by which the PAO lawyers dispensed with their duties. All three (3) of them displayed manifest disinterest on the plight of their client.

"x x x x x x x x

"Canon 18 of the Code of Professional Responsibility requires every lawyer to serve his client with utmost dedication, competence and diligence. He must not neglect a legal matter entrusted to him, and his negligence in this regard renders him administratively liable. Obviously, in the instant case, the aforementioned defense lawyers did not protect, much less uphold, the fundamental rights of the accused. Instead, they haphazardly

performed their function as counsel de oficio to the detriment and prejudice of the accused Sevileno, however guilty he might have been found to be after trial. Inevitably, this Court must advise Attys. Agravante, Pabalinas and Saldavia to adhere closely and faithfully to the tenets espoused in the Code of Professional Responsibility; otherwise, commission of any similar act in the future will be severely sanctioned."

The Court sees no other choice than to direct the remand of the case to the court a quo for new trial.

WHEREFORE, let this case be REMANDED to the court a quo for trial on the basis of the complaint, aforequoted, under which he was arraigned. Atty. Ricardo A. Fernandez, Jr. of the Anti-Death Penalty Task Force is hereby appointed counsel de oficio for the appellant.

Attys. Rosa Elmina Villamin of the Public Attorney's Office, Parañaque, Roberto Gomez and Nicanor Lonzame are hereby ADMONISHED for having fallen much too short of their responsibility as officers of the court and as members of the Bar and are warned that any similar infraction shall be dealt with most severely.

**SO ORDERED.**

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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[1] Rollo, p. 7

[2] Rollo, p. 218.

[3] Rollo, p. 22.

[4] Rollo, p. 25.

[5] Rollo, pp. 117-119.

[6] TSN, Manuela Bermas, 19 October 1994, p. 24.

[7] Rollo, pp. 135-136.

[8] Records, pp. 200-201.

[9] TSN, 16 January 1995, pp. 2-4.

[10] Section 15, General Order No. 58 series of 1900 dated 23 April 1900.

[11] Section 17, *ibid*.

[12] *Flores vs. Ruiz*, 90 SCRA 428.

[13] 85 Phil. 752.

[14] At pp. 756-757.

**[15]323 U.S. 471.**

[16] *Delgado vs. Court of Appeals*, 145 SCRA 357.

[17] Ruben E. Agpalo, *Legal Ethics*, 4th Ed., 1989, page 184; *People vs. Estebia*, 27 SCRA 106.

[18] *People vs. Panel*, 261 SCRA 720.

[19] People vs. Estebia, 27 SCRA 106.

[20] People vs. Magsi, 124 SCRA 64.

[21] Ruben E. Agpalo, Legal Ethics, 4th ed., 1989, page 186, citing Canon 4, Canons of Professional Ethics; Ledesma vs. Climaco, 57 SCRA 473.

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