PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO NUELAN Y LUDOVICE, ACCUSED-APPELLANT.

G.R. No. 123075. October 08, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an automatic review of the decision[1] of the Regional Trial Court, Camarines Norte, at Daet convicting accused Pedro Nuelan y Ludovice of three (3) counts of rape committed against his daughter, thirteen-year-old Margie L. Nuelan, and sentencing him to death for each count, and to pay the offended party in the amount of fifty thousand pesos (P50,000.00) as moral damages, plus costs.

On March 7, 1994, thirteen-year-old Margie L. Nuelan, assisted by her mother Lily Nuelan, filed with the Municipal Trial Court, Paracale, Camarines Norte a criminal complaint against her father, accused Pedro Nuelan y Ludovice charging him with three (3) counts of rape. After preliminary investigation, on March 23, 1994, the court found probable cause against the accused and issued a warrant for his arrest without bail.[2] On the same day, March 23, 1994, the court transferred custody of the accused to the Municipal Jail Warden, Paracale, Camarines Norte.[3]

On April 14, 1994, provincial prosecutor of Camarines Norte Pascualita Duran-Cereno filed with the Regional Trial Court, Camarines Norte three (3) informations[4] against the accused for rape, as follows:

> Criminal Case No. 8209
>
> "That on or about 9:00 o'clock in the morning of January 1, 1994 at Purok IV, Barangay Gumaus, municipality of Paracale, province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged with bestial lust and by means of force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter, Margie L. Nuelan, a girl of 13 years old against the will of said Margie L. Nuelan to her damage and prejudice.
>
> CONTRARY TO LAW."[5]
>
> Criminal Case No. 8210
>
> "That on or about 11:00 o'clock in the evening of February 27, 1994 at Purok IV, Barangay Gumaus, municipality of Paracale, province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged with bestial lust and by means of force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter, Margie L. Nuelan, a girl of 13 years old against the will of said Margie L. Nuelan to her damage and prejudice.
>
> "CONTRARY TO LAW".[6]
>
> Criminal Case No. 8211
>
> "That on or about midnight of March 4, 1994 at Purok IV, Barangay Gumaus, municipality of Paracale,

> province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by bestial lust and by means of force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter, Margie L. Nuelan, a girl of 13 years old against the will of Margie L. Nuelan to her damage and prejudice.
>
> "CONTRARY TO LAW."[7]

On June 1, 1994, the accused, with the assistance of counsel de oficio Atty. Camillus Ayo pleaded not guilty to the charges against him.[8] On August 15, 1994, the accused entered into plea-bargaining. With the consent of the prosecution, the offended party and her mother, the trial court dropped Criminal Case No. 8209 on condition that the accused would plead guilty to Criminal Cases Nos. 8210 and 8211.[9] The trial court ordered the re-arraignment of the accused and the prosecution to present evidence to establish the guilt of the accused beyond reasonable doubt with respect to Criminal Cases Nos. 8210 and 8211.[10] Upon re-arraignment on the same occasion, the accused assisted by his counsel pleaded guilty to the charges in Criminal Cases Nos. 8210 and 8211. Thereafter, Margie L. Nuelan and her elder sister, Agnes L. Nuelan,[11] testified for the prosecution.[12]

On August 17, 1994, after a searching inquiry on the voluntariness of the plea, the trial court found that accused did not fully comprehend the consequences of the plea of guilty. The accused thought that the two cases (Criminal Cases Nos. 8209 and 8210) were only for attempted rape, which he was willing to admit. The trial court allowed the accused to withdraw the improvident plea of guilt to Criminal Cases Nos. 8210 and 8211, and ordered the reinstatement of Criminal Case No. 8209.[13] It ordered the recall of prosecution witnesses to establish the guilt of the accused with respect to Criminal Case No. 8209.[14]

The prosecution presented Margie L. Nuelan, Agnes L. Nuelan and Dr. Virginia Barrameda-Mazo as witnesses, while the defense presented the accused himself.

On July 25, 1995, the trial court rendered a consolidated decision,[15] the dispositive portion of which reads:

> "WHEREFORE, finding PEDRO NUELAN y LUDOVICE guilty beyond reasonable doubt of the crime of rape charged against him in Criminal Cases Nos. 8209, 8210 and 8211 which is defined and punished under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, and in the absence of any mitigating circumstances he is hereby sentenced as follows:
>
> 1. In Criminal Case No. 8209 - to suffer the DEATH penalty;
>
> 2. In Criminal Case No. 8210 - to suffer the DEATH penalty; and
>
> 3. In Criminal Case No. 8211 - to suffer the DEATH penalty;
>
> to pay the offended party the sum of FIFTY THOUSAND (P50,000.00) PESOS in moral damages and to pay the costs."[16]

Hence, this automatic review of the death sentences.[17]

On January 1, 1994, at around nine o'clock in the morning (9:00 a. m.), thirteen-year-old Margie Nuelan was cooking in their house located at Gumaus, Paracale, Camarines Norte. At that time, her younger siblings[18] were playing outside the house. Suddenly, the accused grabbed her and dragged her inside the room. Then, he removed her shorts and panty, as well as his pants and brief. The accused pushed her down, separated her legs, inserted his penis in her vagina and stayed there for about five (5) minutes. Margie cried and struggled, trying to free herself, but did not cry for help because her father threatened to kill her.[19]

On February 27, 1994, the accused repeated the rape. At around eleven o'clock in the evening (11:00 p. m.), accused approached Margie while she was sleeping in the sala of their house. When she saw him, Margie ran to

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the bedroom and proceeded to the kitchen. Accused ran after her and when he caught her, he removed both their undergarments. He forcibly separated her legs, laid on top of her and inserted his penis in her vagina. All she could do was to struggle and cry. Accused threatened to kill her if she shouted for help.[20]

On March 4, 1994, accused again took advantage of his daughter. At around twelve o'clock midnight (12:00 m.n.) while Margie was sleeping beside her younger siblings in the sala of the house, the accused undressed her, removed his undergarments, forcibly separated her legs and inserted his penis in her vagina. She struggled and cried. She could not cry for help since accused threatened to kill her. He even boxed her. During this time, Agnes, Margie's elder sister, was inside the bedroom.[21]

On March 5, 1994, at around six o'clock in the morning (6:00 a. m.), Agnes asked Margie why she was crying during the night. After Agnes' persistent inquiry, Margie confessed the bestial acts she suffered at the hands of their father. Agnes immediately relayed the incidents to their eldest brother, Gilbert. They accompanied Margie to the Jose Panganiban Hospital for medical examination, but no medical certificate was issued.[22]

On March 7, 1994, Margie went to Talobalib Hospital to be reexamined. Dr. Virginia Barrameda-Mazo examined Margie and issued a medical certificate with the following findings:

> "1. Multiple Linear Abrasions, about 2.5 cm in length, just above the wrists area, medial aspect, L.;
>
> 2. Linear abrasion, tendon of achiles (sic) area, R.
>
> 3. Healed hymenal Tear, 12:00, 4:00, 6:00, and 8:00 position;
>
> 4. The examining finger can go in and out of the introitus and vaginal canal with ease and without any pain experienced on the part of the patient;
>
> 5. Gaping labia minora, and introitus is very visible on a lithotomy position.
>
> NOTE: Vaginal Smear for presence of sperm - result negative (done after 3 days).
>
> Above findings revealed that patient is no longer virgin. Slight physical injuries has been inflicted to the patient."[23]

Dr. Mazo testified that the hymenal lacerations could have been caused by sexual intercourse with deep penetration. She explained that the healed hymenal lacerations could have been inflicted on the dates[24] charged in the informations.[25]

Accused Pedro Nuelan testified in his behalf. He stated that he had five (5) children[26] with his wife Lily. He denied the charges of rape committed on January 1, 1994 and February 27, 1994 and interposed the defense of alibi. At around nine o'clock in the morning of January 1, 1994, accused testified that he was working at his friend's house.[27] However, he claimed that he was having a drinking spree with his friends during the same period.[28] On February 27, 1994, at around eleven o'clock in the evening, accused asserted that he was on night duty in a mining company where he worked, located about three (3) kilometers from their house.[29]

As to the rape committed on March 4, 1994, accused admitted that he committed the crime because he was dead drunk at that time. He asked forgiveness from his family and regretted what he had done. He asked his family for help and to have the case dismissed, but the court did not allow it.[30]

In his sole assignment of error, accused averred that the trial court erred in not appreciating the mitigating circumstances to reduce the death penalty imposed on him. Accused contended that the trial court gravely erred in failing to immediately inquire into the voluntariness of his plea of guilty in Criminal Cases Nos. 8210[31] and 8211.[32]

We find the contention meritorious.

The Court observes that the manner by which the trial court, during the re-arraignment, conducted the inquiry into the voluntariness and full comprehension of the accused-appellant's plea of guilty leaves much to be desired.[33] The trial court did not impress on the accused the full comprehension of the consequences of his plea of guilty.[34] Rule 116, Section 3 of the Revised Rules on Criminal Procedure is explicit:

> "Section 3. Plea of guilty to capital offense, reception of evidence.- When the accused pleads guilty to a capital offense, the courts shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf."

Under the formulation, three (3) things are enjoined on the trial court after a plea of guilty to a capital offense has been entered by the accused:

> "1. The court must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea;
>
> "2. The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and
>
> "3. The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires."[35]

This rule is mandatory.[36]

When accused-appellant was re-arraigned on August 15, 1994, the trial court failed to observe the required procedure of conducting a searching inquiry, thus:

> "COURT:
>
> Atty. Intia, is your client ready for re-arraignment?
>
> "INTERPRETER:
>
> According to the accused, Your Honor, as he is to make his change of plea but if he is going to sentence life imprisonment, he prefers death sentence.
>
> "COURT:
>
> But it depends upon the number of mitigating circumstances when the crime was committed.
>
> "ATTY. INTIA:
>
> We submit this matter to the discretion of the Honorable Court.
>
> "COURT:
>
> No. It is for the accused to enter a plea of guilty or not guilty. This is a very serious offense, in fact I will require the Fiscal to prove.
>
> "ATTY. INTIA:
>
> In view of the manifestation of the accused that he doesn't want to be sentenced life imprisonment, instead death penalty, I think he is not in his right mind, Your Honor. I cannot give in to the request of the accused because of what he said. But as counsel, it is my duty to convey his wishes, Your Honor.

"PROS. RAMOS:

The duty of the counsel is to inform his client of the consequences.

"ATTY. INTIA:

I informed him already.

"PROS. RAMOS:

So let him decide. The court cannot decide on that, whether he will plead guilty or not.

"ATTY. INTIA:

But even the accused entered a plea of guilty, the court will order a hearing.

"PROS. RAMOS:

Precisely.

"COURT:

The Supreme Court has ruled in several cases of capital offense. The prosecution has to establish the guilt of the accused beyond reasonable doubt even if the accused entered a plea of guilty.

"PROS. RAMOS:

But the primary witness has already testified, Your Honor, and he wish to change his plea of guilty, it is of no use anymore.

"ATTY. INTIA:

Your Honor please, I have already talked to the accused and he is willing to enter a plea of guilty to the last charge, in criminal case No. 8211, Your Honor. But the other two (2) remaining cases, Your Honor, he said he cannot admit. Only the criminal case no. 8211.

"PROS. RAMOS:

We are willing to drop the first case, Criminal Case No. 8209, provided that he will enter a plea of guilty to remaining cases.

"ATTY. INTIA:

After presentation of the accused, he is now willing to enter a plea of guilty to Criminal Cases No. 8210 and 8211, Your Honor.

"PROS. RAMOS:

Your Honor, I am willing to drop the first case, with the consent of the offended party and her mother, Your Honor please, in Court today.

"COURT:

With the consent of the prosecutor, the offended party and her mother in Criminal Case No. 8209 is considered DROPPED, and the accused is allowed to enter a plea of guilty to Criminal Cases No. 8210 and 8211.

Alright, arraign the accused.

We will proceed to the hearing of these cases.

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"INTERPRETER:

The accused, assisted by his counsel Atty. Leo Intia, when re-arraigned, entered a plea of guilty to the charge in criminal cases No. 8210 and 8211."[37]

The plea of guilty that the accused-appellant improvidently entered is null and void.[38] The plea of guilt must be based on a free and informed will of the accused. Thus, the searching inquiry of the trial court must be focused on: (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea.[39]

On August 17, 1995, or two (2) days after the improvident plea was entered, it became apparent that accused did not fully comprehend what crimes he pleaded guilty to, as well as the consequences of his plea of guilty. Hence, counsel of accused moved for the withdrawal of the improvident plea.[40] Accused was willing to admit his guilt in Criminal Cases Nos. 8210 and 8211 because he thought the indictment were for attempted rape. Particularly, the proceedings on August 17, 1994, went as follows:

"COURT:

Alright. Actually, there are three cases filed against you by your daughter Margie Nuelan?

"A:

Yes, Your Honor.

"Q:

And the first case was dropped because there was a plea bargaining the previous day, that was on August 15, 1994, wherein it was agreed by you and your counsel together with the fiscal and the offended party and her mother that that one case will be dropped and you will plead guilty to the other cases?

"A:

There was only one rape incident, your honor. The other rape cases were attempted only.

"Q:

But last Monday, August 15, you entered a plea of guilty to Crim. Cases Nos. 8210 and 8211 filed by your daughter Margie Nuelan which according to Information was committed on February 27, 1994 and March 4, 1994?

"A:

That is correct, your honor."[41]

x x x

"COURT:

Why did you say that you are amenable only to enter a plea of guilty to one case of rape because the other two (2) cases were only attempted?

"A:

I admit your honor, that the two (2) cases were attempts only but the last one (1) really did happen. The last one was consummated.

"Q:

So, you do not understand what you did last Monday August 15, when you entered a plea of guilty to two (2)

consummated rape- not only attempted?

"A:

The reason, your honor, that I admitted that on Monday was because I wanted these cases to be finished immediately that's why I admitted that last Monday even if that really did not happen, and besides, there is nobody to prove my innocence. There is no one who can disprove the accusations against me.

"Q:

But if you really committed one consummated rape and if you said you had committed two (2) attempted rapes, why did you enter a plea of guilty to the two (2) cases of consummated rape?

"A:

Because I wanted, your honor, that the penalty to be imposed on me be death penalty.

"Q:

So, you do not understand what you had done last Monday when you entered a plea of guilty to two (2) criminal cases of rape?

"A:

I only admitted it, your honor, even if it did not happen."[42]

The Court has carefully considered the inquiry that the trial court conducted. We find that it fell short of what was expected. A "searching inquiry" means more than informing cursorily the accused that he faces a jail term but also, the exact length of imprisonment under the law and the certainty that he will serve at the national penitentiary or a penal colony. Not infrequently indeed, an accused pleads guilty in the hope of a lenient treatment, or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions.[43]

In every case where the accused enters a plea of guilty to a capital offense, especially where he is ignorant with little or no education, the proper and prudent course to follow is to take such evidence as are available and necessary in support of the material allegations of the information, including the aggravating circumstances therein enumerated, not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.[44]

After the accused withdrew the plea of guilty, the trial court did not re-arraign accused-appellant. Re-arraignment is necessary. It was evident that the accused misunderstood that the two (2) informations were indictments for attempted rapes.

When life is at stake, we can not lean on the presumption that the accused understood his plea. We must be sure.[45] We cannot anchor our judgment on mere speculations and conjectures.[46]

The retaking of the accused's plea is necessary. Arraignment is a formal procedure in a criminal prosecution "to afford an accused due process."[47] An arraignment is the means of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him.[48] Actual arraignment is an element of due process.[49] It is imperative that the accused is thus made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him.[50] Procedural due process requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face,

to be convicted only on a showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him.[51]

On August 17, 1995, the trial court issued an order reading:

> "It appearing from the searching inquiry upon the above named accused that he did not fully comprehend the consequences of his previous plea of guilty, the motion for withdrawal of the improvident plea of guilt, interposed by counsel for the accused is hereby GRANTED.
>
> "Consequently, considering that the dropping of Crim. Case No. 8209 was subject to the condition that accused would enter a plea of guilty to the remaining two (2) criminal cases and that the same was part of the plea bargaining, said Crim. Case No. 8209 is hereby ordered REINSTATED, and the prosecution is allowed to present additional evidence and to recall the two (2) prosecution witnesses already presented to testify insofar as Crim. Case No. 82089 is concerned.
>
> "By agreement of the parties, let the foregoing cases be scheduled for hearing on August 25, 1994 at 8:30 in the morning.
>
> "SO ORDERED."[52]

Accused did not fully comprehend the consequences of a plea of guilty, or even what crimes he was pleading guilty to. Hence, the necessity of a re-arraignment and retaking of his plea. Judges must be more vigilant and "extra-solicitous" to ensure that the accused fully understood the nature and consequences of his plea of guilty,[53] otherwise the conviction would be set aside and the case remanded to the trial court for new arraignment.[54]

The importance of the court's obligation cannot be overemphasized. One cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilt, he may be sentenced to the lesser penalty of reclusion perpetua and not death. Thus, there is a need for the trial court to take the necessary measures to see that the accused truly comprehended the meaning, full significance, and consequences of his plea. The failure of the trial court to perform its obligation is a ground to remand the case for rearraignment.[55]

Consequently, we remand the case to the court of origin for the proper re-arraignment of the accused before the capital punishment may be imposed. The judgment of conviction was void in the absence of a valid plea. There is no philosophy of punishment that allows the State to kill without any semblance of fairness and justice.[56]

WHEREFORE, the decision of the trial court in Criminal Cases Nos. 8209, 8210 and 8211, convicting accused Pedro Nuelan y Ludovice of three (3) counts of rape committed against his daughter, Margie L. Nuelan, and sentencing him in each case to death is SET ASIDE.

Let the cases be remanded to the trial court for re-arraignment and further proceedings.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, and Panganiban, JJ., on official leave.

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[1] In Criminal Cases Nos. 8209, 8210 and 8211, Decision, dated July 24, 1994, Judge Augusto T. Parcero, presiding.

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[2] Original Record of Criminal Case No. 8209, pp. 10-11.

[3] Ibid., p. 15.

[4] Criminal Cases Nos. 8209, 8210 and 8211, Rollo, pp. 10-12.

[5] Rollo, p. 10.

[6] Ibid., p. 11.

[7] Rollo, p. 12.

[8] Ibid., p. 20.

[9] TSN, August 15, 1994, p. 6.

[10] Ibid., pp. 7-8.

[11] Sixteen (16) years old, second to the oldest child of accused Pedro Nuelan.

[12] TSN, pp. 8-43.

[13] The reinstatement of the case is extremely doubtful. Having been dismissed after plea, to revive the case may be barred by the rule against double jeopardy.

[14] Original Record of Criminal Case No. 8209, p. 40.

[15] Rollo, pp. 19-33.

[16] Ibid., p. 33.

[17] On August 6, 1996, we accepted this case (Rollo, p. 37).

[18] Eulalia, six (6) years old, and Leo, four (4) years old, TSN, June 6, 1995, p. 3.

[19] TSN, August 15, 1994, pp. 10-12.

[20] Ibid., pp. 12-15.

[21] TSN, August 15, 1994, pp. 17-19.

[22] Ibid., pp. 33-36.

[23] Original Record, Criminal Case No. 8209, p. 5.

[24] January 1, February 27 and March 4, 1994.

[25] TSN, January 21, 1995, p. 7.

[26] Gilbert - 20 years old, Agnes - 14 years old, Margie - 14 years old, Eulalia - 6 years old and Leo - 4 years old.

[27] TSN, June 6, 1995, p. 4.

[28] Ibid., p. 5.

[29] Ibid., pp. 6-8.

[30] Ibid., p. 7.

[31] Rape committed on February 27, 1994.

[32] Rape committed on March 4, 1994.

[33] People v. Lakindanum, 364 Phil. 69, 74 [1999]; People v. Petalcorin, 180 SCRA 685, 692 [1989].

[34] People v. Petalcorin, supra, Note 33.

[35] People v. Bello, 316 SCRA 804, 811 [1999]; People v. Camay, 152 SCRA 401, 403 [1987].

[36] People v. de Luna, 174 SCRA 204 [1990].

[37] TSN, August 15, 1994, pp. 4-7.

[38] People v. Lakindanum, supra, Note 33; People v. Alicando, 321 Phil. 656 [1995].

[39] People v. Alicando, supra, Note 38.

[40] Regional Trial Court Records, p. 40.

[41] Regional Trial Court Decision, Rollo, p. 21, quoting from TSN, August 17, 1994, p. 6.

[42] Regional Trial Court Decision, Rollo, pp. 21-22, quoting from TSN, August 17, 1994, pp. 9-11 [Emphasis supplied].

[43] People v. Dayot, 187 SCRA 637 [1990].

[44] People v. Sevilleno, 365 Phil. 63, 73 [1999]; People v. Villacores, 97 SCRA 567, 573 [1980].

[45] People v. Alicando, supra, Note 38.

[46] People v. Bello, supra, Note 35, p. 813 [1999].

[47] Borja v. Mendoza, 77 SCRA 422, 428 [1977].

[48] Section 14 (2), 1987 Constitution; Borja v. Mendoza, supra, Note 47, p. 425.

[49] Nolasco v. Enrile, 139 SCRA 502, 512-513 [1985].

[50] Borja v. Mendoza, supra, Note 47, p. 426.

[51] Herrera, Remedial Law, Book IV, 1992 Edition, pp. 355-356.

[52] Regional Trial Court Records, p. 40.

[53] People v. Lakindanum, supra, Note 33; People v. de Guia, 177 SCRA 112, 124 [1989].

[54] People v. de Guia, supra, Note 53; People v. Alicando, supra, Note 38.

[55] People v. Abapo, 329 SCRA 513, 522-523 [2000].

[56] People v. Alicando, supra, Note 38.

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