PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEODEGARIO BASCUGUIN Y AGQUIZ, ACCUSED-APPELLANT.

G.R. No. 144404. September 24, 2001

Ponente: BUENA, J.

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BUENA, J.:

There is an alarming increase of heinous crimes being committed in the country. Notwithstanding the existence of the death penalty, criminal cases involving rape with homicide is a constant subject of our automatic review. In the exercise of our review power, we seek justice not merely for the victim but for the accused as well to guarantee that his constitutional rights are safeguarded.

Leodegario Bascuguin, herein accused-appellant, was charged with the crime of rape with homicide before the Regional Trial Court of Balayan, Batangas [Branch X]. At his arraignment on August 5, 1999, he appeared without the assistance of counsel. The trial court assigned a counsel de officio. He pleaded guilty to the crime charged. A series of questions were propounded by the trial court to test accused-appellant's voluntariness and comprehension of the consequences of his plea. Trial on the merits was conducted thereafter to allow the prosecution to prove his guilt and the precise degree of culpability.

Prosecution evidence showed that the victim, Marissa Moral, was last seen on June 4, 1999, at around 7:00 in the evening by Rolando de Mesa, a tricycle driver, on board the tricycle driven by accused-appellant. Later that evening, at around 8:30 p.m., while accused-appellant was going towards the direction of Balayan town proper, Rolando saw him again but failed to notice whether accused-appellant had a passenger on board.[1] That same evening, Domingo Liwanag, while on his way home from work, noticed the tricycle which the accused-appellant drives, parked near the waiting shed at Brgy. Calan, Balayan, Batangas. While passing the area, he heard a lady shout but ignored the same because the area was said to be hunted.

At around 11:50 p.m., Marissa Moral was reported missing. The police officers in Balayan, Batangas conducted an investigation. Upon an information that a patient was being treated for tongue injury at the Don Manuel Lopez Memorial District Hospital, police officers rushed to the hospital and saw the patient in the person of accused-appellant. The police officer who testified in court declared that when accused-appellant was questioned as to the cause of his tongue injury, he narrated that Marissa Moral was his passenger and, when he was about to leave the tricycle terminal, a man and a woman boarded. The man sat behind him, while the lady sat beside Marissa Moral. While he was driving, he was hit by a hard object on his nape, causing him to black out. Upon regaining consciousness, his tongue was already injured and his three [3] passengers were gone. Such declarations prompted the police officers to invite him to the police station for further investigation.

On June 5, 1999 at around 1:30 in the morning, upon an information from Brgy. Chairman Felix Liwanag that his son, Domingo Liwanag, saw accused-appellant's tricycle parked in front of the waiting shed at Brgy. Calan, Balayan, Batangas, the police officers, accompanied by relatives of Marissa Moral, proceeded thereto. When they arrived, they found a muddled portion of the sugarcane plantation with visible tricycle marks, and found a hairclip

belonging to Marissa Moral. At around 6:00 in the morning, the police officers returned to the area to further investigate. On their way back to the police station, they found the body of Marissa Moral with thirteen [13] stab wounds, in the canal along the national road, naked from the waist down. The body was brought to the funeral parlor where an autopsy was conducted.

Prosecution evidence consisted of (i) hair strand and one abaca rope found inside the tricycle driven by accused-appellant; (ii) a piece of stone found at the back of the waiting shed in Brgy. Calan, Balayan, Batangas; (iii) a pair of maong pants and two pieces of panty found near the body of the victim; (iv) the Hanford (men's underwear) brief, sleeveless undershirt or sando, blue t-shirt and a pair of curdoroy pants belonging to accused-appellant, which were given by accused-appellant's father to the police; and, (v) a sample fingernail of accused-appellant taken by the medico-legal of the National Bureau of Investigation (NBI). The foregoing pieces of evidence were submitted to the NBI for forensic examination which revealed that the fingernail, pair of maong pants belonging to the deceased, and the abaca rope, all gave positive results for human blood showing reactions to Group "A" similar to the victim's blood group.

After the prosecution rested its case, accused-appellant did not present evidence for his defense.

On June 15, 2000, the trial court rendered its decision finding Leodegario Bascuguin guilty beyond reasonable doubt of rape with homicide, sentenced him to death and to pay the heirs of the victim the amount of P75,000.00 as indemnity, and P50,000.00 as moral damages plus costs.

Due to the penalty imposed, the case is now before us on automatic review. Accused-appellant posits that the lower court gravely erred (a) in holding him guilty of the crime charged based on his improvident plea of guilt; (b) in not asking him if he desires to present evidence in his behalf and allow him to do so if he desires in blatant contravention of Sec. 3, Rule 116 of the 1985 Rules of Criminal Procedure; and (c) in convicting and sentencing him to suffer death penalty despite the insufficiency of circumstantial evidence against him.

The Solicitor General in his Manifestation and Motion in lieu of Brief, similarly questions the validity of the proceedings had in the court a quo, and seeks to set aside the judgment of conviction, and recommends the remanding of the case to the court a quo for proper arraignment and trial.

The procedure observed by the trial court at the arraignment of accused-appellant is graphically illustrated in the Transcript of Stenographic Notes [TSN] herein quoted as follows-

> "COURT:
>
> Ready for arraignment? You ask(ed) the accused if he has a counsel?
>
> "CLERK OF COURT:
>
> (Note: Asking the accused)
>
> "ACCUSED:
>
> None, sir.
>
> "COURT:
>
> Atty. Macasaet, I will appoint you as counsel de officio for the accused.
>
> "ATTY. MACASAET:
>
> Yes, Your Honor.

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"ATTY. MACASAET:

May I confer with the accused, Your Honor. The accused is ready for arraignment, your Honor.

"COURT:

Arraigned (sic) the accused.

(Note: the Clerk of Court is reading the Information to the accused)

"CLERK OF COURT:

The accused pleaded (sic) guilty, your Honor, for the crime charged.

"COURT:

You ask the accused if he knows the consequences of his plea.

"COURT:

"Q:

Do you know that the penalty impossible (sic) in cases of this nature is death?

"ACCUSED:

Yes, sir.

"COURT:

"Q:

Do you know that in your plea of guilt you can be sentenced by the Court?

"ACCUSED:

Yes, sir.

"COURT:

"Q:

Do you admit having raped Marissa Moral?

"ACCUSED:

"Yes, sir.

"COURT:

"Q:

Do you admit that after raping Marissa Moral you stabbed and killed her?

"A:

Yes, sir."[2]

The OSG impugns the proceedings had in the court a quo on its alleged failure to communicate in a language known to accused-appellant the information filed against him. On the scheduled arraignment, what was recorded in the TSN was- "(NOTE: The Clerk of Court is reading the Information to the accused)." The OSG claims that

the information was read in English[3] and insinuates that the same was not understood by accused-appellant.

Basic is the precept that every person accused of a crime must know the nature and cause of accusation against him.[4] This is effected, among others, by the reading of the information in a language understood by the person accused. Reading the TSN, we are left to speculate on whether the information was actually read in the dialect known to accused-appellant, or whether it was translated to him or explained in a manner he can comprehend. What is visible to us is the cryptic recording of the proceedings in the court a quo. Nevertheless, the trial court's decision declared that the information was read in Tagalog, a language known to accused-appellant.[5] Granting, on presumption of correctness, that the information was read in Tagalog as declared by the trial court, still, we cannot admit accused-appellant's conviction on the basis of his improvident plea of guilt.

One of the constitutional guarantees of due process is the right of an accused to be heard by himself and counsel. The trial court gave accused-appellant a counsel de officio to represent him. However, accused-appellant impugns such assignment contending that he was not given the opportunity to choose his own counsel.[6] What is visible from the TSN is the fact that when the court asked accused-appellant if he has a lawyer, and upon responding that he has none, the trial court appointed a counsel de officio, as follows - "COURT: Ready for arraignment? You ask(ed) the accused if he has a counsel?; CLERK OF COURT: (Note: Asking the accused); ACCUSED: None, sir.; COURT: Atty. Macasaet, I will appoint you as counsel de officio for the accused."

When the case was heard, Section 8 Rule 116 of the 1985 Rules of Criminal Procedure provides that when a counsel de officio is assigned by the court to defend the accused at the arraignment, he shall be given at least one [1] hour to consult with the accused as to his plea before proceeding with the arraignment. In this case, the substance of the lawyer-client conference made before the arraignment is being challenged. Both the OSG and accused-appellant cry foul to the hasty consultation made by counsel de officio.

It appears from the records that after the appointment of a counsel de officio, the arraignment immediately followed. As glaringly reflected in the records, the appointed counsel de officio conferred with the accused only for a few minutes, thus- "COURT: Atty. Macasaet, I will appoint you as counsel de officio for the accused; ATTY. MACASAET: Yes, Your Honor; ATTY. MACASAET: May I confer with the accused, Your Honor. The accused is ready for arraignment, your Honor."

A criminal case is a serious matter that deserves serious attention especially in cases involving capital punishment. Under the present Revised Rules of Criminal Procedure, whenever a counsel de officio is appointed by the court to defend the accused at the arraignment, he shall be given a reasonable time to consult with the accused as to his plea before proceeding with the arraignment.[7] Counsel de officio's haste in proceeding with the arraignment falls short of the standard mandated by the rules for an effective and adequate counseling. The limited time allotted for consultation with accused-appellant seriously casts doubt on whether counsel de officio has indeed sufficiently explained to the accused-appellant the crime charged, the meaning of his plea, and its consequences.

A criminal case involves the personal liberty of an accused and inadequate counseling does not satisfy the constitutional requirement of due process. What is evident in this case is that counsel de officio merely conferred with accused-appellant and proceeded immediately with the arraignment, indicative of his failure to effectively provide accused-appellant with qualified and competent representation in court.

We do not condone the crime committed by a person indicted for a criminal offense. It is imperative however to balance our zealousness to punish the malefactor and the government's prosecutory machinery directed against the accused vis-a-vis the recognition of his constitutional rights.[8] Courts must see to it that an accused must be afforded a qualified and competent representation. Where it appears that a counsel de officio resorted to

procedural shortcuts that amounted to inadequate counseling, the Court will strike down the proceedings had in order to promote a judicious dispensation of justice. Therefore, given the attendant circumstances of this case, this Court cannot send accused-appellant to the death chamber, for no matter how outrageous the crime charged might be, or how depraved the offender would appear to be, the uncompromising rule of law must still prevail. Verily, a judgment of conviction cannot stand upon an invalid arraignment. In the interest of substantial justice then, this Court has no recourse but to remand the case to the trial court for further and appropriate proceedings.[9]

ACCORDINGLY, the judgment of the court a quo in Criminal Case No. 4371 convicting accused-appellant Leodegario Bascuguin of the crime of rape with homicide is ANNULLED AND SET ASIDE. Said case is REMANDED to the trial court for further and appropriate proceedings conformably with the above disquisition.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] TSN, September 9, 1999, p. 9.

[2] TSN, August 5, 1999, pp. 2-4.

[3] Rollo, p. 85.

[4] see People vs. Cutamora et al., G.R. Nos. 133448-53, October 6, 2000.

[5] Rollo, p. 19 & 60; records, p. 89.

[6] Rollo, p. 51.

[7] Section 8, Rule 116, as amended effective December 1, 2000.

[8] Section 14, Article III, 1987 Constitution-

> "(1)
>
> No person shall be held to answer for a criminal offense without due process of law.
>
> (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 x x x x."

[9] People vs. Tizon, 317 SCRA 632, 640 [1999].

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