

ALFREDO RODILLAS Y BONDOC, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 58652. May 20, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition brought by Alfredo Rodillas y Bondoc asking for the reversal of a decision of the Sandiganbayan which found him guilty beyond reasonable doubt of the crime of Infidelity in the Custody of Prisoner Thru Negligence (Art. 224, RPC). The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered finding accused Alfredo Rodillas y Bondoc GUILTY beyond reasonable doubt as principal in the crime of Evasion through Negligence, as defined and penalized under Article 224 of the Revised Penal Code, and there being no modifying circumstance to consider, hereby sentences him to suffer the straight penalty of FOUR (4) MONTHS and ONE (1) DAY of arresto mayor, to suffer eight (8) years and one (1) day of temporary special disqualification and to pay the costs of this action.

SO ORDERED." (Rollo, p. 30)

Petitioner Rodillas was charged with having committed the said crime in an information which reads as follows:

"That on or about the 27th day of March, 1980, in the City of Caloocan, Philippines, and within the jurisdiction of this Honorable Court, said accused, being then a policeman duly appointed and qualified as such, hence a public officer, specially charged with the duty of keeping under his custody and vigilance and of conducting and delivery from the City Jail, Caloocan City to the Court of First Instance, Branch XXXIV, Caloocan City and return, one Zenaida Sacris de Andres, a detention prisoner being tried for violation of Section 4, R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, under Crim. Case No. C-12888, did then and there with great carelessness and unjustifiable negligence, allow and permit said Zenaida Sacris de Andres to have snacks and enter the comfort room at the second floor of the Genato Building, Rizal Avenue, Caloocan City after the hearing of said case, without first ascertaining for himself whether said comfort room is safe and without any egress by which the said detention prisoner could escape, thereby enabling said Zenaida Sacris de Andres, to run away and escape thru the window inside the comfort room, as in fact she did run away and escape from the custody of said accused.

CONTRARY TO LAW." (Rollo, p. 6)

The prosecution's evidence upon which the court based its finding of guilt is summarized as follows:

"xxx accused herein is a Patrolman of the Integrated National Police Force of Caloocan City and assigned with the jail section thereof. On March 27, 1980, when he reported for work, he was directed by his superior, Corporal Victor Victoriano, officer-in-charge in assigning police officers to escort prisoners, to escort Zenaida Sacris de Andres, a detention 'prisoner, before the sala of Judge Bernardo Pardo of the Court of First Instance, Br. XXXIV, located at the Genato Building, Caloocan City, to face trial for an alleged Violation of the

Dangerous Drugs Act of 1972, as the policewoman officer who was supposed to escort the said detainee was then sick. He and the detainee proceeded to the court building and arrived thereat between 8:30 and 9:00 o'clock in the morning. While waiting for the arrival of the judge at the courtroom, Pat. Orlando Andres, who happened to be in the court and a relative of the husband of said detention prisoner Zenaida, approached the accused and requested the latter if he could permit Zenaida to talk to her husband. The accused consented and Zenaida de Andres had a short talk with her husband. After a short while, the presiding judge deferred the decision against her because of a new Presidential Decree revising some provisions regarding violations of the Dangerous Drugs Act.

"After the court had already adjourned, the husband of Zenaida requested the accused to allow them to have lunch as they were already very hungry. He consented to the request and they proceeded to the canteen located at the mezzanine floor of the court building (Exhibit 1). He took a seat beside Zenaida and Pat. Andres while the relatives of said detainee were seated at a separate table. While eating, the husband of Zenaida asked him if he could accompany his wife to the comfort room as she was not feeling well and felt like defecating. The accused accompanied Zenaida and a lady companion to the ladies comfort room located at the second floor of the building (Exhibit 2). Zenaida and her lady companion entered the comfort room, while he stood guard along the alley near the ladies' comfort room facing the door thereof (Exhibit 5). Not long after, the lady companion of Zenaida came out of the comfort room and told him that she was going to buy sanitary napkins for Zenaida as the latter was then bleeding and had a menstruation and could not go out of the comfort room.

"After ten minutes elapsed without the lady companion of Zenaida coming back, the accused became suspicious and entered the comfort room, To his surprise, he found Zenaida no longer inside the comfort room. He noticed that the window of said comfort room was not provided with window grills. He tried to peep out of the window by stepping on the flush tank which is just about 3 feet from the window and noticed that outside of the window there was a concrete eave extending down to the ground floor of the building which he presumed that Zenaida might have used as a passage in escaping (Exhibits 2-A, 3 and 4 to 4-C). He immediately went out to look for the escapee inside the building with the help of Pat. Andres but they were not able to see her. Pat. Andres advised him to go to Zenaida's house as she might be there, which home is located at Bagong Barrio, Caloocan City. Pat. Andres having told him that the husband of the escapee is from Rizal, Nueva Ecija, the accused borrowed the car of his brother-in-law and proceeded to said town. Upon arrival thereat, they contacted the relatives of Zenaida and asked for information as to her whereabouts, but they answered in the negative. They went back to Caloocan City and went again directly to Bagong Barrio to the house of Zanaida, arriving thereat at around 8:00 o'clock in the evening. While at the residence of Zenaida, Cpl. Victoriano arrived and the accused related to him about the escape of Zenaida. He formally reported the matter to his superior officer at the City Jail, Capt. Leonardo Zamora. The accused declared further that as a jailer, he never had any training nor lecture by his superiors regarding the manner of delivering prisoners. However, he admitted that he did not inspect first the comfort room before he allowed Zenaida to enter because there were many females going in and out of said comfort room and that he did not promptly report the escape earlier because they were then pressed for time to intercept Zenaida at the highway." (Rollo, pp. 18-21).

The petitioner assigns the following errors:

I

"WHETHER PETITIONER'S CONVICTION BY THE SANDIGANBAYAN BASED ONLY ON HIS ADMISSIONS WITHOUT THE PROSECUTION HAVING PRESENTED EVIDENCE TO PROVE HIS NEGLIGENCE WILL LIE.

II

WHETHER THE ACTS OF PETITIONER COULD BE QUALIFIED AS DEFINITE LAXITY AMOUNTING TO DELIBERATE NON-PERFORMANCE OF DUTY TO SUSTAIN HIS CONVICTION."

(Brief for the petitioner, p. 5)

In essence, the sole question to be resolved in the case at bar is whether, under the foregoing facts and circumstances, the respondent Sandiganbayan committed a reversible error in holding the petitioner guilty of infidelity in the custody of a prisoner through negligence penalized under Art. 224 of the Revised Penal Code.

The petitioner specifically alleges that his conviction by the Sandiganbayan was based merely on his admissions without the prosecution presenting evidence to prove his negligence.

Sec. 22, Rule 130 of the Rules of Court states that "the act, declaration, or omission of a party as to a relevant fact may be given in evidence against him. The admissions and declarations in open court of a person charged with a crime are admissible against him. (See U.S. v. Ching Po, 23 Phil. 578).

The records show that the elements of the crime for which the petitioner was convicted are present. Article 224 of the Revised Penal Code states:

"ART. 224. Evasion through negligence. If the evasion of the prisoner shall have taken place through the negligence of the officer charged with the conveyance or custody of the escaping prisoner, said officer shall suffer the penalties of arresto mayor in its maximum period to prision correccional in its minimum period and temporary special disqualification."

The elements of the crime under the above-mentioned article are: a) that the offender is a public officer; b) that he is charged with the conveyance or custody of a prisoner, either detention prisoner or prisoner by final judgment; and c) that such prisoner escapes through his negligence (See Reyes, L.B., Revised Penal Code, Book II, 1977 ed., p. 407).

There is no question that the petitioner is a public officer. Neither is there any dispute as to the fact that he was charged with the custody of a prisoner who was being tried for a violation of the Dangerous Drugs Act of 1972.

The only disputed issue is the petitioner's negligence resulting in the escape of detention prisoner Zenaida Andres. The negligence referred to in the Revised Penal Code is such definite laxity as all but amounts to a deliberate non-performance of duty on the part of the guard (Id., p. 408).

It is evident from the records that the petitioner acted negligently and beyond the scope of his authority when he permitted his charge to create the situation which led to her escape. The petitioner contends that human considerations compelled him to grant Zenaida Andres' requests to take lunch and to go to the comfort room to relieve herself.

As a police officer who was charged with the duty to return the prisoner directly to jail, the deviation from his duty was clearly a violation of the regulations.

In the first place, it was improper for the petitioner to take lunch with the prisoner and her family when he was supposed to bring his charge to the jail. He even allowed the prisoner and her husband to talk to each other at the request of a co-officer.

It is the duty of any police officer having custody of a prisoner to take necessary precautions to assure the absence of any means of escape. A failure to undertake these precautions will make his act one of definite laxity or negligence amounting to deliberate non performance of duty. His tolerance of arrangements whereby the prisoner and her companions could plan and make good her escape should have aroused the suspicion of a person of ordinary prudence.

The request for lunch and the consequent delay was an opportunity for the prisoner to learn of a plan or to carry

out an earlier plan by which she could escape. The plan was in fact carried out with the help of the lady who accompanied the prisoner inside the comfort room. The use of a toilet is one of the most familiar and commonplace methods of escape. It is inconceivable that a police officer should fall for this trick. The arrangement with a lady friend should have aroused the petitioner's suspicion because the only pretext given by the petitioner was that she was going to answer the call of nature. It was, therefore, unnecessary for her to be accompanied by anyone especially by someone who was not urgently in need of a toilet if the purpose was merely to relieve herself. Despite this, the petitioner allowed the two to enter the comfort room without first establishing for himself that there was no window or door allowing the possibility of escape. He even allowed the prisoner's companion to leave the premises with the excuse that the prisoner was having her monthly period and that there was a need to buy sanitary napkins and he patiently waited for more than ten minutes for the companion to return. This was patent negligence and incredible naivete on the part of the police officer.

Contrary to what the petitioner claims, the escape was not a confluence of facts and circumstances which were not foreseen and were not unnatural in the course of things. Not only should they have been foreseen but they should have been guarded against.

Considering that the city jail was only a kilometer away and it was only 11:30 a.m., it would not have been inhuman for the petitioner to deny the prisoner's request to first take lunch. Neither would it have been inhuman if he cleared the toilet of female occupants and checked, all possible exits first and if he did not allow the lady companion to go with Zenaida Andres to the comfort room. These human considerations, however, are immaterial because the fact remains that as a police officer, he should have exercised utmost diligence in the performance of his duty.

The supposed confluence of facts does not alter his liability. That he was not trained in escorting women prisoners is likewise unacceptable as there are no hard and fast rules of conduct under all conceivable situations for police officers acting as guards. However, they are expected to use prudence, diligence, and common sense. That Judge Pardo did not immediately pronounce judgment so the petitioner could have immediately brought Zenaida back to jail is inconsequential. In the first place, the escape would not have materialized had he immediately escorted her back to jail after the hearing. That he cannot follow the prisoner inside the comfort room because it would create a commotion, he being a male, is a lame excuse. There is nothing wrong in asking the ladies for permission so he could check the comfort room first to insure that the prisoner cannot escape. The fact that the building is made of concrete and the outside windows covered with grills should not make a police officer complacent especially because well-planned escapes are not uncommon. Escapes are in fact, even presumed so much so that two (2) guards are usually assigned to a prisoner. (Tsn, August 4, 1981, p. 40)

There appears to have been no genuine effort on the part of the petitioner to recapture the escapee. Instead of promptly reporting the matter so that an alarm could immediately be sent out to all police agencies and expert procedures followed, he allegedly tried to look for her in the latter's house in Caloocan and failing in this, proceeded to Nueva Ecija. It was only later in the evening that he formally reported the matter to his superior. This even gave the escapee greater opportunity to make good her escape because the chances of her being recaptured became much less. Such action requires concerted police effort, not a one-man job which petitioner should have been or was probably aware of.

The petitioner further contends that he cannot be convicted because there was no connivance between him and the prisoner. In support of his claim, he cites the case of *Alberto v. dela Cruz*, (98 SCRA 406). The citation, however, is erroneous. It creates the impression that for one to be held liable under Art. 224, there must be a showing that he first connived with the prisoner. This was not the ruling in said case. Conniving or consenting to evasion is a distinct crime under Art. 223 of the Revised Penal Code.

The petitioner here is not being charged with conniving under Art. 223 but for evasion through negligence under Art. 224 of the same Code. It is, therefore, not necessary that connivance be proven to hold him liable for the crime of infidelity in the custody of prisoners.

We quote the Solicitor General that the Sandiganbayan's observation regarding escaped prisoners is relevant and timely. The Court stated:

"It is high time that the courts should take strict measures against law officers to whom have been entrusted the custody and detention of prisoners, whether detention prisoners or prisoners serving sentence. Laxity and negligence in the performance of their duties resulting in the mysterious escapes of notorious criminals have become common news items, involving as it does the suspicion that monetary considerations may have entered into the arrangements which led to the successful escape of such notorious criminals even from military custody. No quarters should be extended to such kind of law officers who, deliberately or otherwise, fail to live up to the standard required of their duties, thus directly contributing not only to the clogging of judicial dockets but also to the inevitable deterioration of peace order." (Brief for Respondents, pp. 17-18)

WHEREFORE, the petition is hereby DISMISSED. The questioned decision of the Sandiganbayan is AFFIRMED.

SO ORDERED.

Yap, C.J., Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

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