

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO MONTEVERDE Y CONE ALIAS “EDUARDO MASCARIÑAS”; ACCUSED-APPELLANT.

G.R. No. 60962. July 11, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by defendant Rolando Monteverde from the judgment of the CFI of Zamboanga City, in Criminal Case No. 1661 (185-111-79) finding him and his co-accused Reynaldo Codera, Jr. guilty of the crime of Robbery with Rape and sentencing them to death.

According to the spouses, Tomas and Teresita, at about 1:00 in the morning of December 29, 1976, the appellant and co-accused Reynaldo destroyed the window of their house. Teresita stood up and lighted a kerosene lamp, at which instance the couple saw Reynaldo at the window pointing a gun at them. He forced them to open the door. Once inside, he hogtied Tomas, gagged him and placed him under the bed. With the use of a gun and a knife, the appellant and Reynaldo intimidated Teresita and raped her three times (twice by the former and once by the latter). At about 4:00 in the same morning, they ransacked the house and left with their loot valued at P300.00 plus cash money of P15.00. Teresita and her husband immediately reported the matter to the police. Upon examination, the medico-legal officer issued a medical certificate with the following findings: that Teresita was already 2 months pregnant when she was sexually abused and that there were no external signs of physical injuries. Said medical certificate, however, was not properly identified in court because the physician was not presented during the trial. On March 27, 1977, the victims-spouses went to the police station for identification of arrested suspects. The spouses immediately identified Reynaldo as one of the two culprits who had committed the crimes. Teresita also unhesitatingly pointed to Rolando in a picture shown to her, as the very same person who is the other culprit. In a sworn statement before the NBI, Reynaldo admitted that he and appellant planned the robbery. However, he was not cross-examined because pending trial, he escaped. The appellant put up alibi as his defense and claimed that he was elsewhere with relatives and friends when the incident took place. Finding the straightforward and substantiated testimonies of the spouses credible, the trial court convicted the appellant and Reynaldo as charged and sentenced them to death. The appellant, however, assails the spouses' credibility, and claims that: (a) the medical certificate does not show signs of physical injuries and spermatozoa; (2) said medical certificate and even his co-accused's confession are inadmissible against him, for being hearsay; (3) recidivism cannot be considered against him because it was not alleged in the information; and (4) the lower court's proceedings are void because the amended information does not contain a certification.

The appeal lacks merit. The fact that the medical certificate shows no external signs of physical injuries and spermatozoa on the victim does not negate the commission of rape. (People vs. Bawit, L-48116, February 20, 1981; People vs. Dadaeg, L-37798, July 15, 1985, 137 SCRA 500).

While the medical certificate as well as the questioned extrajudicial confession may be incomplete or defective,

neither is indispensable to prove the crime of rape. In previous cases, medical examination was held to be merely corroborative. (People vs. Pielago, et al., L-42256, December 19, 1985; People vs. Opena, L-34954, February 20, 1981, 102 SCRA 755). In a prosecution for rape, the accused may be convicted even on the sole basis of the complainant's testimony, if credible. (People vs. Aragona, L-43752, September 19, 1985, 138 SCRA 569). In the case at bar, We find no cogent reason to disturb the trial court's findings on the credibility of the spouses. Having heard the witnesses and observed their deportment during the trial, the trial court is in a good position to decide the question. Indeed, the spouses' direct and substantiated testimonies are more credible than the appellant's general denial and uncorroborated testimony. Considering that the spouses have no motive to charge the appellant falsely, especially with such a grave offense, his defense of alibi is unavailing because the spouses positively identified him. (People vs. Arbois, L-36936, August 5, 1985, 138 SCRA 24; People vs. Estante, L-30354; July 30, 1979, 92 SCRA 122; People vs. Cabeltes, L-38145-48, June 29, 1979, 91 SCRA 208; People vs. Chavez, L-38603, September 30, 1982, 117 SCRA 221).

The trial court properly appreciated recidivism as an aggravating circumstance although not alleged in the information because the same was proved by evidence. (People vs. Perez, L-50044, July 31, 1981, 106 SCRA 436; People vs. Entes, L-50632, February 24, 1981, 103 SCRA 162).

Finally, We wish to state that while generally, a preliminary investigation is mandatory and a certification that such investigation was held is required, still this rule does not apply if the issue is raised only after conviction. Thus, it has been held that after a plea of not guilty to the information, an accused is deemed to have foregone the right of preliminary investigation and to have abandoned the right to question any irregularity that surrounds it (See Zacarias v. Cruz, 30 SCRA 728, People vs. Bel-tran, 32 SCRA 71. See also People v. Arbola, L-16936, Aug. 5, 1985).

Judgment of conviction is AFFIRMED, with the modification that due to the lack of the necessary votes, the death penalty is reduced to reclusion perpetua, with costs against the accused.

SO ORDERED.

Tehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Cruz, JJ., concur.

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