

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELQUIADES FERNANDEZ ALIAS “MODING”, AND FEDERICO CONRADO, DEFENDANTS-APPELLANTS.

G.R. NO. 62116. March 22, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

Before the Court is Federico Conrado’s appeal from the decision* of the Court of First Instance (now Regional Trial Court) of Pangasinan, Branch I, in Criminal Case No. L-2593 entitled, “The People of the Philippines vs. Melquiades Fernandez, alias ‘Moding’ and Federico Conrado” convicting him and the other accused of the crime of rape and sentencing them each to suffer inter alia two (2) death penalties.

The criminal complaint dated 2 June 1982 filed before the trial court, reads as follows:

“That on or about the 13th day of January, 1982, at 2:00 o’clock in the afternoon, at barangay Taloy, municipality of Malasiqui, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and mutually helping one another, did, then and there, wil-fully, unlawfully, and feloniously have sexual intercourse with the undersigned offended party Rebecca M. Soriano, a virgin and a 15 years old by means of force and intimidation and against the will of the latter.”[1]

Assisted by counsel, the accused Fernandez and Conrado, uncle and nephew respectively, pleaded not guilty on arraignment[2] and underwent trial.

Teofilo Malong employed Rebecca Soriano as a house-helper since September 1981. Residing in Teofilo’s house were his wife and daughters Amelita and Ma. Teresa. Rebecca Soriano testified that on 13 January 1982 at about 2:00 o’clock in the afternoon, and after she had just finished taking a bath and still naked, the two (2) accused, both in short pants, surreptitiously entered the bathroom. To prevent her from making an outcry, a piece of cloth was tightly tied around her neck, after which she was forcibly laid down. Conrado held her hands behind her while Fernandez sexually abused her. She declared that, immediately after Fernandez had raped her, Conrado in turn went on top of her and likewise succeeded in having sexual congress with her against her will. She added that, thereafter, Fernandez got a handful of mud near the bathroom and placed it on her vagina. Thereupon, she ran to the upper floor of the house to report the tragic incident to Amelita Malong.[3]

During the trial, Amelita Malong declared that in that afternoon of 13 January 1982, she was combing her hair in her room when she saw the approaching Rebecca, naked with smeared mud on her lower private part and a piece of cloth, around her neck. She testified that after she was told by Rebecca about the incident, they reported the same to her father, Teofilo, who was in his store. She also declared that she knew both the accused because Fernandez used to spray their mango trees while Conrado sold to them a dog sometime in November 1981.[4]

Teofilo Malong likewise testified for the prosecution. He stated that upon being informed that his housemaid Rebecca was raped by the accused, he and his family, together with Rebecca, proceeded to the office of the INP

Police Station of Malasique to report the crime and had Rebecca physically examined by Dr. Wilfredo Claudio of the San Carlos General Hospital in that same afternoon. He further said that the following day, or on 14 January 1982, he, Amelita and Rebecca gave their written statements to the police.[5]

Submitted as evidence for the prosecution was the “Medico-Legal Certificate” issued by Dr. Claudio, indicating his findings of “hymenal lacerations at 6, 10, 3 o’clock positions and one dead sperm cell seen on a slide examined.”[6]

In defense, the two (2) accused denied any involvement in the offense, both claiming they were nowhere at the scene of the crime when it was committed.

More particularly, Fernandez claimed he was in his house at Taloy, Malasique weaving baskets when the incident happened. He admitted having been formerly employed by Teofilo for about two (2) years to spray his mango trees and stated that during the period he was hired as such, he lived alone in a small hut constructed under a mango tree.[7] Conrado, on the other hand, alleged that when the crime was committed, he was at Malimpuec, Malasique as he was hired to spray the mango trees of a certain Mr. Overo. Bo. Malimpuec is his hometown but he admitted that he used to go to Bo. Taloy, prior to the incident, as his parents-in-law lived there.[8]

In the trial court’s decision holding that the guilt of both accused had been established beyond shadow of any doubt, the following observations and conclusions are made:

“As already stated, the defense of both accused is alibi, which is not even corroborated by a single defense witness. It is well-settled rule that alibi is the weakest defense that can be resorted to by an accused, as it is easy to concoct or fabricate. x x x.

“x x x, the alibi of both accused can not prevail over their positive identification by the prosecution witnesses (especially by complainant victim of rape, Rebecca Soriano) as the perpetrators of the crime charged, they having testified in a clear, straightforward, positive, truthful, and convincing manner, with no motive to fabricate this serious charge of rape or falsify the truth. The alibi of both accused can not also be given credence or weight, considering that at the time of the rape, accused Melquiades Fernandez was in his house at Bo. Taloy, which is just 150 meters away from the house of the Malongs, where Rebecca Soriano was raped; and accused Federico Conrado was at Bo. Malimpuec, which is only 9 kms. away from Bo. Taloy, where Rebecca was raped that afternoon of January 13, 1982. The evidence disclose that said distance of 9 kms. can be negotiated in only about 30 minutes by motorized vehicle, on good road connecting the 2 barrios.

x x x x x x x x

“The clear, positive, straightforward, and convincing testimony of rape victim Rebecca Soriano, as well as her immediate reporting of the incident to the police authorities, just 30 minutes or so after she was raped that afternoon of January 13, 1982 and her giving of a sworn statement (Exh. A) on January 14, 1982 (just the day after she was raped) which was corroborated by the statements on the same date (January 14, 1982) by prosecution witnesses Amelita Malong and Teofilo Malong, more than convinces and satisfies this Court that the crime charged was, in truth and fact, perpetrated by both accused.[9]

Hence, the judgment of conviction, now the object of this appeal, the dispositive part of which reads as follows:

“WHEREFORE, the Court finds each of the accused MELQUIADES FERNANDEZ, alias ‘Moding’ and FEDERICO CONRADO, guilty beyond reasonable doubt of two crimes of rape, aggravated by cruelty or ignominy, and, pursuant to law, hereby sentences each of them to suffer two (2) penalties of death, to indemnify the aggrieved party, Rebecca M. Soriano, in the amount of P12,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.”[10]

In an effort to reduce the imposed penalty of death to reclusion perpetua (life imprisonment), without disproving

the charges against them, the two (2) accused assigned the following errors:

“1.

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANTS FOR TWO (2) CRIMES OF RAPE.

2.

THE LOWER COURT ERRED IN HOLDING THAT THE COMMISSION OF THE RAPE WAS ATTENDED BY THE AGGRAVATING CIRCUMSTANCE OF CRUELTY OR IGNOMINY.

3.

THE LOWER COURT ERRED IN SENTENCING EACH OF THE ACCUSED-APPELLANTS ‘TO SUFFER TWO (2) PENALTIES OF DEATH.’[11]

In the light, however, of the 1987 Constitution, specifically, Section 19(1), Article III thereof, under which a death penalty already imposed is reduced to reclusion perpetua, Fernandez withdrew his appeal.[12] The lone appellant therefore is Conrado who insists on his appeal, notwithstanding the advice of his counsel de oficio to discontinue the appeal allegedly on the ground that “it has become moot and academic.”[13]

This Court nonetheless proceeded to consider accused-appellant’s arguments for the sake of verifying the correctness of the sentence imposed. We find no merit in the appeal.

First Assignment of Error

The trial court is accused of violating the rule against duplicity of offenses in that, the accused were convicted for two (2) crimes of rape even when under the criminal complaint against them, there is only one (1) crime of rape alleged. The rule invoked is Section 13, Rule 110 of the Rules of Court which states that there should be only one (1) offense charged in a criminal complaint or information, the purpose of which is to afford the defendant a necessary knowledge of the charge so that he may not be confused in his defense. But it is likewise the rule that if ever duplicity of offenses is committed, the same constitutes a ground for a motion to quash the complaint; and failure of the accused to interpose the objection constitutes waiver.[14] Conrado, after he had been convicted by the court a quo, can no longer assail its judgment by raising this issue. Neither can he claim, as he now does, that he was denied the information that he was to be tried for two (2) separate crimes of rape. The acts complained of, as constituting the offenses, were stated in the 2 June 1982 complaint in ordinary and concise language that any person of common intelligence would be able to understand and thereby know what acts he was to defend himself against.

The imposition on each of the accused of the penalty corresponding to two (2) crimes of rape is proper, because of the existence of conspiracy. As clearly found by the trial court:

“Both accused have, obviously, conspired and confederated to commit the crime, considering that they entered the bathroom where Rebecca was, together and at the same time. Accused Fernandez then tied her with a piece of cloth tightly around her neck, while accused Conrado held her hands placing them behind her body, to prevent her from struggling or resisting. Then after accused Fernandez had raped Rebecca, accused Conrado raped her. Both accused, thereafter, fled from the scene of the crime together and at the same time. All these circumstances show beyond shadow of any doubt conspiracy on the part of both accused, which renders each of them liable for two (2) crimes of rape, x x x.”[15]

In a long line of decided cases, it has been held by this Court that in multiple rape, each defendant is responsible not only for the rape personally committed by him, but also for the rape committed by the others, because each of

them (accused) cooperated in the commission of the rape perpetrated by the others, by acts without which it would not have been accomplished.[16]

Second Assignment of Error

The trial court is correct in appreciating the aggravating circumstance of ignominy because of the greater perversity displayed by the offenders. The testimony of the examining physician that he did not find mud on the victim's private organ, does not necessarily belie the latter's asseveration that the accused "plastered" (in the words of the lower court) mud on her private part. It is worthwhile mentioning that the victim was examined and treated by Dr. Claudio at 3:55 p.m. or about almost two (2) hours after the rape was committed.[17] Given this circumstance, the absence of mud in the victim's private part when she was examined by the physician, may be attributed to the possibility that the mud washed or fell off even before the victim left the house for her physical examination. Moreover, Rebecca's testimony was corroborated by that of Amelita Malong who swore that she saw mud smeared on Rebecca's private part when she (Amelita) saw Rebecca right after the incident. It is also difficult to conceive why the offended party, young as she was, and with a chaste reputation, would go to the extent of fabricating this portion of her testimony notwithstanding the consequent humiliation on her person and disgrace on her womanhood. We cannot but agree with the trial court's finding that the offense was aggravated by ignominy. We are of the opinion, however that the word "cruelty" used in the dispositive portion of the judgment, to describe an alternative aggravating circumstance, is unnecessary. The act of "plastering" mud on the victim's vagina right after she was raped, is adequately and properly described as "ignominy", rather than "cruelty or ignominy."

Third Assignment of Error

Lastly, the original death sentence was correctly imposed pursuant to the provisions of the Revised Penal Code, namely, Article 335 which states that when the crime of rape is committed by two (2) or more persons, the penalty shall be reclusion perpetua to death, and Article 63, which provides that when the penalty prescribed is composed of two (2) indivisible penalties (as in this case) and the offense is attended by an aggravating circumstance, the greater penalty shall be applied.

However, since the original death penalties imposed by the trial court are no longer imposable under the present Constitution and are reduced to reclusion perpetua, the sentence on appellant Federico Conrado has to be reduced to two (2) penalties of reclusion perpetua.[18] But the indemnity he has to pay to the victim must be increased to P20,000.00 in line with prevailing jurisprudence.

WHEREFORE, the appealed judgment, as above modified, is AFFIRMED. With costs against the accused-appellant Federico Conrado.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Willelmo C. Fortun.

[1] Original Record, p. 81

[2] Id., p. 83

[3] TSN of August 10, 1982, pp. 6-32; TSN of August 11, 1982, pp. 4-18

[4] TSN of August 30, 1982, pp. 19-30

- [5] TSN of August 31, 1982, pp. 4-12
- [6] Original Record, p. 52
- [7] TSN of August 31, 1982, pp. 36-54
- [8] TSN of August 31, 1982, pp. 23-28
- [9] Original Record, pp. 105-107
- [10] Id., p. 107
- [11] Appellants' Brief, p. 7
- [12] Melquiades Fernandez's Manifestation, p. 103, Rollo
- [13] Federico Conrado's Manifestation, p. 102, Rollo
- [14] Section 8, Rule 117, Rules of Court; People vs. Barrunga 61 Phil. 318; Provincial Fiscal of Nueva Ecija vs. CFI of Nueva Ecija, 79 Phil. 165; People vs. Roca, et al., August 19, 1986, 143 SCRA 552
- [15] Original Record, p. 7
- [16] People vs. Alfaro, et al, 91 Phil. 404; People v. Vidal, et al., February 28, 1984, 127 SCRA 793; People vs. Ludovico, et al., March 23, 1984, 128 SCRA 361
- [17] TSN of August 30, 1982, p. 6
- [18] Section 19(1), Article III, Philippine Constitution; People vs. Munoz, G.R. Nos. L-38968-70, February 9, 1989

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