

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY PARBA, DEFENDANT-APPELLANT.*G.R. No. 63409. May 30, 1986*

Ponente: NARVASA, J.

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By judgment promulgated on December 10, 1982 in Criminal Case No. 1462, by the Court of First Instance of Lanao del Norte (Branch I, Iligan City), Henry Parba was found guilty beyond reasonable doubt of the crime of attempted rape with homicide and correspondingly sentenced "to the supreme penalty of death, with the accessories prescribed by law; to indemnify the heirs of the deceased Alejandra Dalidig in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs." The case is before this Court on automatic review (sub-par; (1), par. 3, Sec. 17, R.A. No. 296; Sec. 5(2), Art. X, Constitution).

Henry Parba entered a plea of not guilty upon being arraigned in the Court a quo on July 20, 1981, under an Amended Information charging him with attempted rape with homicide "contrary to and in violation of Article 335 as amended by Republic Act No. 2632 and Republic Act 4111, with the aggravating circumstances that it was committed in a secluded place; that the wrong done in (the) commission of the crime x x x (was) deliberately augmented by causing other wrong not necessary for its commission, and (that) the accused is a recidivist." Trial was subsequently conducted in due course.

After five (5) witnesses had been presented by the prosecution, the hearing scheduled on October 29, 1982 was postponed to November 15, 1982, at the instance of Henry Parba, through his counsel de oficio, in order that he could "study thoroughly the feasibility of withdrawing his former plea of not guilty and x x x substitute the same with that of guilty" (ORDER, 29 October, 1982). On the next scheduled date of trial, November 15, 1982, Henry Parba moved thru counsel and was allowed by the Court to substitute his initial plea of not guilty with one of guilty. At this time, the five (5) witnesses (and exhibits) thus far presented by the prosecution, had established the material facts constituting the crime charged inclusive of the collateral circumstances. It is significant that the distinguished counsel who was appointed by this Court to represent Henry Parba on appeal does not seriously dispute those facts, which are tersely summarized in the Solicitor-General's brief, as follows:

"At around 10:00 p.m. of March 24, 1981, Roy Salgado, a prosecution eyewitness, while conversing with his buddies (barkada) in front of the store of Epifanio Clerigo in Tubod, Iligan City saw Bonifacio Tolo bring-ing the victim, Alejandra Dalidig, from a waiting shed towards an unoccupied hut loca-ted in Manauang, Iligan City (pp. 5-7, tsn, May 19, 1982).

Roy Salgado knew Dalidig was insane because she was the woman who was residing at Dodo Benti's house (id.).

While following Bonifacio Tolo to the hut, Roy Salgado saw his cousin, the accused-appellant, in the yard of the hut. He was able to recognize accused-appellant because of a flourescent lamp installed atop a post (p. 30, id.).

Shortly thereafter, Bonifacio Tolo brought the victim inside the hut. Roy Salgado peeped inside and saw Bonifacio Tolo having sex with the victim. Roy Salgado then saw Henry Parba go inside the hut after Bonifacio was through, the latter going straight to the Banana plantation to change his clothes. (pp. 9-10, id.).

Roy Salgado peeped again and saw accused-appellant taking hold of victim's arm and embracing her. The victim was heard shouting as she was being boxed by accused-appellant several times. Roy Salgado, thinking of the victim's safety, asked accused-appellant to stop. Appellant instead told Salgado to just go home because he (Salgado) had nothing to do with the vic-tim (pp. 11-12, 45-46, id.). To avoid any conflict, Roy Salgado went home and slept.

Thereafter, at around 1:00 o'clock in the morning of March 25, 1981, Roy Salgado was awakened by accused-appellant who was carrying a double-bladed hunting knife (pp. 13; 33-35, id.) wrapped in a carton. Acting sleepy, accused-appellant stood up and told Roy Salgado he forgot his shoes at the banana plantation (id.). Accused-appellant then left.

In the early morning (6:00 a.m.) of March 25, 1981, a certain Sgt. Francisco Englatiera, who was assigned to the Iligan City Police Station, but who was then in his house that early morning, saw an unusual crowd in front of a hut which was about 30 meters from his residence (pp. 5-6, tsn, Sept. 23, 1981).

Upon reaching the hut, where there were about 50 to 100 people around, he saw the body of the victim Dalidig with four to five stabbed wounds covered with banana leaves (p. 7, id.). Sgt. Englatiera was then tipped by a certain Aniceto Sismar, who saw accused-appellant within the vicinity at around 10:00 p.m. the night before (id.). Accompanied by two members of his staff, Sgt. Englatiera proceeded to the house of a certain Edgar Parba. The latter was not in the house but accused-appellant was there (p. 8, id.).

After a series of interrogation, accused-appellant, trembling and turning pale, confessed that he killed the victim because she refused to have sex with him (p. 9, id.). Accused-appellant was immediately brought to the Police Station (p. 11, id.).

It was Pat. Milo Paredes who took down the written sworn statement (Exh. "A", p. 12, tsn, Feb. 26, 1982) of accused-appellant admitting responsibility after the latter was fully apprised of his constitutional rights (p. 3, tsn, March 19, 1982). The investigation was conducted in the Cebuano-Bisayan dialect which the appellant fully understands (p. 14, tsn, supra)."

Both Henry Parba's counsel and the Solicitor-General are in agreement as regards what transpired at the hearing of November 15, 1982. In his brief, the former reproduces pages 2 to 7 of the transcript of stenographic notes, viz:

"FISCAL ULYSSES LAGCAO:

The same appearance for the prosecution, Your Honor, we are ready.

ATTY. ALBERT ABRAGAN:

Respectfully appearing for the accused, Your Honor. The accused has intimated to this representation that he will change his plea of not guilty to that of guilty.

COURT:

Usually, in cases like this we require the presentation of all the evidence necessary to show the extent of liability of the accused, but considering that the prosecution has already presented several witnesses perhaps that will . . .

FISCAL LAGCAO:

Nevertheless, Your Honor, after the accused have formally entered a plea of guilty, I will be presenting my documentary evidence.

COURT:

You mean you are no longer presenting other witnesses?

FISCAL LAGCAO:

No more, Your Honor, I will just present our documentary exhibits.

COURT:

So you believe that on the basis of the evidence already presented it is sufficient to prove the guilt of the accused beyond reasonable doubt?

FISCAL LAGCAO:

Yes, Your Honor.

COURT:

(To the accused)

Come here.

Q

Mr. Parba, your counsel here, Atty. Alberto Abragan, manifested that you have intimated to him your desire to withdraw your former plea of not guilty and to substitute the same with that of guilty, is that correct?

A

Yes, Your Honor.

Q

Do you know the consequences of your offer?

A

Yes, Your Honor.

Q

In other words, you are admitting all the allegations here in the information?

A

Yes, Your Honor.

Q

And that you actually committed all the acts alleged therein?

A

Yes, Your Honor.

Q

Has your lawyer explained to you the import and meaning of all the words appearing therein?

A

Yes, Your Honor.

COURT:

And do you know, as a matter of fact, that because of your offer the Court will have to sentence you accordingly? This is a grave offense.

A

Yes, Your Honor.

COURT:

Q

And despite your awareness of the consequences of your offer you still insist in withdrawing your former plea of not guilty and to substitute the same with that of guilty?

A

Yes, Your Honor.

COURT:

Well, in view of this you read the information again to the accused.

(Court Interpreter, Mr. Saidali Gandamra, reading the information to the accused.).

COURT:

Q

By the way, Mr. Defense Counsel, have you explained to your client the consequences of his offer?

ATTY. ABRAGAN:

Yes, Your Honor, during the last hearing.

COURT:

The possible penalty, as well as the meaning and import of all the words appearing in the information?

ATTY. ABRAGAN:

Yes, Your Honor, but I did not explain the allegation of recidivism and I think it is in the amended information, Your Honor.

COURT:

Alright, you read the amended information to the accused.

FISCAL LAGCAO:

May we be allowed to withdraw the allegation of recidivism, Your Honor, as we have not established that.

COURT:

You mean you are not sure whether you have presented any evidence in support thereof and therefore you are going to withdraw it now?

FISCAL LAGCAO:

Yes, Your Honor.

COURT:

You have here the amended information, Fiscal; it appears on page 21 of the record, you delete the particular portion regarding recidivism. You delete that, initial it, and place the date today.

COURT INTERPRETER:

(After reading the amended information to the accused.)

Q

Do you understand the information?

A

Yes, sir.

Q

What is your plea?

A

Guilty." (tsn, pp. 2-7, Nov. 15, 1982).

And the Solicitor-General's brief, in turn, reproduces pages 8 to 10 of the same transcript, viz:

"COURT:

Q

In other words, Mr. Accused, by your plea of guilty you are admitting also the following aggravating circumstances: (1) that the crime was committed in a secluded place, and (2) the wrong done was deliberately augmented by causing other wrong not necessary for its commission?

A

Yes, Your Honor.

COURT:

With respect to the other allegations, Mr. Defense Counsel, have you already explained them to the accused?

ATTY. ABRAGAN:

I have not explained that aggravating circumstances.

COURT:

Do you know this statement here, the meaning or import of this statement that "by means of force and violence", you commenced the commission of rape upon one Alejandra Dalidig?

ACCUSED:

A

Yes, Your Honor.

Q

And in your comprehension or understanding, you also admit that you did all these?

A

Yes, Your Honor.

Q

And that you also know that the woman was not in her normal frame of mind?

A

I do not know, Your Honor, that she was a mentally defective woman.

COURT:

Fiscal, did you have any of this?

FISCAL LAGCAO:

Thru the testimony of Ludovina Frasco, Your Honor.

COURT:

Q

You came to know later on that this woman was suffering from mental abnormality?

A

The following day, sir." (pp. 8-10, tsn, Nov. 15, 1982).

The other relevant occurrences on that day, November 15, 1982, are set out in the Decision of the Court a quo, as regards which there is again no dispute.

"In order to complete the records of the case, Fiscal Ulysses Lagcao offered in evidence Exhibits A, A-1, A-2, A-3, A-4, B, B-1, C, C-1, C-2, D and E, and the testimonies of Sgt. Francisco Englatiera, Pat. Milo Paredes, Roy Salgado, Dr. Livey Villarin and Ludovina Frasco.

After the prosecution had rested its case, the defense counsel invoked the mitigating circumstances of passion and obfuscation and other circumstances of a similar nature and analogous to those mentioned in paragraphs 8 and 9 of Article 13 of the Revised Penal Code. Fiscal Lagcao admitted the existence of said mitigating circumstances."

Judgment was thereafter promulgated, convicting Henry Parba of the crime charged and sentencing him as aforestated, "to the supreme penalty of death, etc."

This judgment Henry Parba now assails in this Court, It is claimed by his counsel that:

- 1) the lower Court erred in accepting the accused's plea of guilty which was improvidently made; and
- 2) assuming, without conceding, that the accused did not make an improvident plea of guilty and should rightfully be convicted, the lower Court erred in disregarding the privileged mitigating circumstance of minority in determining the penalty to be imposed.

The first point that appellant's counsel attempts to make is -

" x x x that the plea of guilty was hastily accepted by the trial court; and that the accused did not fully understand the meaning, import and effect of such plea to a capital offense. The trial court simply asked the accused whether he realized that because of his plea of guilty he will be sentenced accordingly. There is no evidence that the court took great care and patience in explaining to him all the allegations in the amended information in the native dialect. There is also no evidence that the trial court explained to him the gravity of the offense charged. And more importantly, there is no evidence that the trial court explained to the accused that despite such plea of guilty and other ordinary mitigating circumstances which may be considered as present herein, there is no other recourse but to sentence him to the mandatory penalty of death. Thus, the trial court failed to exercise patience and circumspection in explaining the meaning of the accusation to the accused and the full import of his plea of guilty" (appellant's brief, pp. 76-77, rollo).

Appellant's argument cannot be sustained in the light of the facts on record. The record shows that through his counsel de oficio, appellant asked for and was granted a postponement of two weeks or so so that he could "study thoroughly the feasibility of withdrawing his former plea of guilty and x x x substitute the same with that of guilty." The record further shows that in response to questions of the court, appellant affirmed his counsel's

manifestation of his desire to change his plea from not guilty to guilty. He also affirmed not only his awareness of the consequences of his offer to change his plea and that the change of plea would imply that he was "admitting all the allegations x x x in the information," but also that in fact, he had "actually committed all the acts" described in the information. Appellant also confirmed that his lawyer had explained to him "the import and meaning of all the words appearing" in the indictment. He affirmed, too, his knowledge that because of the change of plea "the Court will have to sentence x x x (him) accordingly," and that the offense was "a grave offense"; and he declared that despite knowing all "the consequences," he would "still insist" on his proffered change of plea. The record moreover shows that the Court also questioned appellant's counsel and obtained from the latter the assurance that he had explained to his client the consequences of the offer of change of plea, "as well as the meaning and import of all the words appearing in the information," except "the allegation of recidivism" which, however, was quickly withdrawn by the fiscal. The record shows, furthermore, that after the amended information had once again been read to the accused, and in answer to still other questions by the Court a quo, appellant Parba stated that he knew that by his plea of guilty he was "admitting also the x x x aggravating circumstances: (1) that the crime was committed in a secluded place, and (2) the wrong was deliberately augmented by causing other wrong not necessary for its commission;" and that he understood the "meaning and import" of the statement that "by means of force and violence x x x (he) commenced the commission of rape upon one Alejandra Dalidig." In fact, "in x x x (his) comprehension or understanding," he admitted having done those acts. The record finally discloses the fact, not impugned by appellant, that the Trial Court's explanation "was translated by the Court Interpreter in the Bisayan dialect which the accused speaks and understands" (Decision, p. 8, rollo), and that all throughout the proceedings on November 15, 1982, the day appellant voluntarily changed his plea from not guilty to guilty, his counsel de oficio was present and assisted him, just as he had done at all other prior proceedings. This Court holds that upon these facts on record, the Trial Court had -

" x x x exercised that patience and circumspection which is enjoined of trial judges in explaining to the accused the nature and meaning of the accusation and the full import of their plea of guilty. This injunction on trial judges in hearing a capital offense where the accused entered a plea of guilty, reiterated in the case of *People vs. Baluyot* (75 SCRA 148, 154) relied upon by appellant, appears fully complied with in the instant case. The record speaks for itself, and nothing more need hardly be said on this score." (*People vs. Pascual, Jr.*, 109 SCRA 197, 204).

Of no little significance is the circumstance that appellant's decision to change his plea from not guilty to guilty was reached after the prosecution had presented five (5) witnesses whose evidence, as aforesaid, satisfactorily proved the commission by appellant of the crime charged, inclusive of his spontaneous and voluntary acknowledgment thereof on no less than two (2) occasions: the first, verbally, at his residence, and the second, in writing, at the police station.

This Court is satisfied, therefore, that no error is imputable to the Court a quo not only in its appreciation of the evidence, as establishing appellant's culpability independently of his plea of guilty, but also in its determination that the change by the appellant of his plea from not guilty to guilty had been done knowingly, intelligently, and voluntarily, with full aware-ness and understanding of the nature and consequences thereof.

The second point raised by appellant's court-appointed counsel, upon the other hand, is well taken. The Lower Court did err "in disregarding the privileged mitigating circumstance of minority in determining the penalty to be imposed."

That Henry Parba was seventeen (17) years of age at the time he perpetrated the offense of which he has been found guilty is clearly shown by the evidence (Exh. A). Given this undisputed fact, Parba avers that he is entitled to the benefits of Article 68 of the Revised Penal Code, viz:

"Art. 68. Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.
2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period."

The Solicitor-General shares this view. And this Court declares their views to be correct.

The case of *People vs. Ramos*, 94 SCRA 843, adverted to by the Court a quo, in which it was ruled that regardless of the presence of mitigating circumstances, when a person is found guilty of rape with homicide (or attempted rape with homicide), for which the law prescribes the single, indivisible penalty of death, courts do not have "any discretion with respect to the severity of the penalty to be imposed," does not preclude the application of Article 68 to the appellant herein. Ramos obviously had reference to ordinary mitigating circumstances, not to the privileged mitigating circumstance dealt with in Article 68 which has the effect of lowering the penalty by one or two degrees than that prescribed by law. Thus, in accordance with said Article 68, the proper penalty imposable upon appellant is not death but reclusion perpetua.

WHEREFORE, with the modification above-mentioned, i.e., the reduction of the penalty imposed upon accused-appellant Henry Parba from death to reclusion perpetua, the judgment of the Trial Court is affirmed in all other respects.

SO ORDERED.

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

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