

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO RIO, ACCUSED-APPELLANT.

G.R. No. 90294. September 24, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

Convicted of rape and sentenced to reclusion perpetua by the Regional Trial Court, Branch CXLVI[*] of Makati, Metro Manila, in Criminal Case No. 12042, accused-appellant Ricardo Rio interposed his appeal and as a consequence, the clerk of court of said regional trial court branch forwarded the records of the case to the Court of Appeals. The appellate court, however, forwarded the records of the case to the Supreme Court in view of the penalty imposed upon the accused.

On 29 December 1989, the accused-appellant Ricardo Rio, in two (2) letters dated 14 December 1989, addressed to Division Clerk of Court Fermin J. Garma and to Assistant Clerk of Court Tomasita M. Dris, manifested his intention to withdraw the appeal due to his poverty.[1]

The Court resolved in a resolution dated 22 June 1990 to require the Solicitor General to comment on the appellant's manifestation to withdraw the appeal.

In the Comment filed by the Solicitor General, the action recommended was for the Court to ascertain from the accused-appellant, through the clerk of court of the trial court, whether he desired the appointment of a counsel de oficio on appeal, in view of the reasons stated by him for the withdrawal of his appeal, and inasmuch as poverty should not preclude anyone from pursuing a cause. It was also recommended that the clerk of court of the trial court be required by the Court to submit the response of the accused appellant along with a certificate of compliance with the duty imposed on him[2] by Section 13 of Rule 122 of the Rules of Court, which provides:

"Sec. 13. Appointment of counsel de oficio for accused on appeal. — It shall be the duty of the clerk of the trial court upon the presentation of a notice of appeal in a criminal case, to ascertain from the appellant, if he is confined in prison, whether he desires the Intermediate Appellate Court or the Supreme Court to appoint a counsel to defend him de oficio and to transmit with the record, upon a form to be prepared by the clerk of the appellate court, a certificate of compliance with this duty and of the response of the appellant to his inquiry."

The branch clerk of the trial court, in a letter addressed to the Assistant Clerk of Court of the Second Division, this Court, in compliance with the resolution of this Court, dated 16 April 1990, adopting the suggestions of the Solicitor General, which required him to comply with his duty mandated in Section 13, Rule 122 of the Rules of Court, submitted the reply of the accused-appellant informing the Court that he was no longer interested in pursuing his appeal and had, in fact, withdrawn his appeal.[3]

Upon recommendation of the Solicitor General, however, the Court in a resolution dated 1 October 1990, denied the appellant's motion withdrawing the appeal and appointed a counsel de oficio for the accused-appellant for, as correctly observed by the Solicitor General, all the letters of the accused-appellant reveal that the only reason offered by him for the withdrawal of his appeal is his inability to retain the services of a counsel de parte on

account of his poverty, a reason which should not preclude anyone from seeking justice in any forum.[4]

It seems that the accused-appellant was unaware that this Court can appoint a counsel de oficio to prosecute his appeal pursuant to Section 13 of Rule 122 of the Rules of Court and the constitutional mandate provided in Section 11 of Article III of the 1987 Constitution which reads as follows:

"Sec. 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."

This constitutional provision imposes a duty on the judicial branch of the government which can not be taken lightly. "The Constitution", as aptly stated in one case, "is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances."[5]

Paraphrasing Mr. Justice Malcolm, "Two (2) of the basic privileges of the accused in a criminal prosecution are the right to the assistance of counsel and the right to a preliminary examination. President McKinley made the first a part of the Organic Law in his Instructions to the Commission by imposing the inviolable rule that in all criminal prosecutions the accused 'shall enjoy the right x x x to have assistance of counsel for the defense'".[6] Today said right is enshrined in the 1987 Constitution for, as Judge Cooley says, this is "perhaps the privilege most important to the person accused of crime."[7]

"In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little meaning if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one de oficio for him if he so desires and he is poor, or grant him a reasonable time to procure an attorney of his own."[8]

This right to a counsel de oficio does not cease upon the conviction of an accused by a trial court. It continues, even during appeal, such that the duty of the court to assign a counsel de oficio persists where an accused interposes an intent to appeal. Even in a case, such as the one at bar, where the accused had signified his intent to withdraw his appeal, the court is required to inquire into the reason for the withdrawal. Where it finds the sole reason for the withdrawal to be poverty, as in this case, the court must assign a counsel de oficio, for despite such withdrawal, the duty to protect the rights of the accused subsists and, perhaps, with greater reason. After all, "those who have less in life must have more in law."[9] Justice should never be limited to those who have the means. It is for everyone, whether rich or poor. Its scales should always be balanced and should never equivocate or cogitate in order to favor one party over another.

It is with this thought in mind that we charge clerks of court of trial courts to be more circumspect with the duty imposed on them by law (Section 13, Rule 122 of the Rules of Court) so that courts will be above reproach and that never (if possible) will an innocent person be sentenced for a crime he has not committed nor the guilty allowed to go scot-free.

In this spirit, the Court ordered the appointment of a counsel de oficio for the accused-appellant and for said counsel and the Solicitor General to file their respective briefs, upon submission of which the case would be deemed submitted for decision.

From the records of the case, it is established that the accused-appellant was charged with the crime of rape in a

verified complaint filed by complainant Wilma Phua Rio, duly subscribed before 3[rd] Assistant Fiscal Rodolfo M. Alejandro of the province of Rizal, which reads as follows:

"That on or about the 24[th] day of March, 1984, in the Municipality of Muntinlupa, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned Wilma Phua against her will." [10]

On 26 June 1985, at the arraignment, the accused-appellant, assisted by Atty. Leonido Manalo of the Makati CLAO office, as counsel de oficio, entered a plea of not guilty to the offense charged.[11] The evidence for the prosecution adduced at the trial established the following facts:

During the months of February and March 1984, complain-ant Wilma Phua, then only 13 years of age, was living with her mother and three (3) sisters in a house in Barangay Bayanan, Municipality of Muntinlupa, Metro Manila. At a distance of about three (3) meters from this house is another house with a toilet and bath also owned by complainant's mother but which was uninhabited at that time. The accused, complainant's uncle, being the younger brother of complainant's mother, was staying in their house, free of board and lodging, although he helped in the household chores. The children used the bathroom in the uninhabited house because the amenities in the inhabited house were used only by the adults.[12]

At about 2:00 o'clock in the afternoon of 24 March 1984, classes having closed for vacation and while Maria Zena Phua Rio was in the house occupied by her family, her daughter Wilma (complainant) asked her for the key to the comfort room of the uninhabited house because she had to answer a call of nature. After having delivered the key to Wilma, the latter proceeded to the other house, entered the comfort room, and seeing that nobody was around and that her uncle was washing dishes in their house, proceeded to answer nature's call without taking the precaution of locking the comfort room from inside.[13]

After relieving herself but before she could raise her panty, the accused entered the bathroom with his body already exposed, held Wilma's hands, and ordered her in a loud voice to lie down and when she resisted, the accused got mad and ordered her to lie down. After she lay down on her back, the accused put himself on top of her and tried to insert his private organ into her private part. Wilma kept pushing the accused away and calling for her mother; however, since the accused was heavier than she, the accused succeeded in overpowering her, inserting his penis into her vagina and having sexual intercourse with her. After satisfying his lust, the accused released Wilma and allowed her to leave the bathroom.[14]

Outside the bathroom door, complainant met her mother Maria Zena who, meanwhile, had proceeded to the said other house after sensing that an inordinate length of time had passed and her daughter, complainant herein, had not returned from the bathroom. Maria Zena, upon noticing that Wilma was speechless, trembling and looking fearful, suspected something remiss, so she tried to open the door of the bathroom. Unable to open it the first time because it was locked from inside, Maria Zena waited a few minutes before pushing the door again. This time she was successful in finding her brother, the herein accused-appellant in the process of raising his pants. Maria Zena was ignored by her brother when she asked him the reason for his presence inside the bathroom.[15]

Still suspecting that the accused has done something to her daughter, Maria Zena continued her inquisition of her brother for several days but to no avail. Finally, on 9 April 1984, the accused was asked to leave the house and move out by his sister Maria Zena.[16]

Only after the departure of the accused did Wilma report to her mother the fact that she had been raped by the accused four (4) times between the months of February and March of that year (1984). After receiving such information, Maria Zena wanted her daughter to immediately undergo physical examination; however, Wilma,

apparently traumatized by her experience, was too weak to go with her for such examination and frequently suffered from fainting spells. It was only on 30 April 1984 that Maria Zena was able to bring Wilma to the police to report the matter and to file the complaint. After the report to the police, they were referred to the P.C. Crime Laboratory at Camp Crame where Wilma underwent physical examination.[17]

Dr. Dario Gajardo, the physician who conducted the internal examination of Wilma, submitted a report of his examination dated 6 May 1984. The medical report showed, among others, the following findings:

"There is a scanty growth of pubic hair. Labia majora are full, convex and gaping which pale brown, slightly hypertrophied labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with deep lacerations at 3, 8 and 9 o'clock. x x x."[18]

The medical report also showed that "there was (sic) no external signs of recent application of any form of trauma."[19] All these findings led him to conclude that Wilma is "in a non-virgin state physically." [20] Later, on the witness stand, Dr. Gajardo would further testify that Wilma, on inquiry, revealed that the first rape happened in the month of February 1984, but that he could not tell the approximate period or age of the lacerations.[21]

Armed with this medical report, Maria Zena and Wilma went back to the police where a sworn statement of Wilma was taken and the complaint for rape against the accused was filed before Third Assistant Fiscal Rodolfo M. Alejandro on 12 May 1984.[22]

The evidence for the defense consisted of the testimony of the accused himself and his brother, Amado Rio. The accused's defense was anchored on alibi and he substantially testified as follows: that contrary to the statements made by the witnesses for the prosecution, he was not asked to leave their house in April 1984, the truth being that he left in the month of January 1984 or about a month before the alleged first rape on Wilma was committed because, contrary to an alleged employment agreement between brother and sister, his sister, Maria Zena, had not paid him any salary as helper in their house; that from the month of January 1984, up to 24 March 1984 when the rape charged in the complaint was allegedly committed, he was in their hometown in Kambalo, Cahidiocan, province of Romblon; that at the time of his arrest, he was informed of the criminal charge of rape on his niece filed against him in court; that from January 1984 up to the time of his arrest on 6 May 1984, he had stayed in the house of his uncle, Francisco Rio, and had never left the place during the whole period.

The accused vehemently denied the rape and conjectured that his sister could have fabricated the charge because he left her house due to her non-payment of his salary as helper. The brother of the accused in the person of Amado Rio corroborated the defense of alibi of the accused.[23]

On rebuttal, the prosecution presented Nemesia B. Merca, the Election Registrar of the Municipality of Muntinlupa, who brought with her a Voter's Affidavit which was executed on 31 March 1984 by one Ricardo Rio and was subscribed and sworn to on 31 March 1984 before Tessie Balbas, Chairman of Voting Center No. 37-A of Bayanan, Muntinlupa, Metro Manila. On cross-examination, Registrar Merca admitted that she does not know the accused personally but that the xerox copy of the Voter's Affidavit that she brought to court was copied from a book containing about 60 voter's affidavits of said precinct.[24]

After comparing the signature appearing in the Voter's Affidavit with the penmanship appearing on a letter[25] dated 12 December 1985 written by the accused to his brother, Amado Rio and on the envelope of said letter,[26] the trial court ruled that the writing characteristics on the presented documents are the same, especially the rounded dot over the letter "i" appearing in the afore-mentioned documents. It was, therefore, satisfied that the Voter's Affidavit was indeed prepared by the accused in Bayanan, Muntinlupa, Metro Manila, on 31 March 1984, before Tessie Balbas and that this piece of evidence completely belies the defense of the accused as corroborated by his brother, Amado, that he was in Romblon continuously from the month of January 1984 up to the time that

he was arrested on 6 May 1984.[27]

Thus, the trial court found the accused-appellant guilty of the crime of rape. The dispositive portion of the decision reads as follows:

"WHEREFORE, finding the above-named accused guilty of the crime charged in the information beyond reasonable doubt the Court hereby sentences him to suffer the penalty of reclusion perpetua, with the accessory penalties of the law, to indemnify Wilma Phua in the sum of P15,000.00, Philippine currency, and to pay the costs.

"SO ORDERED."

The theory of the defense at the trial level was grounded on alibi. The accused claimed that at the time of the alleged commission of the crime of rape he was in Romblon. This claim was corroborated by the accused's brother, Amado Rio. However, this claim was, as aforesaid, rebutted by the prosecution's submission of the voter's affidavit executed by the accused in Muntinlupa, Metro Manila on 31 March 1984 when appellant claimed he was in Romblon.

Upon careful examination of the voter's affidavit, the Court is convinced, as the trial court, that the affidavit was indeed executed by the accused himself and the date appearing therein must be presumed correct and genuine.

Alibi is inherently a weak defense, easy of fabrication especially between parents and children, husband and wife, and other relatives and even among those not related to each other. For such defense to prosper, the accused must prove that it was not possible for him to have been at the scene of the crime at the time of its commission.[28]

In the present case, where nothing supports the alibi except the testimony of a relative, in this case the accused's brother Amado, it deserves but scant consideration.[29] Moreover, the Court notes the fact that while the accused-appellant had another brother and sister living in Manila besides the complainant's mother, those two never came to his aid. Were the accused the innocent man he claims to be, these siblings would have readily helped in his defense. The testimony of his other brother Amado alone cannot raise the necessary doubt to acquit him as against the evidence presented by the prosecution.

Furthermore, it would be hard to believe that a female, especially a twelve-year old child, would undergo the expense, trouble and inconvenience of a public trial, not to mention suffer the scandal, embarrassment and humiliation such action inevitably invites, as well as allow an examination of her private parts if her motive were not to bring to justice the person who had abused her. A victim of rape will not come out in the open if her motive were not to obtain justice.[30]

It is harder still to believe that the mother of a child of twelve will abuse her child and make her undergo the trauma of a public trial only to punish someone, let alone a brother, for leaving her without the services of an unpaid helper were it not with the aim to seek justice for her child. Nobody in his right mind could possibly wish to stamp his child falsely with the stigma that follows a rape.

On appeal, appellant's counsel de oficio changed the theory of the defense. The new theory presented by counsel de oficio is that Wilma Phua consented when accused-appellant had sexual intercourse with her on 24 March 1984. It was stressed by counsel de oficio that the rape occurred on 24 March 1984 and that, allegedly, it was the fourth time accused had abused complainant. This allegation as well as the fact that complainant failed to lock the door to the bathroom could only have been due to the fact that there was consent. The charge was filed, according to defense counsel de oficio, only because the complainant's mother caught them.[31]

This theory of the defense on appeal that there had been consent from the complainant, fails to generate doubt as

to the accused's guilt, for it would be an incredulous situation indeed to believe that one, so young and as yet uninitiated to the ways of the world, would permit the occurrence of an incestuous relationship with an uncle, a brother of her very own mother.

The Court notes the sudden shift in the theory of the defense from one of total denial of the incident in question, by way of alibi, to one of participation, that is, with the alleged consent of the complainant. This new version could only be attributed by the Court to the fact that counsel on appeal is different from the counsel in the trial court. Although the Solicitor General has suggested that this sudden shift be interpreted as an afterthought by the accused or a desperate effort to get himself acquitted,[32] the Court deems it more likely that this shift was caused by counsel de officio's preparation of the appellant's brief without examining the entire records of the case. If the appointed counsel for the accused, on appeal, had read the records and transcripts of the case thoroughly, he would not have changed the theory of the defense for such a shift can never speak well of the credibility of the defense. Moreover, the rule in civil procedure, which applies equally in criminal cases, is that a party may not shift his theory on appeal. If the counsel de officio had been more conscientious, he would have known that the sudden shift would be violative of aforementioned procedural rule and detrimental to the cause of the accused-appellant (his client).

The Court hereby admonishes members of the Bar to be more conscious of their duties as advocates of their clients' causes, whether acting de parte or de officio, for "public interest requires that an attorney exert his best efforts and ability in the prosecution or defense of his client's cause." [33] Lawyers are an indispensable part of the whole system of administering justice in this jurisdiction.[34] And a lawyer who performs that duty with diligence and candor not only protects the interests of his client; he also serves the ends of justice, does honor to the Bar and helps maintain the respect of the community to the legal profession. This is so because the entrusted privilege to practice law carries with it correlative duties not only to the client but also to the court, to the bar and to the public.[35]

While a lawyer is not supposed to know all the laws,[36] he is expected to take such reasonable precaution in the discharge of his duty to his client and for his professional guidance as will not make him, who is sworn to uphold the law, a transgressor of its precepts.[37]

The fact that he merely volunteered his services or the circumstance that he was a counsel de officio neither diminishes nor alters the degree of professional responsibility owed to his client.[38] The ethics of the profession require that counsel display warm zeal and great dedication to duty irrespective of the client's capacity to pay him his fees.[39] Any attempted presentation of a case without adequate preparation distracts the administration of justice and discredits the Bar.[40]

Returning to the case at bar, even if we consider the sudden shift of defense theory as warranted (which we do not), the Court is just as convinced, beyond reasonable doubt, that the accused-appellant is guilty of the crime as charged. His conviction must be sustained.

WHEREFORE, the decision of the trial court finding the accused-appellant Ricardo Rio guilty beyond reasonable doubt of the crime of rape and sentencing him to the penalty of reclusion perpetua with all the accessory penalties of the law, is hereby **AFFIRMED**. The Court, however, increases the amount of indemnity to be paid by the accused-appellant to Wilma Phua to thirty thousand pesos (P30,000.00) in line with prevailing jurisprudence on this matter. Costs against accused-appellant.

SO ORDERED.

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

[*] Presided over by then Judge Jose L. Coscolluela, Jr.

[1] Rollo, pp. 30-33.

[2] Rollo, pp. 40-41.

[3] Rollo, pp. 45-49.

[4] Rollo, pp. 57-60.

[5] Ex-parte Milligan, 4 Wal, 2, 132, 18 L.ed. 281, 295 cited in Cayaga vs. Tangonan, G.R. No. L-40970, August 21, 1975, 66 SCRA 216.

[6] United States v. Escalante, Malcolm, J., dissenting, 36 Phil. 747.

[7] Cooley, Constitutional Limitations, 7[th] edition, p. 749.

[8] People v. Holgado, 85 Phil. 752.

[9] No. 2 Point of the 10-point "Magsaysay Credo" codified by then Magsaysay Executive Secretary Fred Ruiz Castro cited in the book "Ramon Magsaysay, A Political Biography" by Jose Abueva, p. 282.

[10] Rollo, p. 21.

[11] Ibid.

[12] Rollo, pp. 21-22.

[13] Rollo, p. 22.

[14] Rollo, p. 22.

[15] Ibid.

[16] Rollo, pp. 22-23.

[17] Rollo, p. 23.

[18] Exhibit "B-3".

[19] Exhibit "B".

[20] Exhibit "B".

[21] Rollo, p. 23.

[22] Ibid.

[23] Rollo, pp. 23-24.

[24] Exhibit "Y" and Rollo, p. 23.

[25] Exhibit "X".

[26] Exhibit "X-1".

- [27] Rollo, pp. 24-25.
- [28] *People v. Rafanan*, G.R. No. 48362, 28 February 1990, 182 SCRA 811.
- [29] *People v. Munoz*, G.R. No. 61152, 29 July 1988, 163 SCRA 730.
- [30] *Ibid.*
- [31] Rollo, p. 73.
- [32] Rollo, pp. 95-96.
- [33] *Cantiller v. Potenciano*, Adm. Case No. 3195, December 18, 1989, 180 SCRA 246.
- [34] *Ibid.*
- [35] Agpalo, *Legal Ethics*, 3[rd] ed. (Law Publishing House, 1985), p. 153.
- [36] *In re Filart*, 40 Phil. 205 (1919).
- [37] *Hernandez v. Villanueva*, 40 Phil. 715 (1920).
- [38] *Javellana v. Lutero*, G.R. No. L-23956, July 21, 1967, 20 SCRA 717; *Cabalag v. Roxas y Cia*, G.R. No. L-20011, December 17, 1966, 18 SCRA 1099.
- [39] *Blanza v. Arcangel*, Adm. Case No. 492, September 5, 1967, 21 SCRA 1; *People v. Estebia*, G.R. No. L-26868, February 27, 1969, 27 SCRA 106.
- [40] *New York Central Railroad Company v. Johnson*, 297 U.S. 310, 73 L.ed. 706 (1926).

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