

EDUARDO ARROYO, JR., PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 96602. November 19, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

In G.R. No. 96602, the Court summarized the facts of the case in this manner:

"Dr. Jorge B. Neri filed a criminal complaint for adultery before the Regional Trial Court (RTC), Branch 4, of Benguet against his wife, Ruby Vera Neri, and Eduardo Arroyo committed on 2 November 1982 in the City of Baguio.

Both defendants pleaded not guilty and after trial, the RTC convicted petitioner and Mrs. Ruby Vera Neri of adultery as defined under Article 333 of the Revised Penal Code.

The essential facts of the case, as found by the trial court and the Court of Appeals, are as follows:

'x x x. On November 2, 1982, accused, Mrs. Ruby Vera Neri in the company of Mrs. Linda Sare and witness Jabunan, took the morning plane to Baguio. Arriving at around 11:00 a.m., they dropped first at the house of Mrs. Vera, mother of Ruby Vera at Crystal Cave, Baguio City then proceeded to the Mines View Park Condominium of the Neri spouses. At around 7:00 o'clock in the evening, accused Eduardo Arroyo arrived at the Neris' condominium. Witness opened the door for Arroyo who entered, he went down to and knocked at the master's bedroom where accused Ruby Vera Neri and her companion Linda Sare were. On accused Ruby Vera Neri's request, Linda Sare left the master's bedroom and went upstairs to the sala leaving the two accused. About forty-five minutes later, accused Arroyo Jr. came up and told Linda Sare that she could already come down. Three of them, thereafter, went up to the sala then left the condominium.' (Court of Appeals Decision, p. 4)"[1]

Petitioner Arroyo filed a Motion for Reconsideration of the Court of Appeals' Decision. Petitioner Ruby Vera Neri also moved for reconsideration or a new trial, contending that a pardon had been extended by her husband, private complainant Dr. Jorge B. Neri, and that her husband had later contracted marriage with another woman with whom he is presently co-habiting. Both motions were denied by the Court of Appeals.

Petitioner Arroyo filed a Petition for Review (G.R. No. 96602) dated 8 February 1991 which this Court denied in a Resolution dated 24 April 1991.

In the meantime, petitioner Neri filed a separate Petition for Review (G.R. No. 96715) dated 19 February 1991.

Petitioner Arroyo filed a motion for reconsideration dated 14 May 1991 and a motion dated 23 May 1991 for consolidation of G.R. No. 96602 with G.R. No. 96715.

On 3 June 1991, G.R. No. 96715 was consolidated with G.R. No. 96602 in the Third Division in accordance with long-standing practice of the Court.

On 29 July 1991, the Third Division deliberated upon the case which was then assigned to the ponente for the

writing of the Court's Resolution.[2]

On 26 August 1991, Dr. Neri filed a manifestation, dated 14 May 1991,[3] praying that the case against petitioners be dismissed as he had "tacitly consented" to his wife's infidelity.[4]

Petitioners then filed their respective motions praying for the dismissal or for the granting of new trial of the case claiming as basis for their motions Dr. Neri's manifestation. The Solicitor-General was then asked to comment on the manifestation; his comment was filed with this Court on 18 October 1991.[5]

In October 1991, the consolidated cases were, again in accordance with long-standing practice of the Court, assigned to the First Division upon the assignment of the ponente to that division. On 4 November 1991, the consolidated cases were re-deliberated upon by the members of the First Division who reached the same conclusion as the members of the Third Division of the Court.

In his Motion for Reconsideration in G.R. No. 96602, petitioner Arroyo made the following contentions:

1. Dr. Neri's affidavit of desistance which states that the case was filed out of "pure misunderstanding" raises questions as to the truth of the alleged admission made by Mrs. Neri;
2. The other prosecution witnesses' corroborative testimonies merely proved the existence of an illicit affair but not that adultery was committed on the date and place in question;
3. Mrs. Neri's separate petition for review raised the issue of Dr. Neri's alleged subsequent marriage to another woman which, if proven, would preclude either of the spouses from filing charges of adultery or concubinage against each other.

In G.R. No. 96715, petitioner Neri imputes the following errors to the Court of Appeals:

- "1. The Honorable Court of Appeals gravely erred in not granting the motion for reconsideration and/or new trial of the petitioner;
2. The Honorable Court of Appeals gravely erred by violating the constitutional rights of petitioner against self-incrimination;
3. The Honorable Court of Appeals erred in failing to take into consideration the material inconsistencies of the testimony of the complaining witness; and
4. The Honorable Court of Appeals gravely erred in discarding medical testimony as to the physical impossibility of the petitioner to have committed the crime charged."[6]

The issues in the consolidated cases may be summarized as follows:

1. Whether or not Dr. Neri's affidavit of desistance is sufficient to cast reasonable doubts on his credibility;
2. Whether or not Mrs. Neri's constitutional right against self-incrimination had been violated;
3. Whether or not Dr. Neri's alleged extra-marital affair precludes him from filing the criminal complaint on the ground of *pari delicto*; and
4. Whether or not Dr. Neri's manifestation is sufficient basis for the granting of a new trial.

Deliberating on the:

1. Motion for Reconsideration in G.R. No. 96602, the Court believes that petitioner Arroyo has failed to show any ground that would warrant the Court reversing its Resolution dated 24 April 1991; and on the
2. Petition for Review docketed as G.R. No. 96715, the Court considers that petitioner Ruby Vera Neri has failed

to show reversible error on the part of the Court of Appeals in issuing its Decision dated 21 May 1990 and its Resolution, dated 18 December 1990.

Petitioner Arroyo did not convince this Court in G.R. No. 96602 to dismiss the criminal case on the basis of Dr. Neri's pardon. He, together with petitioner Neri, now cites the same affidavit in the effort to cast doubts on the credibility of Dr. Neri's testimony given before the trial court. However, in the Court's Resolution, dated 24 April 1991, dismissing the Petition for Certiorari in G.R. No. 96602, the Court held that:

"It has been our constant holding that:

'In certiorari proceedings under Rule 45, the findings of fact of the lower court as well its conclusions on credibility of witnesses are generally not disturbed, the question before the court being limited to questions of law (Rule 45, Sec. 2). Specifically, the conclusions of the trial court on the credibility of witnesses are given considerable weight, since said court is in the best position to observe the demeanor, conduct and attitude of witnesses at the trial. (Aguirre v. People, 155 SCRA 337 [1987]; under-scoring supplied)'

Thus, the claim that Dr. Neri's testimony is incredible is unavailing at this stage. Besides, the Court does not believe that such an admission by an unfaithful wife was inherently improbable or impossible." [7] (Underscoring partly in the original and partly supplied)

The Court, in the said Resolution of 24 April 1991, had likewise ruled on the claim that Mrs. Neri's constitutional right against self-incrimination had been disregarded when her admission to her husband in the privacy of their conjugal home that she had indeed lain with petitioner Arroyo was taken into account by the trial court, to wit:

"Dr. Jorge Neri was also presented as a witness and he testified that sometime in December of 1982, he surprised his wife while she was looking at some photographs in their bedroom in their house in Dasmariñas Village, Makati. Accused Ruby Vera Neri then turned pale and started for the door. Struck by this unusual behavior, Dr. Neri started looking around the dressing room and he came upon a Kodak envelope with film negatives inside. He took the negatives for printing and a few days later, armed with the photographs which showed his wife in intimate bedroom poses with another man, confronted Ruby Vera Neri. It was at this point that Ruby Vera Neri admitted to her husband that Eduardo Arroyo was her lover and that they went to bed in Baguio on 2 and 3 November 1982.

x x x x x x x x

As to the constitutional issue, we held in Gamboa v. Cruz (162 SCRA 642 [1988]) that:

'The right to counsel attaches upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confession or admissions from respondent-accused.' (Underscoring supplied)

In the present case, Dr. Neri was not a peace officer nor an investigating officer conducting a custodial interrogation, hence, petitioner cannot now claim that Mrs. Neri's admission should have been rejected.

In the case of Aballe v. People (183 SCRA 196 [1990]), the Court held:

'The declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him.

The rule is that any person, otherwise competent as witness, who heard the confession, is competent to testify as to substance of what he heard if he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance.

Compliance with the constitutional procedures on custodial investigation is not applicable to a spontaneous

statement, not elicited through questioning, but given in an ordinary manner, whereby the accused orally admitted having slain the victim.'

We also note that the husband is not precluded under the Rules of Court from testifying against his wife in criminal cases for a crime committed by one against the other (Section 22, Rule 129, Revised Rules of Court).

In short, the trial court and the Court of Appeals did not err in admitting Dr. Neri's testimony as he was a competent witness. Neither was said testimony rendered inadmissible by the constitutional provision on the right to remain silent and the right to counsel of a 'person under investigation for the commission of an offense.'

Petitioner next claims that the trial court erred in convicting him on the basis of the failure of Ruby Vera Neri to take the witness stand. In *People v. Gargoles* (83 SCRA 282 [1978]), it was held that:

'We have held that an accused has the right to decline to testify at the trial without having any inference of guilt drawn from his failure to go on the witness stand. Thus, a verdict of conviction on the basis, solely or mainly, of the failure or refusal of the accused to take the witness stand to deny the charges against him is a judicial heresy which cannot be countenanced. Invariably, any such verdict deserves to be reversed.

Such situation does not obtain, however, in the case at bar. For while the trial court took note of the failure of defendant to take the witness stand to deny the charge against him, the same was not the main reason, much less the sole basis, of the trial court in holding, as credible the testimony of complainant, and in ultimately concluding that the crime of rape had been committed by the accused?appellant. (Underscoring supplied)'

Examination of the trial court decision here shows that said failure to testify was not the sole nor the main basis of the conviction. Aside from accused's failure to deny Dr. Neri's testimony, the trial court also considered the testimonies of Dr. Neri and other prosecution witnesses and the photographs of the two accused in intimate poses (and three of which showed them half naked in bed)."[8] (Underscoring partly in the original and partly supplied)

We turn to the contention that *pari-delicto* "is a valid defense to a prosecution for adultery and concubinage and that in such a case 'it would be only a hypocritical pretense for such spouse to appear in court as the offended spouse'." [9]

In the first place, the case cited does not support petitioner Neri's position. In the *Guinucud* case, the Court found that the complaining husband, by entering into an agreement with his wife that each of them were to live separately and could marry other persons and by filing complaint only about a year after discovering his wife's infidelity, had "consented to, and acquiesced in, the adulterous relations existing between the accused, and he is, therefore, not authorized by law to institute the criminal proceedings." In fine, the *Guinucud* case refers not to the notion of *pari delicto* but to consent as a bar to the institution of the criminal proceedings. In the present case, no such acquiescence can be implied: the accused did not enter into any agreement with Dr. Neri allowing each other to marry or cohabit with other persons; and Dr. Neri promptly filed his complaint after discovering the illicit affair.

Moreover, the concept of *pari delicto* is not found in the Revised Penal Code, but only in Article 1411 of the Civil Code. The Court notes that Article 1411 of the Civil Code relates only to contracts with illegal consideration.[10] The case at bar does not involve any illegal contract which either of the contracting parties is now seeking to enforce.

Petitioners also contend that Dr Neri's manifestation which reads:

"2. Even before I filed the complaint in court and before the pardon that I had extended to my wife and her

co-accused, I was in reality aware of what was going on between and therefore, tacitly consented to my wife's infidelity, x x x."

should result in the dismissal of the case or, at the very least, the remand of the case for new trial claiming that in *People v. Camara*[11] it was held that "the consent of the spouse is valid defense to a prosecution for adultery and/or concubinage." [12]

Dr. Neri's manifestation amounts in effect to an attempted recantation of testimony given by him before the trial court. It is settled that not all recantations by witnesses should result in the granting of a new trial.[13] In *People v. Follantes and Jacinto*, [14] it was held that:

"x x x. [R]ecantation by witnesses called on behalf of the prosecution does not necessarily entitle defendant to a new trial. The question whether a new trial shall be granted on this ground depends on all the circumstances of the case, including the testimony of the witnesses submitted on the motion for the new trial. Moreover, recanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. x x x." [15] (Underscoring supplied)

Succinctly put, the Court doubts the truthfulness and reliability of Dr. Neri's belated recantation. Dr. Neri had two (2) previous occasions to make the claim contained in his manifestation: first, in the compromise agreement[16] dated 16 February 1989 submitted before the Regional Trial Court of Makati, Branch 149 in relation to Civil Case No. M-001; and second, his affidavit[17] dated 23 November 1988 submitted to the Court of Appeals. Instead, however, these two (2) documents merely stated that Dr. Neri had pardoned petitioners[18] and the complaint was filed out of "pure misunderstanding"[19] without hinting that Dr. Neri knew of the adulterous relations. It appears to the Court that Dr. Neri's manifestation was so worded as to attempt to cure the deficiency noted by the Court in the two (2) previous documents in the disposition of the petition in G.R. No. 96602:

"Petitioner will find no solace in the cases he cites, in support of his prayer to dismiss the case based on Dr. Neri's pardon. *People v Camara* (100 Phil. 1098 (1957) is inapplicable as the affidavit there expressly stated that the wife had consented to the illicit relationship. In *Gomez v. Intermediate Appellate Court* (135 SCRA 620 [1985]) a case involving estafa, the criminal case was dismissed as the affidavit of desistance specifically stated that the accused had nothing to do whatsoever with the crime charged. In the present case, the pardon did not state that Dr. Neri had consented to the illicit relationship of petitioner and Mrs. Neri. Neither did it state that the case was filed against the wrong parties." [20]

Moreover, while the manifestation is dated 14 May 1991, which incidentally is also the date of petitioner Arroyo's motion for reconsideration, it was subscribed to only on 23 August 1991.

Petitioner Neri also contends that Dr. Neri's affidavit of desistance and the compromise agreement operate as a pardon meriting a new trial. The Court notes that the cases of *People v. Camara* (supra) and *Gomez v. Intermediate Appellate Court* (supra) were the very same cases which petitioner Arroyo cited in G.R. No. 96602 which the Court has already held to be inapplicable in the present case.

The rule on pardon is found in Article 344 of the Revised Penal Code which provides:

"ART. 344. x x x. -- The crime of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders.

x x x x x x x x"

While there is a conceptual difference between consent and pardon in the sense that consent is granted prior to the

adulterous act while pardon is given after the illicit affair,[21] nevertheless, for either consent or pardon to benefit the accused, it must be given prior to the filing of a criminal complaint.[22] In the present case, the affidavit of desistance was executed only on 23 November 1988 while the compromise agreement was executed only on 16 February 1989, after the trial court had already rendered its decision dated 17 December 1987 finding petitioners guilty beyond reasonable doubt. Dr. Neri's manifestation is both dated and signed after issuance of our Resolution in G.R. No. 96602 on 24 April 1991.

It should also be noted that while Article 344 of the Revised Penal Code provides that the crime of adultery cannot be prosecuted without the offended spouse's complaint, once the complaint has been filed, the control of the case passes to the public prosecutor.[23] Enforcement of our law on adultery is not exclusively, nor even principally, a matter of vindication of the private honor of the offended spouse; much less is it a matter merely of personal or social hypocrisy. Such enforcement relates, more importantly, to protection of the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind. In Article II, Section 12 of the Constitution there is set forth the following basic state policy:

"The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x"

The same sentiment has been expressed in the Family Code of the Philippines in Article 149:

"The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect."

In *U.S. v. Topiño*,[24] the Court held that:

"x x x. The husband being the head of the family and the only person who could institute the prosecution and control its effects, it is quite clear that the principal object in penalizing the offense by the state was to protect the purity of the family and the honor of the husband, but now the conduct of the prosecution, after it is once commenced by the husband, and the enforcement of the penalties imposed is also a matter of public policy in which the Government is vitally interested to the extent of preserving the public peace and providing for the general welfare of the community. x x x." [25] (Underscoring supplied)

As to the claim that it was impossible for petitioner Neri to engage in sexual intercourse a month after her cesarian operation, the Court agrees with the Solicitor General that this is a question of fact which cannot be raised at this stage. In any case, we find no reason to overturn the Court of Appeals' finding that "a woman who has the staying power to volley tennis balls for fifteen minutes at the [John Hay] tennis court would not be incapable of doing the sexual act" which ball play was followed, as noted by the Court of Appeals "by a picture taking of both accused in different intimate poses." [26]

ACCORDINGLY, the Motion for Reconsideration in G.R. No. 96602 is hereby DENIED for lack of merit and this denial is FINAL. The Petition for Review in G.R. No. 96715 is hereby similarly DENIED for lack of merit. Costs against petitioners.

Let a copy of this Resolution and of Dr. Neri's Manifestation and Motion subscribed on 23 August 1991 be forwarded to the Department of Justice for inquiry into the possible liability of Dr. Neri for perjury.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Resolution in G.R. No. 96602, promulgated 24 April 1991, p. 1; Rollo, p. 82.

- [2] Rollo in G.R. No. 96602, p. 142a.
- [3] The Court notes the while the manifestation was dated 14 May 1991, it was subscribed only on 23 August 1991.
- [4] Rollo in G.R. No. 96602, p. 144.
- [5] Id., pp. 160-161.
- [6] Petition in G.R. No. 96715, pp. 7-8; Rollo, pp. 14-15.
- [7] Resolution in G.R. No. 96602, promulgated 24 April 1991, p. 4; Rollo in G.R. No. 96602, p. 92.
- [8] Id., pp. 4-6; Rollo, pp. 85-87.
- [9] Petition in G.R. No. 96715, p. 9, Rollo, p 16, citing *People v. Guinucud and Tagayun*, 58 Phil. 621.
- [10] See *Gonzales v. Trinidad*, 67 Phil. 682 (1939).
- [11] G.R. No. L-11085, 27 February 1957.
- [12] Motion, p. 2; Rollo of G.R. No. 96602; p. 148.
- [13] *People v. Pasilan*, 14 SCRA 694 [1965].
- [14] 64 Phil. 515 [1937].
- [15] 64 Phil. at 536.
- [16] Rollo in G.R. No. 96715, pp. 91-100.
- [17] Id., p. 103.
- [18] Id., p. 99.
- [19] Id., p. 103.
- [20] Resolution in G.R. No. 96602, promulgated 24 April 1991, pp. 4-6; Rollo in G.R. No. 96602, p. 94-95.
- [21] *People v. Schneckenburger*, 73 Phil. 413 (1941).
- [22] *People v. Infante*, 57 Phil. 138 (1932); *Ligtas v. Court of Appeals*, 149 SCRA 514 (1987).
- [23] See *U.S. v. Gallegos*, 37 Phil 289 (1917); Rule 110, Section 5 of the Rules of Criminal Procedure.
- [24] 35 Phil. 901 (1916).
- [25] 35 Phil. at 912.
- [26] Decision, p. 20, Rollo in G.R. No 96602, p. 68.

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