

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTORINO DEL MUNDO, ACCUSED-APPELLANT.

G.R. Nos. 119964-69. September 20, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellant Victorino del Mundo was charged with six counts of rape filed by his ten-year old daughter, Marivic del Mundo, before Branch 27, RTC-Cabanatuan City.[1] The records of the case show that the incidents of rape in Criminal Cases Nos. 5977, 5978, 5980, 5981 and 5982 were committed on different days in October 1993 while that in Criminal Case No. 5983 took place on July 22, 1994. Hence, the court a quo took cognizance of the fact that only Criminal Case No. 5983 is covered by Republic Act No. 7659[2] which took effect December 31, 1993.

The criminal complaints, all six of them similarly worded except the time of commission, state:

"The undersigned accuses VICTORINO DEL MUNDO of the crime of rape, committed as follows:

That sometime in October, 1993, at 8:00 a.m. or thereabout, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of MARIVIC DEL MUNDO, a ten (10) year old child who is her (sic) natural child, against the latter's will and consent and to her damage and prejudice.

CONTRARY TO LAW.

Cabanatuan City, this 23rd day of August, 1994."

Finding that the complainant, the accused, the witnesses and the evidence in these six (6) cases are common to all the cases, the court a quo tried them jointly.

Among those who testified for the prosecution was Dr. Jun Concepcion, City Health Officer of Cabanatuan City who conducted Marivic's medico-legal examination. The medico-legal report dated August 23, 1994[3] reads:

"xxx xxx xxx

OCCULAR (sic) INSPECTION of the body plus the external reproduction organ

- Negative for any evidence of external physical injuries like hematoma nor abrasions.

INTERNALLY

VAGINAL CANAL - with the use of gloves, nasal speculum with special lightened instrument.

(+) Abrasion, old, 3:00 o'clock and 9:00 o'clock.

(+) Whitish vaginal discharges with in the canal blocking the opening of the cervix

(+) Ruptured with remnants of the hymen within the vaginal opening.

IMPRESSION = Positive for history of vaginal penetration.

(Sgd.) JUN B. CONCEPCION
JUN B. CONCEPCION, M.D.
Medical Officer V
Medico-Legal Officer"

Dr. Concepcion testified that the contents of and entries in the medico-legal report he prepared are true and correct, that is, there were abrasions, injury and lacerations at 3 and 9 o'clock positions and that the hymen was ruptured indicating a penetration of the vagina. The salient portions of Dr. Concepcion's testimony were quoted in the court a quo's joint decision, thus:

"Q

And with respect to the examination of her external part of her sex organ, what are your findings?

A

There was evidence of external injury, sir.

Q

How about in the internal examination of the sex organ of the victim?

A

Internal examination shows that there was (sic) six penetration, sir.

Q

In this medico-legal report there is an entry here which says 'abrasion old 3 and 9 o'clock xxx' Will you please tell us what does this entry mean?

A

3 and 9 o'clock indicates the position of the injury sustained by the victim in her private internal organ, sir." (p. 6, tsn, hearing of Oct. 27, 1994)

xxx xxx xxx

"Q

How about this last entry which I again quote: 'Rupture with remnants of the hymen within the vaginal opening.' Tell us as to what this entry mean (sic)?

A

It simply means that if the hymen is ruptured there is penetration, sir.

Q

As a result of this medical examination conducted by you, what was your impression?

A

After that my overall impression, sir, that there is really a penetration, sir, of the vagina.

Q

That is your medical impression?

A

It is medical impression, sir, there is vaginal penetration." (p. 7, tsn, hearing of Oct. 27, 1994).[4]

Thereafter, all documentary and testimonial evidence were offered by the prosecution and admitted by the Court. When the time came for the defense to present its evidence, complainant Marivic del Mundo was called as witness. She identified an affidavit of desistance executed by her dated November 17, 1994, the salient portions of which are hereunder quoted:

"1. Na, ako ang siyang naghahabla sa isang asunto Kriminal na lalong kilala bilang Criminal Case No. 5981, 5983, 5977, sa salang Rape, People of the Philippines vs. Victorino del Mundo na nabibinbin dito sa Municipal Trial Court in Cities, Cabanatuan City, Branch III;

2. Na wala na akong interest pang ipagpatuloy ang aking nasabing habla sapagkat matapos ang isang masusing palinawagan ay napagalaman namin na ang lahat ay bunga lamang ng hindi pagkakaunawaan at kami ay nagkasundo na;

3. Na, dahil dito ay magalang kong hinihingi sa Kgg. Na Taga-usig ng Lungsod ng Kabanatuan na pawalang bisa na ang aking nasabing habla o asunto."[5]

Notwithstanding complainant's affidavit of desistance, the court a quo sentenced accused-appellant to suffer the penalty of reclusion perpetua in Criminal Cases Nos. 5977, 5978, 5980, 5981 and 5982, and death in Criminal Case No. 5983. Hence, these cases were elevated to this Court on automatic review.

On August 11, 1995, the Judicial Records Office of this Court sent notices to Attys. Napoleon Reyes and Adriano Magbitang of the Provincial Legal Assistance Office, Nueva Ecija, directing them to file appellant's brief and another letter addressed to the Director of the Bureau of Corrections, Muntinlupa, to confirm the confinement of accused-appellant within five days from receipt hereof.

In a letter dated August 17, 1995, Assistant Director Jesus Villanueva of the Bureau of Corrections informed this Court that accused-appellant was received therein on February 11, 1995.

On October 6, 1995, Atty. Procopio Beltran of the IBP Free Legal Aid Program filed a Formal Entry of Appearance for accused-appellant, which we resolved to note in our resolution of November 14, 1995.

Under date of January 24, 1996, accused-appellant, thru his counsel, filed a verified motion for new trial on the following grounds:

1. New and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced in the trial which, when introduced and admitted, would probably change the judgment.
2. Irregularities have been committed during the trial pre-judicial to the substantial rights of the defendant.
3. The principal witness and alleged victim has recanted her testimony which, if not considered, will result in a miscarriage of justice.

Aside from Marivic's affidavit recanting her testimony, accused-appellant, thru his counsel, submits to this Court annexes to afford him the opportunity to establish his innocence of the crime charged and to warrant a new trial, the most important of which is Annex "L"[6]- Medical Report of the examination conducted on Marivic del Mundo by the NBI Medico Legal Division, bearing Living Case No. MG-95-993, dated August 30, 1995 re: determination of her physical virginity. The pertinent findings read:

"xxx xxx xxx

GENITAL EXAMINATION:

Pubic hair, fine, short, scanty. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, tall, thick, intact. Hymenal orifice measures 1.0 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS

Physical Virginity Preserved.

Approved: Examined by
(Sgd.) Alberto Reyes (Sgd.) Aurea P. Villena

Alberto M. Reyes Aurea P. Villena, M.D.
Chief Medico-Legal Officer

Noted:

(Sgd.) Prospero A. Cabanayan
Prospero A. Cabanayan, M.D.
Deputy Director, Technical Services"

In our resolution of February 20, 1996, we resolved to require the Office of the Solicitor General to comment within ten days from notice. In its comment dated March 21, 1996, the Solicitor General interposed no objection to the motion for new trial in the interest of substantial justice.

After a careful scrutiny of the records of this case, this Court notes that aside from the recantation by complainant Marivic del Mundo, the medical report submitted and issued by the Medico Legal Division of the NBI is diametrically opposed to the medico legal report of Dr. Jun Concepcion, City Health Officer of Cabanatuan City, which was relied upon by the court a quo in rendering the judgment of conviction inasmuch as it was submitted four weeks after the last act of rape committed by accused-appellant in 1994. Although the NBI report executed a year later stated that Marivic's physical virginity was preserved, the earlier report by the Cabanatuan City Health Officer stated that there were abrasions, injury and lacerations at 3 and 9 o'clock positions and that the hymen was ruptured, indicating a penetration of the vagina. While the NBI-Medico Legal report cannot be considered new and material evidence which accused could not with reasonable diligence have discovered and produced at the trial,[7] we grant the motion for new trial on the broader ground of substantial justice, taking into account the variance in the two aforesaid reports. It is the sense of this Court that such serious discrepancy raised substantial doubt as to the guilt of the accused-appellant. Furthermore, the penalty imposed on accused-appellant is death. Here is a situation where a rigid application of the rules must bow to the overriding goal of courts of justice to render justice to secure to every individual all possible legal means to prove his innocence of a crime of which he is charged.

The rule for granting a motion for new trial, among others, should be liberally construed to assist the parties in obtaining a just and speedy determination of their rights. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities.[8]

In the case of Jose v. CA,[9] the Court held:

"Surely, the Rules of Court were conceived and promulgated to aid and not to obstruct the proper administration of justice, to set forth guidelines in the dispensation of justice but not to bind and chain the hand

that dispense justice, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion.

Thus, admittedly, courts may suspend its own rules or except a case from them for the purposes of justice or, in a proper case, disregard them. In this jurisdiction, in not a few instances, this Court ordered a new trial in criminal cases on grounds not mentioned in the statute, viz: retraction of witness, negligence or incompetency of counsel, improvident plea of guilty, disqualification of an attorney de oficio to represent the accused in the trial court, and where a judgment was rendered on a stipulation of facts entered into by both the prosecution and the defense.

Characteristically, a new trial has been described as a new invention to temper the severity of a judgment or prevent the failure of justice."

WHEREFORE, we hereby SET ASIDE the judgment of conviction of accused-appellant Victorino del Mundo and REMAND the cases to the court a quo for a new trial only for the purpose of allowing said accused to present additional evidence in his defense. The trial court shall inform this Court the final outcome of the cases within a reasonable time. Without pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

Mendoza, J., on leave.

[1] Judge Feliciano Buenaventura, presiding.

[2] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for the Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes," which restored the death penalty as a penalty for rape when the victim is under eighteen (18) years of age and the offender is a parent.

[3] Original Records, Criminal Case No. 5977, page 8.

[4] Joint decision dated January 4, 1995, Rollo, pp. 24-25.

[5] Ibid., p. 29.

[6] Rollo, p. 81.

[7] Rule 121, Sec. 2(b) of the Revised Rules of Criminal Procedure.

[8] St. Peter Memorial Park, Inc. v. Campos, Jr., L-38280, March 21, 1975, Banco Filipino Savings and Mortgage Bank v. Campos, L-39905, March 21, 1975.

[9] No. L-38581, 70 SCRA 257, 265 (1976).

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