

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EXPEDITO ABAPO Y SIROIHOS, ACCUSED-APPELLANT.*G.R. Nos. 133387-423. March 31, 2000*

Ponente: GONZAGA-REYES, J.

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On January 16, 1998, Benjie Tecson filed a sworn complaint before the National Bureau of Investigation, National Capital Region, alleging that she was first raped by her father when she was barely ten years old inside their house in Nagcarlan, Laguna. She narrated that the first incident was repeated several more times at a rate of not less than twice a week and almost everyday when her mother was not around. The alleged sexual congress between her and her father went on until February 1997 when BENJIE finally became pregnant.[1]

Expedito Abapo y Siroihos was charged with raping his daughter eighty-six (86) times in the Regional Trial Court (RTC) of the City of San Pablo, Branch 32. On March 18, 1998, the RTC rendered its decision convicting the accused of eighty-five (85) counts of rape. The court imposed the supreme penalty of death for thirty-seven (37) counts of rape committed after the effectivity of R.A. No. 7659 and reclusion perpetua for forty-eight (48) counts of rape committed from January 1990 to December 1993.[2] The dispositive portion of the Judgment[3] finding him guilty beyond reasonable doubt of eighty-five (85) counts of rape under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 reads:

"WHEREFORE, the guilt of the accused having been established beyond reasonable doubt by his voluntary and spontaneous plea of guilty to all the above cited criminal informations and based on the searching inquiry conducted by the Court pursuant to the Rules, said accused EXPEDITO ABAPO y SIROIHOS is hereby sentenced to suffer FORTY EIGHT (48) counts of RECLUSION PERPETUA in each of the criminal informations docketed as Crim. Cases Nos. 10667-SP (98) to 10678-SP (98); Crim. Cases Nos. 10679-SP (98) to 10690-SP (98); Crim. Cases Nos. 10691-SP (98) to 10702-SP (98); Crim. Cases Nos. 10703-SP (98) to 10714-SP (98); and THIRTY SEVEN (37) counts of DEATH PENALTY for each of the criminal informations docketed as Crim. Cases Nos. 10715-SP (98) To Crim. Cases Nos. 10726-SP (98); Crim. Cases Nos. 10727-SP (98) to 10738-SP (98); Crim. Cases Nos. 10739-SP (98) to 10750-SP (98); and Crim. Case No. 10751-SP (98) and to pay the costs.

Criminal Case No. 10752-SP (98) is ordered DISMISSED.

The accused is further ordered to indemnify the private complainant the sum of ONE MILLION PESOS (P1 M.). As a child was begotten out of the sexual intercourses the accused had with the private offended party, the said accused is further ordered to give support to said child who is considered as a compulsory heir of the herein accused.

SO ORDERED."[4]

At the outset, we resolve to dismiss the appeals in Criminal Cases Nos. 10667-SP (98) to 10714-SP (98), wherein the RTC imposed the penalty of reclusion perpetua, considering that the accused-appellant failed to file notices of

appeal for said cases. In cases where reclusion perpetua is imposed as a penalty, the accused must file a notice of appeal with the court which rendered the decision pursuant to Section 3, Rule 122 of the Rules of Court which insofar as pertinent reads:

"Sec. 3. - How appeal taken. -

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing of a notice of appeal with the court which rendered the judgment or order appealed from and by serving a copy thereof on the adverse party.

x x x

(c) The appeal to the Supreme Court in cases where the penalty imposed is life imprisonment, or where a lesser penalty is imposed involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to a more serious offense for which the penalty of death or life imprisonment is imposed shall be by filing a notice of appeal in accordance with paragraph (a) of this Section."

Inasmuch as no appeal has been taken by the accused-appellant with respect to these cases, they became final and executory after the lapse of fifteen days, the period for perfecting an appeal.[5]

On the other hand, Criminal Cases Nos. 10715-SP (98) to 10751-SP (98) are now with this Court on automatic review due to the imposition of the death penalty. It is only when the death penalty is imposed that the appeal of the decision to the Supreme Court is automatic.[6] We thus limit our discussion to Criminal Cases Nos. 10715-SP (98) to 10751-SP (98) where the death penalty was imposed on the accused-appellant.

The information in Criminal Case No. 10715 SP (98), which refers to the rape committed in the month of January 1994, reads as follows:

"That sometime during the month of January 1994 at a house located at Brgy. Labangan, Nagcarlan, Laguna, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously has carnal knowledge with a woman, in the person of BENJIE TECSON, through force and intimidation.

CONTRARY TO LAW."[7]

The succeeding thirty-six (36) informations[8] for Criminal Cases Nos. 10716-SP (98) to 10751-SP (98) are worded identically except for Criminal Cases Nos. 10715-SP(08), 10727-SP(08), 10739-SP(08) and 10751-SP(08) where it is further specifically alleged that BENJIE is "the daughter of herein accused." These informations accuse ABAPO with the rapes committed in the succeeding months from February 1994 to January 1997 respectively. None of the informations allege that the victim was below eighteen (18) years of age.

Upon arraignment, the accused pleaded guilty to the crimes charged with the assistance of his counsel, Attorney Nena O. Palencia.[9] The prosecution was however ordered to adduce evidence as required by the Rules of Court.

The RTC summarized the testimonies of the witnesses presented by the prosecution and by the defense as follows;

"BENJIE TECSON, 17 years old, single, jobless and a resident of Pandacan, Metro Manila testified that: she was born on September 7, 1980; the accused is her father and identified him in open court; she filed a complaint before the NBI in 1998; she executed a sworn statement before the NBI in January 16, 1998 (Exh. "A" and Exhibit "A-1"); when she was still ten years old and accused started to have sexual intercourse with her and that was in 1990; during the first year which was in 1990 her father raped her once a week and the sexual intercourse continued up to 1997 without interruption; in 1991 she was raped by accused twice a week

and this went on in 1992 and 1993; in 1994 she was raped more often and when her mother was not around she was raped once or twice in less than five days; this went on up to 1996; in January, 1997 she was raped two times; in February she was not touched anymore; she discovered that she was pregnant in May, 1997 caused by her father from 1990 to 1997, there was no other person who had carnal knowledge of her; she gave birth on December 16, 1997; the child is a girl and she is now in the custody of somebody because she would not like to remember what happened to her; she did not tell her mother the sexual intercourse being done against her by her father because his father told her that he will kill her mother and father and she will live together with her younger brothers and sisters; she does not care for her father; she loves her child with her father but entrusted custody of her child to another because she believes she will have a better future; she first revealed this incident against her to her aunt; then after she had delivered a baby she revealed the incident to her mother; she felt that by telling the incident to her mother, the latter will feel so bad.

When CLAUDIA ABAPO, 42 years old, married housekeeper and a resident of Brgy. Labangan, Nagcarlan, Laguna was about to testify and offer of her testimony was stated by the Prosecutor, the defense counsel admitted that there were occasions when she was out of their house at the time Benjie Tecson, her daughter was ten years old in 1990 up to 1997 when she was 17 years old; that Benjie Tecson is the legitimated daughter of the accused, her husband and she.

At the instance of the Court, as the defense did not intend to present evidence, the accused EXPEDITO ABAPO, 41 years old, married and formerly a resident of Brgy. Labangan, Nagcarlan, Laguna, testified that: Benjie Tecson is his daughter who was born on September 7, 1980 when he and his wife Claudia were not yet married; the maiden name of his wife Claudia is Tecson; it was a long time before he and Claudia got married because they had already six children which was in 1992; they got married before a Judge in Nagcarlan, Laguna; he doubted if Benjie Tecson is his daughter because he could not think why he raped her that was the only reason; but Benjie stayed with him from birth up to the time he had been placed in jail and had considered her as his daughter; he had many sexual intercourses with Benjie; it was every week and had been for a long time; he impregnated his daughter Benjie; he was told by Benjie; that she was pregnant; when she was three (3) months pregnant she told her pregnancy to her father and the accused replied "Paano yan", "Gumawa ka ng paraan para huwag matuloy" to which remarks of her father she answered "Mas maalam ka pa sa akin"; there were occasions when his wife left the house and left Benjie behind; he had sexual intercourses with his daughter Benjie in their house; if he had opportunity to have sexual intercourse with his daughter he did it even if his wife was around; in the initial commission of the sexual intercourses against her daughters Benjie and Rosalia and he was pleading that the proper punishment be imposed on him so that he could already serve it; he could write and understand the Tagalog dialect; he read it in open Court his hand-written confession; the wordings in the confession are his alone and he did the writing voluntarily and freely and finally affixed his signature; his plea of guilty to the eighty six (86) criminal informations is voluntary, spontaneous and he was not coerced and pressured and what was in his mind was to suffer punishment as consequence of what he did; he therefore freely and voluntarily accepts whatever will be the verdict of the Court." [10]

In his brief, the accused-appellant assigns the following errors allegedly committed by the RTC:

"I. THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE EIGHTY SIX INFORMATIONS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR FAILURE TO STATE THE PRECISE DATES OF THE COMMISSION OF THE ALLEGED RAPES, IT BEING AN ESSENTIAL ELEMENT OF THE CRIME CHARGED.

II. THE TRIAL COURT GRAVELY ERRED IN IMPOSING THIRTY SEVEN (37) COUNTS OF DEATH PENALTY UPON ACCUSED-APPELLANT IN VIEW OF THE FAILURE OF THE PROSECUTION TO ALLEGE IN THE INFORMATIONS THAT ACCUSED-APPELLANT IS THE FATHER OF THE VICTIM." [11]

In support of his appeal, the accused-appellant claims that the informations filed against him are insufficient since

they do not state the approximate time of the commission of the alleged rapes. It is contended that in the crime of rape, each sexual act must be proved to have been committed at a precise date and time whereas the informations filed against the accused-appellant alleged indefinite dates and times of the commission of the offenses. Accused-appellant further contends that the RTC erred in convicting the accused-appellant of qualified rape and imposing the death penalty on the accused-appellant. It is claimed that none of the eighty-six (86) informations filed against him allege that the accused-appellant is the father of the victim and thus do not justify the imposition of the death penalty; hence the accused-appellant is denied his right to due process and to be informed of the charges against him.

We are constrained to observe that the arraignment proceedings in the Regional Trial Court leave much to be desired and for this reason resolve to remand the cases for rearraignment.

Section 3 of Rule 116 of the Rules of Court provides that:

"Sec. 3. Plea of guilty to capital offense; reception of evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf."

Pursuant to the foregoing rule it is mandatory for trial courts to accomplish three things to avoid an improvident plea of guilt:

- "1. conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea;
2. require the prosecution to prove the guilt of the accused and the precise decree of his culpability; and
3. inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he desires."[12]

In the present case, the court failed in its obligation to explain fully to the accused-appellant the consequences of his plea of guilt and the probable penalty that may be imposed upon him. We quote the pertinent portions of the transcript which illustrate the judge's half-hearted attempt to conduct an inquiry that would make the accused-appellant fully understand the consequences of his plea as follows:

"COURT to ABAP0:

Q.

When you were arraigned earlier, you pleaded guilty to the 86 criminal informations against you, your plea of guilty was voluntary, spontaneous and you were not coerced or pressured?

A.

Nobody was forcing me, your Honor.

Q.

And what was in your mind is to suffer the punishment that you ought to undergo as a consequence of what you did?

A.

Yes, your Honor.

Q.

So you will freely and voluntarily accept whatever would be the verdict of this Court against you"

A.

Yes, your Honor."[13]

While the trial court inquired as to the voluntariness of the accused-appellant's plea, it failed to explain fully to the accused-appellant that once convicted, he could possibly be meted the death penalty. The fact that the court asked him whether he would accept the punishment that may be imposed upon him is not a sufficient explanation to the accused of the consequences of his plea. The importance of the court's obligation cannot be overemphasized for one cannot dispel the possibility that the accused-appellant may have been led to believe that due to his voluntary plea of guilt, he may be imposed with the lesser penalty of reclusion perpetua and not death.[14] Such assumption is erroneous considering that death is a single and indivisible penalty, which is imposed regardless of the presence of a mitigating circumstance.[15] Thus, there is a need for the trial court to take the necessary measures to see that the accused really and truly comprehended the meaning, full significance, and consequences of his plea.[16] The failure of the trial court to perform its obligation is a ground to remand the case for arraignment.[17]

We are not unmindful of the rulings of this Court to the effect that the manner by which the plea of guilt was made, whether improvidently or not, loses its legal significance where the conviction is based on the evidence proving the commission by the accused of the offense charged.[18] However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. The state prosecutor in his examination of the victim was evidently concerned only with proving the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused. BENJIE's testimony is as follows:

"STATE PROS. VELASCO:

Q.

Miss Witness, in your statement you have stated that accused had sexual intercourse with you, do you still remember when was the first time that accused had sexual intercourse with you?

A.

When I was 10 years old, sir.

Q.

What year was that?

A.

1990, sir.

Q.

You still remember how often was the sexual intercourse?

A.

During the first year he raped me once in a week, sir.

Q.

That was in the year 1990?

A.

Yes, sir.

Q.

Up to what time did the sexual intercourse go on?

A.

Up to 1997, sir.

Q.

You want to impress this Honorable Court that goes on from 1990 without interruption, 1990, 1991, 1992, 1993, 1994, 1995, 1996 and 1997?

A.

Yes, sir.

Q.

In the year 1991, how often was the sexual intercourse if you can still remember?

A.

He raped me twice a week, sir.

Q.

How about in the year 1992, how often was the sexual intercourse with you?

A.

Twice a week, sir.

Q.

How about in 1993?

A.

The same, sir. Twice a week.

Q.

How about in 1994?

A.

He raped me often, sir.

Q.

For each week how often?

A.

Sometimes he raped me twice a week but when my mother was not around, he raped me in once a week or twice in less than five (5) days.

Q.

How about in the year 1994?

A.

The same, sir.

Q.

How about in the year 1995?

A.

The same, sir

Q.

How about in 1996?

A.

The same, sir.

Q.

How about for the month of January, 1997?

A.

Only two times, sir.

Q.

How about in February, 1997?

A.

He did not touch me anymore, sir.

Q.

Do you know the reason why he did not had sexual intercourse with you?

A.

Because I was busy in the school, sir.

Q.

Was there any reason in your own knowledge why the sexual intercourse stopped for the year 1997 of February?

A.

I did not know, sir."[19]

Clearly, as a consequence of accused-appellant's improvident plea of guilt, the prosecution no longer endeavored to elicit from BENJIE sufficient details in her narration of the alleged rapes beyond the approximate dates and frequency of their commission.

The records also disclose that while the prosecution was ready to present Claudia Abapo, the mother of the victim to corroborate BENJIE's testimony, the defense preempted the prosecution's presentation thereof by making an admission with respect to her testimony thus:

"STATE PROS. VELASCO:

Your Honor, we will still proceed with the offer, even though the accused had already pleaded guilty it is for his best interest, your Honor, we would not like to appear that the plea is improvident plea of guilty, your Honor, we would like to ask directly the mother, your Honor.

COURT:

Even though there is already admission as to the fact the relationship between the accused and the victim Benjie Tecson and that she is the wife.

STATE PROS. VELASCO:

May I suggest, your Honor, if counsel will admit that she is not only out of the house; that most of the times she was out of the house since 1990 up to 1996, your Honor, if that would be admitted, then we will have no problem.

ATTY. PALENCIA:

That is admitted, your Honor."[20]

It will be seen that with the above admission made by the defense counsel, the prosecution desisted from availing of the opportunity to fully submit its case. The improvident plea of guilt had adversely influenced the prosecution's presentation of evidence.

Considering that the accused-appellant entered an improvident plea of guilt, which improperly impaired the prosecution's presentation of the evidence, a duty mandated by the rules, we are constrained to remand the thirty-seven (37) charges of rape to the court a quo for arraignment and further proceedings in accordance with the above pronouncement of the court.

WHEREFORE, the judgments on automatic review are SET ASIDE. G. R. Nos. 133387-133423 [Criminal Cases Nos. 10715-SP (98) to 10751-SP (98)] are REMANDED for arraignment under the same informations.

The appeals in Criminal Cases Nos. 10667-SP (98) to 10714-SP (98)[21] are hereby DISMISSED and the decisions therein are final and executory.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Record, Vol. 1, p. 3.

[2] One case was dismissed in view of the absence of evidence.

[3] Penned by Judge Zorayda Herradura-Salcedo.

[4] Judgment, p. 6; Rollo, p. 102.

[5] § 7, Rule 120, Rules of Court.

[6] Section 10, Rule 122

"Sec. 10. Transmission of records in case of death penalty. - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter."

[7] Rollo, pp. 55.

[8] Rollo, pp. 55-81.

[9] Record, Volume II, p. 19.

[10] Judgment, pp. 2-3; Rollo, pp. 98-99.

[11] Brief for the Accused-Appellant, p. 1; Rollo, p. 113.

[12] People vs. Dayot, 187 SCRA 637 at p. 641 [1990].

[13] T.S.N., March 4, 1998 at p. 30.

[14] People vs. Petalcorin, 180 SCRA 685 at p. 693 [1989].

[15] Article 63, Revised Penal Code.

[16] See note 14.

[17] People vs. Dayot, Supra.

[18] People vs. Derilo, 271 SCRA 633 at pp. 658-659 [1997].

[19] T.S.N., March 4, 1998, pp. 5-7.

[20] Ibid., at pp. 22-23.

[21] No G.R. numbers were assigned to these cases since no notices of appeal were filed by the accused-appellant.

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