

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO DURANGO Y CARCEDO, ACCUSED-APPELLANT.

G.R. Nos. 135438-39. April 05, 2000

Ponente: VITUG, J.

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VITUG, J.:

Before this Court, for automatic review, is the decision of the Regional Trial Court of Malabon, Branch 170, in Criminal Case No. 18897-MN and Criminal Case No. 18898-MN, jointly tried, which has found herein accused-appellant Bonifacio Durango y Carcedo guilty beyond reasonable doubt of the crime of rape on two counts.

The complaints charging accused-appellant with the crime of rape, allegedly twice committed on the same victim, read:

"CRIMINAL CASE NO. 18897-MN

"That on or about the 21st day of August, 1997, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a father of Noniebeth Durango y Ferolino, with lewd design and by means of force and intimidation, wilfully, unlawfully and feloniously did then and there have sexual intercourse with NONIEBETH DURANGO Y FEROLINO, a minor of 12 years of age against her will and without her consent.

‘CONTRARY TO LAW.’

"CRIMINAL CASE NO. 18898-MN

"That on or about the 21st day of September, 1996, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a father of Noniebeth Durango y Ferolino, with lewd design and by means of force and intimidation, wilfully, unlawfully and feloniously did then and there have sexual intercourse with NONIEBETH DURANGO Y FEROLINO, a minor of 12 years of age against her will and without her consent.

‘CONTRARY TO LAW.’”[1]

During the arraignment on 22 January 1998, the public prosecutor moved for a joint trial of the two cases. Accused Bonifacio Durango, with the assistance of counsel and after having been informed, in a language and dialect known to him, of the nature and cause of the indictment, voluntarily entered a plea of not guilty to the criminal complaints. On 14 May 1998, after the prosecution had barely started with the presentation at the witness stand of private complainant, the defense counsel manifested to the court that the accused wanted to withdraw his earlier plea of not guilty and to substitute it with a plea of guilty to the crimes charged. On the basis of the manifestation, accused was re-arraigned, and this time accused pleaded guilty. The trial court thereupon proceeded to hear the testimony of private complainant.

On 11 August 1998, after the prosecution had concluded its presentation, the trial court rendered the now

questioned decision, the pertinent portions of which read -

"As established by the testimony of Noniebeth Durango, the first charge of rape was committed on the night of September 21, 1996 while she was already sleeping inside their house located at 214 Hernandez Street, Catmon, Malabon Metro Manila. She was with her seven (7) years old sister Zeny but then the latter was also sound asleep on the floor. Her father at that instant went beside her and forced her to undress. In fact, it was the accused who removed her clothings, after which, stripped himself of his apparels before allowing his penis to touch the private part of Noniebeth. On the following night, the accused finally penetrated his daughter. Noniebeth felt his penis inside her genital during which moment the accused threatened her not to tell her mother about the incident otherwise they would be killed. That initial sexual coupling was repeated for several times while the mother of Noniebeth was still working in Taiwan.

"The second charge of rape was committed August 21, 1997. This time it happened at around 10:00 a.m. and the mother of Noniebeth was around after returning home in July, 1997. Noniebeth was in her room and her mother was then cooking. The accused went inside and begun to violate her daughter under practically the same circumstances as the first. But this time the threat did not work because Noniebeth by now had gained enough courage to inform her mother about the ordeal she went through in the hands of the accused. Finding it to be an easy way in order to get out of their house, Noniebeth and her mother went to Mindanao to visit her sick grandmother. And upon their return, Noniebeth was examined by a doctor in Manila."[2]

The trial court then adjudged:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

"1. In Criminal Case No. 18897-MN, the Court finds accused Bonifacio Durango y Carcedo guilty beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of DEATH;

"2. In Criminal Case No. 18898-MN, the Court finds accused Bonifacio Durango y Carcedo guilty beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of DEATH.

"Likewise, the accused is hereby ordered to indemnify Noniebeth Durango in the amount of P50,000.00, the additional sums of P50,000.00 as moral damages, P30,000.00 as exemplary damages and cost of the suit in each of the crime charged.

"SO ORDERED."[3]

In his appeal brief, accused-appellant submitted a lone assignment of error, to wit:

"The Court a quo manifestly erred in convicting accused-appellant of the crimes charged despite his improvident plea of guilty."[4]

The imposition of the death penalty tasks anew this Court to closely review the judgment of conviction not only whether or not an accused did commit the Crime imputed against him but also whether or not his constitutional rights have been duly protected before and during his trial.

Initially, the accused entered a plea of "not guilty." Just as Noniebeth was called to the witness stand, the defense manifested its intention to substitute the plea of "not guilty" to one of "guilty."

When an accused enters such a plea of "guilty," the trial court is mandated to see to it that the exacting standards laid down by the rules therefor are strictly observed. Rule 116 of the Rules of Court, in part, provides:

"Section 1. Arraignment and plea; how made. - (a) The accused must be arraigned before the court where the complaint or information has been filed or assigned for trial. The arraignment must be made in open court by the

judge or clerk by furnishing the accused a copy of the complaint or information with the list of witnesses, reading the same in the language or dialect known to him and asking him whether he pleads guilty or not guilty. The prosecution may, however, call at the trial witnesses other than those named in the complaint or information.

"(b) The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but a failure to enter of record shall not affect the validity of the proceedings.

"(c) If the accused refuses to plead, or makes a conditional plea of guilty, a plea of not guilty shall be entered for him."

"Section 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."

This Court, in the recent case of *People vs. Tizon*,^[5] has expressed the rationale behind the rule and it is, at bottom -

"x x x that no accused is wrongly convicted or erroneously sentenced. It constantly behooves the courts to proceed with utmost care in each and every case before them but perhaps nothing can be more demanding of judges in that respect than when the punishment is in its severest form - death - a penalty that, once carried out, is irreversible and irreparable. It cannot be said that when a person pleads guilty to a crime there is no chance at all that he could, in fact, be innocent. Statistics (See *People vs. Estomaca*, 256 SCRA 421, citing *People vs. Albert*, 251 SCRA 136, and 14 Am. Jur., Criminal Law, Section 251, p. 951) can easily dispel that notion."

The records of the case at bar would disclose that the trial court issued a curt joint order, dated 14 May 1998, to the following effect; viz:

"JOINT ORDER

"At the hearing today, defense counsel manifested that the accused is intending to withdraw his former plea of not guilty and substitute the same with that of guilty to the offenses charged, to which manifestation the Trial Prosecutor interposed no objection.

"Accordingly, the accused withdrew his former plea and was re-arraigned in these two (2) complaints in the language and dialect known to him. With the assistance of his counsel from the PAO, the accused voluntarily entered a plea of guilty in these two (2) complaints.

"Considering that the charges are capital offenses, the Trial Prosecutor was directed to present the complainant, whose testimony was terminated. Thereafter, Trial Prosecutor formally offered his evidence.

"WHEREFORE, these cases are now submitted for decision. Kyle

"SO ORDERED.

"Malabon, Metro Manila, May 14, 1998.

"(SGD) BENJAMIN T. ANTONIO
J u d g e"[6]

The order was preceded by a brief and abbreviated exchange of remarks between the defense counsel and the trial judge hereunder fully quoted; viz:

"ATTY. DE LAS ALAS

For the accused Your Honor

"FISCAL ALIPOSA

For the people Your Honor, we are ready to present the victim, Noniebeth Durango, whose testimony is being offered to establish the allegations in the Informations and particularly to the fact that she is the victim Your Honor.

"COURT

Duly noted. Swear in the witness.

X-----X

"ON THE WITNESS STAND: NONIEBETH DURANGO, 12 years of age, single, a student, and residing at No. 214 Hernandez Street, Catmon, Malabon, Metro Manila, after having been duly sworn to in accordance with law, testified:

X-----X

"FISCAL ALIPOSA

Considering the nature of the offense Your Honor, may we request that the public be excluded except the accused and the mother of the victim.

"COURT

Yes, exclude the public except the accused and the mother of the victim.

"ATTY. DE LAS ALAS

If your Honor please, a while ago the accused intimated to me that he intends to withdraw his former plea not guilty and substitute the same with that of guilty to these two cases Your Honor.

"COURT

Mr. Durango, according to your counsel you are intending to withdraw your former plea of not guilty in these 2 cases and substitute the same with that of guilty, do you confirm that?

"ACCUSED

Yes Your Honor.

"ATTY. DE LAS ALAS

In view of this development Your Honor, the accused is now withdrawing his former plea of not guilty to be substituted with guilty Your Honor.

"COURT

Alright, re-arraign the accused. (Accordingly, the accused was re-arraigned in these 2 complaints in the language and dialect known to him. With the assistance of his counsel from the PAO, the accused pleaded guilty in these two complaints.)

Even though the accused has already pleaded guilty to the offenses charged, I will require you to continue presenting your evidence Fiscal."[7]

The records would show that thenceforth defense counsel spoke not one word. Nor would it appear that the trial court gave defense counsel or the accused any chance to talk for when the prosecutor ended his direct examination of Noniebeth, the latter was thereupon simply excused and the court forthwith declared the case submitted for decision. Thus -

"FISCAL ALIPOSA

No further question Your Honor.

"COURT

You are excused.

"FISCAL ALIPOSA

We are now ready to formally offer the following exhibits:

Exhibits 'A,' 'A-1,' the medico-legal report, to establish the fact of examination on victim Noniebeth Durango;

Exhibits 'B' and 'B-1,' sworn statement of the victim, as part of the testimony of the witness;

Exhibit 'C,' request for examination;

Exhibit 'C-1,' stamp mark of the PNP Crime Laboratory, to establish the fact that the police intervened to have the victim examined?

Exhibit 'D,' preliminary interview made by the doctor showing that the victim was sexually molested;

Exhibit 'E,' consent for examination upon the request of the mother of the victim;

Exhibit 'F,' birth certificate of the victim showing that she is a minor below 12 years of age at the time of the incident;

Exhibit 'G,' complaint in Crim. Case No. 18897-MN

Exhibit 'G-1,' signatures of the victim and her mother;

Exhibit 'H,' complaint in Crim. Case No. 18898-MN and

Exhibit 'H-1,' signatures of the victim and her mother, as part of the testimony of the witness.

"COURT

Alright, these cases are now submitted for decision."[8]

The improvident plea, followed by an abbreviated proceeding, with practically no role at all played by the defense, is just too meager to accept as being the standard constitutional due process at work enough to forfeit a

human life. It may be opportune to invite attention to the disquisition of the Court in *People vs. Bermas*,^[9] thus:

"x x x The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.

"The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation."

Of most troublous concern is the fact that the accused has not been apprised at all of the consequences of the plea, let alone specifically warned that, given his plea of guilt, the death sentence decreed under Republic Act 7659 would nevertheless have to be imposed, contrary to what he might have entertained or been advised. It is essential that a searching inquiry is conducted after the accused pleads guilty to a capital offense, and it must focus on: (1) the voluntariness of the plea and (2) a complete comprehension of the legal effects of the plea so that the plea of guilt can be truly said as being based on a free and informed judgment. So indispensable is this requirement that a plea of guilt to a capital offense can be held null and void where the trial court has inadequately discharged the duty of conducting the prescribed "searching inquiry."^[10] The trial court should also be convinced that the accused has not been coerced or placed under a state of duress either by actual threats or physical harm coming from malevolent or avenging quarters, and this it can do either by eliciting from the accused himself the manner in which he has been brought into the custody of the law and whether he had the assistance of competent counsel during the custodial and preliminary investigations or by ascertaining from him the conditions of his detention and interrogation during the investigation. Likewise, a series of questions directed at defense counsel on whether or not counsel has conferred with the accused and has completely explained to him the meaning of a plea of guilt are well-taken steps along those lines.^[11]

Similarly, just as in *People vs. Estomaca*,^[12] which has ruled that no valid judgment can be rendered upon an invalid arraignment, there is here no showing that appellant or his counsel de oficio has been furnished with a copy of each complaint with the list of witnesses against him.

All things considered, the Court is left with little recourse except to remand the case to the court a quo for further and appropriate proceedings conformably with the opinion heretofore expressed.

WHEREFORE, the judgment in Criminal Case No. 18897-MN and No. 18898-MN convicting accused-appellant Bonifacio Durango y Carcedo of two crimes of rape and imposing upon him the penalty of death is SET ASIDE. Said cases are REMANDED to the trial court for further and appropriate proceedings.

SO ORDERED.

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

[1] Rollo, pp. 11-12.

[2] Rollo, pp. 12-13.

[3] Rollo, pp. 14-15.

[4] Rollo, p. 28.

[5] G.R. No. 126955, 28 October 1999.

[6] Records, p. 35.

[7] TSN, 14 May 1998, pp. 2-3.

[8] Ibid., pp. 8-9.

[9] G.R. No. 120420, 21 April 1999, p. 15.

[10] People vs. Tizon, supra, citing People vs. Alicando, 251 SCRA 293.

[11] People vs. Estomaca, 256 SCRA 421 citing People vs. Badilla, 138 SCRA 513; People vs. Parba, 142 SCRA 158; People vs. Petalcorin, 180 SCRA 685.

[12] 256 SCRA 421.

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