

PEOPLE OF THE PHILIPPINES, APPELLANT, VS. WILFREDO DELA TORRE, APPELLEE.

G.R. Nos. 137953-58. April 11, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The prosecution cannot appeal a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction.

The Case

The prosecution appeals the March 31, 1998 Decision[1] and June 3, 1998 Order[2] issued by the Regional Trial Court (RTC) of Iba, Zambales (Branch 69)[3] in Criminal Cases Nos. 2179-I, 2180-I, 2181-I, 2182-I, 2183-I and 2184-I. The assailed Decision convicted Wilfredo Dela Torre of two counts of acts of lasciviousness and four counts of rape, while the challenged Order denied the Motion for Reconsideration filed by plaintiff (now appellant).

The dispositive portion of the Decision is reproduced hereunder:

“WHEREFORE, premises considered, accused Wilfredo dela Torre is found GUILTY beyond reasonable doubt as follows:

“1)

In Crim. Case No. RTC 2179-I – of the crime of Acts of Lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, is sentenced to suffer an imprisonment of six (6) months and one (1) day to two (2) years of prision correccional, and to indemnify Mary Rose dela Torre in the amount of P10,000.00 as and by way of civil damages.

“2)

In Crim. Case No. RTC 2180-I – of the crime of Acts of Lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, is sentenced to suffer an imprisonment of six (6) months and one (1) day to two (2) years of prision correccional, and to indemnify Mary Rose dela Torre in the amount of P10,000.00 as and by way of civil damages.

“3)

In Crim. Case No. RTC 2181-I – of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, is sentenced to suffer the penalty of reclusion perpetua, and to indemnify Mary Rose dela Torre in the amount of P50,000.00 as and by way of civil damages.

“4)

In Crim. Case No. RTC 2182-I – of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, is sentenced to suffer the penalty of reclusion perpetua, and to indemnify Mary Rose dela Torre in the amount of P50,000.00 as and by way of civil damages.

“5)

In Crim. Case No. RTC 2183-I – of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, is sentenced to suffer the penalty of reclusion perpetua, and to indemnify Mary Rose dela Torre in the amount of P50,000.00 as and by way of civil damages.

“6)

In Crim. Case No. RTC 2184-I – of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, is sentenced to suffer the penalty of reclusion perpetua, and to indemnify Mary Rose dela Torre in the amount of P50,000.00 as and by way of civil damages.”[4]

The two Amended Informations for acts of lasciviousness, dated July 1, 1997, were similarly worded as follows:

“That on or about the 30[th] day of September, 1996 at Brgy. Guisguis, municipality of Sta. Cruz, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of one Mary Rose de la Torre, actuated by lust and by means of coercion, threats, intimidation and other consideration, did then and there wilfully, unlawfully and feloniously commit acts of lasciviousness on the person of Mary Rose de la Torre, a minor of 11 years old, to the damage and prejudice of the said Mary Rose de la Torre.”[5]

The other Information[6] charged appellee with the same crime against the same victim on a different date, October 10, 1996.

On the other hand, the four Informations charging him with rape, dated July 1, 1997, similarly read as follows:

“That on or about the 18[th] day of October, 1996 at Brgy. Guisguis, municipality of Sta. Cruz, Province of Zambales, Philippine[s], and within the jurisdiction of this Honorable Court, the said accused, being the father of one Mary Rose de la Torre, with lewd design by means of coercion, threats, intimidation and other consideration, did then and there wilfully, unlawfully and feloniously, have carnal knowledge with one Mary Rose de la Torre, a minor of 11 years old, without her consent and against her will, to the damage and prejudice of the latter.”[7]

The three other Amended Informations recited the same allegations on different dates: November 1,[8] November 12[9] and December 23,[10] 1996. When arraigned on August 13, 1997, appellee pleaded[11] not guilty[12] to all six (6) Informations. After trial in due course, the RTC rendered the challenged Decision.

Appellee did not appeal, but the prosecution filed a Notice of Appeal[13] dated June 9, 1998.

The Facts

Appellant’s Version

In its Brief,[14] the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“Appellee Wilfredo dela Torre had a common-law relationship with Melinda dela Torre. The latter gave birth to three children, Mary Rose, Mark Anthony, and Mark Domil. When Mary Rose was about seven (7) years old, her mother left the conjugal abode with Mark Domil, leaving her and sibling Mark Anthony in the care of appellee, who resided with his progeny in a one-room hut in Sitio Pao, Guis-guis, Sta. Cruz, Zambales.

“Mary Rose and her brother Mark Anthony studied at the Guinabon Elementary School. She was the brightest in her class, even though because of their poverty, she had to walk from their hut to the school everyday.

“In January of 1997, Felita Sobrevilla, noticed a sudden change in the behavior and performance of Mary Rose, who was twelve-year[s] old at th[at] time. The latter appeared sleepy, hungry and snobbish. She also urinated on her panty. When confronted by Generosa Mayo, the head teacher, Mary Rose admitted to her that she was abused repeatedly by appellee. Mayo informed Elpidia Balindo, the aunt of Mary Rose, about the abuses. They then decided to refer the matter to the Department of Social Welfare and Development (DSWD), who took Mary Rose under its custody.

“It turned out that on September 30, 1996, Mary Rose was about to sleep when appellee told her, ‘anak puwede ba nating subukan?’ She did not understand what that meant and continued to sleep. Appellee then placed himself on top of Mary Rose. After removing her shorts as well as his shorts, he poked his penis into her organ. He also kissed and embraced Mary Rose, who just wept. The same incident was repeated in the evening of October 10, 1996.

“In the evening of October 18, 1996, appellee was able to insert his penis into the vagina of Mary Rose. After the act, her whole body ached. She started to fear appellee. He also had sexual intercourse with his minor daughter on three more occasions, that is, on November 1 and 12 and December 23, 1996.

“A medical examination conducted by Dr. Milagrina Mayor, Rural Health Physician of Sta. Cruz, Zambales, on Mary Rose revealed that her vagina admitted one finger with ease. She was no longer a virgin. Her hymen was broken with healed lacerations at the 3:00, 6:00 and 9:00 nine o’clock positions. The girl also suffered from urinary tract infection.”[15] (Citations omitted)

Appellee’s Version

On the other hand, appellee’s statement of facts,[16] as contained in his Brief,[17] is reproduced as follows:

“Appellee WILFREDO DELA TORRE had three (3) children with Melinda Torre, namely: Mary Rose, Mark Anthony and Mark Ronnil. Melinda left her family when Mary Rose was about seven (7) years old bringing with her Mark Ronnil. The victim lived with her father and brother Mark Anthony in Sta. Cruz, Zambales.

“Felina Sobrevilla, teacher of Mary Rose, noticed sudden changes in her behavior and when confronted, the latter admitted that she was sexually abused by her father. Her head teacher informed her Aunt Elpidia Balindo about the sexual abuses. They referred the case to the DSWD who took her under its custody.

“Mary Rose testified that her father committed sexual abuses on her on the following dates: September 30, 1996, October 10, 1996, October 18, 1996, November 01, 1996, November 12, 1996 and December 23, 1996.

“Appellee, on the other hand denies vehemently the charges being imputed on him by her daughter and said that the only reason he can think of why the daughter filed the charges is because he did not allow her to stay with her teacher, Mrs. Sobrevilla.”[18] (Citations omitted)

Ruling of the Trial Court

The RTC ruled that “it was duly established that accused Wilfredo committed acts of lasciviousness against Mary Rose on 30 September 1996 and 10 October 1996, and had carnal knowledge [of] Mary Rose on 18 October 1996, 01 November 1996, 12 November 1996 and 23 December 1996.”[19] Further, the trial court added that the moral

ascendancy of appellee over the victim was equivalent to intimidation. It did not give any probative value to his uncorroborated and unsubstantiated defenses of denial and alibi.

However, the court a quo refused to impose the supreme penalty of death on appellee. It maintained that there were circumstances that mitigated the gravity of the offenses, as follows:

“1.

As testified to (supra) there was absence of any actual, physical violence or intimidation in the commission of the acts complained of.

X X X X X X X X

“2.

The abandonment by Melinda (common-law wife of accused Wilfredo and mother of Mary Rose) when Mary Rose was seven (7) years old leaving behind Wilfredo, Mary Rose and her brother, Mark Anthony.

“3.

The extreme poverty on the life of Wilfredo, Mary Rose and Mark Anthony.

“4.

After the mother of Mary Rose left the conjugal home, for more than five (5) years, Wilfredo, Mary Rose and Mark Anthony were living together as a family and Mary Rose was never molested by her father.

“5.

There is reason to deprive Wilfredo of the love of her daughter Mary Rose but there is no reason to deprive Mark Anthony of the love of his father considering that both Mary Rose and Mark Anthony have no one to call as a mother.”[20]

Hence, this appeal.[21]

The Issue

In this appeal, the solicitor general assigns this single error for our consideration:

“The Court a quo erred in penalizing appellee with reclusion perpetua in each of the four indictments for rape, instead of imposing the supreme penalty of death as mandated by R.A. No. 7659.”[22]

The Court’s Ruling

The appeal has no merit.

Lone Issue:

Propriety of Appeal by the Prosecution

The prosecution asks this Court to modify the RTC Decision by imposing the supreme penalty of death on the accused. It argues that it has proven that the victim is the daughter of the accused, and that she was below eighteen (18) years old when the rapes took place. As a consequence, the trial court should have imposed the penalty of death pursuant to Section 11 of RA 7659.[23]

Under Section 1, Rule 122 of the 2000 Rules of Criminal Procedure, any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy. This provision is substantially the same as that provided by the 1985 Rules.

The question now is whether an increase in the penalty imposed by the lower court will violate the right of the accused against double jeopardy.

In several cases, this Court has already definitively ruled on this issue. Recently, in *People v. Leones*,[24] it unmistakably declared that “[w]hile it is true that this Court is the Court of last resort, there are allegations of error committed by a lower court which we ought not to look into to uphold the right of the accused. Such is the case in an appeal by the prosecution seeking to increase the penalty imposed upon the accused for this runs afoul of the right of the accused against double jeopardy.”[25] It added:

“This Court has not just once ruled that where the accused after conviction by the trial court did not appeal his conviction, an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy and should therefore be dismissed.”[26]

This doctrine was applied as early as 1904 in *Kepner v. United States*[27] (hereinafter “*Kepner*”), as follows:

“The Court of First Instance, having jurisdiction to try the question of the guilt or innocence of the accused, found *Kepner* not guilty; to try him again upon the merits, even in an appellate court, is to put him a second time in jeopardy for the same offense.”[28]

The *Kepner* doctrine was clarified in a 1987 case.[29] Speaking through Justice Isagani A. Cruz, the Court explained that an “appeal of the prosecution from a judgment of acquittal (or for the purpose of increasing the penalty imposed upon the convict) would place him in double jeopardy.”[30]

Double jeopardy provides three related protections: (1) against a second prosecution for the same offense after acquittal, (2) against a second prosecution for the same offense after conviction, and (3) against multiple punishments for the same offense.[31]

Although *Kepner* technically involved only a single proceeding, the Court regarded the practice as equivalent to two separate trials, and the evil that the Court saw in the procedure was plainly that of multiple prosecution.[32]

The ban on double jeopardy is deeply rooted in jurisprudence. The doctrine has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials.[33] It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction.[34] And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty.[35]

Being violative of the right against double jeopardy, the instant appeal filed by the prosecution cannot prosper. The rule is clear -- the prosecution cannot appeal on the ground that the accused should have been given a more severe penalty.[36]

Besides, even assuming that the penalties imposed by the RTC were erroneous, these cannot be corrected by this Court on an appeal by the prosecution. Said the Court:

“Whatever error may have been committed by the lower court was merely an error of judgment and not of jurisdiction. It did not affect the intrinsic validity of the decision. This is the kind of error that can no longer be rectified on appeal by the prosecution no matter how obvious the error may be.”[37]

The only way to nullify an acquittal or to increase the penalty is through a proper petition for certiorari to show grave abuse of discretion. This was explained in *People v. CA and Maquiling*[38] as follows:

“While certiorari may be used to correct an abusive acquittal, the petitioner in such extraordinary proceeding must clearly demonstrate that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. On the other hand, if the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court a quo, the constitutional right against double jeopardy would be violated. Such recourse is tantamount to converting the petition for certiorari into an appeal, contrary to the express injunction of the Constitution, the Rules of Court and prevailing jurisprudence on double jeopardy.”[39]

WHEREFORE, the appeal is hereby DENIED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Rollo, pp. 39-66; records, Vol. 1, pp. 167-194.

[2] Records, Vol. 1, pp. 202-204.

[3] Penned by Judge Rodolfo V. Toledano.

[4] Assailed Decision, pp. 26-28; rollo, pp. 64-66; records, Vol. 1, pp. 192-194.

[5] Amended Information dated July 1, 1997; *ibid.*, Vol. 1, p. 31.

[6] Amended Information dated July 1, 1997; *id.*, Vol. 2, p. 27.

[7] Amended Information dated July 1, 1997; *id.*, Vol. 3, p. 33.

[8] Amended Information dated July 1, 1997; *id.*, Vol. 4, p. 27.

[9] Amended Information dated July 1, 1997; *id.*, Vol. 5, p. 25.

[10] Amended Information dated July 1, 1997; *id.*, Vol. 6, p. 26.

[11] Assisted by his counsel, Atty. Eric Ebarle.

[12] See the lower court’s Order dated August 13, 1997; records, Vol. 1, p. 56.

[13] *Id.*, p. 205.

[14] Signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Magdangal M. de Leon, and Sol. Renan E. Ramos.

[15] Appellant’s Brief, pp. 4-6; rollo, pp. 94-96.

[16] Appellee’s Brief, p. 5; rollo, p. 148.

[17] Signed by Attys. Elpidio C. Bacuyag and Ma. Vanessa B. Donato-Balmaceda of the Public Attorney’s Office.

[18] Appellee's Brief, p. 5; rollo, p. 148.

[19] Assailed Decision, p. 20; rollo, p. 58; records, Vol. 1, p. 186.

[20] Ibid., pp. 25-26, 61-64 and 189-192.

[21] This case was deemed submitted for resolution on April 20, 2001, when the Court received the Brief for accused-appellee. The Brief for appellant was received by the Court on December 22, 2000. The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[22] Appellant's Brief, p. 4; rollo, p. 94. Original in upper case.

[23] "Section 11. Article 335 of the same Code is hereby amended to read as follows:

x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x x x x x."

[24] GR Nos. 128514 & 143856-61, October 3, 2001.

[25] Ibid., per Puno, J.

[26] Id.

[27] 11 Phil. 669, May 31, 1904.

[28] Ibid., pp. 701-702, per Day, J.

[29] Heirs of Tito Rillorta v. Firme, 157 SCRA 518, January 29, 1988.

[30] Ibid., p. 522.

[31] North Carolina v. Pearce, 23 L Ed 2d 656, June 23, 1969.

[32] US v. Wilson, 43 L Ed 2d 232, February 25, 1975.

[33] Abbate v. US, 3 L Ed 2d 729, March 30, 1959.

[34] Hoag v. New Jersey, 2 L Ed 913, May 19, 1958.

[35] North Carolina v. Pearce, supra.

[36] Regalado, Remedial Law Compendium, Vol. II, 1995 ed., p. 469, citing People v. Ang Cho Kio, 95 Phil. 475, July 29, 1954; People v. Pomeroy, 97 Phil. 927, November 28, 1955; People v. Ruiz, 81 SCRA 453, January 31, 1978.

[37] People v. Leones, supra., citing Heirs of Tito Rillorta v. Firme, supra.

[38] 308 SCRA 687, June 21, 1999.

[39] Ibid., p. 704, per Panganiban, J.

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