

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARIEL MACARANG, APPELLANT.

G.R. Nos. 151249-50. February 26, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us on automatic review is a Decision[1] of the Regional Trial Court of Pasig City (Branch 163) in Criminal Cases Nos. 116969-H and 117275-H, sentencing appellant Ariel Macarang to suffer the penalty of death in each of said criminal cases for qualified rape. The dispositive portion of said Decision reads as follows:

WHEREFORE, in Criminal Case No. 116969-H, the accused is convicted of the crime of rape and is sentenced to suffer the penalty of death by lethal injection and the accessory penalty provided by law and to pay the costs.

In Criminal Case No. 117275-H, the accused is also convicted of the crime of rape and is sentenced to suffer the penalty of death by lethal injection and the accessory penalties provided by law and to pay the costs.

On the civil aspects of the two cases the accused is ordered to pay the victim, Armie Christine Macarang, Php75,000.00 as civil indemnity and Php50,000.00 as moral damages.

SO ORDERED.

Appellant claims that the trial court erred in giving weight and credence to the testimony of private complainant and that appellant's guilt was not proven beyond reasonable doubt.

Appellee, represented by the Office of the Solicitor General, filed its brief, entitled "Brief For The Appellee With Recommendation To Remand The Cases To The Court A Quo For Further Proceedings", calling our attention to the fact that the trial court had considered appellant to have waived his right to present his evidence without any showing that the latter was fully aware of the consequences of such waiver.

As borne out by the records of the case, the following proceedings took place in the trial court:

Two separate Informations[2] were filed charging appellant with the crime of qualified rape, to wit:

Criminal Case No. 116969-H

On or about November 8, 1999, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being the father of Armie Christine Macarang y Amboy, with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said Armie Christine Macarang y Amboy, 13 years old, against her will and consent.

Contrary to law.

Criminal Case No. 117275-H

On or about June 12, 1998, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the

accused, being the father of Armie Christine Macarang y Amboy, with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said Armie Christine Macarang y Amboy, 12 years old, against her will and consent.

Contrary to law.

Upon arraignment on December 14, 1999 in Criminal Case No. 116969-H and on April 11, 2000 in Criminal Case No. 117275-H, appellant, with assistance of counsel, pleaded NOT GUILTY to each Information. The cases were then consolidated and jointly heard before Branch 163 of the Regional Trial Court of Pasig City.

After pre-trial, the prosecution proceeded to present evidence and thereafter, rested its case.

The initial hearing for the reception of defense evidence was scheduled on March 13, 2001. Presiding Judge Leili Suarez Acebo cancelled the setting as she had to attend a seminar given by the Supreme Court[3] and scheduled anew the hearing on April 24, 2001 and May 8 and 22, 2001. The April 24 hearing was cancelled upon motion of public prosecutor who had to attend a seminar at the COMELEC.[4] The May 8 hearing was also cancelled as appellant informed the court that his de parte counsel, Atty. Arnoldo Pabelonio, was indisposed.[5] The trial court reset the hearing to May 22 as previously scheduled, and set additional hearings on July 3, 17 & 24, 2001. The May 22 hearing was cancelled for failure of counsel for appellant to appear in court for the hearing.[6] Again, defense counsel was absent for the July 3 hearing and the same was reset to the next scheduled hearing dates.[7] On July 17, 2001, defense counsel manifested in court that appellant was contemplating on changing his plea from “not guilty” to “guilty” and requested for more time for the appellant to come to a decision. The trial court then cancelled the July 17 and 24, 2001 hearings and re- scheduled the same on August 14 and 28, 2001.[8] On August 14, the trial court, apparently irked by the numerous postponements of the cases, issued the following:

O R D E R

When this case was called supposedly for the initial presentation of defense evidence, the defense counsel manifested that the accused had intimated to him that he was not prepared to testify, the reason being that he was just recuperating from an illness. However, when asked by the Court, accused stated that it was up to his lawyer, in spite of which, the Defense Counsel begged the indulgence of the Court as he did not bring the record of the case and was not prepared to call the accused to the witness stand.

WHEREFORE, considering that the trial of this case had been repeatedly postponed and that Defense Counsel had been the subject at least two (2) show cause orders, reset for the last time to August 28 and September 18, 2001 at 8:30 o'clock in the morning, with a warning that if on the next scheduled hearing accused would not still be ready to present evidence, he would be deemed to have waived his right to do so.

SO ORDERED.[9] (Emphasis supplied).

On August 28, 2001, defense counsel filed an Urgent Motion to be Allowed to Withdraw as Counsel,[10] stating therein that the delay in the hearing of the case was due to the insistence of appellant that he moved for postponements, in the hope that appellant's daughter would eventually cause the dismissal of the case. At the hearing set on the same date, the trial court issued the following

O R D E R

When these cases were called for trial, accused begged the Court for one last resetting on the ground that he is not prepared. The Public Prosecutor did not object to the request for postponement on the condition that if on the next scheduled hearing, accused would still not be able to present evidence, he would rest his cases and the cases would be deemed submitted for decision on the basis of the prosecution evidence.

WHEREFORE, as prayed for, reset to September 18, 2001, as previously scheduled and additional settings on

September 25, 2001, October 2 & 9, 2001, all at 8:30 o'clock in the morning. The pending motion to withdraw as counsel filed by Atty. Arnoldo C. Pabelonio is denied for lack of merit.

SO ORDERED.[11]

Finally, at the hearing held on September 18, 2001, the trial court issued the following:

O R D E R

When this case was called supposedly for the presentation of defense evidence, accused manifested that he was still not ready to do so. Record shows that such presentation had been repeatedly postponed mostly at the instance of the accused and/or his lawyer.

Thus, as prayed for by the Public Prosecutor and pursuant to the order of August 28, 2001, accused is now deemed to have waived his right to present evidence. As further prayed for, this case is now deemed submitted for decision.

Moreover, the "Urgent Motion to be Allowed to Withdraw as Counsel" filed by Atty. Arnoldo Pabelonio, is granted with the consent of the accused.

SO ORDERED.[12] (Emphasis supplied).

Based on the prosecution evidence, the trial court, on November 13, 2001 promulgated its Decision dated October 17, 2001, convicting appellant of the crime of qualified rape and sentencing him to suffer the ultimate penalty of death in each of the criminal cases.

We are aware of the usual practice of presiding judges in warning a party in a case that he will be considered to have waived his right to adduce evidence if he fails to present it at the next hearing, after prior unwarranted postponements, despite previous agreement of the parties. Its objective is to instill discipline on the litigants and their counsel so that the proceedings of the court would not be unduly delayed.

However, in criminal cases where the imposable penalty may be death, as in the present cases, the presiding judge is called upon to see to it that the accused is made aware of the consequences of not heeding the warning given by the trial court. It must be noted that the waiver of the right to present defense evidence in the present cases was not even voluntary nor upon the instance of the appellant but imposed by the trial court, apparently to penalize appellant, after he and his counsel repeatedly moved for the postponements of the scheduled hearings.

As stated by the trial court in its Order dated September 18, 2001, appellant manifested in open court that "he was still not ready to do so", that is, that he was not ready to present his evidence. Appellant never said that he did not wish to present evidence. It should have been clear to the trial court that appellant never intended to waive his right to present his evidence. Thus, a simple forewarning to the appellant that the next time that he would not be ready with his defense evidence, he would be deemed to have waived his right to present it, did not satisfy appellant's constitutional right to due process. The trial court should have first apprised appellant or explained to him in clear terms the exact nature and consequences of a waiver. The trial court should have satisfied itself that appellant understood the real import of the court's action if it would consider him as having waived his right to present his evidence if he would not be ready to do so the next time the case would be called for trial.

Moreover, in the same Order declaring appellant to have waived his right to present evidence, the trial court granted the motion of appellant's counsel to withdraw his appearance. Appellant, therefore, had no more counsel. The trial court did not ask him if he would wish to solicit the services of another counsel de parte or want the court to designate a de officio counsel for him. Consequently, appellant's inaction, after the declaration by the trial court that he was deemed to have waived his right to present evidence in spite of the fact that there were other

dates previously scheduled by the trial court for reception of his evidence, should not be taken against appellant. It did not justify the trial court to render judgment against him on the basis of the prosecution evidence and sentence him to suffer the penalty of death in both cases, without first ensuring that appellant was aware of the consequences of the waiver of his right to present his evidence, and without exerting any effort to ask him if he would like to be represented by another lawyer of his own choice or through the assistance of the Public Attorney's Office (PAO) or through a counsel de oficio appointed by the court.

It is obvious then that the appellant was deprived of his right to due process.

We apply by analogy our ruling in *People vs. Bodoso*,^[13] to wit:

This Court notes with deep regret the failure of the trial court to inquire from accused-appellant himself whether he wanted to present evidence; or submit his memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any; or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. The inquiry is simply part and parcel of the determination of the validity of the waiver, i.e., "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences," which ought to have been done by the trial court not only because this was supposed to be an uncomplicated and routine task on its part, but more importantly since accused-appellant himself did not personally, on a person-to-person basis, manifest to the trial court the waiver of his own right.

In the light of the foregoing, we have no other recourse but to set aside the judgment of the trial court convicting appellant and order the remand of the records of the case to the trial court to conduct further proceedings.

WHEREFORE, the Decision of the Regional Trial Court of Pasig City, Branch 163, in Criminal Cases Nos. 116969-H and 117275-H dated October 17, 2001 is SET ASIDE.

Let the records of Criminal Cases Nos. 116969-H and 117275-H be REMANDED to Branch 163 of the Regional Trial Court of Pasig City for further appropriate proceedings to give appellant the opportunity to present his evidence, if he so desires, through a counsel of his choice or through the Public Attorney's Office or any competent de oficio counsel to be appointed by said court.

For this purpose, the proper law enforcement officers are directed to TRANSFER appellant Ariel Macarang from the New Bilibid Prison, where he is presently incarcerated, to San Juan Municipal Jail, San Juan, Metro Manila, with adequate security escort, where he shall be DETAINED for the duration of the proceedings in the trial court.

The Regional Trial Court of Pasig City (Branch 163) is directed to dispose of said criminal cases without further delay.

Costs de oficio

SO ORDERED.

Davide, Jr., C.J., Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Puno, J., on leave.

Vitug, J., concurs except for directing the change in the place of detention.

Quisumbing, J., in the result, except as to place of detention.

- [1] Penned by Judge Leili Suarez Acebo.
- [2] Rollo, pp. 4-7.
- [3] Constancia dated March 13, 2001, Record, p. 137.
- [4] Order dated April 24, 2001, Record, p. 141.
- [5] Order dated May 8, 2001, Record, p. 144.
- [6] Order dated May 22, 2001, Record, p. 148.
- [7] Order dated July 3, 2001, Record, p. 154.
- [8] Order dated July 17, 2001, Record, p. 158.
- [9] Record, p. 165.
- [10] Record, pp. 166-170.
- [11] Record, p. 173.
- [12] Record, p. 177.
- [13] G.R. No. 149382-149383, March 5, 2003.

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