

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN HERICO, DEFENDANT-APPELLANT.

G.R. Nos. 89682-83. December 21, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is an incredible case of two (2) minor daughters who on separate occasions were raped by their father in the presence of their mother.

Benjamin Herico and Florencia Peña are husband and wife. They have nine children, namely: Buenafe, Maritess, Rhodora, Criselda, Benjamin, Jr., Roderic, Bonifacio, Maricel and Catherine. They are residents of Barangay Mapulot, Tagkawayan, Quezon Province.

Sometime on November 13, 1984, Buenafe, the eldest daughter, who was at the time about 15 years old, asked her mother Florencia how a conceiving woman felt. Florencia inquired from her daughter why she was asking such a question. Buenafe confessed to her mother that she was not having her monthly menstruation. Pressed by her mother as to who was responsible for what happened to her, Buenafe revealed that sometime in September, 1984 her father Benjamin Herico abused her. Florencia confronted Benjamin and asked him why he raped his own daughter. Benjamin just replied, "just for that, you already got angry? (para yon lang ay nagalit ka na?)" Florencia then admonished her husband not to repeat what he did to their daughter.

In the evening of that same day, Benjamin told Florencia that since she already knew what happened to Buenafe, then Buenafe would sleep with him that night. He then tried to pull Buenafe inside the room and there was a struggle among Benjamin, Buenafe and Florencia. Benjamin removed his pants and brief and he tried to undress Buenafe. Florencia undressed herself and asked Benjamin to do to her what he wanted to do to their daughter. Benjamin replied that if she wanted it that way, she would be the next. He then boxed the left leg of Buenafe who was trying to fight him off. He threatened the two that if they would stop him in having sexual intercourse with Buenafe, he would kill all of them, including the small kids. He even pointed his knife at the neck of Florencia who was then boxing him.

Buenafe was a sickly girl who was not even able to go to school. She therefore became an easy prey of her father.

Thus, Benjamin successfully raped his daughter Buenafe in the very presence of his wife that evening. After the consummation of the dastardly act, Benjamin stood up, put on his brief and pants and went to sleep. Florencia and Buenafe went to the sala and there, together with Maritess, Rhodora and Maricris spent the whole night crying.

Maritess, Rhodora and Maricris were at the sala crying while Benjamin was raping his daughter Buenafe. Although they did not see the actual sexual abuse, Maritess at least knew that something bad was happening inside the room, for they could hear the crying and plea for help of their mother and their sister Buenafe. During the next several days, Benjamin, showed contempt and was always angry. His wife and children were all the more frightened.

On November 16, 1984, Benjamin left for Tanay, Rizal. Before leaving, however, he threatened his wife and children that he would kill them if they ever tell anybody about the incident. He went to Tanay to engage in gold panning.

On March 1, 1985, he returned to their residence. On the evening of the following day, Benjamin called his wife and told her that Maritess who was then 13 years old would sleep with him in the same room where he raped Buenafe. Again Florencia pleaded with Benjamin not to rape Maritess. She once more offered herself to Benjamin who, as in the rape of Buenafe, told Florencia that if she liked to have sex, she would be next. He then dragged Maritess inside the room. He, however, met strong opposition from Maritess. The girl having learned about the fate of Buenafe, although terribly afraid of her father, tried to fight him, kicking her father. Her refusal was met with physical violence. She was boxed by her father and when she fell, Benjamin kicked her. Because Maritess was still young and naturally weak, Benjamin was able to rape Maritess. He touched the breasts and private part of Maritess, placed himself on top of her and forcibly entered the girl. The girl shouted because of the extreme pain.

It is significant to note that when Maritess was boxed, because of fear, Maritess urinated even when she still had her clothes and underwear on. This even angered Benjamin and caused him to once more kick Maritess and called her "bastos" (rude).

After Benjamin inserted his penis to the private part of Maritess, the girl shouted for help from her mother crying, "Inay, masakit, tulungan ninyo ako." (Mother it is painful, please help me). After raping Maritess, once more Benjamin went to sleep. Maritess and Florencia left the room and went to the sala where they cried.

However, Maritess was not like Buenafe. She was not contented by just crying. She did a positive act. At about 4:00 o'clock in the early morning of March 3, 1985 or just a few hours after she was raped by her father, she went to the house of her uncle Nestor, a younger brother of Benjamin. She narrated to Nestor what his brother Benjamin did to her and to her sister Buenafe. Nestor was angry and furious. He waited until the 5th of March and then went to see his brother. Nestor, however, did not immediately inform his brother that Maritess complained to him. He arrived in the house of Benjamin at about 4:00 o'clock in the afternoon, engaged his brother in a drinking spree and in the evening of that day at about 8:00 o'clock, hacked and tried to kill Benjamin. Benjamin shouted and asked Nestor why he was being hacked and Nestor replied that he was killing the devil in Benjamin's body because he raped his daughters.

While this incident was going on, Florencia and her children ran to a billiard hall in their place. She then reported the incident to barangay councilman Henio Hernandez. Hernandez went to the army camp near the place and reported the incident to the authorities. Meanwhile, Benjamin was also able to run away from Nestor. He likewise went to the billiard hall and it was there where Hernandez and his companions found the accused.

In the morning of the next day, Hernandez requested Florencia to help him in bringing Benjamin to a hospital in Tagkawayan. After bringing Benjamin to the hospital, Florencia reported to the police station of Tagkawayan, Quezon, the rape perpetrated by Benjamin on her daughters. She also wrote a letter to her children Buenafe and Maritess who ran away to Malaya at Camarines Norte asking them to return to Tagkawayan inasmuch as Benjamin was already in the hospital.

Maritess went to Tagkawayan, gave her statement to the police and filed a rape complaint against her father. She was also examined by Dra. Generosa Veluz on March 7, 1985 who confirmed that Maritess was really sexually abused. The same doctor also examined Buenafe and she found that she was also sexually molested.

In the examination of Maritess, Dra. Veluz issued a medical certificate^[1] which contained the following findings:

"1. Redness of perineum.

"2. Vagina admits one finger with ease.

"3. Hymen-presence of lacerations at 3 and 5 o'clock."

The lacerations were caused by the penetration of a male organ. In the examination of Buenafe, Dra. Veluz also found that the girl sustained healed lacerations of the vagina showing that she was no longer a virgin.

Thus, in due course, two (2) separate informations for rape were filed against Benjamin Herico in the Regional Trial Court of Calawag, Quezon Province. After the arraignment wherein the accused pleaded not guilty and the trial on the merits, a decision was rendered by the trial court on July 11, 1989, convicting the accused of the crimes of rape of his daughters Buenafe and Maritess imposing on him the following penalties:

"In Criminal Case No. 1385-C, Benjamin Herico is hereby sentenced to suffer the penalty of reclusion perpetua, indemnify the offended party Buenafe Herico Ompao in the amount of P30,000.00 and to pay the costs of the suit.

In Criminal Case No. 1383-C, Benjamin Herico is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify Maritess Herico in the amount of P30,000.00 and to pay the costs of the suit.

Atty. Celso Florido is hereby awarded the amount of P1,000.00 for the two cases for his services as counsel de oficio subject to availability of funds and the usual accounting and auditing requirements."[2]

Appealing from the said decision to this Court, the accused now alleges that the trial court committed the following errors:

The Lower Court erred:

1. IN NOT GIVING ACCUSED-APPELLANT SUFFICIENT OPPORTUNITY TO PRESENT EVIDENCE AND IN DEPRIVING ACCUSED-APPELLANT OF EFFECTIVE COUNSEL. THE LOWER COURT CONSIDERED THE RIGHT TO CONTINUE PRESENTATION OF EVIDENCE WAIVED WHEN COUNSEL FOR ACCUSED-APPELLANT WAS ABSENT AT ONE HEARING. WORSE, ON THE SAME DAY THE LOWER COURT ALLOWED REBUTTAL EVIDENCE WITH ACCUSED-APPELLANT REPRESENTED BY COUNSEL APPOINTED DE OFICIO THAT VERY DAY AND WHO THEREFORE DID NOT HAVE ANY TIME TO PREPARE FOR TRIAL.

2. IN FINDING ACCUSED-APPELLANT GUILTY OF RAPE

A) THE TESTIMONY OF FLORENCIA P. HERICO IS NOT ENTITLED TO CREDENCE. SHE ACCUSED BENJAMIN HERICO OF RAPE TO WRONGLY JUSTIFY THE ATTEMPTED MURDER OF ACCUSED-APPELLANT PROMPTED BY FLORENCIA'S ILLICIT AMOROUS RELATIONSHIP WITH ANOTHER MAN.

B) THE TESTIMONY OF FLORENCIA HERICO IS REplete WITH INCONSISTENCIES AND IS SO CONTRARY TO HUMAN EXPERIENCE AS TO BE INCREDIBLE.

C) THE ALLEGED RAPE VICTIMS VISITED ACCUSED-APPELLANT FOUR TIMES, WHILE HE WAS IN THE HOSPITAL, BELYING THE CLAIM THAT HE ABUSED THEM.

D) THE EVIDENCE SHOWS THAT AT THE TIME OF THE ALLEGED RAPE, ACCUSED-APPELLANT WAS IN DISTANT TANAY, RIZAL IN THE HOME OF BARANGAY CAPTAIN LUIS SANTIAGO."

On the first assigned error whereby the appellant claims he was deprived of due process where on one hearing his

counsel failed to appear, the trial court considered presentation of further evidence of the appellant to be waived and the prosecution presented its rebuttal evidence.

What the records show is that the counsel of record in said hearing was absent without appropriate explanation. Nevertheless, the court appointed a counsel de oficio to assist the appellant until the case was submitted for decision. There was no occasion that the appellant was deprived the assistance of counsel.

The appellant attempted to discredit the testimony of Florencia Herico, his wife, on the basis of an alleged illicit relation between her and another man whom the appellant cannot even pinpoint. The appellant's allegation is that during the hacking incident where he was the victim, and where his own brother Nestor hacked him, the former was supposedly assisted by two other persons whom he did not identify.

He also called attention to the fact that when he called for help, Florencia who was then present, did not do anything to thwart the blows of Nestor.

In debunking this defense of the appellant the trial court had this to say:

"The accused tried to convince the court that Florencia has a paramour. This is hogwash. This was just an afterthought. He tried to show to the court that the person who hacked him was the paramour of Florencia. He could not, however, name who this paramour was.

Anyhow, the evidence is very clear that it was his younger brother Nestor Herico who hacked him. The reason why Nestor hacked him was because Nestor wanted to kill the devil in the body of Benjamin who urged Benjamin to rape his own daughters."[3]

Appellant also contends that Florencia was inconsistent when she testified that her daughter Buenafe confessed to her in September, 1974 and thereafter said it was on November, 1984. Nevertheless, the alleged inconsistency is on a minor matter which rather than affecting the credibility of Florencia, it is an indication of her truthfulness and candor.

Further, appellant argues that it is incredible that, as Florencia testified, Nestor would engage appellant in a social conversation for four (4) hours before suddenly trying to kill him and, that it is more believable that he was treacherously hacked by three (3) men, including his brother and the paramour of Florencia.

What appears from the record, however, is that Nestor when to see Benjamin and engaged him in a drinking spree. When they have had enough liquor, Nestor decided to assault and kill the appellant.

The appellant also avers that if it is true that he raped his daughter Buenafe, then it is difficult to understand why, after he left for Tanay, Florencia did not report the alleged rape of Buenafe to the proper authorities. He also points out that after he allegedly raped Maritess on March 2, 1985 Florencia did not report the same for the next three days and that his family continued to live with him during the said period. The reason is obvious. Florencia was so afraid of the appellant so she did not report his dastardly acts to the proper authorities.

Appellant then calls attention to the fact that his daughters Buenafe and Maritess visited him in the hospital. Benjamin is still their father so they visited him, although he had raped them.

The defense of appellant is denial and alibi in that on March 2, 1985, he was at Barangay Sta. Ines, Tanay, Rizal working to earn a living for his family so that he could not have committed the alleged rape of his daughter Maritess.

Then and again, the Court has declared that alibi is the weakest of all defenses, easy to concoct and difficult to believe and such alibi cannot prevail over the positive assertion of the appellant.

Rape is indeed a heinous crime. More so, the manner in which the offense was committed in this case, where the victims are the very daughters of appellant. To add insult to injury, the appellant raped his daughters in the very presence of their mother. Certainly, the appellant deserves no mercy. He deserves the supreme penalty. Unfortunately, under the present Constitution, the penalty of death cannot be imposed.

It is about time that Congress should consider reviving the death penalty to cover such heinous offenses as rape to insure not only a fair and speedy criminal justice in this country but also to serve as an effective deterrent to the commission of such heinous offenses.

The penalties imposed are correct except that the indemnity to the offended parties should be increased to P40,000.00 in each case.

WHEREFORE, with the above modification as to the indemnities, the decision appealed from is **AFFIRMED** in all other respects, with costs against defendant-appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits C and C-1.

[2] Pages 41-42, Rollo.

[3] Page 40, Rollo.

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