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[G.R. No. 134531-32, July 07, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PERLITO TONYACAO, APPELLANT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us on automatic review is the Joint Decision,[1] dated October 24, 1997, of the Regional Trial Court (Branch 30), Basey, Samar (RTC for brevity) in Criminal Cases Nos. 96-2117 and 96-2118, finding appellant Perlito Tonyacao guilty beyond reasonable doubt of two counts of qualified rape and sentencing him to death for each offense.

The Information in Criminal Case No. 96-2117 reads as follows:

> That on or about the 25th day of November, 1995, **at about noontime**, in Sitio Cancosep,[2] Brgy. Navatas, Daku, Municipality of Talalora, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, armed with a jungle bolo, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with the complainant, GENELITA[3] TONYACAO, his step-daughter, against her consent and will.
>
> CONTRARY TO LAW.[4] (Emphasis supplied)

The Information in Criminal Case No. 96-2118 reads:

> That on or about the 25th day of November, 1995, at about nighttime, in Sitio Cancosep, Barangay Navatas, Daku, Municipality of Talalora, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, armed with a jungle bolo, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously had carnal knowledge with the complainant, GENELITA TONYACAO, his step-daughter, against her consent and will.
>
> CONTRARY TO LAW.[5]

When arraigned on June 10, 1996, appellant, assisted by counsel *de officio*, pleaded guilty to the crimes charged. Appellant was asked in open court whether he knew that the possible penalty for both crimes is death and he answered in the affirmative. The prosecution was then ordered to adduce evidence and a joint trial of the cases ensued.[6]

Based on the evidence of the prosecution consisting of the testimonies of private complainant, Genelita Tonyacao and Dr. Rufina Lynor Barrot, the examining physician, the following facts are established:

Genelita is the 16-year old daughter of Felicidad Asoy Tonyacao, the common-law wife of appellant. At around noontime of November 25, 1995, while Genelita was gathering coconuts at Sitio Cancosep, Brgy. Navatas, Daku, Talalora, Samar, appellant suddenly placed himself behind her and pointed a bolo at the left side of her neck. Appellant demanded that Genelita obey his demands otherwise he will kill her and other members of her family. Appellant then struck Genelita with his elbow which caused her to fall to the ground. Genelita was ordered to lie on her back. Appellant again threatened to kill her and her family. Appellant then stripped Genelita of her shorts and panty. After appellant removed his shorts and brief, he pressed himself on top of Genelita and inserted his penis into her vagina which caused her intense pain. Genelita cried in pain and she was scared because appellant poked the jungle bolo at her neck. Several minutes later, Genelita felt and saw a sticky white liquid in her vagina and appellant's penis. His beastly act done, appellant ordered Genelita to put on her panty and shorts. Appellant then directed Genelita to cook food. But Genelita kept on crying so appellant reiterated his threat to kill her and every member of her family if Genelita tells her mother about the incident. Silenced, appellant and Genelita went to the seashore where she cooked food. They stayed there until 4:00 in the afternoon when they went back home. At home, Genelita did not tell her mother about the rape incident as she was scared of the appellant who was nearby.[7]

Later in the evening of the same day when all the members of the family were asleep, Genelita was awakened by appellant. Appellant held a bolo in his hand and threatened to kill her and her family if she does not do what appellant says. Appellant removed Genelita's maong shorts and panty. Then appellant inserted his penis into her vagina. Again, Genelita just cried because she was scared. Several minutes later, appellant took his penis out. Genelita did not tell her mother of what happened because she was scared because appellant was always watching her.[8]

Three weeks later, or on December 17, 1995, Genelita was confronted by her mother. Apparently, appellant told Genelita's mother of what he had done in the course of one of their fights. Initially, Genelita did not say anything to her mother because of appellant's persistent threats to kill her and her family if she would report the incidents to anyone, but upon the intense inquiry of her mother, Genelita revealed that appellant raped her twice on November 25, 1995. On the same day, Genelita and her mother reported the matter to the Talalora Police Station. On December 18, 1995, Genelita submitted herself to a medical examination.[9]

Dr. Rufina Lynor Barrot, OB-GYNE, Department of the Eastern Visayas Regional Medical Center, Tacloban City, conducted the medico-legal examination[10] on Genelita and reported the following findings: (a) the hymen had old lacerations at 12 o'clock, 5 o'clock and 9 o'clock positions; (b) the hymen was ruptured or lacerated which had been caused by an insertion into her vaginal canal; (c) the cervix is pinkish, small, and closed with scanty whitish watery substance; and, (d) the uterus is small and negative of spermatozoa due to the fact the same could only live in the vaginal canal for seventy-two hours.[11]

After the prosecution rested its case, the defense presented its only witness in the person of appellant.

In stark contrast to the clear and categorical declarations of Genelita, appellant claims that he had a love affair with her and consensual sexual intercourse occurred between them on November 25, 1995. He testified as follows: At around noontime of November 25, 1995, he and Genelita agreed to have sexual intercourse; at that time, Genelita's mother and brother were in a hut about sixty meters away; Genelita suggested that they had sexual intercourse as her mother could no longer bear children; he refused as her common-law wife might discover it and file a case against him; notwithstanding his refusal, he and Genelita eventually engaged in sexual intercourse on a wooden floor near a coconut trunk for about four minutes; in the evening of November 25, 1995, he and Genelita had sexual intercourse again inside a nipa hut which lasted for almost an hour; and, a love affair started on July 1994 and lasted up to December 1995 when his common-law wife discovered it.[12]

On October 24, 1997, the RTC rendered its decision finding appellant guilty beyond reasonable doubt of the crimes charged. The dispositive part of the decision reads as follows:

> IN VIEW OF THE FOREGOING, the Court finds the accused Perlito Tonyacao guilty beyond reasonable doubt of having raped his common-law stepdaughter on both Informations; and pursuant to Sec. 11 of RA#7659 he is hereby sentenced to suffer the penalty of two (2) death sentences; and to indemnify the herein complainant Jenelita Tonyacao the amount of ₱100,000.00, as well as the costs of these cases.[13]

The case is now before us for automatic review pursuant to Article 47 of the Revised Penal Code, as amended. In his Brief, appellant submits for our consideration the following assignment of error:

> THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED NOTWITHSTANDING THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.[14]

Appellant argues that the quantum of proof for his conviction has not been met by the prosecution's evidence. Appellant claims that Genelita's testimony, on which the prosecution's evidence is mainly anchored, is of doubtful credibility for the reasons that: (a) if indeed she was raped, Genelita never shouted, used her arms and legs or offered the slightest resistance; (b) her actuation after the alleged first rape, when she cooked food for appellant, belies a person claiming to have been sexually abused; (c) Genelita testified on re-direct examination that during the first alleged rape appellant poked the bolo with his left hand towards the left side of Genelita's neck which is physically impossible; (d) during the alleged second rape, it is unbelievable that not one among her mother, brothers and sister were roused from their slumber although they were sleeping just beside her; and, (e) Genelita failed to immediately recount her ordeal to her mother.

An appeal in a criminal case, especially one in which the death penalty has been imposed, opens the entire case for review on any question including one not raised by the parties.[15] Thus, before we resolve the love assigned error of the RTC, we

must conduct a thorough examination of the entire records of the case.

Prefatorily, we note that the RTC did not strictly observe the guidelines for a plea of guilt to a capital offense as required by Section 3, Rule 116 of the Revised Rules of Criminal Procedure. Under said Rule, when a plea of guilty to a capital offense is entered, the trial court is duty bound to: (a) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (b) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (c) inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he so desires.

The *raison d'etre* behind the rule is that courts must proceed with caution where the punishable penalty is death for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.[16] Improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea.[17] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[18]

In the present cases, when appellant entered a plea of guilty to the crimes charged, he was simply asked in open court whether he knew that the possible penalty for both crimes is death and when he answered in the affirmative the RTC immediately directed the prosecution to adduce evidence on appellant's culpability.[19] We have repeatedly held that a mere warning that the accused faces the supreme penalty of death is insufficient.[20] Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry", as follows:

1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope

of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[21]

Clearly in these cases, the RTC failed to conduct a "searching inquiry" into the voluntariness of the appellant's plea of guilt and full comprehension thereof. The plea of guilty of the appellant was improvident; hence, inefficacious.

Nevertheless, we find that the prosecution's evidence is sufficient to sustain the judgment of conviction independently of the plea of guilt.

In rape cases, certain well-established principles and precepts are controlling, to wit: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[22]

Consequently, in rape cases the trial court is confronted, almost invariably, with the question of whom to believe – the word of the complainant or that of the accused. The task of ferreting the truth from the conflicting claims of witnesses obviously falls squarely on the trial court which must come face to face with the witnesses and observe their demeanor at the stand. It stands to reason that great reliance is placed by the appellate court on the assessment made by the trial court on the credibility of the witness.[23] The present cases are no exception for, after an exhaustive evaluation of the extant records, we find no cogent reason to depart from the rule.

We are convinced of Genelita's credibility. She spoke in a manner reflective of honest and unrehearsed testimony. She cried when she testified; her tears added poignancy to verity born out of human nature and experience.[24] She remained steadfast and never wavered in her assertion that appellant forced her to have