445 Phil. 127

SECOND DIVISION

[G.R. No. 144590, February 07, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO F. PARADEZA, ACCUSED-APPELLANT.

R E S O L U T I O N

QUISUMBING, J.:

At issue is whether this Court could grant the motion to withdraw the appeal filed by accused-appellant, despite the opposition of the Office of the Solicitor General.

In the judgment[1] dated June 7, 2000, of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case No. RTC-2511-I, the appellant, Romeo F. Paradeza, was found guilty of rape and sentenced to suffer the penalty of *reclusion perpetua*.[2]

At the time of the incident in August 1998, appellant was a resident of [redacted], where he worked as a fisherman engaged in catching *bangus* (milkfish) fry. The private complainant, AAA, lived with her parents a few houses away from appellant. AAA was then 26 years old but had the mentality of a child 6 to 7 years old.

On September 11, 1998, the Office of the Provincial Prosecutor of Zambales charged the appellant of rape allegedly committed as follows:

> That on or about the 13th day of August, 1998, at about 7:00 to 8:00 o'clock in the evening, at [redacted], Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design(s) and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of one AAA, a woman with mental disability and/or emotional disorder, without her consent and against her will, and the same accused knew of said disability of AAA, to the damage and prejudice of the latter.
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> CONTRARY TO LAW.[3]

When arraigned, appellant with assistance of counsel *de parte* pleaded not guilty to the charge. Pre-trial then ensued, during which the parties agreed to the following stipulation of facts:

1. The identity of the accused;

2. The nickname of the accused is "Rago";

3. The name of the victim was AAA and they are neighbors in [redacted];

4. The victim is mentally retarded, illiterate [could not read and write]; and

5. The existence of the medical records issued by the Municipal Health Officer of [redacted], Dr. Nicanor Egalla.[4]

The pre-trial conference was then terminated and Criminal Case No. RTC 2511-I was accordingly tried.

The prosecution's evidence established that:

Early in the evening of August 13, 1998, complaining witness was at their house in [redacted] with her younger brother [redacted], who was then watching TV.[5] The victim was about to go out of their house when appellant, who was about to enter, grabbed her.[6] Appellant then brought her back inside the house and laid her on a bamboo bed.[7] He undressed her and removed her underwear. He took out a knife, which he placed on top of the "*banguera*."[8] The victim became very frightened as a result.[9] Appellant then fondled her breasts. He undressed himself, went on top of private complainant, and inserted ("*tinusok*")[10] his phallus ("*buto*") inside her vagina.[11] She felt pain as a result and noticed blood flow from her private part.[12] Appellant covered her mouth with his hands and told her not to tell his wife, Vivian.[13] Appellant then twisted her arms. After satiating his lust, appellant used her clothing to wipe her pudendum. Appellant dressed her. After putting his clothes on, he went home.

Private complainant told her grandmother and her mother, [redacted], about the incident. [redacted] later brought the victim to Dr. Nicanor Egalla, Municipal Health Officer of [redacted] for a medico-legal examination. Dr. Egalla found the victim to be mentally retarded.[14] His examination of her private parts disclosed "Healed laceration of the hymen at 3:00, 6:00, and 9:00 o'clock positions"[15] and a fresh "laceration at 6:00 o'clock position" of the victim's vulva.[16] Dr. Egalla declared that the genital injuries suffered by private complainant were consistent with sexual intercourse.[17]

The victim was also referred by the Department of Social Welfare and Development (DSWD) to Estrella B. de Sesto, a professional psychologist and guidance counselor of Columban College, Olongapo City, for a psychological examination. Ms. de Sesto found that while the victim had a chronological age of 26 years, her mental ability was that of a 6-or 7-year-old child.[18]

Appellant raised the defense of denial and alibi. He averred that at the time of the incident he was out at sea the whole night with his wife catching *bangus* fry.[19] Appellant declared that he then sold his catch to his neighbor, one Noel Apsay, after which he went to sleep.[20] He also claimed that the reason why he was charged with rape was due to his refusal to heed the demand of the victim's grandmother that he vacate the place where he was residing.[21] He also declared that private

complainant was not a credible witness, as she was widely known in their neighborhood to be a "flirt."[22] He did admit knowing that the victim had a mental disability.[23]

On rebuttal, the prosecution presented Albert Araña, barangay captain of [redacted], who declared that he had known the victim for eight (8) years or so and refuted appellant's allegation that she was a woman of loose morals.[24] He also testified that he knew the victim's family and described them as a poor and peaceable family, not known for creating trouble in the community.[25]

The trial court found complainant to be a credible witness and, as earlier stated, convicted appellant of the offense charged and sentenced him to suffer the penalty of *reclusion perpetua*.

Seasonably, appellant filed his notice of appeal anchored on the sole assignment of error that:

> THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[26]

On April 3, 2002, however, the Public Attorney's Office, as counsel for appellant, filed a motion to withdraw his appeal.[27] Earlier, the Brief for the appellant was filed on June 1, 2001, and the Brief for the appellee was filed on November 20, 2001. In our resolution dated July 17, 2002, we required the Solicitor General to comment on said motion.[28] The OSG, in its comment seeking stiffer penalties, pointed out that since the appellee as well as the appellant already filed briefs, under the Rules of Court, the approval of appellant's motion to withdraw his appeal is now a matter of discretion on the part of this Court.[29]

It is not amiss to point out that at this time the case is not yet submitted for our decision. The only question before us now is whether or not to grant appellant's motion to withdraw his appeal.

Under Rule 50, Section 3 of the 1997 Rules of Civil Procedure,[30] the withdrawal of an appeal is a matter of right before the filing of the appellee's brief. After that, withdrawal may be allowed in the discretion of the court. Said Rule is applicable to this case pursuant to Rule 124, Section 18 of the 2000 Rules of Criminal Procedure. [31] In the present case, accused-appellant's motion to withdraw his appeal was made only after the OSG had filed the Brief for Appellee. However, the Court had required appellant to file his Reply Brief per its Resolution dated December 10, 2001. It could therefore be said that the accused-appellant had not yet completed the process of filing briefs when he moved to withdraw his appeal, a situation which may call for a more liberal rule. Additionally, it is our impression that from the records of this case, appellant is hardly literate functionally and of very low socio-economic standing as a mere *bangus* fry catcher. In making his appeal, he is actually wagering his life as against his sentence below, a point not often stressed to or understood by the convict. In any event, we are persuaded that this Court admittedly has the discretion whether to grant or not the withdrawal sought.