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[G.R. No. 121211, April 30, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RONETO DEGAMO ALIAS "ROY", APPELLANT.

D E C I S I O N

PER CURIAM:

Before us for automatic review is a decision rendered by the Regional Trial Court (Branch 12) of Ormoc City imposing the supreme penalty of death on appellant Roneto Degamo alias "Roy" for the crime of rape with the use of a deadly weapon and the aggravating circumstances of dwelling and nighttime.

On October 4, 1994, a complaint was filed before the trial court charging appellant with the crime of rape to which, upon arraignment, pleaded not guilty.

On January 17, 1995, before the start of the trial proper, the court a quo allowed the complaint to be amended to include the allegation that by reason of the incident of rape, the victim has become insane[1], to wit:

> The undersigned Prosecutor accuses RONETO DEGAMO alias Roy of the crime of RAPE committed as follows:
>
> > That on or about the 1st day of October 1994 at around 1:00 o'clock in the early morning, in Brgy. Punta, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused RONETO DEGAMO alias Roy, being then armed with a bladed weapon, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein ELLEN VERTUDAZO, against her will and in her own house.
> >
> > All contrary to law and with the aggravating circumstances that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense; and that by reason of the incident of rape, the victim become insane.
> >
> > In violation of Article 335, Revised Penal Code.

Upon re-arraignment, appellant pleaded not guilty to the charge.[2]

Trial ensued.

As borne out by its evidence, the following is the version of the prosecution:

Complainant Ellen Vertudazo and her children were living in a rented apartment at Barangay Punta, Ormoc City. She and her family just moved into the neighborhood on July 15, 1994.[3] She was not personally acquainted with appellant although she knew him to be one of their neighbors. On August 2, 1994, her brother-in-law, Venancio, came from the province for a visit and stayed in her house. It was during this time that appellant became acquainted with Venancio. On September 30, 1994, appellant invited Venancio for a night out. Venancio left complainant's house immediately after supper, telling her that he would return to the house. Later that night, or on October 1, 1994, at around 1:00 in the morning, complainant heard someone calling her name. She unwittingly opened the door thinking that Venancio had returned.[4] Thereupon, appellant forced his way inside the house and poked a knife at complainant's neck. She tried to move away from appellant but he grabbed her and told her that he would kill her if she will not accede to his demands. Appellant then told her to put off the light, strip off her clothes and not make any noise. Overwhelmed with fear, complainant meekly followed the orders of appellant who proceeded to kiss her lips, breasts and all parts of her body. He laid her on the concrete floor and succeeded in having carnal knowledge of her. Appellant was holding the knife while having sexual intercourse with complainant. He warned her not to tell anyone about the incident, then he left. Complainant went upstairs and just cried. In the morning of the same day, complainant reported the incident to the Barangay Captain and to the police. She submitted herself for medical examination at the health. center on October 3, 1994. Upon learning of the incident, her husband, who was working in Saudi Arabia, immediately came home.[5]

Due to her traumatic experience at the hands of appellant, complainant underwent psychiatric treatment in Tacloban City.[6] She was first brought to Dr. Gemelina Cerro-Go[7] for treatment on November 8, 1994. Dr. Go found her case of psychosis already acute and chronic. Complainant was talking to herself and each time Dr. Go would ask her a question, she repeatedly said, *"Gi padlock ang akong hunahuna."* Dr. Go also observed that complainant talked irrelevantly, had lost association and had severe destructive inclinations. She did not listen to anybody and just kept staring outside the window. Dr. Go concluded that complainant was suffering from psychosis, a form of mental disorder, induced by an overwhelming trauma secondary to rape. Complainant visited Dr. Go again on December 15, 1994 and on January 3, 1995. Dr. Go prescribed anti-psychotic drugs to complainant who, after three weeks of treatment, showed signs of improvement. Complainant could already sleep although she has not yet regained her normal or regular sleeping pattern. Her delusions and hallucinations were not as serious anymore, but she was still out of contact. She could not function normally as a wife and as a mother. Since complainant still suffered from psychosis, Dr. Go administered to her a dose of low acting tranquilizer injections, anti-depressants and short acting oral tablets.[8]

Dr. Go clarified that psychosis is usually the technical term for insanity.[9] She declared that complainant has not fully recovered from psychosis and that without continuous treatment, complainant would regress and she would completely lose all aspects of functioning.[10]

Appellant's version is based on his lone testimony. He admits that he and complainant were neighbors but claims that they were lovers. He further testified that he met complainant for the first time during the last week of August 1994 at a

neighborhood store. Complainant readily agreed when he asked her if it would be possible for them to get to know each other better. Later, at around 8:00 o'clock in the evening, he and complainant had a conversation in front of the gate of her apartment. He learned from her that her husband was working abroad. When he told the complainant that he wanted to court her, complainant said, "It's up to you." Encouraged by complainant's reply, he returned at midnight and knocked at the gate of her apartment. Complainant peeped through the jalousies and went down to the first floor. She opened the gate and let him in. Upon having entered the house, he sat at the sofa, placed his hands on the shoulder of complainant, who by then had already sat beside him, and touched her ears. She did nothing to repel appellant's advances but just looked up. When asked to remove her shirt, complainant willingly obliged. He proceeded to kiss complainant all over. She removed her short pants when appellant asked her to do so. He then removed his shirt and continued to kiss complainant's breasts, chest and thighs. He wanted that they move upstairs but she demurred saying that her children were upstairs. Complainant instead suggested that they move to the cement floor since the sofa was noisy. He got aroused after transferring to the floor, so he removed his short pants and briefs. Complainant likewise removed her underwear. They had sexual intercourse without him having to use force on complainant. Thereafter, they dressed up. He left the place at 1:00 in the morning. They repeated the same act on four more occasions usually at 12:00 midnight. He did not have to use force, much less threaten complainant with a knife when they had sexual intercourse on October 1, 1994.[11]

On May 22, 1995, the trial court rendered a decision, the dispositive portion of which reads as follows:

> *WHEREFORE, decision is hereby rendered finding the accused RONETO DEGAMO, a. k. a. Roy, guilty beyond reasonable doubt of rape defined and penalized under paragraphs 2 and 3 of Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Appreciating the aggravating circumstances of dwelling and nighttime with no mitigating circumstance to offset any of the two and pursuant to Article 63 of the Revised Penal Code, this court imposes upon the same Roneto Degamo, a.k.a. Roy, the extreme penalty of DEATH. Further, the same Roneto Degamo, a. k. a. Roy, is directed to indemnify Ellen Vertudazo the sum of THIRTY THOUSAND PESOS (P30,000.00) and to pay the costs.*
>
> *As the sentence imposed is death, the jail warden of Ormoc City is directed to immediately commit the person of Roneto Degamo, a. k. a. Roy, to the National Bilibid Prisons at Muntinlupa, Metro Manila while awaiting the review of this decision by the Supreme Court.*
>
> *SO ORDERED.*[12]

Hence, this automatic review.

A discussion of certain procedural rules is in order before going into the merits of the case. It has not escaped our notice that the complaint for rape with use of a deadly weapon was amended after arraignment of appellant to include the allegation that the victim has become insane by reason or on the occasion of the rape. Although the penalty for rape with the use of a deadly weapon under the original Information is *reclusion perpetua to death*, the mandatory penalty of death is

imposed where the victim has become insane by reason or on the occasion of rape as alleged in the Amended Information.

Under Section 14, Rule 110 of the Rules of Court, an amendment after the plea of the accused is permitted only as to matters of form, provided: (i) leave of court is obtained; and (ii) such amendment is not prejudicial to the rights of the accused. A substantial amendment is not permitted after the accused had already been arraigned.

In *Teehankee, Jr. vs. Madayag*,[13] we had occasion to state that a substantial amendment consists of recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following were held to be merely formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) amendment, which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.

We further elucidated in the *Teehankee* case that the test as to whether an amendment is only of form and an accused is not prejudiced by such amendment is whether or not a defense under the information as it originally stood would be equally available after the amendment is made, and whether or not any evidence which the accused might have would be equally applicable to the information in one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.[14]

Tested against the foregoing guidelines, the subject amendment is clearly not one of substance as it falls under all of the formal amendments enumerated in the *Teehankee* case. The insertion of the phrase that the victim has become insane by reason or on occasion of the rape in the Information merely raised the penalty that may be imposed in case of conviction and does not charge another offense different from that charged in the original Information. Whatever defense appellant may have raised under the original information for rape committed with a deadly weapon equally applies to rape committed with a deadly weapon where the victim has become insane by reason or on occasion of the rape. The amendment did not adversely affect any substantial right of appellant. Therefore, the trial court correctly allowed the amendment.

Furthermore, it is also settled that amendment of an information to charge a more serious offense is permissible and does not constitute double jeopardy even where the accused was already arraigned and pleaded not guilty to the charge, where the basis of the more serious charge did not exist, but comes as a subsequent event.[15] In this case the basis for the amendment was the psychosis of complainant which was determined after the filing of the information.

Unlike other qualifying circumstances, insanity of the victim by reason or on occasion of the rape may not be readily discerned right after the commission of the crime. The resultant insanity of the victim could be easily mistaken as a mere initial

reaction, such as shock, to the incident. In other cases, it may take some weeks or even months for the insanity of the victim to manifest. Consequently, a psychiatrist would need some time with the victim before concluding that she is indeed suffering from insanity as a result of rape. Under these circumstances, the subsequent diagnosis of insanity by reason or on occasion of the rape is akin to a supervening event; in which case, the corresponding amendment of the information may be allowed, as correctly done by the trial court.

Besides, the trial proper started only after appellant had been re-arraigned and appellant never objected to the amendment at any stage of the proceedings. It is basic that objection to the amendment of an information or complaint must be raised at the time the amendment is made, otherwise, silence would be deemed a consent to said amendment. It is a time-honored doctrine that objection to the amendment must be seasonably made, for when the trial was had upon an information substituted for the complaint or information without any objection by the defense, the defect is deemed waived. It cannot be raised for the first time on appeal.[16]

We shall now proceed to the merits of the case.

The trial court gave credence to the testimony of victim Ellen Vertudazo that appellant raped her with the use of a deadly weapon. It held that she would not have agreed to endure the indignities of physical examination of her private parts and the embarrassment of a public trial were it not for a desire to seek justice for herself. Moreover, the trial court found that other than the self-serving testimony of appellant, no evidence was introduced to support his claim that he and complainant were having an illicit love affair; and that there was no ill motive on the part of complainant for imputing the serious charge of rape against appellant.

In his Appellant's Brief, appellant raises a single assignment of error, to wit: "The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape", in support of which, he argues:

1. The fact that at first complainant said she opened the door for the accused and later denied this, is not an inconsequential contradiction.

2. Complainant had not become insane by reason of the rape because she gave intelligent answers on the witness stand.

We find the appeal without merit.

It is doctrinal that the evaluation of testimonial evidence by trial courts is accorded great respect precisely because of its chance to observe first-hand the demeanor of the witnesses, a matter which is important in determining whether what has been testified to may be taken to be the truth or falsehood.[17] Appellant failed to show any cogent reason for us to disturb the findings of the trial court.

Complainant and her family had just moved in the neighborhood a little more than two months before she was raped. Prior to the incident of rape, she only knew appellant as one of her neighbors but did not personally know him.[18] Appellant would have us to believe that hours after a chance meeting at a nearby sari-sari