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EN BANC

[G.R. No. 120420, April 21, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUFINO MIRANDILLA BERMAS, ACCUSED-APPELLANT.

D E C I S I O N

VITUG, J.:

In convicting an accused, it is not enough that proof beyond reasonable doubt has been adduced; it is also essential that the accused has been duly afforded his fundamental rights.

Rufino Mirandilla Bermas pleaded not guilty before the Regional Trial Court of Parañaque, Branch 274, Metro Manila, to the crime of rape under a criminal complaint, which read:

"C O M P L A I N T

"The undersigned complainant as assisted by her mother accuses Rufino Mirandilla Bermas, of the crime of Rape, committed as follows:

> "That on or about the 3rd day of August 1994, in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, while armed with a knife and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will.
>
> "CONTRARY TO LAW
> "Parañaque, Metro Manila
> "August 8, 1994

"(SGD) MANUEL P. BERMAS

Complainant

"Assisted by:

"(SGD) ROSITA BERMAS
Mother"[1]

Evidence was adduced during trial by the parties at the conclusion of which the lower court, presided over by Hon. Amelita G. Tolentino, rendered its decision, dated 02 May 1995, finding the accused guilty of the offense charged and sentencing him to suffer the extreme penalty of death.

The death penalty having been imposed, the case has reached this Court by way of automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659 **(otherwise known as An Act To Impose Death Penalty on Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, as amended, Other Special Penal Laws, and For Other Purposes, which took effect on 31 December 1993).**

The prosecution, through the Office of the Solicitor General, gave an account, rather briefly, of the evidence submitted by the prosecution.

> "On August 3, 1994, complainant Manuela Bermas, 15 years old, was raped by her own father, appellant Rufino Bermas, while she was lying down on a wooden bed inside their house at Creek Drive II, San Antonio Valley 8, Parañaque, Metro Manila (pp. 6-7, TSN, Oct. 19, 1994). Armed with a knife, appellant removed the victim's shorts and panty, placed himself above her, inserted his penis in her vagina and conducted coital movements (pp. 7-8, ibid.). After the appellant satisfied his lustful desire, he threatened the victim with death if she reports the incident to anyone. (p. 9, ibid.)
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> "On August 9, 1994, complainant was medically examined at the NBI, which yielded the following findings:
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> "The findings concluded: 1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination; 2. Hymen, intact but distensible and its orifice wide (2.7 cm. In diameter) as to allow complete penetration by an average sized, adult, Filipino male organ in full erection without producing any hymenal laceration."[2]

The defense proffered the testimony of the accused, who denied the charge, and that of his married daughter, Luzviminda Mendez, who attributed the accusation made by her younger sister to a mere resentment by the latter. The trial court gave a summary of the testimony given by the accused and his daughter Luzviminda; *viz*:

> "The accused vehemently denied that he has ever committed the crime of rape on her daughter, the complainant. He told the Court that he could not do such a thing because he loves so much his daughter and his other children. In fact, he said that he even performed the dual role of a father and a mother to his children since the time of his separation from his wife. The accused further told the Court that in charging him of the crime of rape, the complainant might have been motivated by ill-will or revenge in view of the numerous scoldings that she has received from him on account of her frequent coming home late at night. The accused stressed that he knew of no other reason as to why his daughter, the complainant, would ever charge him of the crime of rape except probably in retaliation for being admonished by him whenever she comes home late in the night.
>
> "The married daughter of the accused, who testified in his behalf, denied that the complainant was raped by the accused. She said that the complainant did not come home in the night of August 3, 1994, and that,

she is a liar. She told the Court that the concoction by the complainant of the rape story is probably due to the resentment by the latter of the frequent scoldings that she has been receiving from the accused. She further added that she was told by the previous household employer of the complainant that the latter is a liar. She went on to testify further that she does not believe that the accused, who is her father, raped the complainant, who is her younger sister."[3]

The trial court, in its decision of 02 May 1995, found the case of the prosecution against the accused as having been duly established and so ruled out the defense theory of denial and supposed ill-will on the part of private complainant that allegedly had motivated the filing of the complaint against her father. The court adjudged:

"WHEREFORE, this Court finds the accused guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the DEATH PENALTY, to indemnify the complainant in the amount of P75,000.00, Philippine Currency, and to pay the costs.

"SO ORDERED."[4]

In their 61-page brief, defense counsel Fernandez & Kasilag-Villanueva (in collaboration with the Anti-Death Penalty Task Force), detailed several errors allegedly committed by the court *a quo*; thus:

"I. THE ACCUSED WAS DEPRIVED OF DUE PROCESS.

"A. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE AND VIGILANT COUNSEL

1. The trial court did not observe the correct selection process in appointing the accused's counsel de officio;

2. The Public Attorney could not give justice to the accused;

    a. Negligent in not moving to quash the information on the ground of illegal arrest;

    b. Negligent in not moving to quash the information on the ground of invalid filing of the information;

    c. Negligent in not moving for a preliminary investigation;

    d. Negligent in not pointing out the unexplained change in the case number;

    e. Negligent in not moving to inhibit the judge;

    f. Negligent in her conduct at the initial trial.

3. The Vanishing Second Counsel de Officio

a. He was not dedicated nor devoted to the accused;

b. His work was shoddy;

4. The Reluctant Third Counsel de Officio

5. The performance of all three counsels de officio was ineffective and prejudicial to the accused.

"B. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE TRIED BY AN IMPARTIAL JUDGE AND TO BE PRESUMED INNOCENT.

"C. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE HEARD AND FOR WITNESSES TO TESTIFY IN HIS BEHALF.

"D. THE ARRAIGNMENT OF THE ACCUSED WAS INVALID.

"E. THE ACCUSED WAS DENIED THE EQUAL PROTECTION OF THE LAW.

"II. THE TRIAL COURT DID NOT `SCRUTINIZE WITH EXTREME CAUTION' THE PROSECUTION'S EVIDENCE, MISAPPRECIATED THE FACTS AND THEREFORE ERRED IN FINDING THE ACCUSED GUILTY OF RAPE BEYOND REASONABLE DOUBT."[5]

The Court, after a painstaking review of the records, finds merit in the appeal enough to warrant a remand of the case for new trial.

It would appear that on 08 August 1994 Manuela P. Bermas, then 15 years of age, assisted by her mother Rosita Bermas, executed a sworn statement before SPO1 Dominador Nipas, Jr., of the Parañaque Police Station, stating, in sum, that she had been raped by accused Rufino Mirandilla Bermas, her own father, in 1991 and 1993, as well as on 03 August 1994, particularly the subject matter of the complaint, hereinbefore quoted, duly signed and filed conformably with Section 7, Rule 112, of the Rules of Court. The Second Assistant Prosecutor, issued a certification to the effect that the accused had waived his right to a preliminary investigation.

On the day scheduled for his arraignment on 03 October 1994, the accused was brought before the trial court without counsel. The court thereupon assigned Atty. Rosa Elmira C. Villamin of the Public Attorney's Office to be the counsel *de officio*. Accused forthwith pleaded not guilty. The pre-trial was waived.

The initial reception of evidence was held on 19 October 1994. The prosecution placed complainant Manuela Bermas at the witness stand. She testified on direct examination with hardly any participation by defense counsel who, inexplicably, later waived the cross-examination and then asked the court to be relieved of her duty as counsel *de officio*.

"ATTY. VILLARIN:

And I am requesting if this Honorable Court would allow me and my pañero besides me, would accede to my request that I be relieved as counsel de officio because I could not also give justice to the accused

because as a lady lawyer . . . if my pañero here and if this Honorable Court will accede to my request.

"COURT:

It is your sworn duty to defend the helpless and the defenseless. That is your sworn duty, Mrs. Counsel de Officio. Are you retracting?

"ATTY. VILLARIN:

That is why I am asking this Honorable Court."[6]

Counsel's request was granted, and Atty. Roberto Gomez was appointed the new counsel *de officio*. While Atty. Gomez was ultimately allowed to cross-examine the complainant, it should be quite evident, however, that he barely had time, to prepare therefor. On this score, defense counsel Fernandez & Kasilag-Villanueva in the instant appeal would later point out:

"To substitute for her, the Public Attorney recommended Atty. Roberto Gomez to be appointed as defense counsel de oficio. And so the trial court appointed him.

"Atty. Gomez asked for a ten minute recess before he began his cross examination, presumably to prepare. But a ten minute preparation to cross examine the complainant upon whose testimony largely rests the verdict on the accused who stands to be meted the death penalty if found guilty, is far too inadequate. He could not possibly have familiarized himself with the records and surrounding circumstances of the case, read the complaint, the statement of the complainant, the medico-legal report, memos of the police, transcripts and other relevant documents and confer with the accused and his witnesses, all in ten minutes."[7]

The prosecution abruptly rested its case after the medico-legal officer had testified.

The reception of the defense evidence was scheduled for 12 December 1994; it was later reset to 09 January 1995. When the case was called on 09 January 1995, the following transpired:

"COURT:

Where is the counsel for the accused?

"COURT:

Did he file his withdrawal in this case? It is supposed to be the turn of the defense to present its evidence.

"PROSECUTOR GARCIA:

Yes, Your Honor. The prosecution had already rested its case.

"COURT: