

FIRST DIVISION

[G.R. No. 129567, December 04, 1998]

JOCELYN LABARO, REPRESENTED BY HER MOTHER, EVELYN LABARO, PETITIONER, VS. HONORABLE VINCENT EDEN C. PANAY AND ALFREDO AVIADOR, RESPONDENTS.

DE C I S I O N

DAVIDE, JR., C.J.:

We are urged in this petition for *certiorari* and mandamus under Rule 65 of the 1997 Rules of Civil Procedure to set aside the 25 June 1997 Order of public respondent Judge Vincent Eden C. Panay of Branch 30 of the Regional Trial Court of Bayombong, Nueva Vizcaya, in Criminal Case No. 943 granting the petition for bail of accused Alfredo Aviador and fixing the bail at P200,000.

The antecedents are not disputed.

In the Amended Information^[1] filed with the trial court, private respondent Alfredo Aviador (hereafter ALFREDO) was charged with the crime of rape, allegedly committed as follows:

That on or about 4:30 o'clock in the afternoon of April 21, 1996, at an uninhabited place, in the Municipality of Kayapa, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Jocelyn Labaro while she was unconscious caused by the violence inflicted upon her by the said accused and by reason thereof she has become insane, to her own damage and prejudice.

The witnesses presented by the prosecution were herein petitioner Jocelyn Labaro (hereafter JOCELYN), the offended party; Dr. Antonio Labasan, the medico-legal officer who physically examined JOCELYN; Dr. Alice Anghad, the psychiatrist who conducted the psychiatric and mental examination on the rape victim.^[2]

After these witnesses completed their testimony, Judge Panay, acting on ALFREDO's petition for bail filed earlier, issued on 25 June 1997 an Order^[3] admitting ALFREDO to bail and fixing his bail bond at P200,000. The Order reads as follows:

All persons in custody shall be entitled to bail as a matter of right, except those charged with a capital offense when the evidence of guilt thereof is strong.

A capital offense, as the term is used in this Rule, is an offense which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, may be punished with death

(Sections 3 & 4, Rule 114, Rules of Court).

With the effectivity of Republic Act [No.] 7659, the death penalty is now imposed on certain heinous crimes, one of which is rape by reason or on the occasion of which, the victim has become insane, at present the instant offense with which the accused, Alfredo Aviador, is charged.

The accused in his petition for bail momentarily concentrates on the circumstance of insanity and not on the alleged rape itself and attempts to go beyond mere demonstration of the weakness of the prosecution's evidence by strongly advancing the ground that the victim is not suffering from insanity by reason or on the occasion of the alleged rape.

As expected, the prosecution vehemently opposed this petition with its evidence adduced from the presentation of its witnesses, the victim herself, Jocelyn Labaro and Dr. Alice Anghad whose concentration of study and work is Psychiatry.

Due perhaps to the dearth of jurisprudence on its circumstance of insanity upgrading rape to the category of a heinous crime, the prosecution contents itself by saying, on the basis of Dr. Anghad's testimony of victim's suffering from some degree of psychosis as a result of the traumatic experience, that the law does not qualify whether said insanity is temporary or permanent.

It is again perhaps the prosecution's observation of the clearly mental and emotional normalcy of the victim during the several times when she testified that the prosecution concluded that that bit of psychosis could have been permanent without continued medication.

To the mind of the Court, it would take more than what the medical doctor-witness termed as psychosis for the alleged crime of rape by reason or on the occasion of which the victim suffered insanity, in order to earn the penalty of death.

The Court as of now, without pre-judging either the alleged crime of rape or the aggravating circumstance of insanity, overrules the opposition and grants the petition.

Premises considered, the accused Alfredo Aviador is admitted to bail for his provisional liberty in the amount of P200,000.00.

It is however directed that for the accused to avail of the bail bonds earlier posted which however were later on cancelled, the bondsmen who posted them must again voluntarily sign new forms constituting the same properties as bail bonds to avoid any technical defect that may have arisen due to their earlier cancellation.

A new Order for release on provisional liberty of the accused shall be issued upon completion of the requirements ordered by the Court.

SO ORDERED.

The next day, the prosecution filed a motion to reconsider^[4] the order.

In his Order^[5] of 2 June 1997, Judge Panay denied the motion for reconsideration. He insisted on his finding that Dr. Anghad's testimony regarding JOCELYN's insanity was unbelievable.

Forthwith, Assistant Provincial Prosecutor Edilberto H. Calip filed this petition alleging that the court, in determining whether the accused was entitled to bail, should have considered the evidence of the crime of rape itself and not merely the evidence of the aggravating circumstance of insanity. Since the accused is charged with a crime punishable by *reclusion perpetua* to death and the evidence of his guilt, which the prosecution established and which ALFREDO did not rebut, is strong he should not have been admitted to bail pursuant to Section 7, Rule 114 of the Rules on Criminal Procedure, as amended by this Court's Administrative Circular No. 12-94 dated 16 August 1994. The challenged order is, therefore, without basis in fact and in law and was issued with grave abuse of discretion.

We initially dismissed the petition for petitioner's failure to submit a verified statement of material dates to determine the timeliness of the filing of the petition.^[6] Petitioner moved for a reconsideration. Before acting thereon, we required the Office of the Solicitor General (OSG) to comment on the petition.

In its Comment, the OSG agrees with petitioner that Judge Panay committed grave abuse of discretion amounting to lack or excess of jurisdiction in admitting ALFREDO to bail; in disregarding Dr. Alice Anghad's testimony; and in stating, without any legal or medical support whatsoever, that psychosis is not the insanity contemplated by law which can aggravate the crime of rape and raise the penalty to death.^[7] Besides, even assuming *arguendo* that JOCELYN did not suffer from any form of insanity as a result of the rape, her testimony on the crime of rape itself and on the culpability of ALFREDO is strong. Then, too, JOCELYN's testimony was corroborated by Dr. Labasan and was not rebutted by ALFREDO. The penalty for rape under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, is however, if by reason or on occasion of the rape the victim has become insane, the penalty shall be death. The OSG concludes that pursuant to Section 7 of Rule 114 of the Rules of Court, Judge Panay should not have granted ALFREDO's petition for bail. It then recommends that the motion for reconsideration be granted and the instant petition be given due course.

In our resolution of 13 March 1998, we granted the motion for reconsideration, reinstated the petition, and required the respondents to comment on the petition.

In his Reply to the Comment of the OSG, ALFREDO contends that the evidence of guilt is not strong both on simple rape and on rape on the occasion of which the victim has become insane. First, JOCELYN went with ALFREDO to view a movie in another municipality three days after she was allegedly raped; such act is contrary to human experience and human conduct. Second, Dr. Anghad was unsure of her finding of insanity.

Before we go any further, some procedural concerns must be addressed. We noticed that JOCELYN is the petitioner and is assisted by the Assistant Provincial Prosecutor. Since she filed the petition in her capacity as the private complainant, the latter

cannot represent her. The Assistant Provincial Prosecutor might have honestly believed that the petition will necessarily benefit the plaintiff, the People of the Philippines, or is for all intents and purposes both for the public and the private prosecutors.

It must, however, be stressed that if the public prosecution is aggrieved by any order or ruling of the trial judge in a criminal case, the OSG, and not the prosecutor, must be the one to question the order or ruling before us.^[8] The OSG is the law office of the Government authorized by law to represent the Government or the People of the Philippines before us and before the Court of Appeals in all criminal proceedings, or before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.^[9]

Nevertheless, since the challenged order affects the interests of the State or the plaintiff People of the Philippines, we opted not to dismiss the petition on this technical ground. Instead, we required the OSG to comment on the petition, as we had done before in some cases.^[10] In light of its Comment, we rule that the OSG has ratified and adopted as its own the instant petition for the People of the Philippines.

The petition is meritorious.

The crime of rape charged in the Amended Information was allegedly committed on 21 April 1996, or after the effectivity of R.A. No. 7659.^[11] The penalty for rape under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, is *reclusion perpetua*; however, when by reason or on the occasion of the rape the victim has become insane, the penalty is death. In this case, the Amended Information alleges that by reason of the rape, the victim became insane. If thus proved, ALFREDO could be sentenced to suffer the death penalty.

Judge Panay admitted ALFREDO to bail, in his Order of 25 September 1997, on the ground that the prosecution's evidence failed to establish that JOCELYN became insane by reason of the rape. He never ruled that the evidence of the crime and of ALFREDO's culpability was not strong. Obviously, Judge Panay forgot that even if the special aggravating circumstance of insanity was not duly proved, the unrebutted testimony of JOCELYN established a strong *prima facie* case for rape, the penalty for which is *reclusion perpetua*. Section 13 of Article III of the Constitution expressly provides that "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong shall, before conviction, be bailable by sufficient sureties, or released on recognizance as may be provided by law." Likewise, under Section 7, Rule 110 of the Rules of Court, as amended by this Court's Administrative Circular No. 12-94 dated 16 August 1994, no person charged with an offense punishable by death or *reclusion perpetua* or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution.

Needless to state, Judge Panay grievously erred in admitting ALFREDO to bail solely on the ground that the death penalty could not be meted out to him because of insufficient proof of insanity.

The Order of 25 September 1997 suffered from another flaw. We have ruled time and again that in an order granting or denying bail in cases where the offense charged is punishable by *reclusion perpetua* or higher, the trial judge must make a summary of the evidence offered by the prosecution and formulate a conclusion as to whether the evidence of guilt of the accused is strong.^[12] As indubitably shown in the aforementioned 25 June 1997 Order, Judge Panay did not. Neither did he in the order of 2 July 1997. He only tried to prove that JOCELYN had not become insane by reason of the rape. He did not declare that the rape itself was not committed or the evidence thereof was not strong. On the contrary, he was "impressed with [JOCELYN's] intelligence, calmness, spontaneity and articulateness." Indeed, as pointed out by the OSG, JOCELYN testified in a clear and straightforward manner on how she was raped by ALFREDO. Thus:

Q Now do you know the accused in this case Alfredo Aviator?

A Yes, sir.

Q And why do you know the accused in this case?

A Because they were friends with my father, Sir.

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Q Now Madam witness on April 21, 1996 at around 4:30 in the afternoon, do you recall where were you?

A Yes, sir.

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Q Now on said date and time did you have an occasion to see or meet the accused?

A I saw him, sir.

Q And did he see you also?

A He saw me standing, sir.

Q And do you know what did he do when he saw you?

A He stopped by me, sir.

Q Do you mean to say, he [was] riding on a vehicle at that time?

A There was, sir.

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Q And do you know what kind of jeep?

A Passenger jeep, sir.

Q And when the accused stopped by you what did you do if any?

A He forced me to ride on that vehicle, sir.

Q And will you tell the court or will you please demonstrate how the accused forced you to ride on his jeep?

A Come'n he said, I am going to Sta. Fe. Any way I will not pick up passengers anymore.

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Q Now Miss Witness what did you do when the accused told you to board his vehicle?

A I boarded on his jeep because I was eager to go home because it [was] already late in the afternoon, Sir.

Q Now were there other passengers aboard the jeep when