

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CONRADO SAMILLANO, DEFENDANT AND APPELLANT.

G.R. NO. L-31375. April 22, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is a rape case. Conrado Samillano appealed from the decision of the Court of First Instance of Occidental Negros, convicting him of that crime and sentencing him to reclusion perpetua (Criminal Case No. 9768).

The case presents the pathetic and distressing spectacle of a fourteen-year old girl who swore that she was raped by her mother's paramour, her quasi-stepfather (if that term may be permissibly coined). The mother and quasi-stepfather denied the rape. The girl's paternal uncle, siding with her, revealed that she and her mother had requested him to assist them in filing the complaint for rape. After hearing the conflicting contentions, the trial court concluded that rape was committed.

The factual background is as follows:

Basilisa Garde, who was forty-six years old in 1969, has five children by her late husband, Juan Samillano. The fourth child is Dioleta Samillano who was fourteen years old in January, 1969.

For about seven years prior to 1969, Basilisa had been cohabiting with Conrado Filemon, who is nine years her junior. He changed his family name to Samillano. They have begotten four children. All nine of Basilisa's children used to live with her and her common-law husband. He supported that big family out of his daily wage of four pesos and fifty centavos as a tractor driver at Hacienda Progreso, Isabela, Occidental Negros, owned by Sergio Montinola.

The family lived in a sort of duplex apartment provided by the hacienda. The house, which was about twenty feet long and twelve feet wide, was divided by a plywood partition. One-half of the house was occupied by Samillano, Basilisa and the children. The other half was occupied by another family.

Prosecution's evidence. – According to the prosecution's version, on January 30, 1969, Basilisa Garde, with Dioleta and her other children, were in Biscom, Binalbagan, Occidental Negros. In the afternoon of that day, Conrado Samillano fetched Dioleta in order to take her to their apartment in Hacienda Progreso, Isabela. Basilisa was left in Binalbagan because her youngest child was sick. On the way, Dioleta and Samillano passed Hacienda Nalipay. There, Dioleta requested Danny, a nephew of Samillano, to accompany her.

They arrived at Hacienda Progreso at around three o'clock in the afternoon. Samillano scolded Dioleta for having invited Danny to go along with them. He sent Danny home. Dioleta went to the room of the apartment to get her clothes preparatory to her return to Binalbagan. Samillano followed her. He removed his pants and took liberties with Dioleta's person. He proposed that they indulge in sexual intercourse. She said. "I will not consent".

Because of her refusal, he slapped her and pointed at her a foot-long butcher's knife. He threatened that, if she

would not consent to the coition, he would kill her. He pushed her down on the floor, assumed a kneeling position and held her on the shoulder with his left hand. With his right hand, he pointed the knife at her. He placed himself on top of her, opened his underwear and brought out his penis. He raised her skirt and removed her pantie. Then "he made a push-and-pull movement". She was resisting him with both hands and moving her hips sideways. She felt some pain in her organ. Soon thereafter, "he was able to accomplish his desire meaning that he "made the "penetration." She allegedly did not shout because, if she shouted, he would kill her.

Later, or one afternoon in the first week of February, 1969, she had another encounter with Samillano. It was merienda time. He ordered his wife to go to town and the children to leave the room. He was left alone with Dioleta. As on the prior occasion, he was able to have forcible carnal knowledge of her. He intimidated her with threats. He was also armed with a butcher's knife. She allegedly resisted but her resistance was unavailing because he was stronger than her. Her mother returned to the house at five o'clock.

This time, Dioleta did not keep silent. She disclosed the outrage to her mother and to Vicente Ramon, the overseer of Hacienda Progreso, who advised her to go to Bacolod City. She went to Teofisto Samillano, the forty-seven year old brother of her deceased father, who was residing at Hacienda Nalipay. She told her uncle: "Taytay Pistong, please bring me to the doctor, because I was raped by Conrado". She and her mother went to Teofisto's house at ten o'clock at night to ask for his help. Conrado Samillano had allegedly threatened to kill them. Teofisto accompanied them that night to the town of Isabela. They slept in the house of their relatives.

On February 19, 1969 a lawyer brought Dioleta to Doctor Alfonso R. Vergara, the municipal health officer. He found that her hymen and "rugosities" were no longer prominent and that the "vaginal canal easily admits (the) examining finger without any tenderness (Exh. A). His conclusion was that the hymen had been ruptured due to penetration or defloration. Dioleta admitted to him that she had sexual intercourse "during the last week of January or first week of February". She could not remember the exact date. The doctor learned from the police that Conrado Samillano had sexually assaulted her. In his opinion there were "more than two penetrations".

On that same date, February 19th, Dioleta executed an affidavit and was investigated by the chief of police. Her question-and-answer statement was sworn to before the municipal judge.

He asked her searching questions which, together with her answers, were reduced to writing. She filed a verified complaint with the municipal court on February 19th (Exh. B). A warrant of arrest was issued. Samillano was duly arrested. He posted bail and was released on April 24, 1969. The record of the case was remanded to the Court of First Instance where the Provincial Fiscal on June 27, 1969 filed an information for rape.

Appellant's evidence. – Conrado Samillano and Basilisa Garde denied that the rape was committed. He was allegedly working as a tractor driver in the afternoon when Dioleta claimed that she was twice ravished by him. Basilisa testified that the rape could not have been committed because she was in the apartment at the time the alleged acts of carnal intercourse were consummated. Her paramour was working in the field. "How could it be done when I was at home?", Basilisa asked rhetorically. She was never informed by her daughter that she was raped. She did not consent to the filing of the rape charge.

She explained that she left her house in the second week of February, 1969 because her brother-in-law, Teofisto Samillano, threatened to kill her. He was interested in prosecuting the rape because he wanted to get Dioleta as a maid in his house but Basilisa did not consent to that arrangement. She said that Dioleta went to Bacolod City without her consent. That would explain why Dioleta lost her virginity.

Conrado Samillano said that he could not have repaired to Binalbagan on January 30, 1969 or gone home at the merienda hour sometime in the first week of February, 1969 because he was continuously working daily as a

tractor driver from six o'clock in the morning to five o'clock in the afternoon.

Conrado's theory was that Dioleta ran away from home for one week in February, 1969 because her mother did not allow her to work as housemaid. When she returned on February 15, 1969, he scolded and slapped her. Because of the slapping, Teofisto Samillano wanted to have custody of Dioleta but her mother refused to give her to him because she was helping Basilisa in the household work. That incident provoked the filing of the rape charge which, according to Conrado Samillano, was a frameup. He said that his wife, with Dioleta and their baby, went to Teofisto Samillano's house because she (his wife) was afraid of her brother-in-law.

Prosecution's rebuttal evidence. – Teofisto Samillano, as a rebuttal witness, testified that he never proposed that Dioleta would work in his house as a helper. He has nine children who are big enough to help him and, besides, being hard up, he could not afford a maid. He clarified that on or about February 18, 1969 Dioleta and Basilisa asked him to accompany them to town to report to the authorities the wrong suffered by Dioleta. He did not know why Basilisa later changed her mind and sided with Conrado.

After the case was filed, he accompanied Dioleta and her mother to another uncle of Dioleta in Aguisan. Hinigaran. Basilisa rejoined Conrado but remained in Aguisan.

Findings. – The case was tried on September 4, 1969 or about eight months after the alleged rape. In the morning session Dioleta and her mother gave their contradictory testimonies. In the afternoon session, the accused, Conrado Samillano, testified. He was followed by Teofisto Samillano who refuted his testimony.

Whose story should be given credence? The trial court believed Dioleta's testimony. It characterized as unbelievable the version of the accused. It concluded that Teofisto Samillano's testimony was more credible than that of Basilisa Garde. It noted that Basilisa had to favor Conrado Samillano because he was her common-law husband who supported her and her children.

The Solicitor General notes that, while the accused, during the trial, flatly denied that he had carnal knowledge of Dioleta, in this appeal he adapted the theory that the rape was improbable because the complainant did not make any outcry at all. He intimated that she voluntarily submitted to the sexual congress. He relies on the rule that rape is not presumed and that consent, not force, is the origin of acts between man and woman (U.S. vs. De Dios, 8 Phil 279).

We exerted pains to review the record thoroughly so as to avoid a miscarriage of justice. In a rape case the uncorroborated testimony of the complainant should not be received with precipitate credulity. "The books disclose too many instances of false charges of rape" (U.S. vs. Ramos, 35 Phil. 671, 677; People vs. Fausto, 51 Phil. 852).

After a searching study of the evidence, particularly the complaint (Exh. B) and the testimony of Dioleta, who was already fifteen and half years when she testified, we are of the opinion that Conrado Samillano committed qualified seduction and not rape.

The evidence conclusively indicates that Dioleta Samillano at the age of fourteen had already experienced coition (Exh. A) and that the person responsible for the loss of her virginity was Conrado Samillano, her mother's paramour who, as to her, stood in loco parentis.

Qualified seduction is the act of having carnal knowledge of a virgin over twelve years and under eighteen years of age committed by any of the persons enumerated in article 337 of the Revised Penal Code. Abuse of confidence is inherent in the offense. Among the persons who could commit qualified seduction is a "domestic".

"La voz domestico se refiere a las personas que habitualmente viven bajo el mismo techo, pertenecen a una

misma casa y forman en este concepto parte de ella" (2 Cuello Calon, *Codigo Penal*, 1967 12th Ed. 560). It is distinct from house-servant (*Sentencia de 11 de Noviembre de 1881*; 3 Viada, *Codigo Penal* 136; 2 Hidalgo, *Codigo Penal* 319). Because of the intimacy and confidence existing among various members of a household, opportunities for committing seduction are more frequent (*U.S. vs. Santiago*, 26 Phil. 184; *U.S. vs. Arlante*, 9 Phil. 595; *U.S. vs. Bautista*, 40 Phil. 735).

Where the accused carnally abused two orphan girls, relatives of his wife, sheltered in his house, he was convicted of qualified seduction. He was a domestic in relation to the girls (*U.S. vs. Arlante*, supra).*

Conrado Samillano was a domestic in relation to Dioleta Samillano within the meaning of article 337 of the Revised Penal Code. Considering that his common-law wife was already forty-six years old and he was only thirty-seven and considering his propinquity to the offended girl, it is not surprising that he lusted after her.

Dioleta's verified complaint for rape contains allegations which aver the crime of seduction. If the allegation therein regarding the use of force is discarded, what would remain are the averments imputing the crime of estupro. Dioleta alleged that Conrado Samillano had sexual intercourse with her, "14 years of age, minor" or "minor of tender (age) with a good moral character and reputation in the community" (Exh. B at trial; C in the preliminary examination). Any deficiency in her complaint is supplied by her supporting affidavit, wherein she described Conrado Samillano as her "stepfather" with whom she was "living" (Exh. B in the preliminary examination). The accused appeared at the second stage of the preliminary investigation. He was assisted by counsel who presumably read the record of the preliminary examination and was apprised that the complainant had alleged that her "stepfather" had sexual intercourse with her (pages 1 to 18 of the Record).

It is not the designation of the offense in the complaint or information that is controlling. What are decisive are the allegations therein which directly apprise the accused of the nature and cause of the accusation against him (*U.S. vs. Lim San*, 17 Phil. 273, 278).

Dioleta's testimony proves that the appellant committed the crime of qualified seduction. A judicious evaluation of the conflicting declarations of the witnesses leads to the conclusion that the sexual intercourse between Dioleta and Conrado Samillano was apparently voluntary. It was not marked by tenacious resistance and clamorous protestation on her part. The accused took advantage of his moral dominance over the girl, not to mention her dependence on him for her subsistence. She was presumably a virgin (*Sec. 5[a], Rule 131, Rules of Court; U.S. vs. Alvarez*, 1 Phil. 351; *People vs. Fontanilla*, G.R. No. L-25354, June 28, 1968, 23 SCRA 1227).

Under the circumstances, the conviction of the appellant for qualified seduction is proper. A similar ruling was rendered in *People vs. Alvarez*, G.R. No. L-34644, January 17, 1974 where the lower court convicted the accused of rape. The victim was his thirteen-year old sister-in-law. This Court, speaking through Mr. Justice Fernando, reversed that judgment and found him guilty of qualified seduction.

WHEREFORE, the trial court's judgment is set aside. Appellant Conrado Samillano is found guilty beyond reasonable doubt of qualified seduction without any modifying circumstances. He is sentenced to an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional*, as maximum (Arts. 64[1] and 337, Revised Penal Code) and ordered to pay an indemnity of five thousand pesos to the offended girl, Dioleta Samillano (Art. 345, Revised Penal Code). As the record does not show that Dioleta became pregnant, it is not necessary to order the appellant to support the offspring. Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

* “Aun cuando el ayuntamiento carnal del padrastro con su hijastra, mayor de doce años y menor de veintitres, haya sido plenamente voluntario, cae bajo la sancion del art. 458 parralo primero delCodigo penal.

Asi lo resuelve el Tribunal Supremo estableciendo:

Que segun el expresado articulo se comete el delito de estupro en doncella mayor de doce años y menor de veintitres, cuando el estuprador es alguna persona en quien concurren cualquiera de las condiciones en el mismo enumeradas, y entre ellas la de estar encargado por cualquier titulo de la educacion o guarda de la estuprada, condicion que es forzoso reconocer en el acusado pues que su cualidad de marido de la madre de aquella le daba una autoridad real y efectiva, no solo para los efectos de la educacion y guarda de la menor, que vivia en su compania bajo el mismo techo, sino para todos los consiguientes al orden y subordinacion de la familia, aunque no fuera mas que por la influencia que en dicha menor habia de ejercer y producir la autoridad legal que sobre su madre tenia el acusado." Sentencia de 30 de Abril de 1884; (2 Hidalgo, Codigo Penal 320).

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