

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. FELICIANO CASTRO, ACCUSED AND APPELLANT.

G.R. No. L-33175. August 19, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Feliciano Castro appealed from the decision of the Court of First Instance of Nueva Ecija, convicting him of rape and sentencing him to reclusion perpetua, to recognize and support the offspring, Caridad Micua, and to indemnify her mother, Miguela Micua, in the sum of P5,000 (Criminal Case No. 8869).

Here is a case where the Court is confronted with the task of ascertaining who among the members of the same family should be given credence. Miguela Micua and her father claimed that she was raped by her brother-in-law, Feliciano Castro (her Manong Elong). Her sister, Lydia Micua, and Castro himself testified that no rape was committed. They interposed the defense that if there was sexual intercourse between Castro and Miguela (Mila), it was impelled by mutual desire (Exh. 1).

In 1967 Petronilo Micua, a forty-nine-year-old widower and farmer, resided in his house at Barrio Calikid Norte, Cabanatuan City. Living with him in that house, which consisted of living room, bedroom and kitchen, were his twenty-two-year-old married daughter Lydia, his twenty-two-year-old-son-in-law Castro, their child and his two unmarried daughters Miguela and Marta. Miguela was sixteen years old. She had reached the sixth grade. She slept in the living room with the married couple and their child in this manner: on her left was the child; to the left of the child was Lydia and beside Lydia was Castro who was a meter away from Miguela.

According to Miguela, at midnight of December 15, 1967 she was awakened because she felt that Castro was on top of her. His left hand covered her mouth. His right hand held her arms. He "pinned" down her legs. She was not able to shout or make any sound. Her efforts to move and shout were futile. While Castro was trying to insert his penis into her organ, he warned her not to tell anyone of what he was doing or else he would kill her. At that time her father was still in the farm.

Castro experienced some difficulty in copulating with her because she was a virgin. He rested for a while but remained on top of her for around three minutes. Finally, he was able to insert his organ into her vagina. "he forced it". Miguela was allegedly not able to do anything because he was stronger than she and she could not move. She said nothing during the time that Castro was ravishing her. The following morning she did not reveal the incident to her sister or father because she was afraid. In January, 1968, Castro had again sexual intercourse with her.

Four months later, or in April, 1968, Petronilo advised her to see a midwife after he was informed that she had not been menstruating for sometime. Miguela accompanied by her elder sister, Marta, consulted a midwife. The latter informed Petronilo that Miguela was pregnant. When he asked Miguela who was responsible for her pregnancy, she answered that it was Castro. Miguela told her father that she did not inform him of her carnal intercourse with Castro because the latter had warned her that, if she sequealed, he would kill her.

Petronilo instructed his daughter Lydia to summon Castro's parents for a conference. The latter did not bother to see Petronilo. Castro left Petronilo's house on April 15, 1968. He fled to Bataan where he engaged in fishing.

On April 25, 1968 Doctor Macaria B. Villalobos examined Miguela at the instance of her father. She found multiple lacerations in Miguela's hymen which she called caruncular niptiformis. That means that Miguela had been deflowered. Doctor Villalobos also found hyperpigmentation of the clitoris and labia minora, meaning that there was increased coloration of those parts of Miguela's genital organ. That was a sign of pregnancy. Other signs of pregnancy and frequent sexual intercourse were noted by the physician. She said that she could not positively state that there were only two acts of sexual intercourse. She concluded that Miguela was already pregnant for about four to five months (Exh. A, A-1).

The case was investigated by the City Fiscal. Miguela filed in court against Castro a complaint for rape dated May 3, 1968. A baby girl was born to her on August 2, 1968 (August 6th according to Exh. B). She was named Caridad. Castro was arrested in September, 1968. After the trial, during which Miguela and her father testified for the prosecution, while Castro and his wife testified for the defense, the lower court rendered the judgment of conviction already mentioned.

In this appeal, appellant Castro's four assignments of errors may be boiled down to the issue of credibility. He denied that he had sexual congress with Miguela but at the same time he argued that, if there was carnal union, it was voluntary (Exh. 1).*

Castro testified unconvincingly that his father-in-law imputed rape to him because the latter regarded him as lazy and as having done nothing to justify the expenses for his maintenance. He intimated that Miguela was having an affair with another man whom his counsel identified as Narciso Romero (Petronilo denied that Romero was courting Miguela). His wife Lydia indirectly denied the rape by saying that her sister, Miguela, slept in the bedroom while she and her[1] husband slept in the living room.

Castro presented as part of his defense a letter written to him by Miguela (Mila) wherein she affirmed that her carnal intercourse with Castro was due to mutual desire (Exh. 1). The letter follows in haec verba:

"Calikid Norte Cab. City
Sep. 16, 1968

Saiyo Manong,

Manong akoy sumulat saiyo ng ilang kataga, sapagkat alam kong ikaw ay nagdurusa sa bilangguan ngayon subalit hindi matiis ng aking kalooban na magdurusa ka sa ngayon kayat huwag kang magalala at kitay aking tutulongang sapagkat kapwa nating kagustuhan and nangyari at hindi mo rin ako tinakot ng baril, or patalim at wala ka naman noon kayat ipanatag mo ang iyong kalooban halimbawat akoy kanilang turuan na magsinungaling at iyon ang aking gagawin ay huwag mong paniniwalaan Manong Elong katonayan ay hawak mona ang katibayan, hanggang dito na lamang ang aking masasabi ang iyong hipag.

(Sgd.) Mila Micua"

However, during the trial, Miguela tearfully recounted that, after the rape charge was filed, her sister, Lydia, visited Castro in jail. Castro gave to Lydia a letter. Lydia and Miguela went to church in Cabanatuan City. After leaving the church, Lydia brought Miguela to Farmacia Soriano where she allegedly intimidated Miguela into copying the letter. She uttered the threat that, if Miguela did not copy the letter, she (Lydia) would kill Miguela. The copy made by Miguela is Exhibit 1. Lydia got the copy made by Miguela and gave it to Castro's lawyer.

After a painstaking scrutiny of the record, we have arrived at the opinion that the prosecution's evidence does not support the conviction for rape. Certain circumstances negative the commission of that detestable crime and point

to the conclusion that the sexual intercourse between the accused and the complainant was voluntary, as indicated in Exhibit 1. One such circumstance is that force and intimidation were not proven. Miguela did not offer any resistance or vocal protestation against the alleged sexual assault. She could have easily made an outcry or resisted Castro's advances without endangering her life. She was allegedly raped in her own home. Her sister was in close proximity to her, just an arm's length away from her on the floor where they slept together. Castro was unarmed. Miguela's testimony does not convince the unprejudiced mind that she was sexually abused. She testified:

Q.

Now at around 12 midnight on that same day (December 15, 1967) did something extraordinary happen to you? — A. None, sir.

Q.

When? — A. On December 15, sir.

Q.

At what time more or less? — A. More or less 12 o'clock in the evening, sir.

Q.

(Fiscal). Now, when you stated that Feliciano Castro raped you, will you please narrate to the Honorable Court how this person raped you? — A. I was then sleeping, when I was awakened when I found out that he was already on top of me.

Q.

When you found out that he was on top of you, what did you do? — A. Nothing, sir. (2-3 tsn Nov. 14, 1969).

Another circumstance is that Miguela did not reveal immediately to her father and sister that she was raped. It was about five months after the alleged rape, when she was not menstruating and her abdomen had become enlarged, that she, upon the discovery by the midwife, disclosed that she had sexual intercourse with Castro. She did not submit to any medical examination soon after the perpetration of the alleged rape.

A baby girl was born to Miguela two hundred thirty-one (or thirty-five) days after the alleged rape. Since the average duration of human pregnancy, counting from the first day of the last menstrual period, is about two hundred eighty days or forty weeks (Williams' Obstetrics, 14th Ed. p. 236), Miguela's baby was either prematurely born or she probably had sexual intercourse with Castro even prior to December 15, 1967. That is another circumstance which engenders doubt as to the rape.

The rational inference from the facts appearing in the record is that her father, infuriated by the abusive conduct of his son-in-law and incensed by the apathetic attitude of Castro's parents, who did not conciliate him when he sent for them, pressured Miguela into filing the complaint for rape. It is a fact that, soon after Miguela had testified and when her father learned that she had written Exhibit 1, he slapped her twice. He sensed that Exhibit 1 weakened the prosecution's case against Castro.

On the other hand, Lydia, after appraising the situation, was intuitively aware that it would have been difficult for her husband to rape her sister who was practically beside her. She must have come to the conclusion that the sexual intercourse between Miguela and her Manong Elong was not brought about by force and intimidation.

Hence, Lydia sided with her husband during the trial and even coerced Miguela into signing a document attesting 'that there was voluntary coition between her and Castro.

Appellant Castro may possibly have committed qualified seduction, of which one form is "the seduction of a virgin over twelve years and under eighteen years of age, committed by" a "domestic" (Art. 337, Revised Penal Code). "La voz domestico se refiere a las personas que habitualmente viven bajo el mismo techo, pertenecen a misma casa y forman en este concepto parte de ella" (2 Cuello Calon, Codigo Penal 12th Ed. 560). By reason 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; People vs. Samillano, L-31375, April 22, 1974, 56 SCRA 573). It may be argued that Castro was a domestic in relation to Miguela.

We do not make any finding that he committed qualified seduction. Since he was definitively and squarely charged with rape, he cannot be convicted of qualified seduction. The complaint in this case is not susceptible of being construed as charging qualified seduction. It is alleged in the indictment that Castro, "by means of force and intimidation", wilfully had carnal knowledge of Miguela Micua against her will. That charge does not include qualified seduction. Much less can qualified seduction include rape. Hence, Castro cannot be convicted of qualified seduction under the rape charge (See secs. 4 and 5, Rule 120, Rules of Court). The rape charge did not place him in jeopardy of being convicted of qualified seduction. He is entitled to be informed of the nature and cause of the accusation against him (Sec. 1[c], Rule 115, Rules of Court; Sec. 1[17], Art. III, Old Constitution; Sec. 1[19], Art. IV, New Constitution).

The instant case is different from People vs. Alvarez, L-34644, January 17, 1974, 55 SCRA 81, where the accused was charged with having raped his thirteen-year-old sister-in-law and was convicted of qualified seduction. The charge in that case, as in the Samillano case, supra, although nominally for rape, contained the elements of qualified seduction.

WHEREFORE, the trial court's judgment is reversed and appellant Feliciano Castro is acquitted of rape with costs de oficio. So ordered.

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

[1] Castro in a letter to this Court dated December 14, 1970 admitted that he had sexual intercourse with Miguela. He said:

"x x x sa mga araw na nagdaan kami ng aking hipag ay nagkaroon ng kakaibang damdamin, damdamin na kami po ay nagkaibigan at kapua kami nakalimot sa aming sarili at hanggang isilang niya ang sanggol, na bunga ng aming nagawang pagkakasala at hanggang ako po ay nabibista ay aking ipinagtapat sa aking abogado ang namagitan sa amin ng aking hipag, at nasabi ko po sa aking abogado, na ako'y aamin dahil kami ay may anak, at kung ako ay makalalaya ay aking susustentohan ang aming naging anak x x x at ako'y hinatulan ni Judge Alfredo Cruz ng habang buhay, napakalaki po ang naging hatol sa akin gayong kapua naming kagostohan ng aking hipag ang nangyari.

"Ito po ang aking problema, ano po ang mabuti kong gawin upang ako'y makalaya na, at kong ako po ay dinadalaw ng aking asawa, ay halos umiyyak siya at idinadaing niya ang kanilang kahirapan at ako lang ang kanyang inaasahan ay halos hindi ako makakibo, kaya narito po ako mahal naming hukom, na humihingi ng inyong tulong na sana po, ako'y inyong tulongan at ako'y inyo ng patawarin sa nagawa kong pagkakasala at kong ako po ay makalalaya ay aking susustentuhan ang aming naging anak, at ipinapangako ko po sa inyo na hindi na po ako magkakasala sapagkat bigay aral sa akin ang nangyaring ito sapagkat napakahirap ng malayo sa mga mahal sa buhay, kaya't inuulit ko po ang paghingi sa inyo ng tulong na sana po, ako ay inyo ng

patawarin sa nagawa kong kasalanan." (p. 6, Rollo).

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