

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERVILLANO VELASQUEZ, DEFENDANT-APPELLANT.***G.R. No. L-35241. February 28, 1983*

Ponente: VASQUEZ, J.

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Under an information charging defendant-appellant Servillano Velasquez with the crime of rape, the Court of First Instance of Nueva Ecija convicted the said defendant-appellant of the offense of qualified seduction and sentenced him to an indeterminate penalty of four months and one day of *arresto mayor*, as minimum, to one year, eight months and twenty days of *prision correccional*, as maximum, to indemnify Remedios Domingo in the sum of P2,000.00 to suffer subsidiary imprisonment in case of insolvency, to acknowledge and support the offspring of Remedios Domingo in the sum of P100.00 every month, and to pay the costs. The appeal by defendant-appellant to the Court of Appeals was certified by it to the Supreme Court upon a finding that, as recommended by the Solicitor General, the accused should have been found guilty of rape which is punishable by *reclusion perpetua*, but which penalty is beyond the jurisdiction of the Court of Appeals to impose.

The complainant Remedios Domingo was a housemaid of Cecilia Velasquez in the latter's house in Licab, Nueva Ecija. Cecilia, a sister of the appellant, is a public school teacher married to a dentist. The appellant, who was unmarried, was staying in the house of said spouses in the ground floor of which he had a radio repair shop. Remedios, at the time of the alleged rape committed on February 9, 1966, was 15 years, 2 months and 27 days old, she having been born on November 12, 1950.

There is no dispute that the appellant had performed sexual intercourses with complainant Remedios Domingo in the house where they were both staying. It is also undenied that Remedios Domingo delivered a child on December 22, 1966. The parties are, however, in disagreement as to when and under what circumstances the sexual intercourses between the appellant and the complainant had taken place. The appellant further disputes his paternity of the child begotten by the complainant.

The testimony of the complainant was to the effect that in the evening of February 9, 1966, while she was sleeping in a room in the house of her employer, she felt someone embracing her. Awakened, she saw the appellant by her side, threatening her with death if she would make an outcry. The appellant held a bladed weapon which he pressed to her breast. Overcome with fear, the complainant did not shout. The appellant then proceeded to raise her blouse and touched her breast. Despite her struggle, the appellant persisted in his erotic advances. He held her hands and removed her panties after snapping its garter. The appellant then inserted his penis into her private parts and succeeded in consummating his carnal desire. The complainant simply cried her heart out. In the next two succeeding days, February 10 and 11, 1966, the appellant again satisfied his lust by having sexual intercourse with the complainant.

Sometime later, the complainant told her employer that she wanted to leave, but the latter refused to let her go until a replacement for her could be secured. The complainant decided to write to her mother to take her home. On

May 4, 1966, the mother of the complainant took her from the house of Cecilia Velasquez and brought her home to barrio Linao, Licab, Nueva Ecija. Sometime in August 1966, the mother of the complainant noticed that she was not menstruating and that her abdomen was showing signs of pregnancy. The complainant had to tell her mother as to what happened to her while she was working as a housemaid in the house of Cecilia Velasquez.

On September 2, 1966, the complainant filed a complaint with the Office of the Provincial Fiscal charging the appellant with the crime of "seduction or rape." After proper preliminary investigation, an information for rape was filed with the Court of First Instance of Nueva Ecija on October 20, 1967.

The appellant has a different version of his sexual encounters with the complainant. He denied that their first intercourse took place on February 9, 1966. He claimed that their first intercourse occurred since the last week of January 1966, and was repeated several times thereafter, and that the said encounters took place in his shop at day time and never at night. Appellant averred that he gained the confidence and intimacy of the complainant because she used to go down to his radio repair shop where he gave her money and good things to eat. In one of such occasions, he embraced her and she offered no resistance. He disclaimed being the father of the child of the complainant, pointing out the fact that from the date of his supposed last sexual intercourse with the complainant which, according to the latter was on February 11, 1966, up to the delivery of the child on December 22, 1966, a period of ten months and eleven days had elapsed, which renders it medically impossible for him to have been the father of the said child.

The issue that confronts Us is the determination of what crime, if any, had been committed by the defendant-appellant under the facts appearing on record. The information filed against the appellant was for rape allegedly committed as follows:

"That on or about the 9th day of February, 1966, in the Municipality of Licab, Province of Nueva Ecija, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Servillano Velasquez, armed with a bladed instrument, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned against her will and consent." (p. 1, Rollo.)

The trial court ruled that the crime committed by the appellant as shown by the evidence is that of qualified seduction, as defined and penalized in Art. 337 of the Revised Penal Code. This conclusion of the trial court is premised principally upon its finding that the claim of the complainant of having been threatened or forced by the appellant in making her submit to his sexual desire is not borne out by the evidence. The Solicitor General, on the other hand, expressed the view that the trial court erred in disbelieving the claim of the complainant that the appellant used a bladed weapon in threatening her to submit to his sexual demand, and accordingly recommended that the appellant be pronounced guilty of the crime of rape with the use of a bladed weapon, as defined and penalized in Art. 335 of the Revised Penal Code. The Court of Appeals, in refusing to take cognizance of the appeal taken therein, expressed concurrence with the said view of the People's counsel.

It is Our considered opinion that the trial court committed error in holding the appellant guilty of the crime of qualified seduction. Assuming it to be a fact that the appellant may be considered a "domestic" within the meaning of Art. 337 of the Revised Penal Code — a point disputed by the appellant who claimed that he was not staying in the house of his sister but only operated a radio repair shop in the ground floor of said house — still, no conviction for qualified seduction may be decreed against the appellant. This is because there is no allegation in the information filed against him of two of the essential elements of the crime of qualified seduction, to wit: virginity of the offended party, and that the latter is over 12 but under 18 years of age. In the event of a variance between the offense charged in the complaint or information and that proved or established by the evidence, the accused may only be convicted of the offense proved included in that which is charged, or of the offense charged

included in that which is proved. (Section 4, Rule 120, Rules of Court.) "An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter." (Section 5, Ibid.) The view that conviction for qualified seduction may not be had on a charge of rape had already been expounded by Chief Justice Enrique M. Fernando in *People vs. Ramirez*, 69 SCRA 144.

For similar reasons, neither may the appellant be validly convicted of the crime of simple seduction. As may be noted from the information filed against the appellant, there is likewise no allegation therein of the elements of the good reputation of the offended party and of the latter being over 12 but under 18 years of age, which are essential for the commission of the crime of simple seduction. (Art. 332, Revised Penal Code.)

The criminal responsibility of the appellant may only be predicated on his having committed the crime of rape should it appear from the evidence on record that he had, indeed, obtained carnal knowledge of the complainant against her will and consent by means of force and intimidation, and with the use of a bladed instrument, as alleged in the information. We have meticulously examined the record of this case, particularly the testimony of complainant Remedios Domingo, in an effort to find adequate confirmation of her claim that the appellant succeeded in making her submit to his sexual desire by threatening her with death by means of a bladed weapon should she refuse to do so, or should she cry out for help. Sadly enough, Our earnest endeavor and desire to render justice to the aggrieved party had failed to dissipate persistent doubts in Our minds as to the credibility of her assertion that the appellant coerced and threatened her with death into submitting to his carnal demand in the evening of February 9, 1966.

The record reveals the following disconcerting circumstances which argue against the defendant-appellant's conviction for the crime of rape:

- The only testimony in the record as to how the alleged rape was committed is that of the complainant herself. Her declaration suffers not only from lack of corroboration, but also from inherent improbabilities that effectively impair its credibility. While it may be true that the complainant manifested initial reluctance to the appellant's erotic demand, We are not convinced that her resistance was sufficient to make the appellant resort to force and intimidation in accomplishing his desire. There appears to be no sincere struggle as the complainant had claimed, or a determined effort on her part to preserve her virtue. Neither the complainant nor the appellant sustained injuries of any kind whatsoever. Not a single piece of complainant's apparel was torn or damaged, except a snapped garter of her panty which could easily be attributed to the eagerness of the appellant as readily as to a refusal of the complainant to take her panty off. Not a single outcry came from her mouth, even as of the moment she was suddenly awakened with the appellant lying beside her. There was no claim that the appellant pressed his hands against her mouth or covered the same otherwise so as to prevent her from shouting for help. No commotion was created as could have aroused the other occupants in the house into coming to her aid. Complainant had testified that her employers were sleeping in a room only six meters away from hers. It is a fact that despite the alleged struggle, not one of the occupants in the said house had been awakened during the entire incident that allegedly transpired in the complainant's room in the evening of February 9, 1966.

- The claim that the intercourse in the evening of February 9, 1966 was accomplished with force and intimidation loses adherence in the light of the admission by the complainant herself that their aforesaid sexual encounter was repeated the following evening, and once again in the night of the day thereafter. In the two other events mentioned by the complainant, she made no claim that she was forced or intimidated into having sexual intercourse with the appellant. A woman who had been the unwilling victim of a bestial attack would not submit herself voluntarily to the further demands of her attacker in the two successive days after the alleged violent sexual encounter.

- It is intriguing to imagine that the complainant, who had allegedly been the victim of forcible sexual intercourse that occurred in the evening of February 9, 1966, would continue to sleep in the same room in the following evenings despite the admitted fact that the said room had no lock. She further admitted that she took no precaution to prevent entry of intruders in the said room while she was sleeping thereat. She did not ask that a lock be installed, or see to it that the door be secured by means of even a piece of string or wire, or that her bed or some furniture be placed against the door to prevent entry in the room while she was asleep thereat. Neither did she resort to the simple precaution of sleeping in some other place in the house, or that someone else sleep with her, so as to deter the appellant from taking advantage of her womanhood in the middle of the night when the rest of the household was asleep.

- Complainant admitted that aside from failing to make any outcry during all her sexual encounters with the appellant, she also failed to complain about the appellant's misdeeds either to her employers, to her parents or relatives or to anyone else. It was only when the mother of the complainant noticed the undeniable signs of her pregnancy that she was compelled to confess to her having had sexual relations with the appellant. The assertion of the complainant that her failure to complain was due to the threat made by the appellant may hardly be believed considering that, after her mother brought her home to barrio Linao in May 1966, she was no longer staying with the appellant in the same house. It further appears that a brother-in-law of the complainant was the barrio Captain of barrio Linao and he resided just next door to the house of the complainant's parents.

- When the complainant finally was forced to reveal the paternity of the child she was bearing to her parents, brothers and sisters, the reaction of the latter to her revelation was highly indicative that she did not complain of having been raped by the appellant. Upon being so informed, a brother of the complainant got so mad that he slapped her. If the complainant had told her kins that, she had been the victim of a bestial attack, they would have pitied her and sought out the appellant to make him pay for what he had done. Instead of doing so, they put the blame on complainant, and even laid hands on her.

- The filing of the case against the appellant was apparently motivated by the refusal of the appellant to marry the complainant. Prosecution witness Tomas Villaroman, Municipal Mayor of Licab, declared that when the complainant went to his office accompanied by his brother-in-law to complain against the appellant, he invited the latter to his office; that he tried to settle the matter by asking the appellant to marry the complainant, both the appellant and the complainant being single; that the appellant requested for a chance to talk with his family about such proposal; and that when the appellant ignored the suggestion of the mayor, the latter told the complainant to see the Chief of Police about her complaint. (TSN, December 11, 1968, pp. 2-3.)

- When the complainant was eventually referred to the Office of the Provincial Fiscal, her complaint was attended to by Assistant Fiscal Cecilio. Before him, the complainant signed and swore to a complaint slip. (Exhibit "A".) In the said complaint slip, the contents of which, except for the signature of the complainant, were all written down by Assistant Fiscal Cecilio, the charge was "Seduction or Rape." (Exhibit "4-A".) It is not improbable that the Fiscal who attended to the complaint of Remedios was not sure or convinced that the crime she was complaining of may be classified as rape.

- Another weak link in the theory of the prosecution is the fact that the complainant delivered her child on December 22, 1966. If she was telling the truth that her last intercourse with the appellant was on February 11, 1966, it would mean that her child was born at least ten months and eleven days after conception. While We are not certain as to whether such circumstance is not a medical impossibility, it is undeniably contrary to ordinary and normal experience and, as such, sufficient to cast a reasonable doubt as to its credibility. Under Our laws, a child born after three hundred days from possible conception is not accorded any presumption either of legitimacy or illegitimacy. Whoever alleges the paternity of the child, whether legitimate or illegitimate, must prove such

allegation. (Art. 261, Civil Code; Section 6, Rule 131, Rules of Court.) It is accordingly believed that the sexual intercourse between the complainant and the appellant did not terminate on February 11, 1966, as averred by the complainant, but continued for several times thereafter as asserted by the appellant.

An abiding sense of fairness impels Us to take heed of the oft-repeated observations that "a rape charge is easy to make, hard to prove and harder to defend by the party, though innocent" (People vs. Barbo, 56 SCRA 459); and that "experience has shown that unfounded charges of rape have frequently been preferred by women actuated by some sinister, ulterior or undisclosed motive; hence, convictions for such crime should not be sustained without clear and convincing proof of guilt." (U.S. vs. Bay, 27 Phil. 495; U.S. vs. Ramos, 35 Phil. 691.) Under the circumstances appearing in the case at bar, the claim of the appellant that the complainant was not totally unresponsive to his advances after he secured her intimacy with gifts of money and nice things to eat is, to Our mind, not inherently improbable as to be totally disbelieved. He was single, a brother of her employer, with a means of livelihood, and was staying in the same house with the complainant. Their sexual encounter was not between total strangers where the man had no means except brute force to satisfy his lust upon the woman he had desired.

We consider it unfortunate to find Ourselves unable to impose the penalty provided by law upon the appellant for the crime he is shown to have committed beyond reasonable doubt, to wit, simple seduction as defined and penalized in Art. 338 of the Revised Penal Code. The legal obstacle against Our authority to do so is no less than a constitutional right granted to an accused person of being entitled to be "informed of the nature and cause of the accusation against him." (Sec. 19, Art. IV, Constitution of the Philippines.) We would be denying the appellant this fundamental right if We shall find him guilty of seduction under an information that does not sufficiently allege the essential elements constituting the said offense.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. The accused is acquitted of the charge, with cost de officio.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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