

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO PAILANO, ACCUSED-APPELLANT.

G.R. No. L-43602. January 31, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

At the time the rape was allegedly committed by the accused-appellant, he was already sixty-nine years old.[1] The prosecution will have to contend not only with the presumption of innocence but also of impotence.

The crime was allegedly perpetrated in October of 1971 in Barrio Sampinit-Baybay in the City of Bago.[2] It was reported to the authorities on December 24, 1971,[3] and the corresponding criminal complaint was filed on July 10, 1972.[4] Judgment was rendered on January 30, 1976, sentencing the accused-appellant to reclusion perpetua plus civil indemnity of P2,000 and the costs.[5] He now wants this decision reversed.

The complainant is Anita Ibañez, who was fifteen years old at the time of the alleged offense. She says that on the day in question, she was dragged by the accused-appellant to a bushy place on the seashore where she was waiting for her mother. She could not resist because he was threatening her with a scythe he was carrying. In the bushes, he pointed the scythe at her neck and then forcibly took her. She could not cry out because she was afraid. She did not report the matter to her mother because the accused-appellant had warned her he would kill her if she did.[6]

The accused-appellant has a different version. He does not deny he had sexual intercourse with Anita, but he insists it was voluntary. As a matter of fact, he says, it was the complainant who enticed him into the bushes, where she wantonly opened herself to him. He was unable at first to have an erection because of his age. But Anita herself rubbed his organ in hers until, thus stimulated, he succeeded in penetrating her. Afterwards, noticing some people nearby who might have seen them, the girl put back her panty on and left. He followed a few minutes later.[7]

As the medical examination of the complainant was made more than two months afterwards, there naturally could not be any finding of the bruises, cuts and scratches that usually attend forcible rape. But there was the tell-tale hymeneal laceration in the complainant that even the accused-appellant could not dispute.[8]

Given the choice between the separate accounts of the complainant and the accused-appellant, the Court inclines in favor of the latter. It is in our view more believable. Anita never spoke of any difficulty on the part of Pailano in violating her. She simply said he removed her panty and entered her. No effort was mentioned; It seemed she was talking of a vigorous stud. Yet, the accused-appellant was not a teen-ager or even only in the prime of his life at the time of their sexual encounter. He was all of sixty-nine years old.

Considering his age and the emotional pressures of the moment, we doubt if Pailano could have accomplished the rape as easily as Anita narrated it. The prosecution has not offered any proof of his sexual prowess, and under stress at that. By contrast, the accused-appellant did not hesitate to testify, at the risk of his manly pride, that he did not easily have an erection during the tryst with Anita and that it took some fondling from her before his organ

could respond. This was a hard and humiliating fact but it had to be admitted.

We are disposed to believe the testimony of Leonardo Pilomeno that he saw Pailano and Anita coupling on the day in question,[9] but not on the other previous occasions claimed by him. His presence in all of these meetings seems too much of a coincidence to be credible. However, Pailano is also corroborated by Natividad Madrigal, who declared she saw Anita and Pailano caressing each other, with the girl in fact assuming the more aggressive role.[10] There is no reason not to believe this witness.

Article 335 of the Revised Penal Code provides that rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The criminal complaint in this case alleged the commission of the crime through the first method although the prosecution sought to establish at the trial that the complainant was a mental retardate. Its purpose in doing so is not clear. But whatever it was, it has not succeeded.

If the prosecution was seeking to convict the accused-appellant on the ground that he violated Anita while she was deprived of reason or unconscious, such conviction could not have been possible under the criminal complaint as worded. This described the offense as having been committed by "Antonio Pailano, being then provided with a scythe, by means of violence and intimidation, (who) did, then and there, willfully, unlawfully and feloniously have carnal knowledge of the complainant, Anita Ibañez, 15 years of age, against her will." No mention was made of the second circumstance.

Conviction of the accused-appellant on the finding that he had raped Anita while she was unconscious or otherwise deprived of reason — and not through force and intimidation, which was the method alleged — would have violated his right to be informed of the nature and cause of the accusation against him.[11] This right is safeguarded by the Constitution to every accused so he can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating his defense against the ground, alleged would plainly be unfair and underhanded. This right was, of course, available to the herein accused-appellant.

In *People v. Ramirez*,[12] we held that a person charge with rape could not be found guilty of qualified seduction, which had not been alleged in the criminal complaint against him. In the case of *People v. Montes*,[13] the Court did not permit the conviction for homicide of a person held responsible for the suicide of the woman he was supposed to have raped, as the crime he was accused of — and acquitted — was not homicide but rape. More to the point is *Tubb v. People of the Philippines*,[14] where the accused was charged with the misappropriation of funds held by him in trust with the obligation to return the same under Article 315, paragraph 1(b) of the Revised Penal Code, but was convicted of swindling by means of false pretenses, under paragraph 2(a) of the said Article, which was not alleged in the information. The Court said such conviction would violate the Bill of Rights.

It may be argued that although initially deficient, the criminal complaint was deemed corrected when the prosecution introduced evidence of the complainant's mental condition and the defense did not object, thereby waiving the procedural defect. Even so, the charge has not been adequately established.

In the first place, the doctor who examined Anita reported that he saw no evidence of insanity in her family history nor was there any indication of such condition in the complainant herself.[15] He did observe that she had the mentality of a thirteen-year old,[16] which was not that serious an impediment as her age at the time was only fifteen.

Secondly, and more importantly, the prosecution has not proved that during that encounter in the bushes, Anita's mental condition was so weakened that she could not resist Pailano's supposed advances.

The statutory presumption of sanity[17] and the constitutional presumption of innocence[18] have not been overcome.

There is evidence that Filomeno reported the incident in the bushes on the same day to Anita's mother,[19] but she took no action whatsoever, for reasons not disclosed. It was only two-and-a-half months later that she decided to complain to the authorities, but then it was already suspiciously late. The only possible explanation for her delay is that the liaison between her daughter and Pailano had already become a scandal by that time and she must have thought she could redeem Anita's honor by initiating the criminal complaint. The delay, however, blunts the charge of rape.

What we see here is an aging Lothario having his last lustful fling and a young girl with a rather weak mind and a ripe body offering him a flaccid return to his youth. We do not mean to romanticize this sordid affair. It is wrong and is not here excused, made light of, or dismissed. It is disdained for what it is — an unseemly seduction where it is not clear who the tempter and the tempted are although neither can really claim to be blameless. But, in our view, it is definitely not rape.

WHEREFORE, the appealed conviction is REVERSED and the accused-appellant is ACQUITTED on reasonable doubt. No costs.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Orig. Records, p. 313; Plaintiff-Appellee's Brief, p. 2.

[2] Rollo, P. 6.

[3] *ibid.*, p. 7

[4] *id.*, P. 3.

[5] *id.*, p. 19.

[6] TSN, August 14, 1973, pp. 8-10.

[7] TSN, January 2, 1975. pp. 14-25.

[8] Rollo, P. 9.

[9] TSN, June 11, 1974, pp.8-10.

[10] TSN, April 11, 1975, pp. 7-8.

[11] Article IV, Sec. 19, Constitution of 1973; now Article III, Sec. 14(2).

[12] 69 SCRA 144.

[13] 122 SCRA 409.

[14] 101 Phil. 114.

[15] TSN, August 14, 1973, P. 4.

[16] Ibid., P. 3.

[17] Art. 800, Civil Code.

[18] Art. III, Sec. 14(2).

[19] TSN, June 11, 1974, p. 11.

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