

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. CEFERINO DE LA CRUZ, DEFENDANT AND APPELLANT.***G.R. No. L-28810. March 27, 1974*

Ponente: AQUINO, J.

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This is an appeal of defendant Ceferino de la Cruz from the decision of the Court of First Instance of Masbate, finding him guilty of rape, sentencing him to reclusion perpetua and ordering him to indemnify the offended girl, Ligaya German, in the sum of six thousand pesos and to pay the costs (Criminal Case No. 5201).

The record reveals that the spouses Simeon German and Priscilla Refuerzo, residents of Danao Street, Masbate, Masbate, have a daughter named Ligaya who was born on August 17, 1954 (Exh. A). She was a Grade two pupil of the North Elementary School. One time she met in the theater a man who called her Baby and who instructed her: "Baby, please come to the place where I am working every afternoon". He was employed in an establishment known as Lim Yang Hong Trading.

Acting on that invitation, Ligaya frequented Lim Yang Hong Trading. The man used to give her candies worth twenty centavos and the same amount so that she could see the movies. On January 13, 1966 the man gave her candies and biscuit and told her to see a show. She came to know the man as Ceferino Esquillo. His real name is Ceferino de la Cruz. She identified him during the trial as the same man whom she had known as Ceferino Esquillo. He was a thirty-five year old laborer residing at Barrio Ibingay, Masbate.

In the evening of January 13, after the bell rang at six o'clock, Ligaya was playing at the swing ("naga duyan sa swing") located at the Social Center which was in front of the municipal building of Masbate. She was wearing a red T-shirt and short denim pants (Exh. E and F). Ceferino approached her, held her by the arms and dragged her to the "plaza", which was a building inside the Social Center. ("I did not want to go with him but later on he dragged me", she said). He made her lie down ("aco guin pahigda sa simento") while he undressed. He removed her panties (Exh. D). He placed himself on top of her and inserted his penis into her vagina ("solod an iya pisot as acon potay"). She experienced intense pain. He slapped her face and kicked her on her right thigh. She resisted by biting his right palm. He released her. He warned her that, if she disclosed his name to her father and mother, he would kill her. He left her. Her vagina was bleeding.

Ligaya went to the Constabulary barracks and asked for help. It was already forty-five minutes past midnight or the early morning of the next day, January 14th. Sergeant Juan Movida (Navida or Mavida) attended to her. He noticed that there was much blood in her groin ("laps") and pants. She informed him that she had been abused by someone whose name she did not want to divulge because she was afraid of him. He asked a prisoner to carry her. They made an ocular inspection of the place in the Social Center where she was abused. Then, they took her to her residence on Danao Street. It was already one o'clock. When they reached her house, she was unconscious. Her father said that he would take her to the hospital.

Ligaya did not immediately tell her mother the details of the rape "because she (Ligaya) was told by that same

person not to tell because she was threatened that she will be killed in the event that she will tell what happened to her". She told her mother that she was raped by Ceferino only after she was released from the hospital. The culprit was known to Mrs. German "because everyday he used to pass by our (their) house".

At around four-thirty in the afternoon of the following day, January 14th, Ligaya was examined at the Masbate Provincial Hospital by Doctor Florenda E. Duano, a twenty-seven year old unmarried resident physician. Her medical certificate (Exh. A), contains the following findings:

"External Findings: Fairly developed, fairly nourished female Filipino child. Breast —not developed.

"External genitalia — absence of pubic hair. Face — Lower lip — contused.

"External Findings: Hymenal opening — presence of new lacerations corresponding to 10:00 o'clock, 8:00 o'clock, 6:00 o'clock, 4:00 o'clock and 2:00 o'clock in the face of the clock. Posterior commissure lacerated and said lacerations bleed to touch. Hymenal orifice admits 2 fingers of the examiner with moderate resistance.

"LABORATORY:

"Smear for Human Spermatozoa: Negative Conclusion: Physical virginity lost."

Doctor Duano explained that there was a defloration of the hymen caused by a "hard, blunt instrument". She said that Ligaya appeared to be normal. She (the doctor) was informed that the rape was perpetrated at seven o'clock on the night of January 13th at the Social Center. On the basis of her findings, the alleged rape took place less than twenty-four hours before the examination. Asked to explain why no spermatozoa was found, she said that there could be "penetration but no emission", as when, after the penetration, the penis was immediately taken out or because the assailant had tension due to fear of being caught in flagrante, or because the girl was moving and trying to escape from the clutches of her assailant.

Six days after the incident, or on January 19th, Ligaya was brought again to the hospital. She was treated by Doctor Duano for "vaginal bleeding secondary to hymenal laceration". She was confined for two days or up to January 21st (Exh. C).

After her hospitalization, she gained courage to apprise her mother that she was assaulted by Ceferino de la Cruz alias Esquillo. On January 22nd Mrs. German signed a complaint for rape which was sworn to and filed in the municipal court of Masbate on January 24th. She executed her affidavit on that date. The following day the municipal judge conducted a preliminary examination and issued a warrant for the arrest of Ceferino de la Cruz. He was arrested on January 25th. He waived the preliminary investigation.

After the trial, the lower court rendered the judgment of conviction already mentioned.

In this appeal, Israel Bacobo, appellant's counsel de oficio, has posed a jurisdictional question. He contends that the trial court did not acquire jurisdiction over the case because the complaint for rape was filed by the mother of the eleven-year old offended girl and not by the father. His view is that the father had the exclusive authority to file the complaint. That contention is based on the following provisions of Rule 110 of the Rules of Court:

"SEC. 4 Who must prosecute criminal actions. —

xxx xxx xxx

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party, or her parents, grandparents, or guardian, nor in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

The offended party, even if she were a minor, has the right to institute the prosecution for the above offenses,

independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents or guardians, may file the same. The right to file the action granted to the parents, grandparents or guardians shall be exclusive of all other persons and shall be exercised successively in the order herein provided." (See third paragraph of article 344 of the Revised Penal Code).

Appellant's counsel cites articles 61, 320 and 2180 of the Civil Code as instances where "the father is preferred over the mother." His thesis is that, if the parents are living together, the complaint for rape should be filed by the father.

Appellant's contention is untenable. It is based on a dubious technicality. If sustained, it might defeat the ends of justice. It is not sanctioned by section 4 of Rule 110 nor by article 344 of the Revised Penal Code whose provisions do not categorically specify that the father has the preferential right to file the complaint for seduction, abduction, rape or abusos deshonestos. It is noteworthy that the father and mother jointly exercise parental authority over their legitimate children who are not emancipated". It is their duty to represent their unemancipated children "in all actions which may redound to their benefit" (Arts. 311 and 316, Civil Code).

The Court is of the opinion that each case should be considered according to its facts (*ex facto jus oritur*). In the instant case the father of the offended girl did not restrain or prevent his wife from filing the complaint for rape. It is highly probable that he tacitly approved it. He did not pardon the offender. Being occupied in the daily task of earning a living for his family, he had no time to spare for a criminal investigation.

Under the circumstances, the complaint filed by the mother was a sufficient compliance with article 344 and section 4 of Rule 110. It conferred jurisdiction on the court to try the case (*People vs. Pastores*, L-29800, August 31, 1971, 40 SCRA 498, 508; *People vs. Bangalao*, 94 Phil. 354; *U.S. vs. Gariboso*, 25 Phil. 171). The father's passivity should not preclude the mother from securing redress for the outrage committed against her daughter.

As persuasive authority, a case arising under article 467 of the Penal Code for Cuba and Puerto Rico, where the father's right to file a complaint for rape and abduction "is preferential and previous to the mother's," may be cited. It was held in that case that, when the complaint was filed by the mother, in whose company the minor female lived, and it was filed not only without any opposition on the father's part but also with his tacit consent, the complaint "was legally sufficient to require and set in motion the action for prosecution and punishment of the crime committed" (*Sentencia of the Spanish Supreme Court dated November 25, 1896, 7 Viada,Codigo Penal, 313; II Hidalgo, Codigo Penal 353 Concurring opinion, U.S. vs. Gariboso, 25 Phil. 171, 177*).[\*]

Another issue raised by appellant De la Cruz is that he was not accorded the right to cross-examine the complainant. That point was never raised by the appellant in the lower court. It is not entirely accurate. The truth is that after the direct examination of the offended girl on February 22, 1966, she was cross-examined. The cross-examination was not finished.

Two days later, or on February 24th, the cross-examination was resumed at ten o'clock in the morning. After a few minutes, the examination was suspended. When the case was called at ten-thirty-five for the resumption of the cross-examination, the counsel for the accused asked for postponement. The hearing was transferred to March 1st. The right of the defendant to continue the cross-examination was reserved. No hearing was held on that date. Other hearings were scheduled. The offended girl was subpoenaed to appear at those hearings.

After some cancellations or transfers, the trial was resumed on June 27, 1966. At that hearing, the counsel for the accused could have asked that he be allowed to continue his cross-examination. He did not do so. He did not object when the fiscal called his next witness. The counsel for the accused either forgot or waived the further cross-examination of the offended girl.

Under the circumstances, it cannot be said the constitutional right of the accused "to meet the witnesses face to face" or the right to confrontation (Sec. 1[f], Rule 115, Rules of Court; Sec. 1[17], Art. III, Old Constitution) was impaired.

The fact that the cross-examination of the complainant was not formally terminated is not an irregularity that would justify a new trial. The right to confront the witnesses may be waived by the accused expressly or by implication (U.S. vs. Anastacio, 6 Phil. 413; 4 Moran's Comments on the Rules of Court, 1970 Ed., p. 201-2).

"The chief purpose of confrontation is to secure the opportunity for cross-examination x x x , so that if the opportunity of cross-examination has been secured, the function and test of confrontation has also been accomplished" (1 Greenleaf on Evidence par. 163, cited in Anastacio case). In the instant case, there was not merely confrontation. The counsel for the accused cross-examined the complaining witness but he waived the right to make additional cross-examination.

The other issues raised by the appellant involve the credibility of the witnesses and his defense of alibi. He testified that he did not have the opportunity to talk with Ligaya German during the time he worked as laborer in Lian Hong Trading. He denied having given money to her for candy, or having brought her to the show, or having told her that his name was Ceferino Esquillo. He admitted that he knew Ligaya and had seen her often at the wharf but he denied having molested her.

His story is that in the morning of January 11, 1966, he went to Aroroy to accompany his sister-in-law, Marina Francisco, and her three children. They used a motorboat in going to Aroroy. He stayed in Aroroy for four days in the house of Marina Francisco. He returned by motorboat to the town of Masbate in the afternoon of January 14th at around four o'clock. Upon arrival at his house, he rested. The trip had made him dizzy. On January 15th, he was arrested by a policeman. He was brought to the municipal building and was confined in jail. He was investigated but he was not confronted by Ligaya German. He never had any conversation with her. He has resided in Barrio Ibingay for about ten years.

He knows that Ligaya's father stays at Barrio Ibingay. He used to meet the father at the wharf. In going to the wharf, he passed the Social Center sometimes at twelve noon and when he went home after his work. He was a daytime laborer at the wharf.

Seneca Francisco and Marina Francisco, the wife and sister-in-law of the accused, tried to corroborate his alibi. However, discrepancies vitiate their testimonies. Marina testified that De la Cruz went with her to Aroroy on January 11th, staying with her for "two days" and returning to Masbate on January 14th, meaning after a sojourn of three days. The accused testified that he stayed four days in Aroroy. Seneca testified that De la Cruz returned to the town of Masbate on January 13th, the date when the rape was committed. Appellant's witnesses rendered his alibi unworthy of credence.

The trial court noted the inconsistency. It held that the prosecution's evidence is more credible than that of the defense. After a conscientious study of the evidence, this Court agrees with the lower court.

Appellant's alibi, which, as his counsel admits, is a weak defense, cannot prevail over the unmistakable identification made by the offended girl. She testified:

Q. Are you positive that this Ceferino de la Cruz whom you met in the theater and who told you to go to him oftentimes at Lim Yang Hong Trading is the same Ceferino de la Cruz whom you told this Court to have abused you and whom you have identified here in Court? —

A . Yes, sir.

Q. Will you please point to him again?—

A. Witness points to the accused. (17 tsn Bajar, Feb. 22, 1966).

Appellant's attempt to discredit complainant's story by observing that she had "made no outcry" during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below twelve years of age force or intimidation need not be present. The Revised Penal Code provides:

"ART. 335. When and how rape is committed. — 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 crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (As amended by Rep. Act No. 2632 and Rep. Act No. 4111)."

The gravamen of the offense is the carnal knowledge of a woman below twelve years of age. In this case the fact that the accused ravished an eleven-year old girl was proven beyond reasonable doubt.

In the information, nocturnity is alleged as an aggravating circumstance. Its appreciation in this case would not alter the penalty of reclusion perpetua which is imposable on the appellant (Art. 63, Revised Penal Code).

Finding no reversible error in the penalty and indemnity fixed by the trial court, its judgment is hereby affirmed with costs against the appellant.

### **SO ORDERED.**

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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[\*] It may be noted that article 344 traces its descent from article 463 of the Spanish Penal Code of 1870 which provides that the complaint should be filed by "la agraviada, 6 de sus padres o abuelos o tutor". In article 443 of the present Spanish Penal Code, the complaint may be filed by "la persona agraviada o del conyugue, ascendiente, hermano, representante legal o guardador de hecho, por este orden". The terms "padres o abuelos" were replaced by "ascendiente". (II Cuello Calon, Derecho Penal, Duodécimo Edicion, p. 577). The change indicates a trend not to establish a preference among the ascendants in the filing of the complaint.

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