

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE,
VS. DOMINADOR VILLA ET AL., DEFENDANTS, DOMINADOR VILLA,
EULOGIO MOLINA, AND TRANQUILINO (ALIAS AQUILINO)
BERNARDINO, APPEL...**

G.R. No. L-591. June 30, 1948

Ponente: FERIA, J.

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FERIA, J.:

The defendants in this case, Dominador Villa, Eulogio Molina, Tranquilino Bernardino and Eligio Gomez, were charged with rape, and the Court of First Instance of Ilocos Norte found them guilty thereof, and sentenced each one of them to an indeterminate penalty of from 12 years of prisión mayor to 20 years of reclusion temporal, to pay jointly and severally the offended party an indemnity of P500, with the accessory penalties prescribed by law, and the costs. Subsequently, the court amended its decision with regard to Dominador Villa, who was 17 years old at the time of the commission of the offense, by appreciating his age as a mitigating circumstance and imposing upon him an indeterminate penalty from 10 years and 1 day of prisión mayor to 17 years, 4 months and 1 day of reclusion temporal.

From the trial court's decision the four accused appealed; but prior to the transmittal of the record to this Court, the defendant Eligio Gomez withdrew his appeal. Two of the appellants, namely, Dominador Villa and Eligio Molina, have filed their briefs. But the attorney de oficio appointed for Tranquilino Bernardino filed with this Court, instead of a brief, a statement to the effect that, after examining the record of the case, particularly the written statement or confession of the accused Tranquilino Bernardino, he finds no ground to justify the reversal of the judgment of the lower court.

The evidence presented in this case shows, beyond a reasonable doubt, that the four defendants, each one armed with a bolo and Bernardino with a revolver besides a bolo, at about 9 o'clock in the evening of February 13, 1945, went up the house of the offended party, and once inside the house ordered the inmates thereof to light a lamp and after the lamp was lighted the defendants Villa and Molina grabbed the offended party Consolacion Felipe, a girl of about 29 years of age by the hands and forced her to go down stairs, followed by Bernardino and Gomez, and dragged her to a nearby granary belonging to one Moises Domingo. When they arrived under the said granary, the defendants held Consolacion's hands, Dominador Villa slapped her and threw her to the ground. Thereafter, in spite of her resistance, each and every one of the accused, while the others were holding Consolacion by the hands, succeeded one after the other in having sexual intercourse with her. After having satiated their lusts the defendants left the offended party, who returned to her home crying, and upon being asked the reason why, she exclaimed: "It would be better if I were dead because the four men have raped me." The next day after the commission of the offense Consolacion Felipe reported the outrage committed against her by the defendants to the Barrio Lieutenant and to the Philippine Army Sergeants Miguel Andres and Monico Caldito, and the latter ordered the arrest of the accused. Upon being investigated, they confessed having attacked and raped Consolacion Felipe, and Bernardino also admitted having a revolver which was recovered from his house by a soldier sent with him to get it. They

signed separate written confessions sworn to on April 6, 1945, before the Secretary of the Jury organized by Lieut. Col. R. H. Arnold of the 15th Infantry Regiment USAFIP, Northern Luzon, appointed by the Military Mayor of Laoag, which were presented and admitted as Exhibits A, B, C and D.

As to appellant Villa, his attorney does not claim that the finding of the lower court that the defendant has committed the offense charged is erroneous; he contends that the trial court erred in not suspending the judgment against him, in accordance with article. 80 of the Revised Penal Code, as amended by Commonwealth Act No. 99, and committing the appellant to a reformatory. As according to Exhibit B, this appellant was only 16 years, 9 months and 16 days old when he committed the crime, the contention of the appellant Villa is correct and well taken.

The recommendation or statement filed with this Court by the attorney do oficio for Tranquilino Bernardino, to the effect that, after examining the record of the case particularly the written statement of Tranquilino Bernardino, he finds no ground to ask for the reversal of the decision of the lower court is also well grounded.

With respect to the appellant Molina, his only defense is that he had a sexual intercourse with the offended party because he was forced to do so by two unknown soldiers who threatened to shoot him if he refused to do so, and that the latter consented to it "she herself having lifted up her dress and she handled my virile member and put it into her genital organ". This defense, aside from being contradicted by conclusive evidence, is in itself very incredible. There is no reason whatever why the imaginary two soldiers should compel the appellant Molina to have sexual intercourse with Consolacion Felipe. And taking into consideration the proverbial modesty of Filipino country women, it is inconceivable that the offended party, a single and honest girl of 29 years of age, should have openly and willingly performed the said acts attributed to her in the presence of several persons.

As to the crime or number of crimes committed by the appellant, we agree with the prosecution that each and everyone of them committed and are guilty of four crimes of rape. Each defendant is responsible, not only for the act of rape committed personally by him, but also for the rape committed by the others, because each one of them cooperated in the consummation of the rape committed by "the others, by acts without which it could not have been accomplished. The Supreme Court of Spain, in a sentence dated March 10, 1897, and published in the Spanish Official Gazette of April 10th of the same year, held that a person who throws the offended party to the ground and holds her while another is having a sexual intercourse with her, is a co-principal of the crime of rape.

Besides, from the acts performed by the defendants from the time they arrived at Consolacion's house to the consummation of the offenses of rape on her person by each and everyone of them, it clearly appears that they conspired together to rape their victim, and therefore each one is responsible not only of the rape committed personally by him, but also for that committed by the others, because each sexual intercourse had, through force, by each one of the defendants with the offended party was consummated separately and independently from that had by the others, for which each and every one is also responsible because of the conspiracy. The Supreme Court of Spain, in a sentence of March 15, 1898 (Hidalgo, Vol. I, p. 107), held that a person who has executed acts of lasciviousness upon a young girl on three occasions: once in her house, another on the morning, and the last act in the afternoon of the next day, must be penalized as guilty of three crimes of lasciviousness, because each one of the said acts had been committed independently from the others.

In view of all the foregoing, with the Modification that the appellants Molina and Bernardino be declared each guilty of four crimes of rape and sentenced, for each one of the offenses, to the indeterminate penalty of from 12 years, of prisión mayor to 20 years of reclusión temporal, to be served in accordance with article 70 of the Revised Penal Code, and that the appellant Villa be dealt with in accordance with the provisions of article 80 of the same Code, the sentence of the lower court is affirmed, with costs against the appellants Molina and

Bernardino.

So ordered.

Parás, Actg. C. J., Pablo, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING AND CONCURRING

BENGZON, J.:

I believe the defendants-appellants are guilty of rape; but they should be sentenced for one crime only — not four crimes. My reasons are fully set forth in my dissenting opinion in *People vs. Bernardo*, 38 Off. Gaz., p. 3482, which for the sake of convenience will not be re-written here.

DISSENTING

PERFECTO, J.:

Appellants are accused of rape in an information which reads as follows:

"El Fiscal Provincial que suscribe acusa a Dominador Villa, Eulogio Molina, Tranquilino Bernardino y Eligio Gomez del delito de violación, cometido como sigue:

"Que en o hacia el día 13 de Febrero de 1945 en el municipio de Laoag, provincia de Ilocos Norte, Filipinas, los acusados arriba nombrados, obrando de común acuerdo y ayudándose mutuamente, voluntaria, ilegal y criminalmente, yacieron uno tras otro mediante fuerza, violencia e intimidación con la ofendida Consolación Felipe contra su voluntad.

"Hecho cometido con infracción de la ley."

The information has been filed to advise the accused of the offense for which they were brought to the bar of Justice, as it is their constitutional right "to be informed of the nature and cause of the accusation" against them. (Sec. 1[17], Article III of the Constitution.)

Under the information the accused are charged with a single offense of rape, although they took turns in having sexual intercourse with the offended girl, in the same place, at the same time and under the same circumstances, each one helped by the others to accomplish the act.

The singleness of the offense alleged in the information in accordance with sections 3 and 12 of Rule 106, which provides that an information must charge but one offense except those where the law prescribes a single punishment for various offenses, which are thus considered a single complex offense:

"SEC. 3, Information defined.—An Information is an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court.

"SEC. 12. Duplicity of offense.—A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses."

Trial took place under the common understanding of prosecution, defense and trial judge that accused were charged with the single offense of rape. Accordingly, finding them guilty of the offense, upon the evidence on record, the lower court rendered judgment finding them guilty of the single offense of rape as defined and

punished by article 335 of the Revised Penal Code, and sentencing the accused to imprisonment and to indemnify the offended party.

Appeal has been taken against the judgment.

We agree with the lower court and with all the other Members of this Court that there is evidence to show inclusively appellants' guilt. We agree with attorney for the appellant Dominador Villa, supported by the opinion of the Solicitor General, that the lower court erred in not suspending the judgment against said appellant in accordance with article 80 of the Revised Penal as amended by Commonwealth Act No. 99, it appearing that when the accused committed the crime he was less than 17 years old, and that the appealed decision should be modified in said respect.

We are of opinion that the lower court erred in not ordering all the accused to jointly and severally support the issue, if any there be, in accordance with the doctrine laid down by this Court in *People vs. Velo*,^[1] L-868, promulgated on March 13, 1948.

We dissent from the majority opinion imposing upon appellants Molina and Bernardino four penalties for four different crimes of rape. The majority's position is far-fetched, contrary to law and violative of fundamental rights of appellants. The majority action is simply amazing.

Appellants had been charged with a single crime of rape. How can they be found guilty of and sentenced for four separate crimes of rape? According to the Constitution, they were and are entitled to be informed of the nature and cause of the accusation and the information conveyed by the prosecution was that they were and are charged with a single offense of rape. It was thus understood, and the prosecution, defense and judge acted tunder that understanding. By what miracle or legal magic or legerdemain has the single offense been turned into four distinct and separate crimes? Of course, with a fertile imagination, a way can always be found to make the absurdity sensible as there are those who insist on their ability to square a circle.

There is the case of defendant Eligio Gomez who, having committed the same act with appellants, was also sentenced by the lower court for a single crime of rape, and having withdrawn his appeal, he will undergo the single penalty for the single offense of rape, while appellants Molina and Bernardino will have to undergo four separate penalties for four separate crimes, notwithstanding the fact that they have not perpetrated different or more acts than those committed by Eligio Gomez. The injustice is so glaring as to need further elaboration.

Appellants Molina and Tranquilino, according to the majority, will have to undergo for the four separate penalties, imprisonment up to 40 years, 10 years longer than *reclusión perpetua*, the penalty for the most heinous crimes such as treason and murder. Is a sexual offense more serious than assassination or than killing guerrillas and selling one's country to the enemy? Has conceptual blindness gone to the extent of thus subverting moral values? By valuing the feminine sexual organs more than life itself and more than the security, sovereignty and freedom of a fatherland, is it intended to create a new fetish, as a modern counterpart of the phallic religious rituals of ancient Egypt?

If it is pretended that it is possible to read in the information that four offenses of rape are alleged against appellants, then we have a clear case of flagrant violation of sections 3 and 12 of Rule 106, and this Supreme Court will be debasing its functions to directly or indirectly countenance such violation of law. In the hypothesis that we can reconcile ourselves to our conscience by condoning or ignoring that violation, and on the assumption that the lower court as a matter of fact had simultaneously tried appellants for four offenses of rape, by finding them guilty of but a single offense of rape, whichever it may be, it is logical to conclude that the lower court had acquitted appellants of the three remaining crimes of rape. That acquittal is a legal obstacle to appellants'

conviction for the three offenses, unless we would not have any compunction in violating the constitutional guarantee against double jeopardy.

For all the foregoing, we vote to affirm the appealed decision, modified in the sense that appellants should also be ordered to Jointly and severally support the offspring resulting from the rape if there is any.

Judgment modified, penalty increased.

[1]80 Phil., 438

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