

**LEODEGARIO BENG-ORAS, PETITIONER, VS. JOSE EVANGELISTA,
JUDGE OF THE COURT OF FIRST INSTANCE, FIRST BRANCH, CAPIZ
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. No. L-8558. September 28, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside the order of respondent judge entered on September 14, 1954 which denies the motion to dismiss filed by petitioner on the ground of lack of jurisdiction.

Norma Ballos, a girl fourteen years old, was allegedly abducted against her will by petitioner in the night of February 27, 1954 and so her father Silvestre filed a complaint for abduction against him before the Justice of the Peace Court of Pontevedra, Capiz. When the case was elevated to the court of first instance, the fiscal on May 18, 1954, filed an information for the same crime in accordance with law.

On August 6, 1954, petitioner filed a motion to dismiss challenging the jurisdiction of the court on the ground that the complaint which served as basis of the information was not signed by the offended party, who was already of the age of discernment, but merely by her father, and as such it did not confer jurisdiction upon the court. The fiscal objected to the motion in a well-written opposition, and on September 14, 1954, the court denied the motion. Hence this petition for certiorari.

The complaint which gave rise to the present case is predicated on Article 344 of the Revised Penal Code the pertinent portion of which reads:

"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."

It is the contention of petitioner that under the above legal provision the offended party has the preferential right to file the complaint even if she is a minor as long as she has the age of discernment and if she fails to do so, unless she is otherwise disqualified, the complaint does not confer jurisdiction upon the court. In support of his contention, he cites a decision of the Court of Appeals wherein this view was expressed: "The right to file is exclusively and successively reposed in the persons mentioned in said provision in the order in which they are named. The law gives the offended person a preferential right, placing him or her in the first rank for the filing of the complaint although he or she is not of age." (People vs. Mapotol, CA 35 Off. Gaz. No. 60 p. 1153)

It appears however that the view above expressed has already been abandoned, the correct ruling being the one expressed by this Court in Tolentino vs. De la Costa, 66 Phil., 100,[1] to the effect that the law (Article 344 of the Revised Penal Code) "does not state or does not intend to state that the right of the offended party to file the complaint against the offender, in the cases mentioned, is hers exclusively in the sense that when she does not file the same, her parents, grandparents, or guardian cannot file it. What it means to say and what it in fact says is, that

when the offended party is a minor and she does not file complaint, this may be done by her parents, grandparents or guardian, in the order named." (*Italics supplied*) Elaborating on this point, the Court said:

"Article 344 of the Revised Penal Code which contains the provisions that: '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', does not state or does not intend to state that the right of the offended party to file the complaint against the offender, in the cases mentioned, is hers exclusively in the sense that when she does not file the same, her parents, grandparents or guardian cannot file it. What it means to say and what it in fact says is, that when the offended party is a minor and she does not file the complaint, this may be done by her parents, grandparents or guardian, in the order named. It has thus been interpreted by this court in the case of *United States vs. Bautista* and in that of *People vs. Roa*, already cited, it having been held in the first of said cases that the preferred right of the offended party to take action against the offender, by filing the necessary complaint, is not exclusive of that of her parents, grandparents, or guardian, if she does not exercise it before reaching the age of majority. * * *

"We see no reason for altering this ruling, all the more so when it is considered that the offended party in the case under discussion is still a minor. She has not yet reached her 21 years at which majority begins, inasmuch as she was only 19 years on October 8, 1936 and, therefore, will not complete her 21 years until October, 1938. Alone, therefore, she is without capacity to protect herself, being, as she is, subject to the patria potestas and legal guardian ship of her parents."

The case at bar comes squarely within the doctrine of the Tolentino case because here the offended party was still a minor when the complaint was filed. Her father was therefore within his right to file the complaint in the light of the doctrine we have mentioned. Of course, if she is already of age and is in complete possession of her mental and physical faculties no one would dispute her paramount right to avenge the wrong done to the exclusion of her parents and other relatives mentioned in the law, as was stated in the case of *U. S. vs. De la Costa*, 9 Phil., 22. It is true that in *U. S. vs. Bautista*, 40 Phil., 735, this Court declared that a complaint filed by a minor confers jurisdiction upon the court, but such ruling merely passed upon the issue touching on the validity of a complaint filed by a minor and not on the question whether a complaint filed by her parents, she being a minor, is valid or not. On the contrary, from the context of the decision it may be inferred that if the offended party, who is under age, does not file or does not want to file the complaint against her offender, her parents may do so "being under obligation to render protection to those under their power and lawful guardianship and to represent them in the exercise of all the actions which may redound to their benefit."

The right of the parents to take action to vindicate the wrong done to their minor children and to the whole family is justified by Groizard in the following wise:

"Now then, if according to the civil law, it is the father and in his absence the mother, and in the absence of both the guardian, to whom belongs the right to represent a minor in the exercise of all the actions which redound for his benefit; and if, according to the procedural law, a minor cannot appear at the hearing without his personal incapacity being substituted by the authority of the parents or guardian, how can it be admitted, against what sound principles teach, positive legislation has established and science has exalted, that the legislator has here intended to make a very serious exception, destitute of all foundations and full of dangers and fatal consequences to a minor? This is inadmissible, and, therefore, under sound interpretation, the spirit of the law must in this case prevail over its letter. If this opinion need greater support, it would be found on the very ground that moved our, and almost all foreign, legislators to put unsurmountable obstacles to the public prosecution for the crime of seduction, subjecting, up to a certain point, by very special reasons, the general interest—consisting of the prosecution and punishment of all crimes—to the interest of the aggrieved party and her family in that their vice or faults, their fame and honor may not be exposed to the public nor to the heated

controversies before the courts of justice. * * *" (U. S. vs. Bautista, 40 Phil., 742)

Petition is denied, without pronouncement as to cost.

Bengzon, Acting C.J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

Petition denied.

[1] This is a reiteration of the ruling laid down in *People vs. Varela*, G. R. No. 45564, June 9, 1937.

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