

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SALVADOR PONELAS Y INAJE AND JAVIER ENORIO Y HERNANDEZ, DEFENDANTS AND APPELLANTS.

G.R. No. L-10853. May 18, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Salvador Ponelas and Javier Enorio were charged with rape before the Court of First Instance of Manila". Both were found guilty and sentenced each to suffer, an indeterminate penalty of from 12 years of prision mayor to 20 years of reclusion temporal, to indemnify jointly and severally the heirs of the deceased in the sum, of P5,000.00, and to pay the costs.

Both appealed to the Court of Appeals. Pending appeal, Ponelas moved to withdraw his appeal which was granted. And when counsel for the accused gave notice that he would only raise questions of law, the case was certified to this Court as required by law.

In the morning of April 25, 1955, Enrique Marcelo, a coffee vendor, went to Estero de la Quinta, near Echague, Manila, to answer a call of nature and upon reaching the place, he saw a woman in the river drowning whereupon he jumped and brought the girl to the bank to resuscitate her through artificial respiration. In the meantime, a mobile patrol arrived after having been informed of the drowning woman, while Salvador Ponelas informed a police precinct of the drowning incident. A policeman questioned the girl and asked her why she jumped into the river. She replied that she was raped by two men, pointing to Ponelas as one of them who was then around. Ponelas said nothing when he was pointed to. The woman was placed in an ambulance and taken to the North General Hospital where she died the following afternoon of "respiratory failure due to marked congestion and edema of the lungs following submersion in water." The vaginal smear taken from her private organ was found positive for several complete sperm cells.

Ponelas was taken to the police station and upon being investigated by a policeman, he admitted having sexual intercourse with the woman implicating one Javier Enorio. He stated that the latter used force upon the girl who fought with her wooden shoes, and allowed her to jump into the water which she threatened to do because Javier thought that she was merely bluffing. His statements were taken down in writing and were signed by him. Javier Enorio was subsequently arrested and investigated, and he too admitted his participation in the rape. His statements were also taken down in writing and signed by him. After the investigation, the two were taken to the scene of the crime where they reenacted how they abused and ravished the woman. Photographs of the reenactment were taken.

We are only concerned here with the appeal of Javier Enorio since, as already stated, the appeal of his co-accused Ponelas was withdrawn. And in this instance, his counsel merely raises the question of whether the trial court had validly acquired jurisdiction over the case in view of the testimony given in court by Leonor Sarabia who signed the complaint that gave rise to the prosecution of the two defendants. In this connection, counsel poses the

following question: since the crime of rape can only be prosecuted upon complaint of the offended party, her parents grandparents, or guardian, does failure to comply with this requirement affect the jurisdiction of the trial court?

It appears that when the victim died as a result of her attempt to commit suicide by jumping into the river, the authorities waited for her relatives to claim for her body which was kept in the morgue for sometime. Apparently, the deceased had neither parents, grandparents, or relatives. Later, however, one Leonor Sarabia came along inquiring about a niece of hers who disappeared, and so she was taken to the morgue. After the coffin was opened and Leonor and her brother were allowed to examine the cadaver, they stated that the victim was their missing niece and apparently because she made the authorities know that she was her guardian, Leonor was taken to the city fiscal's office where she filed the complaint which gave rise to the prosecution of Ponelas and Enorio.

It developed, however, After the prosecution had rested its case, that Leonor was presented as witness by the defense and testified that she made a mistake in her identification claiming that although the deceased bore a marked similarity to her missing niece, she was not the one because her niece turned out to be alive. According to Leonor, the name of her missing niece was Amalia Sarabia whereas the name of the victim was Flora de Cesareo. And in view of this change in the attitude of Leonor Sarabia, counsel for the defense now contends, as he did in the lower court, that the latter lost jurisdiction over the case, invoking Article 344 of the Revised Penal Code which provides that the offense of rape can only be prosecuted upon complaint filed by the offended party, her parents, grandparents or guardian.

While under Article 344 abovementioned the offense of rape can only be prosecuted upon complaint filed by the offended party, her parents, grandparents or guardian, and that unless this requirement is complied with the prosecution may fail on the ground of lack of jurisdiction, we believe however that in this, particular case, it cannot be successfully maintained that there is a failure of compliance with this requirement it appearing that Leonor Sarabia has filed the complaint as guardian of the victim after satisfying herself that the one lying in the morgue which she carefully examined and identified was really her niece of which she stood as her guardian in the City of Manila. While Leonor on the witness stand affirmed that she committed a mistake in the identification of the victim, her testimony was not however given credence by the trial court considering her wavering attitude and the apparent discrepancies noted in her testimony.

Thus, the trial court said on this point: "The Court entertains serious doubts on the sincerity of the defense witness Leonor Sarabia who claims that she made a mistake in the identification of the victim." The court further commented: "Assuming for the sake of argument that there was a marked similarity in the facial features of the deceased and Amalia Sarabia and assuming further that by sheer coincidence both the victim and Amalia have a scar in their left legs, all of which might have led Leonor Sarabia into error as to the real identity of the victim, Leonor Sarabia could not have been mistaken as to the names. The victim's name is Flora and Leonor's niece was named Amalia. Besides, if Leonor was not really sure of the identity of the victim, why did she subscribe to the complaint?" And then the court concluded: "Leonor Sarabia of her own accord and free will and as guardian of the victim, instituted the original action. Such complaint, the Court believes, is sufficient to confer jurisdiction upon the Court to take cognizance or try the case on the merits"

The foregoing, being a finding of fact which is binding upon this Court in view of the fact that this appeal was taken on purely questions of law, we have no other alternative than to conclude that Leonor Sarabia filed the present action as guardian of the victim and as such such complaint conferred jurisdiction upon the trial court to act on the case. The lower court, therefore, acted properly in denying the motion to dismiss filed by the defense.

Wherefore, the decision appealed from insofar as appellant Javier Enorio is concerned is affirmed, with one-half

of the costs against said appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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