

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DELFIN BAUTISTA, DEFENDANT AND APPELLANT.

C. A. No. L-226. February 23, 1946

Ponente: OZAETA, J.

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OZAETA, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Laguna, finding the appellant guilty of qualified seduction and sentencing him to an indeterminate penalty of from eight months to one year and ten months of prision correccional, to indemnify the offended party, Concordia Barquilla, in the sum of P1,000, with subsidiary imprisonment in case of insolvency, to support the offspring named Trinidad Bautista, and to pay the costs.

The accused, Delfin Bautista, aged thirty years, a Doctor of Medicine, of San Pablo, Laguna, is a married man, he having contracted matrimony in Vienna on December 12, 1937, with Josephine Petrack of that city, by whom he has two children who were born in October 1938 and October 1939, respectively. After his return to the Philippines from Vienna with his nineteen-year-old wife in May 1938, he established his conjugal home at 20 Basa street, San Pablo, in a three-story building of which the third floor contained the bedroom; the second floor, the living room, the dining room, and the kitchen; and the first floor, his clinic and the office of his father, Enrique Bautista.

The complainant Concordia Barquilla, who was born on August 16, 1922, entered the service as a housemaid of the accused Doctor Bautista in December 1938, after her parents had contracted an indebtedness of \$70 with Enrique Bautista, the father of the accused.

In the month of October 1940, after she had reached the age of eighteen years and while she was still in the service of the accused, the said complainant conceived, and on June 8, 1941, gave birth to a baby girl whom she christened Trinidad Bautista.

Concordia Barquilla left the service of Doctor Bautista on January 18, 1941, and initiated this criminal prosecution shortly thereafter against her former master. It is alleged in her complaint that from the month of May 1939 until the month of January 1941, in the city of San Pablo, the accused, being a domestic and a person in charge of the care and custody of the complainant, a virgin over twelve and under eighteen years of age, by means of deceit, trickery, and abuse of confidence and authority and with criminal intent to debauch, defile, and disrepute her, did then and there criminally, feloniously, illegally, and voluntarily have sexual intercourse with the said complainant, as a result of which she became pregnant.

Before considering the inculpatory evidence to determine whether or not it is sufficient to overcome the presumption of innocence in favor of the accused, we deem it necessary to clarify the issue in the light of the law applicable thereto. It will be noted from what has been said above that the complaint embraces two periods which must not be confused: (1) from May 1939 to August 15, 1940, when the complainant was under eighteen years of age; and (2) from August 16, 1940, to January 1941, when she was over eighteen years. This division is necessary

because, to determine the criminal liability of the accused under the complaint, the second period is absolutely immaterial, inasmuch as under the law the complainant could not be the object, nor could she complain, of seduction after she had reached the age of eighteen years. The allegations of the complaint cover both of the following articles of the Revised Penal Code:

"ART. 337. Qualified seduction.—The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall, be punished by prision oorreccional in its minimum and medium periods.

* * * * *

"Under the provisions of this chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

"Art. 338. Simple seduction.—The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by arresto mayor."

To determine whether the accused is guilty of having seduced the complainant, i.e., of having had carnal knowledge of her while she was a virgin over twelve years and under eighteen years of age, only the proofs of the alleged cohabitation between the complainant and the accused during the first period embraced in the complaint can be considered. In other words, proofs of the alleged cohabitation subsequent to August 15, 1940, which resulted in complainant's pregnancy, cannot be taken into consideration for the reason that she was then already over eighteen years of age. As a matter of law, the paternity of the resulting offspring could not even be the subject of judicial inquiry.

Thus, article 132 of the Civil Code provides:

"ART. 132. When the acknowledgment is made separately by the father or the mother, the name of the child's other parent shall not be revealed by the parent acknowledging it, nor shall any circumstance be mentioned by which such person might be recognized.

"No public officer shall authenticate any document drawn in violation of' this provision and should he do so notwithstanding this prohibition shall be liable to a fine of from 125 to 500 pesetas, and the words containing such revelation shall be stricken out."

Under article 141 of the same Code, with two exceptions not pertinent herein, "no court shall permit the filing of any complaint, the purpose of which may be to investigate, either directly or indirectly, the paternity of illegitimate children who have not the legal status of natural children."

In the case of *Infante vs. Figueras*, 4 Phil. 738, which was an action to compel the defendant to recognize a natural daughter as his, the trial court permitted the mother and the maternal grandmother of the child and another witness to testify, against the objection and exception of the defendant, to the relations which existed between the defendant and the mother of said child prior to the birth of the latter, and that the defendant was the father of the child. The plaintiff in that case contended that in actions to compel acknowledgment of a natural child arising either under paragraph 1 or paragraph 2 of article 135 of the Civil Code, evidence of the relationship and evidence tending to show that defendant is in fact the father of the child is competent and admissible as throwing light upon his subsequent conduct in the treatment of the child. But this Supreme Court, overruling such contention and reversing the decision of the trial court, said:

"* * * It is very clear that in every case such evidence would have great weight. Evidence having been received in this case to show that the defendant was in fact the father of the child, the court was easily led to the

decision that the defendant had so treated the child as to give the latter the continuous possession of the status of a natural child. Its influence was undoubtedly preponderating upon this point, but the question is, Can it under the law have such influence? Does the law allow the judge, in his decision on the question of the existence of a writing under paragraph 1, or the possession of status under paragraph 2, to be influenced by evidence showing that the defendant in fact was the father of the child? Let us suppose that the facts showing the possession of the status of a natural child are in themselves insufficient to prove such possession, but when proof of the parentage is introduced for the purpose of explaining the evidence in regard to the possession of the status of a natural child, the latter evidence becomes sufficient for that purpose. In such case it is seen, of course, that the judgment against the defendant rests, not upon the evidence that the child possessed the status of a natural child, but upon the evidence that the defendant was in fact its father, and the effect of such a holding would be to compel the defendant to recognize the child, not because the child had possessed continuously the status of a natural child, but because the plaintiff had proved that the defendant was in fact its father. This is a result which the Civil Code does not authorize. If it had been the intention of the legislators to have allowed this kind of evidence to turn the scale, the code might as well have provided, as was done in the case of the mother, that proof of this fact would compel a recognition. In this particular case evidence was introduced to show that the defendant had sent money and medicine to Presentaeion Infante, the mother. That evidence, standing by itself, has no significance. It acquires all its force by reason of the evidence previously introduced to the effect that the defendant was the father of Presentation's child." (Pages 741-742.)

See also *Borres and Barza vs. Municipality of Panay*, (42 Phil. 643, and cases therein cited.

It is argued in the brief for the appellee that the carnal relations had after the complainant had reached the age of eighteen years constitute a continuation of the criminal offense begun before. This view is untenable. There is no such thing as a continuing offense or a continuation of the offense of seduction. The loss of virginity during the minority of the offended party (i.e., while under eighteen years of age)[1] consummates the offense, and the virginity of one cannot be lost twice. Strictly speaking, the carnal relations subsequent to the first coition are beyond the pale of the law which penalizes seduction. It is plain that cohabitation with a woman during her majority, whether for the first or a subsequent time, cannot and does not constitute an offense under the law in question.

With the issue in view as thus clarified, to wit: whether the accused had carnal knowledge of the complainant in and between May 1939 and August 15, 1940, we proceed to examine the evidence for the prosecution on that point.

The complainant Goncordia Barquilla testified on direct examination in substance as follows: On the night of May 18, 1939, Doctor Bautista and his wife left the house saying that they were going to some place. A while later Doctor Bautista returned and locked the door. The complainant was then taking care of Doctor Bautista's baby. Doctor Bautista then and there embraced and kissed her and tried to raise her dress and lay her down on the bed. She told him: "Don't do that because you are a married man," to which he replied: "Don't talk; I will take care of you because I am not married to Josefina." He went on with his advances and forced the complainant and succeeded in having sexual intercourse with her, and when she began to shout he stuffed her mouth. "The night after that he had another sexual intercourse with me, and after the lapse of one week he succeeded in having sexual intercourse with me every night." Doctor Bautista's wife, according to the complainant, "does not stay in the house the whole day. She goes out after breakfast and comes back at night," usually at twelve o'clock midnight, because she usually stays in the store of her friend Mrs. Avanzado. The complainant said she gave birth on June 8, 1941.

Upon cross-examination she testified in part as follows:

"Q.

You said your child was born on June 8, 1941. At your conception of that child you were more than 18 years?

- A.

Not yet.

"Q.

Do you remember the date of your birth?-

"A.

Yes, sir.

"Q.

When were you born?

"A.

August 16, 1922.

"Q.

When did you conceive that child?

"A.

In October, 1940.

"Q.

So from August 16, 1922, to October 1940, by mathematical calculation, you were 18 years old, and 2 months?

"A.

No, because it seems to me that I conceived twice, at my first conception I was given medicine by Dr. Bautista.

"Q.

I refer to your child. You said you conceived of her in October 1940, is that right?-

"A.

Before I conceived again I was given medicine.

"Q.

But from October 1940, that was the time when you conceived of your present child?

"A.

Yes, sir. ,

"Q.

So at the time of your conception of that child you were 18 years and 2 months because you said you were born on August 16, 1922?

"A.

Maybe.

* * * * *

"Q.

Will you state to the court what date in May, 1939, when Dr. Bautista had sexual intercourse for the first time with you?

- A.

I don't remember the exact date but I remember the month and year.

"COURT:

" Q. Did you not state May 18, 1939? - A. I did not say that." (Pages 8, 9, 10, t. s. n.)

She further testified: "The succeeding night I resisted but he told me to keep my mouth shut because my parents had a debt to him and told me that if I did not acc ede to his desire he would file a complaint against my father, so that I acceded to his desire."

"Q. And from that date after (until) you left the house of Dr. Bautista, almost every night Dr. Bautista had sexual intercourse with you?- A. Yes.

"Q. That is, covering a period of one year and six months, almost? -A. Yes.

"Q. The first night Dr. Bautista had sexual intercourse with you, you said you were holding a child of Dr. Bautista, is that true? - A. Yes.

"Q. You were sitting or standing at that time? - A. I was sitting down.

"Q. What is the age of that child you were holding? - A. I don't remember if that child was one year old or less.

"Q. And Dr. Bautista as soon as he approached you, tried to embrace and kiss you and raised your dress? - A. Yes.

"Q. And what did you do? - A. I was trying to disentangle myself from him because he was embracing me, but he would not allow me and forced me to lie in bed.

"Q. Will you show to the court graphically how Dr. Bautista embraced you when he approached you that night of May, 1939? - A. He embraced me like this (witness embraces her mother, kisses her and hugs her).

"Q. As you tried to show graphically to the court the breast of Dr. Bautista was touching your breast at the time he was kissing you? -A. Yes.

"Q. You said you were holding a child of Dr. Bautista at the time when Dr. Bautista approached you. How was it possible that it happened in the way you graphically demonstrated, and what happened with the child? - A. I was not holding the child then. I was only holding a milk bottle, and when Dr. Bautista made his advances I dropped the bottle." (Pages 12-13, t. s. n.)

She also revealed for the first time on cross-examination that Doctor Bautista promised to give her P1,000 and to marry her. She said she did not mention the promise to give her P1,000 when she testified before the municipal judge of the city of San Pablo because her attorney, Mr. Gomez, had told her "not to put that in the records because it has nothing to do with the case and only to put the fact that he would marry me." She said that the promise to give her P1,000 was made by Doctor Bautista "the first time he made his advances." She further said: "I acceded to all his desires because of his threats that he would file a complaint against my parents. I pity my parents." But, she said, she did not ask her parents about their supposed indebtedness until she left the service of Doctor Bautista.

On redirect examination the complainant testified for the first time that in July 1939 the accused gave her two kinds of capsules, one red and the other white, instructing her to take two white capsules before every meal and two red capsules after meals. On re cross-examination she testified that before filing the complaint she informed her lawyers (she was assisted by two attorneys as private prosecutors) about the medicine that she had been taking, but that they told her "not to put that fact in writing," and that that was the reason why it did not appear in her testimony before the municipal judge.

The only other witness called by the prosecution to corroborate the alleged sexual intercourse between the accused and the complainant in the month of May 1939 was one Maria Veridiano, a 55-year-old woman, who testified that she entered the service of the accused as a cook on October 12, 1939; that while she was in the service of Doctor Bautista as a cook, one day during the month of May 1939, about five o'clock in the afternoon, she went upstairs to the room (meaning the bedroom) to get some rice, and she saw Concordia Barquilla being embraced by Doctor Bautista, and when Doctor Bautista saw her he sent her away; that she did not see other persons in that room besides Doctor Bautista, Concordia Barquilla, and a child of Doctor Bautista. Further testifying on direct examination this witness swore:

"Q. When you saw the accused and the offended party inside the room, how far were you from them? - A. I was about one braza away from them; they were near the door.

"Q. That room is a sleeping room, or a dining room?-A. Sleeping room of Dr. Bautista.

"Q. Was the door of the room open or closed when you saw the two?- A. It was closed.

"Q.. How could you see them if the door of the room was closed?- A. I opened the door because I was going to get some rice.

"Q. Was the rice inside that room?-A. It was in that room." (Pages 27-28, t. s. n.)

According to this witness, after the lapse of one week, at noontime and in the same room, she again saw the accused embracing the complainant, who was then holding a child; that when she saw them she again went down; and that she went up that room that second time to get the coffee pot.

On cross-examination she reiterated that she entered the service of Doctor Bautista as a cook on October 12, 1939, whereupon she was interrogated by the court as follows:

"Q. And when did you see this act you are describing now, what month and year?- A. When I was already in the service of Dr. Bautista, in the month of May.

"Q. Do you mean to say May, 1939?- A. I did not stay long in the service after I saw those incidents.

"Q. But May of what year?-A. In the month of May that same year.

"Q. 1939? -A. Yes, sir." (Page 32, t. s. n.)

Upon analyzing the testimony of the complainant and her witness Maria Veridiano, one is struck by the apparent lack of candor of the former and the manifest inherent incredibility of the testimony of the latter. If we are to believe the first part of the testimony of the complainant, she was raped by the accused on the night of May 18, 1939. But in another part of her testimony she gave the court to understand that she acceded to the advances of the accused because the latter promised to give her P1,000 and to marry her. Later on she practically nullified those alleged promises by saying: "I acceded to all his desires because of his threats that he would file a complaint against my parents. I pity my parents." Aside from that, it will be recalled that at the beginning of her testimony on direct examination she categorically stated that the first sexual intercourse with her occurred on the night of May 18, 1939; but on cross-examination she said she did not remember the exact date but only the month and year, and when she was asked by the court if she had not said May 18, 1939, she replied that she did not say that. Again, at first she said that she was holding the baby when the accused embraced and kissed her; but after she had been made to demonstrate gKscjstetBsiy how the accused embraced and kissed her, when she was made to explain how that could have been done while she was holding the baby, she asserted that she was not holding the baby then but only a milk bottle, which she said she dropped when the accused made his advances. Moreover, it appears from her testimony that, at least, when she testified before the municipal judge during the preliminary investigation, she deliberately withheld certain vital alleged facts, such as the promise to give her P1,000 and the use of abortive medicines, in obedience to the instructions of her attorney, Mr. Gomez. Needless to say, the testimony of any witness who may have been previously instructed as to what to say and what not to say before the court and who admits having obeyed such instruction, cannot be relied upon; and when in other respects the testimony of such witness appears exaggerated, self-contradictory, evasive, and otherwise denotes lack of sincerity and candor, it is certainly not safe for the court to accept it for any purpose, and much less as a basis for conviction.

We find manifest exaggeration in the testimony of the complaining witness that from May 18, 1939, to January 17, 1941, a period of one year and eight months, the accused cohabited with her every night, or almost everynight, in the conjugal bed; and to make the court believe such exaggeration she swore that the wife of the accused was

almost always absent from home from morning to midnight because she stayed in the store of a friend of hers during that time—another palpable exaggeration. The evasiveness of her testimony on cross-examination can be readily seen from what has been quoted above. For instance, after denying that she was more than eighteen years of age when she conceived her child, who was born on June 8, 1941, and after admitting that she was born on August 16, 1928, and that she conceived her child in October 1940, she was asked whether it was not true that in October 1940 she was eighteen years and two months old, to which she replied: "No, because it seems to me that I conceived twice, at my first conception I was given medicine by Dr. Bautista." It is transparent from her testimony that she was conscious of the importance of establishing the fact that she was under eighteen years of age when the seduction took place.

More incredible still, to our mind, is the testimony of Maria Veridiano. She repeatedly and categorically stated that she entered the service of the accused as a cook on October 12, 1939, and yet she pretended to have seen, the accused embracing the complainant in his bedroom on the third floor of the house at five o'clock one afternoon in May 1939; and that one week thereafter, at noontime and in the same room, she again saw the accused repeating the same act. The apparent purpose of her testimony was to corroborate that of the complaining witness to the effect that she was seduced in May 1939. But it will be recalled that according to the complainant the first cohabitation with her took place on the night of May 18, 1939, after the accused had locked the door; that the second cohabitation took place the following night, "and after the lapse of one week he succeeded in having sexual intercourse with me every night." The complainant never mentioned any attempt on the part of the accused to have sexual intercourse with her at five o'clock in the afternoon or at twelve o'clock noon or at any other time of the day. If we were to believe the witness Maria Veridiano as well as the complainant, it would result that the accused was not satisfied with having carnal knowledge of his maidservant every night but had to indulge in it at other times of the day, even during the period of menstruation. The testimony of this witness strikes us as inherently incredible. Aside from the fact that according to her she was not yet in the service of the accused in May 1939, she having entered it on October 12, 1939, and therefore she had no opportunity to intrude into the privacy of the accused as claimed by her, by opening without first knocking at the closed door of his bedroom, the purpose claimed by her in going to that room on the two occasions—to get rice on the first, and to get the coffee pot on the second—is manifestly false. The bedroom was on the third floor of the house while the living room, the dining room, and the kitchen were on the second floor. The bedroom is not the place where the rice and the coffee pot are usually kept. In this connection the wife of the accused testified that Maria Veridiano entered her service as a laundress in October 1939 and stayed in the service for only about two weeks; that said woman was never their cook and never cooked rice; that in 1939 she (Mrs. Bautista) kept her rice on the second floor, "in the dining room, by the stairs leading to the third floor"; and that she never kept rice in the bedroom.

We must therefore reject the testimony of the witness Maria Veridiano as completely incredible. Hence there remains only the uncorroborated testimony of the complaining witness Concordia Barquilla as to her alleged seduction by the accused in May 1939. From an analysis of her testimony as hereinbefore made, we cannot but entertain serious doubts as to its veracity. In the case of *People vs. Fausto*, (51 Phil. 852, 856), this Court said:

"On more than one occasion in the past this court has had occasion to point out that, in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion."

We reaffirm that pronouncement as sound and in consonance with the wisdom of the ages and the experience of mankind on the subject. In the Scriptures it is writ: "There be three things which are too wonderful for me, yea, four which I know not: The way of an eagle in the air; the way of a serpent upon a rock; the way of a ship in the midst of the sea; and the way of a man with a maid. Such is the way of an adulterous woman; she eateth, and

wipeth her mouth, and saith, I have done no wickedness." (Proverbs, 30: 18-20.)

In the present case the trial court was unduly influenced in its appreciation of the testimony of the complainant as to her alleged seduction by the accused in May 1939 by the physical fact that on June 8, 1941, she gave birth to a child whose paternity she attributed to the accused. The trial court thus reasoned out: Nature always asserts itself. The complainant would not attribute the paternity of her child to the accused if he were not the real father. And if he was really the father, he must be the one who had seduced the mother in May 1939 as claimed by her. The faultiness of such reasoning is too apparent for comment.

In the case of *Infante vs. Figueras*, (supra), this Court noted that the evidence tending to show that the defendant was in fact the father of the child easily led the trial court to the decision that the defendant had so treated the child as to give the latter the continuous possession of the status of a natural child. That was so because there was a necessary connection between the fact of paternity and the subsequent conduct of the father towards the child, since the former explained the latter. Nevertheless, since the law did not permit the investigation of paternity, this Court discarded that fact and held that it was error on the part of the trial court to be influenced thereby. In the present case there is no necessary connection between the alleged paternity of the child conceived in October 1940 and the alleged cohabitation in May 1939. Even assuming for the sake of argument that the accused cohabited with the complainant in October 1940, as a result of which said child was born, it would not necessarily follow that there was cohabitation between its parents in May 1939 or at any other time prior to August 16, 1940, when the complainant was under eighteen years of age. And, again assuming that the accused is the father of said child, it would not be strange if the complainant should pretend to extend backward her relations with him in order to bring the fruit of her sin within the pale of the law not only to secure support for her child from the accused but also to obtain indemnity from him. In her situation the end would seem to justify the means.

The ultimate effect of the decision of the trial court in this case, wherein it unduly allowed itself to be influenced by the testimony of the complainant that the accused is the father of her child, is to convict the accused upon a forbidden and incompetent proof—that of the paternity of an illegitimate child conceived and begotten after the mother who acknowledges it had reached the age of eighteen years, when cohabitation with her was not an offense under the criminal law invoked in her behalf. This, we hold, is a reversible error.

Since the evidence for the prosecution has not proved the guilt of the accused beyond reasonable doubt, we do not deem it necessary to consider the evidence for the defense to the effect that three different young men other than the accused courted or had amorous relations with the complainant, and "that one of them is the father of her child.

The judgment is reversed and the appellant is acquitted, with costs de oficio.

De Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

[1] Excepting the seduction of a sister or descendant as penalized in the second paragraph of article 337.

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