THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUIS MANDIA, DEFENDANT AND APPELLANT.

G. R. No: 41313. August 24, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant appeals from a decision of the Court of First Instance of Nueva Ecija, finding him guilty of robbery and sentencing him to suffer an indeterminate sentence of not more than six years, ten months, and one day of prision mayor and not less than four months and one day of arresto mayor, and of attempted rape with physical injuries and to suffer therefor an indeterminate sentence of not more than four years, two months, and one day of prision correcdonal and not less than four months and one day of arresto mayor, to indemnify the offended party in the sum of P16, without subsidiary imprisonment in the case of robbery, but with subsidiary imprisonment, if he should be insolvent, in the case of the attempted rape, not to exceed one-third of the principal penalty, and to pay the costs.

The attorney de oficio of the appellant contends that the lower court erred in not giving credit to the testimony of the witnesses for the defense to the effect that the defendant could not have committed the alleged crimes when it is alleged that they were perpetrated. We find no merit whatever in this contention.

The evidence clearly shows that the defendant attempted to rape the offended woman at the time and in the manner alleged in the information, and that by means of violence he took from her "P4, and in so doing inflicted upon her physical injuries, which incapacitated her for labor for a month.

This action was begun in the justice of the peace court of Bongabon on February 14, 1933, when Eugenio Rosal, a private in the 49th Company of the Philippine Constabulary, subscribed and swore to the complaint. It was alleged therein that the defendant taking advantage of the weakness of Eugenia Santiago took from her possession the sum of P4. To the foregoing allegation the following words were added: "* * * and voluntarily, maliciously, the said accused with intent to have carnal intercourse with Eugenia Santiago against her will and consent." The language quoted does not contain any verb. Nothing is therefore asserted.

The case was remanded to the Court of First Instance, and on March 21,1933 the provincial fiscal filed an information charging the defendant with robbery and slight physical injuries accompanied by attempted rape, committed as follows:

> "That on or about the 29th day of January, 1933, in the municipality of Bongabon, Province of Nueva Ecija, P. I., and within the jurisdiction of this court, the above-named accused Luis Mandia, with intent to have sexual intercourse with Eugenia Santiago, did by means of violence and intimidation and with lasciviousness voluntarily, maliciously, illegally and criminally embrace and drag down on the ground said Eugenia Santiago, put himself on her top, raise her skirt and try to introduce his penis into her genital organ but he could not do it because of her resistance, and said accused, while he was abusing of said Eugenia Santiago, did by means of violence and intimidation voluntarily, maliciously, illegally and criminally take, with intent to gain, the amount of P4, belonging to said Eugenia Santiago against her will, slight physical injuries which needed medical

> attendance to heal for less than 9 days and incapacitated her for labor for a like period of time having been caused unto her because of the violence dealt upon her by said accused on occasion of such robbery and attempted rape."

The attorney for the accused asked for the dismissal of the case on the ground that the crimes charged in the information were different from those imputed to the accused in the justice of the peace court. The Court of First Instance found that the crime of robbery with attempted rape was not clearly charged in the complaint, and that the accused was entitled to a preliminary investigation on the crimes alleged in the information. Thereupon the trial judge made a preliminary investigation, and finding there was probable cause ordered the case to be set for trial, and in due course the accused was tried and sentenced as herein above stated.

Article 434 of the Penal Code provided that no penalty should be imposed for the crime of adultery except upon a complaint (querella) filed by the injured husband.

Article 448 provided that the offense of seduction should not be prosecuted except upon a complaint filed by and in the name of (sino a instancia) the offended party or her parents, grandparents, or guardian, that it should be sufficient to authorize a prosecution for the offenses of rape and abduction with lewd designs that charges had been preferred by the offended party or by her parents, grandparents, or guardian, without the filing of a complaint by such person or persons; that if the person offended should be disqualified by reason of nonage or mental incapacity to maintain the suit, and should furthermore be absolutely destitute, having no parents, grandparents, brothers or sisters, guardian or curator, by whom the charge might be brought, such charge might be made by the prosecuting officer upon general information.

Sections 3, 4, and 5 of General Orders, No. 58 read as follows:

> "SEC. 3. All public offenses triable in Courts of First Instance or in courts of similar jurisdiction, now established or that hereafter may be established, must be prosecuted by complaint or information.
>
> "SEC. 4. A complaint is a sworn written statement made to a court or magistrate that a person has been guilty of a designated offense.
>
> "SEC. 5. An information is an accusation in writing charging a person with a public offense, presented and signed by the promotor fiscal or his deputy and filed with the clerk of the court."

Section 1 of Act No. 1773, enacted on October 11, 1907, provided that after said date the crimes of adulterio, estitrpro, rapto, violation, calumnia, and injuria, as defined by the Penal Code of the Philippine Islands should be deemed to be public crimes and should be prosecuted in the same manner as are all other crimes defined by said Penal Code or by the Acts of the Philippine Commission: Provided, however, That no prosecution for the crimes of adulterio, estupro, or injuria committed against persons other than public officials or employees should be instituted except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person.

Interpreting this provision of Act No. 1773, the Supreme Court held in the case of the United States vs. Narvas (14 Phil., 410), that in order to give the court jurisdiction over the person of the defendant and the subject matter of the action it is necessary in cases of adulterio, estupro, or injuria that the complaint be made and executed in writing by the offended party personally, if that person be competent to do so, and, if not, then by one of the persons named in the section in the order in which they are named therein. This ruling was reaffirmed in the case of the United States vs. Ortiz and Regalado (19 Phil., 174), notwithstanding the fact that the evidence showed that the offended husband had denounced the crime to the fiscal and requested him to file the complaint.

It has been consistently held by this court as to the crimes mentioned in Act No. 1773 that if the complaint is not

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presented by the aggrieved person or by the parents, grandparents, or guardian of said person the court acquires no jurisdiction.

Article 344 of the Revised Penal Code provides that the crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse (No puede procederse por adulterio, amancebamiento o concubinato sino en virtud de denuncia del conyuge agraviado); and 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 (Tampoco puede procederse por causa de estupro, rapto, violacion o abusos deshonestos, sino en virtud de denuncia de la parte agraviada, o de sus padres, o abuelos o tutor, ni despues de haberse otorgado al ofensor, perdon expreso por dichas partes, segun los casos).

In accordance with the foregoing provisions of law and the decisions of this court, we are of the opinion that the crime of rape cannot be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian. (Samilin vs. Court of First Instance of Pangasinan, 57 Phil., 298; People vs. Trinidad, 58 Phil., 163; where it was held that the information for attempted rape, which was not signed by the offended party, was insufficient to confer jurisdiction on the court to hear and determine the charge therein made.)

The acts complained of in the present case were committed on January 29, 1933, or subsequent to the date when the Revised Penal Code became effective. It is clear therefore that in this case the complaint could be filed only by the offended woman, who was of age. Since the original complaint, even if it had been in due form, was not filed by the offended party, and the appellant was prosecuted on an information filed by the provincial fiscal, the court acquired no jurisdiction over the person of the defendant or the subject matter of the action in so far as it related to the crime of attempted rape, and the conviction of the appellant for said crime must be set aside.

The defendant is guilty of the crime of robbery with violence against persons. The physical injuries, which according to the information incapacitated the offended party for labor for less than nine days, are inherent in the crime of robbery with violence against persons, and there being present in the commission of the crime the aggravating circumstances that the crime was committed in the nighttime and in an uninhabited place, the penalty, which is prision correccional to prision mayor in its medium period, must be imposed in the maximum degree.

The accused was sentenced to indemnify the offended party in the sum of P16, or the P4 taken, plus the value of the offended party's earnings for a month; but it being alleged in the information that the offended party was incapacitated for less than nine days, she is not entitled to recover for the loss of earnings for a greater period than eight days at the rate of P12 a month, or a total of P7.20.

The defendant is therefore sentenced to suffer six years, ten months, and one day of prision mayor and to indemnify the offended party in the sum of P 7.20, without subsidiary imprisonment in case of insolvency, and in accordance with the Indeterminate Sentence Law and the facts of the case the minimum sentence of the defendant is fixed at two years of prision correccional. (People vs. Mallari and Lao Yu, p. 400, post.)

The appellant will pay the costs.

Avancena, C. J., Abad Santos, Hull, and Diaz, JJ., concur.

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