

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. WENDELINO AMORES, ACCUSED AND APPELLANT.*G.R. No. L-32996. August 21, 1974*

Ponente: AQUINO, J.

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This is a rape case. The prosecution's evidence shows that at about nine o'clock in the morning of July 12, 1966 Petronila Baligasa, fourteen years old, and her half-brother, Julito Santillan, eleven years old, both orphans, were in the farm of Sedronico Bantug located at Barrio Bungao, Valencia, Oriental Negros. They had been directed by their grandmother, Valentina Sarmiento, to gather cornstalks (kumpay) in that farm. Bantug is related to Petronila.

While they were engaged in that task, Wendelino Amores and Proculo Inquig (eighteen and sixteen years old, respectively) appeared at the scene. Petronila had known Amores for a long time. His house was not far from her residence. They resided in the same barrio. Without any preliminaries, Amores held Petronila's arm. She extricated herself from his grasp and ran away. Amores chased her and overtook her when she was forced to stop in order to remove a thorn which had pricked her left foot.

Upon overtaking her, Amores seized her hands, removed her panties (Exh. D), pulled her legs, pushed her to the ground, unbuttoned his pants, placed himself on top of her and succeeded in having carnal knowledge of her.

While Amores was abusing Petronila, she repeatedly shouted for help and struggled to free herself from his clutches by scratching, boxing and kicking him. She was unsuccessful. Amores' superior strength frustrated her efforts. After the assault, she went home and cried. Her grandmother was not in the house. Her brother, Julito, who witnessed the ravishment, could not do anything. He ran away after the act was consummated. Thinking like a child, he feared that Amores might also "wrestle" with him.

Petronila did not reveal at once to her grandmother what Amores had done because she was afraid to do so. She disclosed the outrage to the old woman five days thereafter. So, on July 17, 1966, she was brought to the office of Doctor Severiano M. Kho, the Municipal Health Officer, who examined her and certified to the following findings:

- Abrasion, slight right and left legs.
- Superficial, punctured wound, left foot.
- External examination of the vulva showed no external injury. Hymen not intact.
- On internal examination, the vaginal canal admits one finger easily. The small size vaginal speculum admits without difficulty (sic).
- Smear taken from the posterior wall of vaginal fornix is negative for spermatozoa." (Exh. B).

Doctor Kho declared that Petronila's hymen was not intact because it was ruptured possibly by a male organ. That possibility was confirmed by the fact that her vaginal canal admits the entrance of one finger. Doctor Kho

explained that no spermatozoa was found in the victim's vagina because the sperm cells would disintegrate or deteriorate five days after coition. Although an examination within three days after intercourse may reveal the presence of spermatozoa, their absence does not necessarily mean that the subject of the examination has not had any sexual intercourse. In rape the slightest penetration of the female organ consummates the crime (People vs. Selfaison, 110 Phil, 839, 843).

The incident was reported on July 18, 1966 to the police, the Mayor and the Municipal Judge. They did not take any action. There were efforts to settle the case amicably (6, 7, 32 and 33 tsn). Nearly a month after the incident, Petronila wrote a letter-complaint about the rape to the Provincial Fiscal (Exh. A). He conducted a preliminary investigation. On October 11, 1967 Petronila's verified complaint for rape was filed in the Court of First Instance of Negros Oriental.

After trial, the lower court rendered a judgment convicting Amores of rape sentencing him to an indeterminate penalty of "eighteen (18) years and one (1) day of reclusion temporal, as minimum, to reclusion perpetua, as maximum" and ordering him to pay Petronila an indemnity of P5,000 "as moral damages (Criminal Case No. 8336). Amores appealed to the Court of Appeals which transmitted the records to this Court.

In this appeal, he contends that the trial court erred in giving credence to the testimonies of Petronila, her brother and Doctor Kho. Amores, an unmarried laborer, who finished Grade V, admitted that he was in Sedronico Bantug's farm in the morning of July 12, 1966 and that he saw Petronila. He asseverated that he did not do anything to her. His version is that he was pasturing his cow on that occasion. Petronila was sitting and swinging on a fallen coconut tree. He stayed for only fifteen minutes in the farm. He denied that he chased and raped her. He admitted that he had known Petronila for sometime. He first saw her at the house of his elder brother who had married her aunt.

Genaro Bantug and Proculo Inquig corroborated the testimony of Amores. As noted by the trial court, Bantug blundered because he said that he first came to know that he would be a witness in this case on July 12, 1966, at eight o'clock in the morning (15 tsn). That was the day when the rape was committed.

Appellant's denial is not sufficient to overthrow the declaration of the complainant that she was raped. Amores had not explained why Petronila would falsely impute to him the grave crime of rape. It is difficult to believe that a fourteen-year girl would undergo the trouble and inconvenience of a physical examination of her private parts, submit to a public trial and sully her reputation by admitting that she was raped if her purpose was not to bring to justice the person who had grievously wronged her (People vs. Canastre. 82 Phil. 480, 483; People vs. Savellano, L-31127, May 31, 1974).

According to the evidence for the defense, Mauro the son of Valentina Sarmiento, raped Proculo Inquig, sister. If that was true, then the rape of Petronila by Amores was not an isolated instance in Barrio Bungao. That circumstance might explain why Inquig accompanied his friend, Amores, when the latter ravished Petronila.

Appellant's counsel (the Mayor of Valencia), in his fourth assignment of error, complains that the trial court did not allow him to present a supposed affidavit of desistance. That gripe is unfounded. The transcript and the record do not show that the defense ever tried to offer in evidence such an affidavit. The defense counsel cross-examined the complainant, and interrogated his witness, Emeteria Amores, on the alleged affidavit but, curiously enough, he did not produce that document and did not mark it as an exhibit. After Emeteria Amores had testified, he manifested that he was resting his case. He did not offer any documentary evidence.

Annex 1 of his brief is a carbon copy of an affidavit of retraction in English dated July 28, 1966, supposedly signed by Petronila and sworn to before the defense counsel. It cannot be construed as a pardon within the

meaning of article 344 of the Revised Penal Code and section 4, Rule 110 of the Rules of Court. Not having been presented formally in evidence, it has no probative value. The defense could not have been precluded from marking it as an exhibit and causing it to be attached to the record if the lower court rejected it.

Moreover, Petronila's subsequent letter-complaint to the Provincial Fiscal, dated August 10, 1966, accusing Amores of rape (Exh. A), constitutes a revocation of that affidavit of desistance or retraction. Her charge was formally affirmed in a subsequent complaint dated October 3, 1967 which was the basis of the prosecution of this case.

The appeal is devoid of merit. We agree with the following conclusions of the trial court:

"The findings of the doctor who conducted the physical examination on the person of the complainant riveted (meaning confirmed) the testimonies of Petronila Baligasa and Julito Santillan who, the evidence of record shows that they are already motherless; the abrasions on [the] legs could have been caused by the contact of the said legs as she was kicking and struggling to free herself from the defendant as the latter was raping her; the broken condition of her hymen was due to the introduction of the defendant's member into her vagina; and undoubtedly, the superficial punctured wound on her left foot was caused by the thorn that pierced her left foot when she was fleeing from the defendant, and which caused her to stop to remove it, when defendant overtook her. These circumstances could not have been the fabrication of a fertile imagination. The doctor's findings and the facts unfolded by the offended party and her brother are in complete harmony with each other."

The trial court did not err in convicting appellant Amores of simple rape which is penalized with reclusion perpetua (Art. 335 of the Revised Penal Code as amended by Republic Act No. 4111). But it erred in giving him the benefit of the Indeterminate Sentence Law. Article 63 of the Revised Penal Code (not its article 64[1], which was cited by the lower court), dealing with indivisible penalties, applies to this case.

The trial court's judgment should be modified. Appellant Amores is sentenced to reclusion perpetua. The indemnity is increased to twelve thousand pesos (People vs. Amiscua, L-31238, February 27, 1971, 37 SCRA 813; People vs. Garcines, L-32321, June 28, 1974). Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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