

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TONY MONTES, DEFENDANT-APPELLANT.

G.R. No. L-34051. May 26, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

We agree with the Solicitor General that appellant is entitled to an acquittal.

The Court of First Instance of Baguio and Benguet, Branch III, on February 13, 1971 rendered a decision in Criminal Case No. 3757, the dispositive portion of which reads:

"This Court, therefore, has no doubt whatsoever of the culpability of the Defendant, Tony Montes to have been the author who ravished the unfortunate Masning Kingay who took her life because of what happened to her. Both the testimonies presented in Court and the attendant circumstances present in this case point positively to the guilt of the Accused.

"This Court hereby sentences the Defendant Tony Montes to serve a Life Imprisonment for having indirectly caused her death and is hereby ordered to indemnify the heirs of the late Masning Kingay the amount of Twelve Thousand (P12,000.00) Pesos. He is counselled by this Court to live a righteous life in the future in order to atone for the grievous sin that he has committed." (p. 49, Rollo)

Records show that on October 27, 1966 the provincial fiscal filed with the Court of First Instance of Baguio and Benguet the following:

"a) a sworn criminal complaint for rape, allegedly committed on October 18, 1966, against Tony Montes, dated October 26, 1966, thumbmarked by Papas Kingay (as mother of the alleged victim, Masning Kingay, a minor), subscribed by two witnesses, and sworn to before the Provincial Fiscal having been the subject of a preliminary investigation; and

"b) another sworn criminal complaint for rape, also alleged to have been committed on October 18, 1966, against Wagtingan Montes, dated October 26, 1966, subscribed by the alleged victim, Paula Lonzo, and also sworn to before by the same fiscal having been the subject of a preliminary investigation." (pp. 2-3, Brief for Plaintiff-Appellee).

The complaint against Wagtingan Montes was docketed as Criminal Case No. 3756, while the complaint against Tony Montes, as Criminal Case No. 3757. At the time the complaints were filed, Masning Kingay, complainant in the case against Tony Montes, was already dead as shown in the supporting medical report of Dr. Veronica H. Novesteras, that she was found dead at two o'clock in the afternoon of October 18, 1966 at the roadside of Palew, Tublay, Benguet.

Prosecution evidence shows that late afternoon of October 16, 1966 (not October 18, 1966 as alleged in the complaint) Paula Lonzo and Masning Kingay were walking together on their way to the house of the former when their way was blocked by appellant Tony Montes and Wagtingan Montes. Tony Montes grabbed Masning Kingay

while Wagtingan Montes took hold of Paula and each of the accused pulled their victims to separate secluded places and then and there succeeded in abusing them, each to his own victim. It was because of the alleged rape of Masning Kingay that caused her to commit suicide on October 18, 1966, or two days after the supposed incident.

Paula Lonzo filed the criminal complaint against Wagtingan Montes, while the mother of the deceased Masning Kingay filed the corresponding complaint against herein appellant Tony Montes. Eventually, Wagtingan Montes married Paula Lonzo and, as a consequence, Criminal Case No. 3756 against Wagtingan Montes was dismissed. The case against Tony Montes proceeded to trial.

The deceased Masning Kingay and Paula Lonzo were examined by the Municipal Health Officer, Dr. Veronica H. Novesteras. It was the finding of Dr. Novesteras that when she conducted the autopsy of Masning there was frothing on the mouth which smells phosdrine solution and that she died of poisoning. The trial court concluded that "this evidence, coupled with the testimony and corresponding affidavit of her brother, Alberto Kingay, established positively that Masning committed suicide on October 18, 1966." Further, the trial court found that Masning had sexual intercourse on October 16, 1966 because the medical certificate of Dr. Novesteras "clearly averred that there was fecal matter around the genital and anal region and swelling and protusion of the clitoris, broken hymen at 9 and 3 as illustrated in the diagram and that vagina admits one finger." (p. 38, Rollo)

The lower court thus concluded that Tony Montes ravished Masning Kingay who took her life because of what happened to her and sentenced him to suffer reclusion perpetua for having indirectly caused her death.

In his brief, the Solicitor General observed:

"While we regret the tragic death of Masning Kingay, who it seems quite evident, was an unfortunate victim of a wrong on the occasion that she was with the accused Tony Montes and Wagtingan Montes, we hesitate to recommend the affirmation of the conviction of the accused Tony Montes, for lack of sufficient evidence. We cannot rely on the affidavit of Paula Lonzo in view of her retraction.

.....

"With the retraction of Paula Lonzo, the State may rely only on the following:

"a) the testimonies of Dr. Novesteras, Alberto Kingay and Pawid Esyaben, and

"b) Exhibits 'A', the medical report and 'E', the criminal complaint filed by Papas Kingay, on behalf of the victim (pp. 369, 1, Record, respectively). Papas Kingay, who was deaf and dumb, took the witness stand, but notwithstanding the use of signs, she was not able to give any information at all and was thus dismissed (pp. 5-6, tsn., Sept. 20, 1967). There was also another witness, Pawid Chanen, who was not able to testify. He was excluded because he was around during the examination of Alberto Kingay on the witness stand (p. 45, tsn., April 5, 1967).

"Dr. Novesteras confirmed the fact that the alleged rape victim, Masning Kingay, had sexual intercourse (pp. 6, 9, 10 & 25, tsn., February 23, 1967, but nowhere does it appear that she (doctor) found any evidence to show that the same was committed against her will, through force or intimidation exerted by another. The doctor mentioned though that there were minor superficial cuts and bruises on the lower extremities of Kingay but when she (Novesteras) was asked of the causes thereof, she answered:

'Q

How about the minor superficial cuts, what might have been the cause of that?

A

It may be due to the grasses where they walked or where they stayed, sir. Cogon grasses around the, vicinity or

talahib, or this renos because these are very common in Palo, they grow anywhere." (p. 9, tsn., Feb. 23, 1967)

"The doctor mentioned 'force' but she was not referring to that employed to a woman being raped, thus:

'Q

Do you mean to say, doctor, that if a woman is virgin the vagina will not admit one finger like the forefinger?

A With force, of course, it could admit.

Q How do you determine the force there?

A Well, we are referring to the insertion of the one finger . . .

A What force?

Q The pressure when you place the finger inside the vagina?

A

When I examined the deceased, it readily admitted one finger and to Paula Lonzo it readily admitted my two fingers.' (p. 25, tsn., Feb. 23, 1967)

"Moreover, from the testimony of the doctor it does not appear that the sexual intercourse took place during the time Kingay was allegedly with the accused on October 16, 1966, thus:

'Q

How long was the duration of the hymen broken, can you give an estimate how long was it broken?

A On the case of Masning Kingay, I know it is a recent one.

Q

From the time you made the certificate on October 27, 1966, how many days ago?

A

From three days to one week, sir.' (pp. 9-10, tsn., Feb. 23, 1967)

"Alberto Kingay, the brother of the deceased Masning Kingay, testified that before the latter took poison and died, she told him that she was raped by the accused.

"Pawid Esyaben was ineffectual at all as he testified purely on the fact that Kingay committed suicide and died but nowhere did he state anything about the alleged rape." (pp. 19, 21-23, Plaintiff-Appellee's Brief)

Further, the Solicitor General admitted that from the evidence submitted, the fact of the commission of the rape has not been established. It has not been shown that Kingay had sexual intercourse with the accused nor that it was against her will and was done with the use of force and intimidation nor that she was deprived of reason or otherwise unconscious, much less, that she was at the time under 12 years of age. It is true that the accused Tony and Wagtingan Montes admitted in court that they were with Kingay and Lonzo on the date the latter were

allegedly raped by the former, but they denied having raped the two women. There is, therefore, absence of any evidence, direct or circumstantial, to show that Kingay was raped, or that she was raped by the appellant. Under the circumstances, there is no need to discuss the arguments raised by the appellant. It should be noted, however, that the decision of the lower court is not clear as to what crime the accused was convicted of. He was sentenced "to serve a life imprisonment for having indirectly, caused her death", which may indicate that the accused was convicted of the crime of homicide. If this is so, the lower court is in grave error for he was never charged with said offense; he was accused of and tried for rape.

WHEREFORE, upon recommendation of the Solicitor General, the decision dated February 13, 1971 in Criminal Case No. 3757, convicting appellant Tony Montes is hereby REVERSED and SET ASIDE, and said appellant is ACQUITTED. With costs de oficio.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and Gutierrez, Jr., JJ., concur.
Vasquez, J., reserves his vote.

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