

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANTONIO SAVELLANO, DEFENDANT AND APPELLANT.***G.R. NO. L-31227. May 31, 1974*

Ponente: AQUINO, J.

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Antonio Savellano appealed from the decision of the Court of First Instance of South Cotabato convicting him of rape, sentencing him to reclusion perpetua and ordering him to indemnify Zosima Jenilla in the sum of ten thousand pesos (Criminal Case No. 2073).

The evidence for the prosecution shows that on July 18, 1969 Zosima Jenilla, a seventeen-year old unmarried girl, whom Judge Pedro Samson S. Animas described "as barely four feet tall and very cute", was residing at Seven-Hills, Maasim, Kiamba, South Cotabato with her parents. During her childhood Zosima was sickly. She was given injections and medicines. For that reason, "she has a poor hearing" and was somewhat "abnormal" (Exh. B). Her attainment was Grade two in the primary school.

At about ten o'clock in the morning of that day, her mother sent her on an errand to the house of her elder sister, Natividad Jenilla-Josoy, in Highland Breeze, also in Seven-Hills, about a kilometer from Zosima's house. On her way to her destination, she passed the cornfield which was fifty meters, away from the house of Antonio Savellano, the twenty-year old unmarried farmer already named, who is much taller than her and whom she had known since childhood. He was stealthily following her.

Suddenly, he seized her from behind by holding her shoulders and neck. He dragged her away from the trail along a distance of fifty meters to a place near a coconut palm in the cornfield near his house and forced her to lie down. She tried to shout but Savellano covered her mouth with his left hand. She resisted the assault by kicking, slapping and boxing Savellano and scratching him on the face (Exh. A) but she succumbed to the superior force employed by her assailant. He succeeded in pinning her down to the ground. The stump of his right arm pressed her chest. Weakened considerably by her struggle and resistance and the persistent force employed by Savellano, he succeeded in placing himself on top of her. He unzipped his pants with his left hand, exposed his penis, removed her panty and half-slip and had sexual intercourse with her. (Zosima narrated the incident while standing and crying in court, 35 tsn. Her dress, panty and half-slip were presented in evidence as Exhs. E, F and G).

After the sexual act, Savellano warned Zosima not to tell anybody what he had done to her. He said that he would kill her if she squealed. She stood up and picked up her panty and half-slip. She hurled stones at him. Then, she proceeded to her sister's house and tearfully reported the outrage which she had suffered.

She told her brother-in-law, Marcelo Josoy, that she was going to stab Savellano. Her dress was covered with mud. Josoy told her not to stab Savellano but to see her cousin, Alejandro Sasam. The latter advised her to inform her mother of the accident. Mother and daughter reported the incident to the barrio captain. They took that step so that the male persons in their family would not take the law into their hands. Patrolman Rufo Pajares arrested Savellano in the afternoon of July 18th.

Savellano's house was about a kilometer away from Zosima's house. His mother is a comadre of Zosima's mother, she being the godmother of Savellano's sister. Savellano never courted Zosima. The only time that he went to her house was about five months before the incident, when he bought sacks. That was the occasion when he had to sell something in Dadiangas.

Catalina Tale, who is a first cousin of Savellano and Zosima, who had known him since he was small and with whom she lived for two months, characterized him as "very foolish to women". He allegedly committed "foolishness" against some girls. On one occasion in December, 1967, he entered Catalina's bedroom and tried to rape her while she was asleep. He was not able to consummate the rape because she was awakened by his attempt on her honor. She kicked him (Exh. C). She said that Savellano could weed grasses and haul corn.

The municipal health officer examined Zosima on Sunday afternoon, July 20th, or about fifty-two hours after the incident. His findings were as follows:

"The labia majora and minora do not show any distinct sign of recent injury. Only the remains of the hymen (caruncula hymenales) may be perceived.

The vagina admits two fingers without pain. No specimen of semen could be obtained.

Remarks: There has been insertions (sic) of hard object into the vagina" (Exh. D).

The doctor explained that his finding that "the labia majora and minora do not show any distinct sign of recent injury" means that Zosima "has not given birth". He said that "caruncula hymenales" means that the hymen had been ruptured. The fact that two fingers could be inserted into the vagina without pain means that the girl was no longer a virgin. The expression "insertions of hard object into the vagina" means that the vagina had been expanded by a hard object like the penis.

Four days after the incident or on July 22nd the sanitary inspector examined Savellano. He found that Savellano had three or four scratches on the left cheek and neck which required three to five days to heal (Exh. A).

The case was investigated by Patrolman G. L. Bautista in the office of the chief of police. Zosima, Mrs. Jenilla and Catalina Tale executed before the municipal judge sworn statements about the rape. They delivered to Patrolman Bautista a checkered dress colored yellow, blue and white, a white half-slip and a white pantie (page 5 of the record). On July 23rd, a complaint for rape, thumbmarked by Zosima, was filed in the municipal court. Savellano waived the second stage of the preliminary investigation.

The Assistant Provincial Fiscal filed the information for rape on August 8, 1969. The case was tried on October 2, 1969. The judgment of conviction was promulgated on October 6, 1969.

Appellant Savellano raised a jurisdictional question which should first be resolved. He contends in his fifth assignment of error that the trial court did not acquire jurisdiction over the case because the evidence does not show that the offended girl filed a complaint for rape. He argues that the information filed by the fiscal is not sufficient to confer jurisdiction on the trial court. His contention has no merit.

Zosima Jenilla's verified complaint for rape was filed in the municipal court of Kiamba on July 23, 1969. It was docketed as Criminal Case No. 999. It is page 4 of the record elevated by the municipal judge to the Court of First Instance. It should have been marked as an exhibit by the prosecution. However, the fiscal's failure to do so did not mean that the trial court did not acquire jurisdiction over the case. The complaint is a matter of judicial notice (*People vs. Bringas*, 70 Phil. 528, 530).

Appellant Savellano was cognizant of that complaint. In his written waiver of the second stage of the preliminary investigation, he requested the municipal court to remand the case (meaning the complaint and its supporting

affidavits) to the Court of First Instance.

Appellant's other four assignment of error are bottomed on the issue of credibility. His version is that since December, 1968 he and the complainant were sweethearts who had indulged in sexual intercourse ten times.

He said that there was no rape because the sexual intercourse was voluntary. He had known Zosima since they were children. He used to visit her in her sister's house four times a week when only Zosima was in the house. If Mrs. Josoy would see him there, she would be angry. After they became sweethearts, he had sexual intercourse with her three times on the ground floor of Mrs. Josoy's house where Zosima resided. The sexual intercourse took place when the members of her family were not in the house. The other acts of sexual intercourse took place in the cornfield. He allegedly had sexual intercourse with her three times in December, 1968 two times in January and five times in April, 1969. However, on interrogation by the court, he said that he had no sexual intercourse with Zosima from January to July 18, 1969.

Savellano's contradictory testimony on the sexual intercourse with Zosima is quoted below:

"Q. Do you remember the dates when you have all those five sexual intercourse with Zosima? — A. I only remember that day of July 18 but the other occasions I cannot remember anymore.

Q. Was that January, 1969? The four times of sexual intercourse? — A. We did three times in December, two times in January and five times in April (81 tsn).

Q. (by Court): Do you want to tell us that from January until July 18, 1969, you have no sexual intercourse with her? — A. None.

Q. You always meet together between January and, July 18, 1969? — A. Yes, because we used to meet in a different house.

Q. But that notwithstanding you did not have sexual intercourse with her? — A. We did not (82 tsn).

According to Savellano, on July 18, 1969 he and Zosima met at about eleven o'clock in the morning, by prearrangement, in the cornfield owned by her cousin, Catalina Savellano. They went to a place about fifty or sixty meters from the trail and from his own house, near some coconut trees. First, he kissed and fondled her nipples for ten minutes, Zosima kissed him. Then they had carnal intercourse using dried coconut leaves as bedding. The leaves had been there for sometime, having been used by him on prior occasions. He had sexual intercourse with Zosima in that place five times. On July 18th Zosima was wearing a green panty which she herself removed. He did not notice if she was wearing a half-slip. The dress presented in court was the one which she wore on the day of the incident. They necked for half an hour.

Savellano declared that he loved Zosima and was willing to marry her. However, her parents did not like him because his right arm had been amputated. They assumed that he could not support her. He had sexual intercourse with her "so that I will be sure they marry us". He said that ten days before the incident his mother asked Zosima's parents for her hand in marriage. His mother told them that he and Zosima were engaged. Zosima's mother did not agree to the marriage because of his physical defect. His right hand was amputated due to an accident in the ricemill.

After he and Zosima had sexual intercourse on July 18, 1969, he told Zosima that their engagement was futile because they could not get married. She allegedly cried. He tried to pacify her. They talked for about an hour or up to past noontime. He admitted that when the policeman arrested him in the afternoon, he did not tell the peace officer that he and Zosima were sweethearts.

He was boxed by Policeman Bautista while he was confined in the jail at Kiamba. It was not true that he was

examined by a sanitary inspector. He did not suffer any injuries. Zosima did not scratch him.

Appellant's mother, Silvina Villamira, testified that on July 10, 1969 she asked Zosima's parents for her hand in marriage. Her son, Antonio, told her that he was in love with Zosima. Her parents told Savellano's mother that they would think over that proposal. They did not say when Silvina would know their answer. She did not inquire from Zosima's parents about their reaction to the marriage proposal. She did not send food and viands to Zosima's house. They did not like Savellano because his right hand had been amputated. After Savellano's arrest, Silvina met the members of Zosima's family in Kiamba. They uttered reproaches against Silvina.

In his appeal, Savellano insists that his version, that he had voluntary sexual intercourse with the complainant on July 18, 1969, should be given credence. He claims that he did not employ force. He capitalizes on the fact that he is a manco, his right hand having been amputated "six inches from the wrist". He points to certain alleged improbabilities in Zosima's testimony.

On the other hand, the trial court found that it was Savellano's story which is not believable and which is contrary to human experience".[*]

After a conscientious perusal of the record, we find that the trial court's conclusion as to appellant's guilt should be upheld.

It is true that Savellano has only the full use of his left hand. He has a physical handicap because he has no right hand. But the petite complainant, a teenager, is only four feet tall and used to be sickly (Exh. B), whereas, Savellano is five feet and five inches tall (79 tsn) and, as a young farmer, accustomed to manual labor, was quite strong. It is credible that, with his physical superiority, he was able to overcome the resistance of the complainant and to have forcible carnal knowledge of her.

It is not necessary that the force employed against the complaining woman in rape be so great or of such a character as could not be resisted. It is sufficient that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman (U.S. vs. Villarosa, 4 Phil. 434, 437 cited in 52 C.J. 1018, note 7; Decision of Supreme Court of Spain, dated May 14, 1878, 3 Viada,Codigo Penal 452; II Hidalgo Codigo Penal 302). The force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other (75 C.J.S. 475).

The conduct of Zosima Jenilla in reporting immediately to the barrio captain that she had been ravished negates appellant's claim that she had voluntary sexual intercourse with him. As noted by the trial court, it is hard to believe that a seventeen-year old unmarried girl like her would publicly disclose that she had been raped and thus sully her honor and reputation in the community, would allow an examination of her private parts, and would undergo the trouble and humiliation of a 'trial if her motive was not to bring to justice the person who had grievously wronged her (People vs. Canastre, 82 Phil. 480, 483).

The penalty of reclusion perpetua imposed by the trial court is in accordance with article 335 of the Revised Penal Code as amended.

Wherefore, the lower court's judgment is affirmed with costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

[*] The trial court said:

"Firstly, if it were true that they were sweethearts and loved one another as seriously claimed by the indictee that the offended party went to the extent of crying after he told her their love was useless as he could not marry her considering the adamant refusal of her parents, it will be inconceivable that such a woman so madly in love with him could afford to report immediately to her sister and mother and consequently to the authorities the fact that she was the victim of such "a detestable crime of rape, in which a man shows his most heinous side", by the accused, her lover. The ordinary course of things would have been for her to remain silent as she used to be, having in mind the 5 previous intercoursing they have had or, the other ordinary alternative would have been for them to elope. That did not happen to her simply because actually they were never sweethearts and the fact of being so was more of a rehearsed tale than the truth.

Second, if it were true that they had carnal knowledge for 3 times in December, 1968 and 2 times in January, 1969, no plausible reason was adduced why between January and July 18, 1969 or a period of more than 5 months, the sexual enjoyment which they were used to for 5 times in a period of 2 months did not happen again in the succeeding 5 months when there as nothing shown of the impossibility thereof. That is quite very unusual.

Third, if it were true that they were sweethearts, no valid reason was adduced why Zosima whom he claims madly in love with him, never even cared to whisper to him while incarcerated in jail on July 18, 1969 until date, some words of sympathy and pity, if not of love. Must she be only a dreamed Juliet?

Fourth, the dress, half-slip and the panty was exhibited before the Court were all soiled (Exhibits "E", "F" and "G"). If this carnal knowledge were by mutual agreement, ordinarily this loving Romeo would have told Zosima and the latter would have readily acceded to taking all of her clothings, not only to prevent their being soiled, but also to avoid discovery later by her sister and brother-in-law, and perhaps, by others. That should have been the ordinary behavior between lovers earnestly taking care of one another. It did not happen to her and the only conceivable explanation is that, actually, there was more of a case of rape than a sweet romance between 2 hearts in a lovers' lane.

Fifth, it is a common tradition among Filipinos especially in the rural areas that whenever the parents of a man seeks the hands of a daughter of another parents for the first time, this visit should be preceded by a letter done previously informing the parents of the girl of this noble intention. Then, at the appointed time, the parents with one respected leader of the community proceed to the house of the woman sought to be betrothed. In this, some little food and, perhaps, drinks are offered. After their meeting, the parents of the girl make known to the parents of the man the time that they should return when a decision will be known. All these things this Court takes judicial notice as part of the customs and tradition of Filipinos especially in our rural areas. These did not happen here for the simple reason that no such proposal of their marriage was made.

Sixth, it is hard to believe that Zosima Jenilla, a cute and young lady of 17 years old would have exposed herself purposely by telling the authorities of the breaking of her chastity exposing the everything that is so divine and sacred to her and subject herself to physical examination by a government physician and then in court trial, faced the whole world, although between sobs and tears, trembling and stated that her virginity was gone on account of the ravish acts of the accused. The unreasonableness of such a situation becomes real when we consider that the object of such a plea for justice claimed to be her sweetheart against whom no cause for her to persecute was shown (pp. 8-11, Record).

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