

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO GONZALES, DEFENDANT-APPELLANT.*G.R. No. L-33926. July 31, 1974*

Ponente: AQUINO, J.

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Pedro Gonzales y Lagrosa appealed to the Court of Appeals from the decision of the Court of First Instance of Palawan, convicting him of rape and sentencing him to "life imprisonment" with the recommendation that he be pardoned after serving a sentence of thirty years (Criminal Case No. 3365). The Court of Appeals certified the case to this Court (CA-G.R. No. 07434-CR, July 16, 1971).

The appeal is unmeritorious. There can be no reasonable doubt as to appellant's culpability for the act of having carnal intercourse with an eleven-year-old girl. That act is penalized as rape even if no force or intimidation was used or the girl was not deprived of reason or was conscious (art. 335[3], Revised Penal Code). The appellant executed a statement in question--and-answer form which, during the preliminary examination, was sworn to before the Municipal judge. Its voluntariness and the veracity of its contents are indubitable. He admitted therein that he had sexual intercourse with the offended girl. He pleaded guilty at the preliminary investigation. He waived its second stage.

The following facts establish his guilt and justify the judgment of conviction:

Pedro Gonzales, an unmarried thirty-six-year old tuba-gatherer, is the uncle of Primitivo Aurelio whose wife is Margarita Agpao, a thirty-year-old housekeeper. They have a daughter named Teresita who was born on January 6, 1954 (Exh. B). She was a Grade V pupil in 1965. She called Gonzales Lolo. Because the Aurelio spouses regarded Gonzales as a relative, they allowed him to make frequent visits to their house which was located at Sitio Libertad, Barrio Bancao-Bancao, Puerto Princesa, Palawan. Gonzales also resided in that sitio.

Teresita caught the libidinous fancy of Gonzales. If his statement is to be accorded any credence, he and Teresita were already "engaged" for two years prior to July, 1965 although she was a mere child and had not yet reached the usual age of puberty.

Taking advantage of her immaturity and the trust reposed in him by her parents, he was able to have sexual intercourse with her three times before July 23, 1965 (according to his statement or more than four times according to Teresita). The carnal union took place in the room where Teresita slept. On those occasions Teresita's parents were not in the house and her two brothers and three sisters were in deep slumber.

At about past eight o'clock in the evening of July 23, 1965, Gonzales, following his prior modus operandi, went to Teresita's house, intending to copulate with her. Before he could satisfy his lust, her parents arrived. They had been gathering tuba in the coconut plantation of one Ponce de Leon. Mrs. Aurelio engaged Gonzales in conversation. He offered to give her dried fish.

Primitivo Aurelio, the husband, went to a neighbor's house to procure tangal, the bark of the bakawan tree used in

fermenting tuba. Gonzales left and went to his house. Mrs. Aurelio followed her husband to their neighbor's house. Gonzales returned and gave her the dried fish. However, Mrs. Aurelio noticed that when he departed, he followed the path leading to her own house. She suspected that he entered her house instead of going home. As her husband did not want to go home as yet, she gave him the Petromax lamp and she returned to her house which was in complete darkness.

Sensing that Gonzales might be inside the house, Mrs. Aurelio, instead of going to bed, stationed herself under the house. The truth was that Gonzales was in Teresita's room. She woke up to find Gonzales on top of her "doing the push-and-pull movement". Her pantie had been removed and was near her side. The lower part of her dress was above her thighs. She felt pains in her vagina because Gonzales had inserted therein his penis. He warned her that if she should apprise her parents of what he had done to her, he would kill her. Mrs. Aurelio, while under the house for about a quarter of an hour, noticed that the "floor or the house was moving". Then, the house was lighted and she saw Gonzales putting on his pants.

She went up the house, confronted Gonzales and told him that what he had done to Teresita "was bad and unlawful". Gonzales alibied that he was in the house because he was looking for the Tiktik magazine. Mrs. Aurelio called her husband. He examined Teresita's pantie and discovered that it was wet.

The next day Mrs. Aurelio filed against Gonzales in the Municipal Court a verified complaint for rape. The Municipal Judge conducted a preliminary examination. Teresita, Mrs. Aurelio and Gonzales executed sworn statements. The girl affirmed that she had clandestine sexual intercourse with Gonzales several times, the last of which took place on the preceding night. She explained that she admitted to her parents her illicit relations with Gonzales after her father had whipped and scolded her. As already stated, Gonzales' statement was tantamount to an admission of guilt (Exh. A).

Doctor Iluminada Holgado, a physician of the Puerto Princesa Hospital, examined Teresita on August 25, 1965. She found that Teresita's hymen had been ruptured at three, four, seven and nine o'clock positions and that there was a contusion in her fourchette (Exh. C). There is no doubt that she had been deflowered. She had lost her virginity.

The record was remanded to the Court of First Instance where the Fiscal filed an information for rape dated August 23, 1965. Right after the trial was terminated on July 26, 1966, the lower court promulgated in open court the judgment of conviction already mentioned.

In his appeal, appellant's counsel de oficio contends that the trial court erred in concluding, on the strength of Mrs. Aurelio's testimony, that there was sexual intercourse between Teresita and Gonzales. That contention is not well-taken because the trial court based its conclusion, not only on Mrs. Aurelio's testimony, but principally on Gonzales' statement and on Teresita's clear and convincing declaration that Gonzales had inserted his penis into her vagina.

Gonzales' insubstantial defense is a mere denial. He said that on July 23, 1965 nothing happened between him and Teresita. He recounted that on the following day his compadre, a policeman named Digno asked him to go to the municipal building where his statement was taken by Sergeant Leopoldo Padon. He was investigated by three policemen. Tagalog was used in the investigation. He was asked to sign a statement. He said that he was not forced to sign it. His testimony is quoted below:

Q. Did the investigating officer force you or intimidated you to sign those affidavits? (sic) —

A. No, sir. But I was afraid. (4 tsn).

He identified his signature on the back of his statement, Exhibit A. He admitted that he frequented Teresita's

house. His relations with her family were good. He could not understand why he was accused of rape. The trial court construed his expression of fear as meaning that he was afraid of the consequence of his scandalous behavior.

Appellant's counsel impugns the statement of the accused (Exh. A) on the ground that it is in English and that there is no evidence that its contents were translated to him and that he was informed of his constitutional rights. Sergeant Wilfredo Rodriguez testified that he was present when Gonzales was investigated and that the latter was informed of his constitutional right to have counsel. Rodriguez identified Gonzales' signatures and initial in his statement (Exh. A).

The presumption that appellant's statement was made voluntarily (*People vs. Galang and De Guzman*, 73 Phil. 184) was not overthrown. It contained details which only Gonzales could have supplied. His answers to the questions evince spontaneity and a desire to tell the truth. Those answers reveal that the declarant was not under duress (See *People vs. Cruz*, 73 Phil. 651; *People vs. Asas*, 70 Phil. 578, 582).

The rule is that the deliberate admissions of a party charged with a crime are always admissible to show his guilt (*People vs. Hernane*, 75 Phil. 554). A judgment of conviction, based on the admission of the accused, as confirmed by complainant's testimony, stands on solid ground (See *People vs. Banayad*, 86 Phil. 259, 264). Whether an admission or confession is voluntary is a question that in the first instance is addressed to the lower court (*People vs. Ramos*, 59 Phil. 7; *People vs. Abalos*, L-31726, May 31, 1974). It is noteworthy that Gonzales' statement, Exhibit A, was not objected to by his counsel when it was offered in evidence. Its voluntary character is manifest (*People vs. Ramos*, supra).

The crime committed by Gonzales is simple rape or rape without the attendance of any of the qualifying circumstances mentioned in article 335 of the Revised Penal Code. Its basic element is the carnal knowledge of a girl below twelve years of age (*People vs. De la Cruz*, L-28810, March 27, 1974; *People vs. Oscar*, 48 Phil. 527; *People vs. Hernandez*, 49 Phil. 980; *U.S. vs. Herrera*, 10 Phil. 752; *People vs. Segura*, 60 Phil. 933).

It is punishable with reclusion perpetua which is imposable regardless of any generic mitigating or aggravating circumstances that may have attended the commission of the crime (Art. 63, Revised Penal Code). Hence, although dwelling may be aggravating, because the rape was committed in the offended girl's house, it would not affect the penalty of reclusion perpetua (Art. 63, Revised Penal Code).

The contention of appellant's counsel that the penalty for rape in 1965 was reclusion temporal is not correct. The amendment introduced by Republic Act No. 4111, which took effect on June 20, 1964, increased the penalty for rape from reclusion temporal to reclusion perpetua.

The trial court did not impose any indemnity. It recommended appellant's pardon after serving a sentence of thirty years on the ground that "he has been detained for sometime" and "there may have been consent also on the part of the offended girl."

Appellant Gonzales is not exempt from civil liability just because the eleven-year-old Teresita did not resist his lecherous desires. By reason of her nonage, she might not have known that she should not surrender her virtue without a struggle. Using the familiar language in American jurisprudence, she was incapacitated to give consent to sexual intercourse. Moreover, she was physically incapable of effectively warding off the assault on her person.

On the other hand, it is undeniable that a person who indulges in sexual intercourse with a girl below twelve years of age exhibits a perversity or depravity that should be penalized. His bestiality cannot be tolerated in a civilized and well-ordered society.

The trial court's judgment is affirmed with the modification that the penalty imposed should be designated as reclusion perpetua (People vs. Mobe, 81 Phil. 58) and that the portion thereof recommending that the accused be pardoned after serving imprisonment for thirty years should be eliminated. The matter of pardon is governed by article 27 of the Revised Penal Code.

Appellant is ordered to pay the offended girl, Teresita Aurelio, an indemnity of twelve thousand pesos (People vs. Amiscua, L-31238, February 27, 1971, 37 SCRA 813). Costs against the appellant.

SO ORDERED.

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

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