

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. AGAPITO YAP, JR., DEFENDANT AND APPELLEE.

G.R. No. L-25176. February 27, 1968

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Appeal on a pure question of law, from the order of the Court of First Instance of Misamis Occidental directing the amendment of the information in Criminal Case No. 763 of said court.

There is no dispute as to the facts of this case: Convicted by the Municipal Court of Baliangao (Misamis Occidental) of the crime of simple seduction, upon complaint of Catalina Babol, and sentenced to imprisonment for two months and one day of *arresto mayor*, accused Agapito Yap, Jr. brought the case on appeal to the Court of First Instance of Misamis Occidental,[1] where the following information was filed:

"The undersigned (Provincial Fiscal) accuses Agapito Yap, Jr. of the crime of Simple Seduction, committed as follows:

"That on or about May 15, 1959, and for sometime subsequent thereto, in the town of Baliangao, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused by means of deceit and false promise of marriage, did then and there willfully, unlawfully and feloniously seduce and have sexual intercourse several times with Catalina Babol, a virgin over 12 but under 18 years of age, resulting in pregnancy with abortion thereafter.

"Contrary to Art. 338 of the Revised Penal Code."

The accused moved to quash the aforequoted information, claiming that it alleged multiple acts of simple seduction, in addition to the offense of criminal abortion. The motion was duly heard, during which the prosecuting fiscal signified willingness to eliminate the word abortion from the information.

On August 31, 1965, the court, sustaining the stand of the accused, directed its amendment, as follows:

"WHEREFORE, the information is hereby ordered AMENDED such that there must not be an opportunity for the prosecution to put the accused in danger more than once, or that because of lack of objection and because of allegation in the complaint that there is an after effect, in the form of abortion, which might be a criminal abortion, and for which the same accused might be held criminally responsible and duly sentenced therefor, the said information must be amended immediately such that the accused will not be placed in useless danger of being convicted more than once, or for two crimes in an information; OTHERWISE, the case is ordered DISMISSED."

The prosecution interposed the present appeal.

The only issue to be resolved here is, whether or not the above-quoted information violates the prohibition against duplicity of offenses as provided in Section 12 of Revised Rule 110 of the Rules of Court.

It is claimed for the defense that under the averment of the information that, "on or about May 15, 1959, and for

sometime subsequent thereto . . . said accused by means of deceit and false promise of marriage, did then and there willfully, unlawfully and feloniously seduce and have sexual intercourse several times with Catalina Babol, a virgin over 12 but under 18 years of age," the accused may be convicted of as many instances of seduction as may be proved during the trial. In short, it is their theory that there is a complete and consummated offense of seduction for every sexual intercourse the accused may have had with the offended party, so that under the disputed information, the former runs the risk of being found guilty of as many seduction as the number of sexual contacts between the parties that the prosecution would be able to establish. In opposing the motion, the prosecution advances the argument that there is no continuing offense of seduction; that the criminal act is consummated on the first violation of the chastity of the offended girl and any subsequent coition would already be beyond the reach of the penal provision on seduction.

These views, both extreme, may be rejected. On the contention of the prosecution, it may be pointed out that in simple seduction, unlike that in a qualified case, the matter of virginity of the offended party is not essential; it is only necessary that the complainant be an unmarried woman and of chaste life and good reputation.[2] Under the law, simple seduction is not synonymous with loss of virginity; a widow can be the victim of seduction.[3] Upon the other hand, the fact that there should be different acts of intercourse, consented by the woman in reliance upon the same promise of marriage would not mean separate offenses of seduction, (cf. *U.S. vs. Salud*, 10 Phil. 208). Nowhere in the information does it appear that every act of intercourse was the result of a separate act of deceit.

It is, therefore, incorrect to conclude that the information in this case, charged the accused of more than one offense. A reading thereof would show that he was there being charged for the seduction of Catalina Babol, with the clause "May 15, 1959 and for sometime subsequent thereto" serving as the point of time against which the allegation that she was over 12 years, but under 18 when the alleged criminal offense was committed, may be checked or reckoned. Such recital of fact, forming the basis of the statement that the accused had sexual relations with the offended party "several times," together with the allegations of the subsequent pregnancy of the offended girl and the expulsion of the foetus, constitute no more than the details of the entire incident upon which the seduction charge was based. They partake of the nature of particulars, with which the prosecution intends to inform the accused of the matter it will prove at the trial; and this does not come within the prohibition of the rules. Thus, in one case,[4] an information that charged the defendant with a specific crime set forth in various counts, each of which may constitute a distinct offense, was allowed. The narration in the information of the specific acts was considered a bill of particulars of facts upon which the inference of the guilt of the accused of the crime charged may be based and, consequently, was held not objectionable. The same thing may be said of the information in the present case.

Wherefore, the order appealed from is hereby set aside and the case is ordered remanded to the court below for proceedings on the merits. It appearing that the prosecution had expressed willingness to delete from the information the averment of abortion, an amendment to this effect would be in order. No costs.

Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Order set aside.

[1] docketed as Criminal Case No. 763.

[2] *People vs. Iman*, 62 Phil. 92.

[3] 3Art 338, Revised Penal Code

[4] *U.S. vs. Cernias*, 10 Phil. 682, 690,

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