

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAMELO MARIANO Y OBUSAN, ACCUSED-APPELLANT.

G.R. No. L-47437. September 29, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Appeal from the decision of the Court of First Instance of Camarines Norte, finding Gamelo Mariano y Obusan guilty of the crime of rape committed upon a woman of unsound and feeble mind, and sentencing him to suffer the penalty of reclusion perpetua to indemnify the offended party in the amount of P12,000.00 as moral damages and to pay the costs.

Socorro Soria, a demented woman of 24 years, had been confined as a mental patient at the National Mental Hospital in Mandaluyong, Manila, since February 26, 1971 up to May 3, 1974 when she was transferred to the Don Susano J. Rodriguez Me-morial Hospital in Pili, Camarines Sur for further treatment. On May 26, 1975, her parents brought her home to Burabod, Daet, Camarines Norte, to be treated by the appellant, known in the locality as a faith healer or "spiritista".

In the afternoon of September 25, 1976, appellant went to the residence of the Sorias to treat Socorro. After securing some "salonpas" from Mrs. Maria Soria, mother of Socorro, he entered the room of his patient, and locked the door.

Shortly after, Mrs. Soria, who was attending to her customers at the rice mill adjacent to her house, was informed by her daughter-in-law Elizabeth Albino Soria, that the door of Socorro's room was locked. Mrs. Soria proceeded to the room and when she noted that the door was indeed locked from inside, she and Elizabeth peeped through a small aperture and saw the appellant on top of Socorro in the act of sexual intercourse. Appellant had his pants off, while Socorro was naked from the waist down. Mrs. Soria immediately clambered to the top shelf of the cabinet which served as the dividing wall between Socorro's room and the sala, and stretching herself across the top of the cabinet, she reached out and grabbed the appellant's hair. [This was demonstrated by Mrs. Soria during the ocular inspection conducted at the scene of the incident]. Jolted by the sudden intrusion, appellant stood up, with his penis still erect. He hastily put on his clothes, opened the door of the room, and attempted to run, but his path was blocked by Elizabeth. When Mrs. Soria confronted him, appellant expressed his willingness to be Socorro's husband and promised to construct an annex to his house where he would keep Socorro as his wife.

Socorro was forthwith brought to the Camarines Norte Provincial Hospital, where she was examined by Dra. Amelia Paguirigan. The latter's findings are as follows:

- Abrasions, over both lower part of mucosa of labia majora.
- Hymenal tear, 6 o'clock, 2 o'clock and 9 o'clock position.
- Vaginal intritus admits 1 finger loosely.

- Vaginal smear and emulsion for sperm cells - negative.

In his defense, appellant denied having had any sexual intercourse with Socorro at any time since he began treating her sometime in July 1976. He declared that one week before September 25, 1976, he informed Mrs. Soria that her daughter's mental ill-ness was beyond his capacity to cure; that he recommended that Socorro be referred to another faith healer from San Pablo; that despite his recommendation, Mrs. Soria on September 25, 1976 had him fetched by her nephew to continue with the treatment of Socorro; that because of Mrs. Soria's call, he went to the Soria's residence, but he entered Socorro's room only after he had asked the permission of her mother; and that after performing the necessary treatment, he immediately proceeded home.

On September 27, 1976, a verified complaint for rape, signed by Mrs. Maria Soria, was filed against appellant before the Municipal Court of Daet, Camarines Norte. On the basis thereof, an information was filed before the Court of First Instance of Camarines Norte.

We sustain the trial court's conclusion that "the evidence regarding the commission of the offense by the appellant is overwhelming." No less than the victim's mother testified that she had caught appellant having carnal intercourse with Socorro. Indeed, Mrs. Soria could not have given false testimony and thus expose her daughter to public ridicule and disgrace, if she was not motivated by her maternal de-sire to vindicate her daughter's honor.

The positive declaration of Mrs. Soria that her daughter was sexually abused by appellant finds corroboration in the testimony of the examining physician, Dra. Paguirigan, who found "hymenal tears at 6 o'clock, 2 'clock and 9 o'clock positions." These lacerations of the hymen constitute indubitable proof of penetration of the male organ into the labia of the pudendum".[1]

That Socorro was a demented woman is not disputed by appellant, as the latter even admitted that Socorro's mental illness was beyond his capability to cure. Moreover, Dra. Amelia Paguirigan described the victim as a "known psychotic, violent type and resisting examination, talking nonsense," while Dr. Edgardo Bengzon of the National Mental Hospital diagnosed her ailment as "schizophrenia chronic." [Exhibit B].

It is settled in this jurisdiction that an accused who has carnal knowledge with a mentally retarded or demented woman is guilty of rape[2] the reason being that she is incapable of giving rational consent to the sexual intercourse.[3]

Appellant further argues that the court a quo did not acquire jurisdiction over the case because the victim's mother had no right or authority to file a complaint for rape inasmuch as the father was still living. He invokes the following provisions of Rule 110 of the Rules of Court.

"SEC. 4. Who must prosecute criminal actions.-

x x x x

"The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party, or her parents, grandparents, or guardian, nor in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

"The offended party, even if she were a minor, has the right to institute the prosecution for the above offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents or guardians, may file the same. The right to file the action granted to the parents, grandparents or guardians shall be exclusive of all other persons and shall be exercised successively in the order herein provided." [See third paragraph of article 344 of the Revised Penal Code].

While we agree with the appellant's contention that the trial court does not acquire jurisdiction if the complaint charging an accused with any of the aforesaid private crimes is not filed by one of the persons indicated in said section, there is nothing in the context thereof to support the view that the mother cannot present the complaint if the father is still living. In *People vs. Dela Cruz*[4], this Court resolved the same legal question in this wise:

"Appellant's contention is x x x based on a dubious technicality. If sustained, it might defeat the ends of justice. It is not sanctioned by section 4 of Rule 110 nor by article 344 of the Revised Penal Code whose provisions do not categorically specify that the father has the preferential right to file the complaint for seduction, abduction, rape or abusos deshonestos. It is noteworthy that 'the father and mother jointly exercise parental authority over their legitimate children who are not emancipated'. It is their duty to represent their emancipated children 'in all actions which may redound to their benefit.' [Arts. 311 and 316, Civil Code].

x x x x

"Under the circumstances, the complaint filed by the mother was a sufficient compliance with article 344 and section 4 of Rule 110. It conferred jurisdiction on the court to try the case [*People vs. Pastores*, L-29800, August 31, 1971, 40 SCRA 498, 508; *People vs. Bangalao*, 94 Phil. 354; *U.S. vs. Gariboso*, 25 Phil. 171]. The father's passivity should not preclude the mother from securing redress for the outrage committed against her daughter."

WHEREFORE, finding no reversible error in the judgment appealed from, the same is hereby affirmed, with costs against appellant Gamelo Obusan.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., and Guerrero, JJ., concur.
Abad Santos and De Castro, JJ., on leave.

[1] *People vs. Hernandez*, 49 Phil. 980.

[2] Article 335, par. 2, Revised Penal Code.

[3] *People vs. Manlapaz*, 88 SCRA 704.

[4] 56 SCRA 84, per Justice Aquino.

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