

FRANCISCA ALIMAGNO AND JOVITA MELO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-36458. February 21, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioners Francisca Alimagno and Jovita Melo were convicted, as principal and accomplice, respectively, of the crime of corruption of minor, as defined in Article 340 of the Revised Penal Code, by the City Court of San Pablo, and sentenced as follows:

"... The accused Francisca Alimagno, to suffer the penalty ranging from six (6) months of *arresto mayor* as minimum to two (2) years, eleven (11) months and ten (10) days as maximum, to indemnify the offended party in the sum of P500.00 with subsidiary imprisonment in case of insolvency, which shall not be more than one-third of the principal penalty herein imposed and to pay the proportionate costs; the accused Jovita Melo, to suffer the penalty of six (6) months of *arresto mayor*, to indemnify the offended party in the sum of P200.00 with subsidiary imprisonment in case of insolvency which shall not be more than one-third of the principal penalty herein imposed and to pay the proportionate costs."

The Court of Appeals modified the decision with respect to the subsidiary penalty, thus:

"However, the subsidiary imprisonment in case of insolvency of the defendants to pay the respective indemnities imposed upon them should be eliminated from the dispositive portion of the lower court's decision. (Rep. Act No. 5465). Moreover, it should be ordained therein that in the event of insolvency of one of them, the other should be subsidiarily liable thereto, with right of reimbursement, pursuant to Article 110 of the Revised Penal Code.

"WHEREFORE, with the modification indicated above, the decision appealed from, being in keeping with the evidence and the law, is hereby affirmed, with costs against the appellants."

The main facts are set forth in the decision of the Court of Appeals, from which We quote:

"Complainant Filomena de la Cruz, who was undisputedly born on August 10, 1946 at Calamba, Laguna (Exh. B), was employed in the house of Pita Alvero at San Pablo City as a domestic helper for a period of only nine (9) days from November 20, 1964 to November 29, 1964. On November 27, 1964, she came to know defendant Francisca Alimagno who was bringing money to her employer Pita Alvero. On said date, defendant Alimagno tried to convince her to leave the house of Pita Alvero, promising her a better job. Defendant Alimagno, having gained her confidence, succeeded in thus persuading her to leave the house of Pita Alvero. Hence, on November 29, 1964, after leaving a self-explanatory note, Exh. A, which was admittedly written by accused Francisca Alimagno herself, which reads:

'Ako ho ay nagtanan kasama ko ay lalake.

Your Utusan'

complainant abandoned the house of her mistress and went with defendants Francisca Alimagno and Jovita Melo

in a jeep, together with a man and a driver. They then proceeded to Barrio Putol, San Pablo City, where she was brought to a hut thereat and there allowed to be ravished by a man, whom she saw for the first time, after the latter had covered her mouth with a rag and tied her hands, so that she was rendered speechless and helpless from offering any resistance, so much so that he was able to satiate his lust with her until 12:00 o'clock midnight. Thereafter, she was brought by the man to the house of defendant Jovita Melo only to be transferred later to the house of defendant Francisca Alimagno, where she stayed for more or less three days until she was found there and taken back by Leovigildo Perez and Pita Alvero. The two thereafter brought her to the Police Department for the corresponding investigation."

Petitioners contend that the Court of Appeals erred (1) in convicting them of the crime of corruption of minor upon wholly unsubstantial and inherently conflicting evidence; (2) in not holding that the facts, as found by it and the trial court, do not constitute the crime of corruption of minors as defined and penalized by Article 340 of the Revised Penal Code; (3) in not holding that the minor referred to in Article 340 of the Revised Penal Code should be below 18 years of age; (4) in not holding that a person who is already corrupted can no longer be the victim of corruption of minors committed through abuse of authority or confidence; (5) in not acquitting the petitioners of the crime of corruption of minors; and, (6) in not holding that the penalty imposed upon petitioner Melo is incorrect.

Petitioners argue that they were convicted upon unsubstantial and inherently conflicting evidence. This contention is devoid of factual basis considering the findings of the Court of Appeals which are hereunder reproduced if only to demonstrate that the same were made after a thorough analysis of the evidence, and hence are beyond this Court's power of review:

"Appellants (herein petitioners) further contend that the lower court erred in not finding that even before November 29, 1964, the complainant Filomena de la Cruz was already a corrupted person and therefore she could no longer be the victim of the crime of "Corruption of Minors" penalized by Article 340 of the Revised Penal Code in view of the fact that from her own statement, Exh. 1, she admitted that she had sexual intercourse with other men.

"This argument is clearly untenable. Complainant, who does not know how to read and write vehemently denied the contents of Exh. 1, saying that it was not the statement she gave to the police. Indeed, she testified that previous to the incident, she did not have any coition with any man and the trial court so believed her. In any event, even assuming it to be true, Article 340 does not prescribe that the persons corrupted be of good reputation, as in the case of simple seduction under Article 338, much less that they be virgins, as in qualified seduction under Article 337, both of the Revised Penal Code. It follows that the above-mentioned traits are of no consequence. . . .

.....

"With regard to the letter (Exh. A), appellant Francisca Alimagno admitted having written the same out of pity to the complainant Filomena de la Cruz (tsn., p. 70, April 22, 1966). But, if she had nothing to do with complainant's sexual adventure, it is strange why she wrote said letter, containing false averments, and then took the complainant away from the house of Pita Alvero, without the knowledge and consent of the latter. She, being a friend of Pita Alvero, should have known that her actuation in writing the letter was ill-advised and morally wrong. Her admission that she wrote the same clearly indicates her plan to facilitate or promote the prostitution or corruption of the complainant.

"Appellant Francisca Alimagno testified that the witness for the prosecution Leovigildo Perez was demanding P5,000.00 from her and later was reduced to P2,000.00 (tsn. p. 83, April 22, 1966) to quash the case against her. On cross-examination, she (Francisca Alimagno) said that Perez was asking the aforesaid amount on the ground floor of the Secret Service Division. The pertinent portion of her testimony read, thus:

"Q

You stated that Leovigildo Perez asked P5,000.00 from you, can you tell where Leovigildo Perez asked P5,000.00 from you?

A At the ground floor, sir.

Q Are you referring to the Office of the Secret Service Division?

A

At the ground floor but not within the office of the Secret Service Division.

Q Was that when you were called by the Secret Service men?

A Yes, sir.

Q

Did you immediately denounce Perez to the police what he was asking from you?

A No, sir.

Q Why did you not tell or report the matter to the police?

A Because we called up Atty. Alvero and asked him to assist us.

Q

And you told Atty. Alvero that Leovigildo Perez was asking you P5,000?

A No, sir, he just told me go home.

Q

In other words when Atty. Alvero arrived he just told you to go home?

A Yes, sir.' (tsn., pp. 100-101, *ibid.*)

"If there is truth on the matter that Leovigildo Perez was extorting money from her (Francisca Alimagno) for the purpose of quashing the case, appellant Alimagno should have reported or denounced immediately to the police such attitude of Perez, inasmuch as they were near the office of the Secret Service Division or told the matter to Atty. Alvero, but she allegedly kept the matter to herself. The truth, however, is that it was appellant Alimagno who made an offer of P50.00 to Leovigildo Perez to drop the case against her. Thus, the pertinent portion of his (Perez) testimony reads:

'A

The truth is that the spouses went to our residence and asked me to accept the amount of P50.00 and drop the case. I told them to ask the complainant, but the complainant refused and said that let the court decide the case.

.....

Q

In your answer you refer to the spouses, will you please specify whom you are referring to?

A The spouses, Alimagno, Sir.' (tsn., pp. 145-146, June 1, 1966)

"The above-quoted testimony of Leovigildo Perez was strengthened by the testimony of Detective Sergeant Francisco Escondo, a disinterested witness for the prosecution who testified, thus:

'Q

Will you please tell the conversation between you and the accused for the second time?

A They seek our service to help them in settling the case.

Q What was your answer?

A I told them, 'its up to you.' (tsn., pp. 14-15, June 7, 1965.)

"On cross-examination, the same witness further testified, thus:

'A

After Francisca Alimagno had talked with the complainant she requested us to help them to settle this case.' (tsn., p. 22, *ibid.*)

"It is clear from the foregoing testimony of both witnesses for the prosecution that the appellants made an offer of compromise for the settlement of the case. These overtures made by the appellants to have the case settled out of court are indicative of a guilty conscience and it is well-settled in this jurisdiction that an offer of compromise is an evidence of guilt. (People vs. Manzano, CA-G.R. No. 00204-R, Nov. 29, 1962.)"

We find no reason in this case to depart from the rule which limits this Court's appellate jurisdiction to review only errors of law "accepting as conclusive the factual findings of the lower court upon its own assessment of the evidence." (Evangelista vs. Abad Santos, 51 SCRA 416.)

On the question raised that petitioners could not be guilty of the crime of corruption because the offended party is more than eighteen years of age at the time the alleged offense is committed, the point to consider is whether "under age" means below eighteen or twenty-one years old. Article 340 of the Revised Penal Code provides:

"Any person who shall habitually or with abuse of authority or confidence, promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by . . ."

Petitioners contend that in "crimes against chastity, like seduction, acts of lasciviousness with the consent of the offended party and consented abduction, the age of the victim is pegged at below 18 years of age; . . . that the phrase 'person under age' (in Article 340 of the Revised Penal Code) was meant by the lawmakers to refer to persons below 18 years of age." (p. 61, Petitioner's Brief.)

We cannot subscribe to this view. Article 402 of the Civil Code provides that "majority commences upon the attainment of the age of twenty-one years." When the lawmakers specifically provide "persons under age", instead of "below eighteen years of age", they could mean no other than that the offended party must be below 21 years old, and not below 18 years of age. The same is true in Acts of Lasciviousness in Article 336, White Slave Trade in Article 341, and Forcible Abduction in Article 342 of the Revised Penal Code, where the age limit is not set at eighteen. Justice Ramon C. Aquino, in his commentary on the Revised Penal Code, page 1623, Book II, states that "Art. 340 was taken from art. 444 of the old Penal Code. The requisites of the crime of corruption of minors are that the accused acted habitually or with the abuse of authority or confidence; that he promoted or facilitated the prostitution or corruption of persons below 21 years of age and that he so acted in order to satisfy the lust of another." (*italics supplied*).

However, We take note of the recommendation of the Solicitor General that with respect to petitioner Jovita Melo who was found guilty as accomplice in a consummated crime where the penalty is *arresto mayor*, medium and maximum periods (2 months and 1 day to 6 months), and where there is no modifying circumstances present, the penalty in its medium period should be imposed, or not less than 3 months and 11 days nor more than 4 months and 20 days. Otherwise stated, the petitioner Jovita Melo should suffer the penalty of 4 months and 20 days, instead of 6 months of *arresto mayor*.

WHEREFORE, with the modification above indicated, the decision of the Court of Appeals is **AFFIRMED**. With costs.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.
Teehankee (Chairman), J., took no part.

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