

APOLINARIO GONZALES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND IMELDA CARATAO, RESPONDENTS.

G.R. No. 108811. May 31, 1994

Ponente: VITUG, J.

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VITUG, J.:

This petition for review on certiorari assails the decision, dated 12 February 1993, of the Court of Appeals, sustaining the validity of the order, dated 15 June 1992, of the Regional Trial Court (Branch 9) of Malolos, Bulacan, which has reconsidered and set aside its previous order of 30 March 1992 provisionally dismissing criminal cases for multiple rape filed against petitioner.

The backdrop settings may be briefly recited; thus:

A criminal complaint for qualified seduction (of private complainant Imelda Caratao), following a preliminary investigation, was filed (docketed Criminal Case No. 2560) with the Municipal Trial Court of Obando, Bulacan, against herein petitioner Apolinario Gonzales. The latter, upon arraignment, pleaded "not guilty" to the charge. The presentation of evidence by the prosecution started in May 1983 and was concluded in November 1988. Thereafter, the defense took its turn. When the defense was about to rest its case, the prosecution filed a motion to instead commit the accused to answer to a charge for rape since the evidence submitted indicated that rape, not qualified seduction, was evidently committed. Petitioner opposed the motion. On 17 January 1990, the trial court issued an order which, in part, read:

"The evidence adduced in the prosecution of this case clearly and manifestly show that the crime of Qualified Seduction as defined and penalized under the provisions of Art. 337 of the Revised Penal Code has not been proven. The crime of rape is an offense beyond the jurisdiction of this Court.

"If there was a mistake in the charging of the proper offense against the accused, thus the motion, to commit and detain him under the authority of section 11 Rule 119 of the Rules of Court, the trying Court must have jurisdiction to hear the original case and that of the subsequent case to be filed against the accused.

"The Court having no jurisdiction to institute nor try the offense of rape, cannot, and will not, assume the jurisdiction of the Public Prosecutor, for it is their prerogative to file necessary complaint or information against any accused, jurisdiction of which falls exclusively with the Regional Trial Court.

"WHEREFORE, premises considered, there being no sufficient evidence to prove the crime of Qualified Seduction as charged in the complaint, this case is hereby dismissed."[1]

Following the dismissal of Criminal Case No. 2560, the prosecution filed six (6) separate informations for rape, alleged to have been committed on 15, 16, 17, 18, 19 and 20 November 1982, before different branches of the Regional Trial Court (RTC) of Malolos, Bulacan. These cases were later consolidated (docketed Criminal Cases No. 1858-M-90 to No. 1864-M-90, inclusive).

When arraigned, Gonzales pleaded "not guilty" to the charges. In the hearing of 01 July 1991, the prosecution presented its first witness, a brother of private complainant. On 23 March 1992, the private complainant and her counsel not having appeared, the public prosecutor requested a postponement of the hearing. Petitioner did not object to the postponement. On 30 March 1992, the public prosecutor again requested that the hearing be postponed on the same ground. This time, the defense objected and moved for the dismissal of the cases, claiming that the delay would violate petitioner's right to a speedy trial. The trial court issued an order, which read:

"On motion to this effect of the defense counsel predicated on the constitutional right of the accused to a speedy trial as viewed against the repeated absences of the complaining witness despite due notice, and without objection on the part of the Trial Prosecutor, the above-entitled case is hereby DISMISSED PROVISIONALLY with the express consent of the accused and with costs de officio.

"SO ORDERED."[2]

On the very same day, private counsel for private complainant filed a motion for the reconsideration of the court's order, alleging that they (the complainant and private counsel) "were already within the Court premises but complainant was afraid to enter the courtroom in the absence of (her) counsel who was then attending a hearing before another branch of (the) Court." On 15 June 1992, the trial court, finding the motion for reconsideration to be impressed with merit, issued an order lifting and setting aside the 30 March 1992 order of dismissal.

A petition for certiorari was filed by Gonzales with the Court of Appeals. On 12 February 1993, respondent appellate court issued its questioned decision which dismissed the petition and affirmed the trial court's order of 15 June 1992.

Hence, the instant petition.

We uphold the appealed decision.

Section 11, Rule 119 of the Revised Rules of Court provides:

"Sec. 11. When mistake has been made in charging the proper offense. - When it becomes manifest at any time before judgment, that a mistake has been made in charging the proper offense, and the accused cannot be convicted of the offense charged, or of any other offense necessarily included therein, the accused shall not be discharged, if there appears to be good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information."

The dismissal of the charge for qualified seduction is clearly sanctioned by the above-quoted rule in order to pave the way for the filing of the proper offense for the crime of rape. The accused cannot invoke double jeopardy; for that kind of jeopardy to arise, the following requisites must be extant:

- (1) The previous complaint or information or other formal charge is sufficient in form and substance to sustain a conviction;
- (2) The court has jurisdiction to try the case;
- (3) The accused has been arraigned and has pleaded to the charge; and
- (4) The accused is convicted or acquitted or the case is dismissed without his express consent.

When all the above elements concur, a second prosecution for (a) the same offense, or (b) an attempt to commit the said offense, or (c) a frustration of the said offense, or (d) any offense which necessarily includes, or is necessarily included in, the first offense charged, can be rightly barred.

Here, there is no question that the Municipal Trial Court did not have the requisite jurisdiction to try the offense

of rape, a crime that lies instead within the province of the Regional Trial Court to take cognizance of. Moreover, the dismissal of Criminal Case No. 2560 for qualified seduction by the Municipal Trial Court not only was provisional but likewise with the express consent of the accused (herein petitioner).

Then, too, rape and qualified seduction are not identical offenses. The elements of rape -- (1) that the offender has had carnal knowledge of a woman; and (2) that such act is accomplished (a) by using force or intimidation, or (b) when the woman is deprived of reason or otherwise unconscious, or (c) when the woman is under twelve (12) years of age -- substantially differ from the elements of qualified seduction. The latter requires (1) that the offended party is a virgin, which is presumed if she is unmarried and of good reputation; (2) that she must be over twelve (12) and under eighteen (18) years of age; (3) that the offender has sexual intercourse with her; and (4) that there is abuse of authority, confidence or relationship on the part of the offender. While the two felonies have one common element, i.e., carnal knowledge of a woman, they significantly vary in all other respects.

Contrary to the assertion of accused-petitioner, the case of *People vs. Samillano* (56 SCRA 573), did not hold that qualified seduction is necessarily included in rape; what this Court has said is that one who is charged with rape may be found guilty of qualified seduction when the "verified complaint for rape contains allegations which aver the crime of seduction."

We recognize, and we have thus heretofore upheld,[3] an accused's right to speedy trial; in this instance, however, we see no transgression thereof. The appellate court itself has found, and later concluded, that "with only two (2) postponements in the same month entailing an interval of just seven (7) days, the proceedings have not been unreasonably delayed in violation of the right to speedy trial." Looking at the records ourselves, we find no cogent reason to rule otherwise.

WHEREFORE, the appealed decision of respondent appellate court is AFFIRMED. No special pronouncement on costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, p. 37.

[2] Rollo, p. 38.

[3] *People vs. Abaño*, 97 Phil. 28; *People vs. Robles*, 105 Phil. 1016; *Salcedo vs. Mendoza*, 88 SCRA 811.

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