

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER YPARRAGUIRE Y SEPE, ACCUSED-APPELLANT.

G.R. No. 124391. July 05, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

After his indictment[1] and trial, accused-appellant appeals from his conviction for the crime of rape of a mental retardate. [2]Pursuant to Republic Act No. 8353, the Anti-Rape Law of 1997, rape is a crime against person which may be prosecuted de oficio. However, considering that the alleged rape was committed in 1994, which was prior to the effectivity of R.A. 8353, we apply the old law and treat rape as a private crime.

The facts as narrated by the trial court are:

"On March 24, 1994, at about 11:00 o'clock in the evening, while complainant Charmelita D. Ruina, an invalid and mentally retarded, was on her bed at the store of her mother at the Public Market at Carrascal, Surigao del Sur, where she and her mother lived, accused Elmer Yparraguirre alias "Lalo" entered her room, the door of which was not locked because her mother went to the store of her elder sister. Upon getting inside, he undressed himself and approached the Complainant who was apparently awake. He caressed her and sucked her breasts. She shouted for help but nobody came to rescue her, perhaps because it was late already in the evening and her voice was not loud enough to be heard at the distance as, in fact, it could be heard at only about three to five meters away x x x. Accused told her to keep quiet and when she put up some limpy resistance, he boxed her. He then removed her panty went on top of her and inserted his manhood into her most private part. She felt pain. After raping her, he left her room. Soon her mother, Sanselas Leongas Ruina, arrived. She reported to her the incident. The following morning, accused went back to the store and apologized for what he did and promised not to do it again. But his plea would not mollify Sanselas. She took the complainant to the Madrid (Surigao del Sur) District Hospital for physical examination. Dr. Carlo P. Altrecha recorded the following findings in the Medical Certificate that he issued on March 26, 1994:

POLIO MYELITIS-MENTALLY RETARDED PPE:

- ABRASION, AT THE LEVEL OF THE MID-CLAVICULAR AREA, BOTH, LEFT AND RIGHT.
- CONTUSION, BOTH BREAST, LEFT AND RIGHT.
- CONTUSION, AT THE LEVEL OF THE 8TH THORACIC RIB, ME-AXILLARY LINE, RIGHT.

GENITALIA:

- LABIA MAJORA: NO CONGESTION, NO HEMATOMA.
- LABIA MINORA: CONGESTED, SLIGHT SWOLLEN.
- VAGINAL ORIPICE: CONGESTED, SLIGHT SWOLLEN HYMEN NOT INTACT.
- VAGINAL SMEAR FOR THE PRESENCE OF SPERMATOZOA: NO SPERMATOZOA SEEN."[3]

Appellant did not testify in court but instead relied on the lone testimony of his father, who alleged that the complaint for rape was filed as a result of a "misunderstanding" between appellant and the mother of the victim.

In this appeal, the basic issue raised by appellant is that the trial court never acquired jurisdiction over the case because the complaint was signed and filed by the chief of police and not by the complainant.

Appellant's contention has no merit. Section

5, Rule 110 of the Rules on Criminal Procedure provides in part:

"The offense 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. In case the offended party dies or becomes incapacitated before she could file the complaint and has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if she were a minor, has the right to initiate 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 guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph."

Pursuant to the afore-quoted provision, the offended party can initiate a prosecution for rape even if she is a minor, unless she is incompetent or incapable of doing so upon grounds other than her minority. Although the victim in this case is no longer a minor, it is undisputed that she is a mental retardate and suffering from physical deformity. No woman would come out in the open, inform the authorities of the injustice done to her, make a statement of what had happened unless her purpose is to redress the wrong done against her honor. Once the violation of the law becomes known through a direct original participation initiated by the victim, the requirements of Article 344 of the Revised Penal Code (RPC), to the effect that the offense of rape "shall not be prosecuted except upon a complaint filed by the offended party or her parents," are satisfied. Said provision is not determinative of the jurisdiction of courts over the private offenses because the same is governed by the Judiciary law, not the Revised Penal Code which deals with the definition of felonies and their punishment. Stated differently, the complaint required in Article 344 is but a condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties. Such condition was imposed out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial.[4] The complaint simply starts the prosecutory proceeding but does not confer jurisdiction on the court to try the case[5] because the overriding consideration in determining whether the condition precedent in Article 344 has been complied with is the intent of the aggrieved party to seek judicial redress for the affront committed.[6]

Article 344 was not enacted for the specific purpose of benefitting the accused. When it is said that the requirement in Article 344 (that there should be a complaint of the offended party or her relatives) is jurisdictional, what is meant is that it is the complaint that starts the prosecutory proceeding. It is not the complaint which confers jurisdiction in the court to try the case. The court's jurisdiction is vested in it by the Judiciary Law.[7]

Going now to the merits of the case, the gravamen of the crime of rape is the sexual congress of a woman by force and without consent.[8] These elements have been proven beyond reasonable doubt to concur in this case. The evidence shows that appellant boxed the victim in the neck and slapped her on the face while she was alone and lying in bed on that fateful night. When she shouted for help, appellant told her to keep quiet. Appellant then

began sucking her breasts and her vagina. Then he removed her panty and forcibly had sexual intercourse with the mentally retarded victim causing pain in her private part. Her testimony in the oral deposition confirms the statements she made in the vernacular in her affidavit earlier executed. Thus,

P - Unsa may imong guibuhat paghikita nimo niadtong tawo nga miduol kanimo.

T - Misinggit ako.

P - Unsay guibuhat niadtong tawo sa imong pagsinggit?

T - Iyang guitampa ang akong baba, dayon mipatong siya kanako.

P - Unsay sunod nga guibuhat niadtong tawo sa dihang mipatong na siya kanimo?

T - Iyang guidun-an ang akong tiyan, apan kay mikisikisi man ako iyang guisumbag ang akong kilid dayon guihubo ang akong baro ug guisunod usab dayon ang akong pante.

P - Unsay sunod nga guibuhat niadtong tawo kanimo sa tapos niya paghubo sa imong baro ug imong pante?

T - Iya akong gui-iyot senyor.

P - Unsay imong guibuhat sa dihang guiiyot sa tawo?

T - Misinggit ako senyor apan guipagngan ang akong baba busa mikisikisi ako apan guisumbag na usab ug maoy nakapalipong kanako.[9] (*Italics supplied*).

The victim's narrations are corroborated by the medical findings of the physician who examined her and found that her labia minora was "congested, slight swollen", and her hymen no longer intact. She also suffered abrasions and contusions on both breasts and near her right armpit, which may have been caused by the blows.

In rape, it is not essential that the force employed in accomplishing the crime be so great or of such character or could not be resisted.[10] Force in rape is relative, depending on the age, size and strength of the parties. In the same manner, intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[11] The victim was a mental retardate and suffering from physical disability when appellant employed force by boxing and slapping her. And when she shouted for help he intimidated her to keep her quiet. The fact that the victim did not offer a tenacious resistance is immaterial considering her physical nature - she is an invalid and unable to rise from the bed unassisted. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.[12] Although the victim shouted for help, her voice could be heard only as far as three to five meters away.[13] This negates the contention of the father of appellant that the rape could not have been committed because the locus criminis of the crime was only about fifteen meters away from the passengers' terminal where there were people passing. In any case, it has been consistently ruled that rape can be committed even in places where people congregate, in parks along the roadsides, in a house where there are other occupants,[14] in the same room where other members of the family are sleeping,[15] and even in places which to many would appear unlikely and high risk venues for its commission.[16] For rape to be committed, it is not necessary for the place to be ideal, or the weather to be fine for rapists bear no respect for locale and time when they carry out their evil deed.[17]

On the alleged misunderstanding that appellant had with the victim's mother which allegedly prompted the mother to file the rape case against him, suffice it to say that no mother would expose her own daughter to embarrassment and humiliation as well as to the trouble, inconvenience, ridicule and scandal concomitant with a public trial if such was not the truth and had not her intention been to bring the culprit to the folds of justice. No mother,

virtuous or not, will voluntarily and without compelling reasons put her own daughter to shame and humiliation[18] if she were not motivated by an honest desire to have her daughter's transgressor punished accordingly.[19] Besides, it is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment.[20]

In an apparent attempt to free himself from liability, appellant on the very same night after the assault, asked forgiveness from the victim's mother and promised that the same will never be repeated. Yet, no mother can just let pass an indignity committed against one of her own blood. It is easy to forgive, but justice for her would be no less than punishment. Moreover, a plea for forgiveness may be considered analogous to an attempt to compromise, which offer of compromise by the appellant may be received in evidence as an implied admission of guilt pursuant to Section 27, Rule 130 of the Rules on Evidence.[21]

With respect to the monetary awards, the P50,000.00 "damages" granted by the trial court should be properly denominated as moral damages, which is allowed even if there was no proof during the trial as basis therefor.[22] The mental and physical suffering of the victims' injury is inherently concomitant with and necessarily resulting from the odious crime which per se warrants the award of moral damages.[23] In addition thereto, the complainant is also entitled to a civil indemnity of P50,000.00[24] which is outrightly awarded to rape victims being in the category of actual or compensatory damages[25] and because the rape herein is not effectively qualified by any circumstance under which the death penalty is authorized by present amended law.[26]

WHEREFORE, the decision of the trial court finding accused-appellant guilty beyond reasonable doubt of the crime of Rape is AFFIRMED. Further, appellant is ORDERED TO PAY the complainant fifty thousand pesos (P50,000.00) as civil indemnity in ADDITION to the fifty thousand pesos (P50,000.00) moral damages.

SO ORDERED

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] The complaint reads: "That on the 24th day of March 1994, at about 11:00 o'clock in the evening, more or less, at Carrascal Public Market, Carrascal, Surigao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with one Charmelita Ruina, an invalid and mentally retarded girl, against the will of the latter, to the damage and prejudice of the victim." (Regional Trial Court (RTC) Records, p. 6)

[2] The dispositive portion of the decision dated December 5, 1995 of RTC Branch 27, Tandag, Surigao del Sur penned by Judge Ermelindo G. Andal states: "WHEREFORE, finding accused Elmer Yparraguirre y Sepe guilty beyond reasonable doubt of the offense of Rape, the Court hereby sentences him to suffer the penalty of RECLUSION PERPETUA; to suffer the accessory penalties provided by law; to pay private complainant Charmelita I. Ruina the sum of Fifty Thousand (P50,000.00) Pesos as damages; and to pay the cost.

"Accused being detained, he is credited in the service of his sentence with the full term of his preventive imprisonment, if he agreed in writing to abide by the same disciplinary rules imposed on convicted prisoners, otherwise four-fifths (4/5) thereof.

"IT IS SO ORDERED."

[3] People's Brief, pp. 3-5; Rollo, pp. 79-81.

[4] Samilin v. CFI of Pangasinan, 57 Phil. 298 cited in Valdepeñas v. People, 16 SCRA 871 (1966)

[5] People v. Babasa, 97 SCRA 672 (1980)

[6] People v. Ilarde, 125 SCRA 11 (1983)

[7] People v. Babasa, supra.

[8] People v. Igat, 291 SCRA 100 (1998)

[9] Affidavit of the Complainant; RTC Records, p. 7.

Q - What did you do upon seeing the person who came near you?

A - I shouted.

Q- What did the person do while you were shouting?

A - He covered my mouth, then he came on top of me.

Q- What did the person do next after coming on top of you?

A - He pressed my stomach hard but I wiggled so he boxed my side then he removed my dress and also my panty.

Q - What did he do next after removing your dress and your panty?

A - He had sexual intercourse with me, Sir.

Q - So, what did you do when he was having sexual intercourse with you?

A - I shouted Sir, but he clamped my mouth so I wiggled again but he boxed me again which caused me to lose consciousness.

[10] People v. Alfeche, 294 SCRA 352 (1998)

[11] People v. Moreno, 294 SCRA 728 (1998)

[12] People v. Prades, 293 SCRA 411 (1998); People v. Tayaban, 296 SCRA 497 (1998)

[13] Exh. "C", RTC Records, p. 148.

[14] People v. Villorente, 210 SCRA 647 (1992)

[15] People v. Lusa, 288 SCRA 296 (1998)

[16] People v. Dado, 314 Phil. 635; People v. Rafanan, 182 SCRA 811 (1990) cited in People v. Tan, Jr., 332 Phil. 465.

[17] People v. Emocling, 297 SCRA 214 (1998)

[18] People v. Deleverio, 289 SCRA 547 (1998)

[19] People v. Tumala, Jr., 284 SCRA 436 (1998)

[20] People v. Galleno, 291 SCRA 761 (1998)

[21] People v. Bartolome, 296 SCRA 615 (1998)

[22] People v. de los Reyes, G.R. No. 124895, March 1, 2000; People v. Medina, 300 SCRA 98 (1998)

[23] People v. Perez, 296 SCRA 17 (1998)

[24] *People v. Atienza*, G.R. No. 131820, February 29, 2000; *People v. Batoon*, G.R. No. 134194, October 26, 1999.

[25] *People v. Fuertes*, 296 SCRA 602 (1998)

[26] *People v. Victor*, 292 SCRA 186 (1998); *People v. Mostrales*, 294 SCRA 701 (1998)

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