

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEVERINO GONZALES Y DE VERA, ACCUSED-APPELLANT.

G.R. No. 129894. August 11, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

Being of the opinion that accused-appellant should have been sentenced to reclusion perpetua, the Court of Appeals,[1] to which this case had originally been appealed, certified it to us pursuant to Rule 124, §13 of the Rules of Court.[2]

The information[3] alleged:

At the instance of the private complainant Sharon Morandarte Gonzales, in her complaint under oath filed before the Municipal Trial Court of San Pedro, Laguna, the undersigned 3rd Assistant Provincial Fiscal of Laguna, accuses Severino Gonzales y De Vera of the crime of Kidnapping with Attempted Rape, committed as follows:

That about and during the period beginning the early evening of October 24, 1989, to the late morning of October 26, 1989, in the Municipality of San Pedro, Province of Laguna, Republic of the Philippines and within the jurisdiction of this Honorable Court, accused Severino Gonzales y De Vera, enticed Sharon Morandarte Gonzales, a female fourteen (14) years old minor, to ride with him in a motorized tricycle going home to Adelina I Subdivision and while on board the running tricycle, accused did then and there wilfully, unlawfully and feloniously poke a knife on the body of Sharon Morandarte Gonzales, telling her not to move and shout and by force, accused detained, kept and locked her with hands, feet and mouth tied in a room of his house and while said Sharon Morandarte Gonzales was in captivity, detained and restrained for a period of about twenty-two (22) hours, accused, with lewd design, did then and there attack, assault her honor and by means of force and intimidation, committed attempted rape on her person, against her will and to her damage and prejudice.

CONTRARY TO LAW.

The prosecution presented the complainant, Sharon Gonzales, and Dr. Carmelita Belgica, the medico-legal officer who examined her.

Complainant testified that at around 7 p.m. of October 24, 1989, while she was in front of the Meralco Office in San Pedro, Laguna waiting for transportation to take her home to Adelina I Subdivision, accused-appellant, who was then riding on a tricycle, came along and offered her a ride. As accused-appellant was her neighbor and her grandfather's friend, she accepted the offer.[4] She sat between the driver and accused-appellant inside the tricycle. When they passed the Kimberly Clark Phils. compound in San Pedro, Laguna, accused-appellant suddenly pulled out a knife ("balisong") from his pocket and poked it at the right side of complainant. He warned her not to shout or he would kill her. Complainant was taken to accused-appellant's residence at Adelina I Subdivision. It was then 8:30 p.m. Complainant was brought inside a room and her hands and feet were bound,

while her mouth was gagged. She was left in the room.[5]

The next day, October 25, 1989, accused-appellant brought her food. He removed the handkerchief covering her mouth and told her to eat. However, she refused to eat, afraid that he placed something in the food. This made accused-appellant angry. As a result, complainant was gagged again.[6]

At about 3 o'clock that afternoon, accused-appellant came back to the room where complainant was being held captive. He was naked and had a knife. He released complainant's hands and legs and led her to another room of the house where he ordered her to undress. As she refused, accused-appellant threatened her with a knife. After removing her clothes, accused-appellant pushed complainant to the floor, kissed her all over her body, and tried to force himself on her, but he failed as complainant fought back.[7]

Then, complainant felt something warm trickling down the inside of her right thigh. Accused-appellant apparently had a premature ejaculation which embarrassed him. Hence, after wiping off the semen, he told complainant to put on her clothes. He bound her hands and feet again, covered her mouth, and brought her back to the other room.[8] As complainant again refused to eat the food he gave her, accused-appellant got infuriated and pulled her hair.[9]

At around noon of October 26, 1989, accused-appellant told complainant to take a bath because he was going to take her to Manila. He released her hands and feet and removed the handkerchief covering her mouth. When accused-appellant left the room, complainant made a dash for freedom by passing through the front door. She proceeded to her house located just behind that of accused-appellant, but she found the gate locked.[10]

Complainant then took a tricycle to Liceo de San Pedro. She attended classes until 5:45 p.m. without telling anyone about her ordeal. On her way home, she saw accused-appellant in front of the Luzon Development Bank. She ran towards the market, where she was able to get a tricycle which took her home. Complainant told her mother what happened. Her grandfather accompanied her to the Municipal Police Station of San Pedro where she executed an affidavit[11] before Pfc. Reynaldo S. Arcibal.[12]

On November 20, 1989, a complaint[13] for Kidnapping with Attempted Rape was filed by complainant before the Municipal Trial Court of San Pedro. After summary examination was conducted, probable cause for kidnapping with attempted rape was established against accused-appellant. He was then arrested on December 9, 1989 pursuant to a warrant issued on December 5, 1989. The defense filed a motion for reconsideration praying that the complaint be modified to abduction.[14] 14 Id., pp. 15-16.14 This was granted by the court which issued an order changing the offense to forcible abduction. However, on January 17, 1990, the Provincial Fiscal disagreed and filed an information for Kidnapping with Attempted Rape with the Regional Trial Court of Laguna.

Accused-appellant testified in his own behalf. He denied that he kidnapped complainant and attempted to rape her. He claimed that on the evening of October 24, 1989, complainant went to his house and asked to be allowed to spend the night there because she was afraid her mother would scold her for coming home so late. Despite his misgivings, accused-appellant said he agreed to let her sleep in his house. Since the room of his sister was locked, complainant had to sleep on the floor in his room. The next morning, complainant did not leave. She pleaded with him instead to let him stay for two more days until October 26, 1989, when she decided she would return home. He said he left the complainant in the house on October 25, 1990 without locking the doors and she could have left if she wanted to because he neither tied her up nor gagged her.[15]

On November 5, 1991, the trial court rendered its decision finding accused-appellant guilty of Serious Illegal Detention and Attempted Rape and sentencing him to suffer a prison term of 14 years, 8 months, and 1 day of reclusion temporal, as minimum, to reclusion perpetua, as maximum, for the crime of Serious Illegal Detention,

and to suffer a prison term of 2 years, 4 months, and 1 day of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, for the crime of Attempted Rape. The trial court ruled:

The Supreme Court held that where the accused deprived a woman of her liberty and detained her for sometime, as in the case at bar, the crime committed is that of serious illegal detention.

Likewise, there is an attempt when the offender commences the commission of the crime directly by overt acts but does not perform all of the acts which constitute the crime by reason of some cause or accident other than his own voluntary desistance. In the case at bar, the accused attempted to insert his penis in the private organ of the offended party but was unable to do so because of the resistance offered by the latter. The crime committed was attempted rape as there was no penetration of the female organ.

The accused was charged with the crime of Kidnapping with Attempted Rape under Article 267 in relation to Article 335 of the Revised Penal Code. There is no complex crime here under Art. 48 of the Revised Penal Code because the accused neither committed a single act which constituted two or more grave or less grave felonies nor an offense which is a necessary means for committing the other. Hence, the information alleges two distinct and separate offenses.

The rule is that an information must charge only one offense. The rule however admits an exception in cases of complex crimes. When more than one offense is included in an information, the accused should move to quash such information.

In the case at bar, the accused thru counsel should have objected to the information on the ground that more than one offense is charged therein. As the accused failed to interpose an opposition, he is deemed to have waived his right to be tried for only one crime. Accordingly, there can be no objection to the submission of evidence to show the guilt of the accused of both offenses charged in the information. Consequently, since the evidence is sufficient, accused can be convicted of the two offenses charged, which have been established beyond reasonable doubt.

In sum, the crimes committed by the accused Severino Gonzales are Serious Illegal Detention under Article 267 and Attempted Rape under Article 335 of the Revised Penal Code.

WHEREFORE, premises considered, this Court finds the accused Severino Gonzales guilty beyond reasonable doubt of the crimes of Serious Illegal Detention under Art. 267 of the Revised Penal Code and Attempted Rape under Art. 335 of the Revised Penal Code and absent any mitigating or aggravating circumstances and applying the Indeterminate Sentence Law, he is hereby sentenced as follows:

1. With regard to the crime of Serious Illegal Detention, to suffer an indeterminate penalty ranging from fourteen years, eight months and one day of reclusion temporal as minimum to reclusion perpetua as maximum, together with all the accessory penalties set by law; and
2. As regards the crime of Attempted Rape, to suffer an indeterminate penalty, ranging from two years, four months and one day of prision correccional as minimum to eight years and one day of as maximum, together with all the accessory penalties set by law, plus costs.[16]

Accused-appellant appealed to the Court of Appeals which held:

WHEREFORE, the decision of the trial court is hereby AFFIRMED with the modification that as regards the crime of Serious Illegal Detention, appellant should be, as he is hereby, sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties set by law. Costs against accused-appellant.[17]

On motion of accused-appellant, the records of the case were elevated to this Court pursuant to Rule 124, §13 of

the Rules of Court.

Accused-appellant assigns the following errors allegedly committed by the trial court:

I. THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS WHICH WAS REplete WITH INCONSISTENCIES AND CONTRADICTIONS AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II. THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT SEVERINO GONZALES GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING WITH ATTEMPTED RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE.[18]

First. Accused-appellant points out the following as rendering the testimony of complainant unworthy of credence: (1) complainant did not run when he was opening the door of his house; (2) she did not shout for help when her house is just next door; (3) accused-appellant could be so careless as to leave her with hands and feet untied on the afternoon of October 26, 1989; and (4) complainant did not go home but instead went to school to attend classes after allegedly escaping from him.

We find these observations well taken. The elements of Kidnapping and Serious Illegal Detention under Art. 267 of the Revised Penal Code are as follows:

1. That the offender is a private individual.
2. That he kidnaps or detains another, or in any other manner, deprives the latter of his liberty.
3. That the act of detention or kidnapping must be illegal.
4. That in the commission of the offense, any of the following circumstances is present:
 - (a) That the kidnapping or detention lasts for more than 5 days; or
 - (b) That it is committed simulating public authority; or
 - (c) That any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
 - (d) That the person kidnapped or detained is a minor, female, or a public officer.[19]

The essence of illegal detention is the deprivation of the victim's liberty. There must be a showing of actual confinement or restriction of the victim, and such deprivation was the intention of the accused-appellant. There must be a purposeful or knowing action to restrain the victim because taking coupled with intent completes the offense.[20] In the case at hand, we note several material inconsistencies and unnatural courses of action in complainant's testimony which negate her accusation that accused-appellant deprived her of her liberty.

One, complainant testified that she accepted accused-appellant's offer to give her a ride in the tricycle because she trusted him, being her neighbor and her grandfather's friend. There would, therefore, be no need for accused-appellant to force her at knife point to go with him. If his intention was to kidnap her, he could easily have done so without using force which would only attract the attention of others.

If, on the other hand, what complainant meant was that accused-appellant had to poke a knife at her side to make her go with him to his house, her testimony remains incredible. Complainant admitted that accused-appellant was no longer holding her when the latter was opening the door of his house, and she could have ran and shouted for help. She inexplicably did not do this. Complainant testified:

Q Was there any door in getting inside the house?

A Yes, sir.

Q And the accused did not use a key in opening that door?

A He used a key, sir.

Q At the time when he used that key he removed the knife from your side because he used that hand in opening the door, is it not?

A Yes, sir.

Q You did not take that opportunity in running away because the accused was busy opening the door with a key?

A Because the knife, he transferred it to the left hand and poked it at me.

Q At that occasion nobody was holding you anymore because the two (2) hands of the accused was busy with some other activity?

A Yes, sir.[21]

It was only 8:30 p.m. They were in a residential area. In fact, complainant's house was only behind that of accused-appellant. Another house next to accused-appellant's house was only a few meters away such that if complainant stood on accused-appellant's front door, neighbors, including her parents, would have seen her. Had complainant really wanted to escape or call for help, she could easily have done so. But she did not.

Complainant claims that she was overcome by fear. We do not find this believable. Complainant testified that accused-appellant failed to rape her because she fought him. Accused-appellant allegedly threatened her yet complainant successfully prevented him from ravishing her. We see no reason why she could not have offered the same resistance when accused-appellant allegedly forced her to go with him to his house after alighting from the tricycle.

Two, complainant was inconsistent on whether accused-appellant returned to the room on the night of October 24, 1989. At one point, she said that he left her inside the room the whole night. Thus,

Q For how long did you stay in that room with your hands, your feet tied and your mouth gagged according to you?

A For a long time, until the next day.[22]

Testifying at another time, she said he returned that night to give her food. Thus,

FISCAL:

Q What happened when you were there sitting on the floor inside the house?

A Then he went out from the room.

Q Do you mean to say that the accused was inside the house but outside the room where you were.

A Yes, sir.

Q What happened next?

A Then after one hour he entered the room bringing food.[23]

Complainant could not have mistaken an hour for one whole night considering that she could remember in detail what happened on the three days that she was allegedly detained.

In any case, whether accused-appellant returned to the room that night or not, complainant could have made some noise to attract the attention of the neighbors even if she was gagged and her hands and feet were tied.

Three, we cannot believe how complainant, after she was able to escape from accused-appellant, could still attend

classes from noon up to 5:45 p.m. instead of going home. Nor did she tell anyone about her alleged ordeal. Indeed, anyone reading the transcript of her testimony would get the impression that she acted, after her alleged nightmare, as if nothing happened to her. Thus she testified:

Q After escaping from the house of Severino, what was your first plan to do?

A To go to our house.

Q And the best way for you to be heard in your house was to go to the backyard of Severino so that you can easily be heard in your house, is it not?

A I did not go there at the back because I must be careful Severino might see me again so I went to the gate.

Q Is it not that when you are at the gate you can be easily seen from the door of Severino's house?

A No, sir, it was blocked by a tree.

Q Your gate at that time was locked according to you?

A Yes, sir.

Q But, there were people in your neighborhood, is it not?

A Yes, sir.

Q You did not ask their help because you have been detained for 3 days already by Severino?

A No, sir.

Q Instead, you preferred to ride a tricycle and reported for classes that afternoon?

FISCAL

It is not afternoon, morning.

COURT

Morning?

IMBANG

In the morning?

A Yes, sir.

Q And in fact you attended the whole afternoon session of your classes in Liceo de San Pedro?

A Yes, sir.

Q Do you believe that what Severino did to you is not good and should be punished by law?

A I was not able to think of that because at that time I was confused.

Q Why did it come to your mind to go to classes and pretend as if nothing happened?

A In order to avoid Severino.

. . . .

Q You said that the reason why you prefer to go to school so that you can avoid Severino, is that correct?

A Yes, sir.

Q Is this Liceo de San Pedro very near to the police department of San Pedro, Laguna?

A Yes, sir.

Q It did not occur to your mind so that Severino can be prevented from chasing you to report the incident to the police?

A No sir, because when I came home that was the time when my mother and I went to the police for blotter.

....

Q When you reached your school that early afternoon of that day, your clothes was dirty because we were detained for 3 days inside a dirty room?

A Yes sir, but not so much.

Q Your teacher even one time in that occasion asked you to recite in your classes?

A Because at that time our class is not ordinary, because there is a special occasion.

Q You have best friends in your class?

A Yes sir.

Q You did not tell them about the experience that you have had?

A No sir, because I am ashamed.[24]

According to complainant, several persons saw her after escaping from accused-appellant. Noteworthy, however, is the fact that none of these people was ever presented to testify and corroborate complainant's testimony. While it is settled that the testimony of one witness is sufficient to support a finding of guilt, this only applies if said testimony is credible.[25] In this case, we do not find the testimony of the complainant concerning her detention sufficiently credible. We are inclined to believe accused-appellant's claim that complainant came to his house and asked to be allowed to stay overnight because she was afraid she would be scolded by her mother for coming home late.

Second. However, whatever might have been complainant's reason for going to accused-appellant's house, the evidence shows that accused-appellant attempted to rape her. The following is her account of how the incident took place:

Q Around what time did you see him again on that day?

A Around three o'clock in the afternoon.

Q And what did he do when he returned to that room at around 3:00 on the same day?

A The accused was already undressed and he was trying to bring me to the other room.

Q Was he able to bring you to the other room?

A Yes, sir.

Q How was he able to bring you to the other room?

A He was holding a knife.

Q And what did he do with the knife that he was holding?

A He poked the knife at me.

Q And at what portion of your body did he poke the knife?

A At my face.

Q At the time that he poked the knife at your face, was he saying anything to you?

A Yes sir.

Q Tell us what he said to you.

A That he will kill me.

Q What was your reaction when the accused pointed his knife at your face?

A I was very angry at him and I was also afraid.

Q Now, you said that you were brought to the other room. What happened when the accused brought you to the other room?

A He told me to remove my dress.

Q And did you remove your dress as you were asked by the accused?

A No sir.

Q Why?

A Because it's not my habit to remove my dress just like that, especially if there is another person around.

Court

Q Were you still tied at that time?

A No more, Your Honor, he removed it.

Fiscal

Q And what did the accused do when you refused to remove your dress?

A He was the one who removed my dress.

Q How did he remove your dress?

A He grabbed my blouse.

Q Now, at the time the accused grabbed your blouse, what did you do?

A I was fighting back.

Q And then what happened?

A When I was fighting, he poked the knife again at me.

Q At what portion of your body did he poke his knife?

A At my face.

Q And what happened after the accused poked again the knife at your face?

A The accused told me not to shout.

Q And what did you do when you were told not to shout?

A I was afraid.

Q Now, at the time the accused grabbed your blouse, in what manner did you fight the accused?

A I was boxing him.

Q What else did you do by way of fighting him?

A I was also kicking him.

Q And then what happened next when you were told not to shout with his knife pointed at your face?

A He kissed me.

Q In what part of your body did he kiss you?

A Throughout my whole body.

....

Q After he kissed you, what did he do next?

A The accused tried to insert his private organ into my private organ.

Q What was your position at the time when the accused was trying to insert his private part into your private part?

A He asked me to lie down.

Q Did you lie down?

A I refused to lie down but he pushed me.

Q Then what happened when the accused was trying to insert his private part into your private part?

A I was fighting back.

Q And how were you fighting back?

A I was pushing and boxing him.

Q And then what happened when you fought back?

A I was shouting but he told me that if I continued shouting he will kill me.

. . . .

Q And was he able to succeed?

A No sir.

Q Why?

A Because I was fighting back.

Q And after the accused was not able to succeed because you were fighting back, what did the accused do if he did anything?

A When he stood up, I noticed that there was a white substance on my “singit”.

Q Did you notice where the white substance came from?

A Yes sir.

Q Where?

A From his private organ.

Q Now, at the time he was doing all these to you, were you still wearing your dress?

A No sir.

Q Even your underwear?

A He was able to remove my panty up to my knee.

Q How about the accused, was he wearing anything at the time that he was doing this to you?

A He was undressed.

COURT

Q You mean to say he was totally naked?

A Yes, Your Honor.

FISCAL

Q Then what happened next after you saw the white substance in your “singit”?

A He just smiled at me and wiped the white substance.

Q After wiping the white substance in your “singit”, what happened next?

A He told me to put on my dress.

Q After you have dressed up, then what did he do next?

A He tied me up again.[26]

Complainant’s testimony that accused-appellant attempted to rape her and would have succeeded save for her

resistance is confirmed by the results of her medical examination. The medical certificate,[27] dated October 27, 1989, prepared by Dr. Carmelita B. Belgica of the National Bureau of Investigation, contains the following findings on the complainant:

EXTRAGENITAL PHYSICAL INJURY:

Contusions, shoulder, left side, 2.0 cm. x 1.0 cm. and 1.5 cm. x 0.5 cm.; purplish; arm, middle third, posterior aspect, 3.0 cm. x. 1.0 cm. purplish; back, 2.5 cm. x. 0.5 cm. purplish; arm, middle third posterior aspect purplish, 1.0 cm. x 0.5 cm.; arm posterior, lower third, 3.0 cm. x 2.0 cm.; purplish, thigh, middle third postero-lateral, 2.0 cm. x. 0.5 cm.; purplish.

GENITAL EXAMINATION:

Pubic hair, fine short, scanty. Labia majora, gaping. Labia minora, gaping. Fourchette, tense. Vestibule, pinkish. Hymen, annular, tall, thick, fleshy, intact. Orifice, measures 2.0 cm. Walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. Above described physical injury was noted on the body of the subject at the time of examination which is compatible with the alleged date of infliction.
2. Hymen, intact, Orifice, small as to preclude complete penetration by an adult male organ in full erection without producing hymenal injury.

Accused-appellant admitted being with the complainant from October 24-26, 1989. He testified that she slept in the same room with him but denied he attempted to rape her. But the contusions on various parts of the body tend to support her claim that accused-appellant did try to rape her. If he failed, it was for reasons other than his own voluntary desistance. Complainant testified that she fought off accused-appellant's attempts to insert his penis into her vagina and that in the process accused-appellant had a premature ejaculation.

Rape is committed by having carnal knowledge of a woman under any of the circumstances mentioned in Art. 335 of the Revised Penal Code.[28] Attempted rape is committed when an offender commences the commission of a felony directly by overt acts and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[29] In this case, accused-appellant attempted to have sexual intercourse with complainant but ejaculated before he could do so. The trial court correctly convicted accused-appellant of attempted rape.

Likewise, the trial court imposed the correct penalty. Rape is penalized with reclusion perpetua. This being an attempted felony, the imposable penalty is .[30] Since no mitigating or aggravating circumstance was proved, the penalty is in its medium period.[31] Applying the Indeterminate Sentence Law, the minimum of accused-appellant's sentence is the penalty next lower to , and the maximum is to be taken from the medium of the imposable penalty. Thus, the indeterminate sentence imposed, which is from 2 years, 4 months, and 1 day of prision correccional, as minimum, to 8 years and 1 day of , as maximum, is in accordance with law.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED insofar as it finds accused-appellant guilty of Attempted Rape, but it is REVERSED insofar as it finds him guilty of Serious Illegal Detention as to which accused-appellant is acquitted on the ground of reasonable doubt.

SO ORDERED.

Quisumbing, Buena, and De Leon, Jr., JJ., concur.
Bellosillo, J. (Chairman), on leave.

- [1] Per Associate Justice Jainal D. Rasul and concurred in by Associate Justices Eubulo G. Verzola and B. A. Adefuin-Dela Cruz.
- [2] CA Rollo, p. 96.
- [3] Records, p. 38.
- [4] TSN, pp. 3-5, Oct. 25, 1990.
- [5] Id., pp. 5-8.
- [6] Id., p. 8.
- [7] Id., pp. 9-12.
- [8] Id., p. 12.
- [9] Id., pp. 13-14.
- [10] Id., pp. 14-16.
- [11] Records, p. 3.
- [12] TSN, pp. 17-19, Oct. 25, 1990.
- [13] Records, p. 1.
- [14] Records, p. 1.
- [15] TSN, pp. 5-10, Sept. 17, 1991.
- [16] Records, pp. 163-164.
- [17] CA Rollo, p. 88.
- [18] Id., p. 21.
- [19] 2 L. B. Reyes, Revised Penal Code 475 (1995).
- [20] People v. Soberano, 281 SCRA 438 (1997).
- [21] TSN, p. 15, May 2, 1991.
- [22] TSN, pp. 7-8, Oct. 25, 1990. (Emphasis added)
- [23] TSN, pp. 14-15, March 13, 1990. (Emphasis added)
- [24] TSN, pp. 24-28, May 14, 1991.
- [25] See People v. Gozano, G.R. No. 125965, Jan. 21, 2000.
- [26] TSN, pp. 8-13, Oct. 25, 1990.
- [27] Exh. A; Records, p. 128. (Emphasis supplied)

[28] Art. 335. When and how rape is committed.^¾ Rape is committed by having carnal knowledge or a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under 12 years of age or demented.

[29] Revised Penal Code, Art. 6.

[30] Id., Art. 51.

[31] Id., Art. 64.

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