

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCELINO ACOSTA Y RIVERA (ALIAS MARCELINO RIVERA, ALIAS M. A. RIVERA), DEFENDANT AND APPELLANT.

G. R. No. 40903. April 28, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant from the judgment rendered by the Court of First Instance of Manila finding him guilty of the crimes of rape and homicide and sentencing him for the first crime to seventeen years, four months and one day of prison correccional and for the second, to fourteen years, eight months and one day of reclusion temporal, with the accessory penalties of the law, to indemnify the heirs of the offended party in the sum of P1,000, and to pay the costs.

The information alleged:

"That within the time comprised between July, 1933 and October 22, of the same year, in the City of Manila, Philippine Islands, the said accused, with force, intimidation and abuse of confidence, did then and there willfully, unlawfully and feloniously have sexual intercourse with Magdalena Asegurado, a virgin over twelve (12) and under eighteen (18) years of age, and as a consequence thereof, the said minor was infected with venereal diseases and caused physical injuries which resulted in her death on October 22, 1933.

"Contrary to law."

For many years prior to the dates stated in the information, the defendant and the widow Gregoria Buenvenida lived together with the latter's two daughters Magdalena and Virginia Asegurado, of 14 and 8 years of age, respectively, in a house situated on 991 P. Noval Street in the City of Manila. One day in July, 1933, at midnight, the defendant approached Magdalena, entering the mosquito net under which she was sleeping; and, threatening to kill her with the open penknife which he carried, if she did not accede to his lewd designs, succeeded in having sexual intercourse with her.

On that occasion, the defendant was suffering from gonorrhæa and naturally he infected the offended party with the said disease. The offended party did not complain to her mother nor did she suffer from the serious consequences of the infection until the beginning of the month of September when she complained of intense pains in the abdomen. At that time the defendant was in Tarlac and, upon his return two days later, he and Gregoria brought the offended party for treatment to the General Hospital. She then had high fever and was in a critical and serious condition for she was suffering from intense pains and she felt that she was about to die.

In the hospital, she was examined by Dr. Paterno Pavino who discovered that she was suffering from gonorrhæa and had been raped. Asked by him who had raped her, she, after much hesitation, answered that it was the man who was outside the hall and who later turned out to be the defendant. The latter asked by the doctor, denied the accusation.

Inasmuch as the offended party was seriously ill and a surgical operation alone could save her life, Dr. Fernando Galderon operated on her but he had to desist from his intention to cut off her appendix because she was found to be suffering from peritonitis. Dr. Calderon diagnosed the case as salpingitis and asserted that the patient was suffering from gonorrhæa and that she died as a consequence of said disease. In short, the doctor categorically declared that the offended party died of peritonitis but that this disease was caused by the gonorrhæa with which she had been infected, which, in turn, had been produced by sexual intercourse. In other words, although the direct and immediate cause of her death was peritonitis, the same can also be traced to the sexual intercourse, which the defendant had, as its concomitant and determining cause.

On the afternoon of October 3, 1933, Consuelo del Rosario, a friend of the offended party, visited her at the General Hospital and in the short conversation which she had with the patient, the latter disclosed to her that she was seriously ill, that she believed that she was going to die and that the author of her illness was the defendant who had raped her. On the following day, Gregoria Buenvenida, accompanied by Consuelo, went to the office of the secret service of the City of Manila and reported the case. Detectives Quintos and Gallardo, acting upon Gregoria's statement that the offended party was dying, went to the hospital and conversed with the patient. Said patient could hardly utter a word and after repeatedly stating that she was seriously ill and that she thought she was going to die, said agents of the law reduced to writing her ante mortem statement. In the said document the offended party again reiterated her statement that the defendant had raped her and that it was he who had infected her with the venereal disease. The offended party finally died on October 22, 1933, that is, eighteen days after she had made her ante mortem statement.

The above stated facts have been conclusively and convincingly established by the evidence for the prosecution. There is not the least doubt but that the defendant abused the unfortunate girl, as alleged. Neither is there any doubt that her death was caused by the sexual intercourse which he had against the will of the offended party, although the immediate cause thereof, as stated by Dr. Calderon, was the peritonitis which, in that case, was but a mere complication of the gonorrhæa from which the patient was suffering.

The question of law which now arises is whether the proven facts should be considered¹ as independent crimes of rape and homicide, or as the complex crime of rape with homicide. In the information, the crime charged was the latter and in his brief the Solicitor-General recommends that the defendant be convicted of said complex crime. The trial court was not of that opinion and convicted the defendant of the crimes of rape and homicide. Taking into consideration the weight of the evidence and the fact that both crimes, rape and homicide, were but the result of a single act, which is the sexual intercourse, this court declares that such acts should be held as constituting the complex crime of rape with homicide, in accordance with the provisions of article 48 of the Revised Penal Code, as amended by Act No. 4000.

According to the above cited article, the penalty of reclusion temporal prescribed for both crimes should be imposed in its maximum degree, and nocturnity and abuse of superior strength should be taken into consideration as aggravating circumstances in the commission thereof. One of the said circumstances is compensated by the mitigating circumstance of lack of intention on the part of the defendant to commit so grave a crime as that produced, which this court takes into consideration in his favor. Applying the rules of the Indeterminate Sentence Law, the penalty which should be imposed is from twelve years of prision mayor to twenty years of reclusion temporal.

Wherefore, and reversing the judgment appealed from, the defendant is declared guilty beyond reasonable doubt of the complex crime of rape with homicide and is hereby sentenced to the penalty the duration of which is from twelve years, of prision mayor to twenty years of reclusion temporal, with the accessory penalties of the law, and to indemnify the heirs of the offended party in the sum of P1,000, with the costs of both instances de oficio. So

ordered.

Abad Santos, Butte, Goddard, and Diaz, JJ., concur.

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