

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICANOR DE LOS SANTOS, DEFENDANT-APPELLANT.

G.R. No. 55082. April 19, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Does a court have jurisdiction to entertain a complaint for rape not subscribed or initiated by the victim who was already of legal age at the time the crime was committed? This is the main issue presented to this Court by appellant who was convicted of the crime of rape by the Court of First Instance of Cebu, Branch XV in Criminal Case No. AR-288.

As gathered from the records of this case, the essential facts are as follows:

In April, 1973, Luzviminda Tan, a beautiful lass at the age of 23, went to stay with her aunt Calixta de los Santos in Alcoy, Cebu for a vacation. At about eight o'clock in the evening of April 28, 1973, Luzviminda told her aunt that she had to go to the comfort room which was located approximately 20 meters away from the house. Inasmuch as Luzviminda failed to return after 20 minutes, her aunt began to worry. Unable to find her anywhere near the house, Calixta went to a nearby store to ask a certain Jaime Carulasan to help her look for her niece. Carrying a torch light, Jaime and Calixta proceeded towards the town poblacion. On the way, they met three men who informed them that Luzviminda was in the house of a certain Gildo Egon. Immediately thereafter, they went to the said house.

Upon arriving therein, Calixta went up and met Nicandro Anore, the co-accused of appellant in the lower court, who said, "I have nothing to do with that." Upon hearing this statement, Calixta and Jaime barged into a room and saw the seemingly unconscious Luzviminda lying on the floor with her dress raised up to her waist. She was not wearing panties. They also saw appellant Nicanor de los Santos, the son of the then incumbent mayor of Alcoy, near Luzviminda. He was fixing his pants to cover his still exposed private organ. Upon seeing the two, appellant put off the light and ran away. Calixta, on the other hand, went to assist the trembling girl and with the help of Nicanor, brought her home.

The next day, Calixta filed a report of the incident in the PC Headquarters of Sibonga, Cebu. On April 30, 1973, a physical examination of Minda was conducted at the PC Crime Laboratory.

The findings of the medico-legal were contained in a medical report which reads:

FINDINGS:

GENERAL AND EXTRA-GENITAL:

Fairly developed, nourished and slightly coherent nervous female subject. Breasts are hemispherical with dark-brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and tight.

The following injuries are noted:

Trunk and upper extremity;

- (1) Hematoma, scapular region, measuring 3 x 3 cm., 10 cm. right of the posterior midline, 110 cm. above the heel.
- (2) Graze abrasion, proximal 3rd of right forearm, measuring 0.3 x 0.2 cm., 3 cm. lateral to its posterior midline.
- (3) Hematoma, middle 3rd of right arm, measuring 3 x 2.5 cm., 5 cm. lateral to its anterior midline.

Lower extremities;

- (4) Hematoma, proximal 3rd of the right thigh, measuring 9 x 3 cm., just lateral to its anterior midline.
- (5) Linear abrasion, middle 3rd of right leg, measuring 4.5 x 0.1 cm., 3.5 cm. lateral to its anterior midline.
- (6) Linear abrasion, distal 3rd of right thigh, measuring 1.5 x 0.2 cm., 3 cm. medial to its anterior midline.
- (7) Linear abrasion, proximal 3rd of right leg, measuring 2.5 x 0.1 cm., 2.5 cm. lateral to its posterior midline.

GENITALS:

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the dark-brown labia minora presenting in between. On separating the same are disclosed an elastic fleshy type hymen, with indentations at 5 and 7 o'clock positions and an abraded vulvar mucosa. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and virgin size vaginal speculum. Vaginal canal is tight with slightly shallow rugosities. Cervix is normal in size, color and consistency.

Vaginal and peri-urethral smears are positive for spermatozoa.

REMARKS:

Findings are compatible with that of a recent sexual intercourse.

Barring unforeseen complications, it is estimated that the above injuries will resolve in 7-9 days."^[1]

Later, a complaint for rape was filed by the father of Luzviminda against appellant Nicanor de los Santos and Nicandro Anore.

On June 13, 1980, after due trial, the lower court rendered a decision finding appellant Nicandro de los Santos guilty beyond reasonable doubt of the crime of rape and imposed on him the penalty of reclusion perpetua and required him to indemnify the offended party in the amount of P40,000.00 without subsidiary imprisonment in case of insolvency. The trial court, however, acquitted Nicandro Anore for want of sufficient evidence.

Hence, this appeal by Nicanor de los Santos.

Regarding the main issue, appellant argues that jurisdiction was never conferred upon the trial court since the complaint was not signed by the victim herself who was already of age, but by her father Paulino Tan.^[2] The lower court, on the other hand, ruled that the father of the victim had the perfect right to file the complaint in view of the incapacity of the latter who was not in complete possession of her mental and physical faculties.^[3] Section 4, Rule 110 of the Revised Rules of Court is the applicable provision of the Rules in this regard, to wit:

“ SEC. 4 Who must prosecute criminal actions:-

"X X X

X X X

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.

x x x x "[4]

Under the above provision of law, the right to institute a criminal action for the offenses of seduction, abduction, rape or acts of lasciviousness is reposed exclusively and successively in the persons enumerated in the provision, in the order in which they are mentioned. This means that no one has the authority to proceed if there is some other person previously mentioned therein with legal capacity to appear and institute the action.[5] Therefore, a father cannot file a complaint for any of the above-mentioned crimes committed against his daughter if the latter has the legal capacity to appear and institute the action.

After a careful scrutiny of the voluminous records of this case, We hold that the complaint filed by the father of Luzviminda is valid and sufficient and is not in violation of the jurisdictional requirement of the law since the rape victim was incapacitated to file it herself. Although the purpose of the law in placing the offended party in the first rank is to give her the preferential right in the filing of the complaint, this does not apply where she is otherwise physically or legally incapacitated to do so.

The finding of the lower court that "the victim was not in complete possession of her mental and physical faculties and was incapacitated by reason of insanity" is well-supported. Witnesses declared under oath that after the incident, the victim would not talk, refused to eat and just spent her time as a timid and immobile person. This was corroborated by Dr. Ortega, who, after an examination of the victim, concluded that she was not capable of testifying in any court proceeding. The trial court judge personally examined the girl in court and saw for himself the pitiable state she was in. She could not even do such simple acts like standing up and sitting down so much so that somebody else had to assist her. Questions propounded to her were answered with blank stares. Hence, the lower court made the pronouncement that she is insane and that she cannot testify in court.

We cannot help but agree with the above finding after taking a look at the photographs of Luzviminda which were offered as exhibits in the lower court. One cannot deny that the picture taken of her after the incident is that of a skinny, untidy, and frightened girl so different from that taken of her previous thereto where she appears to be very healthy and strikingly beautiful. Accordingly, it is unreasonable to expect her to file the necessary complaint with the proper authorities. In view of the foregoing, We hold that the father of a rape victim has the perfect right to initiate the prosecution of a rape case in behalf of his daughter, even if she is of legal age, if she is mentally incapacitated to do so.

Appellant, however, insists that he cannot be convicted of the crime of rape on the basis of the circumstantial evidence presented by the prosecution which allegedly does not clearly establish his guilt. He also maintains that the lower court should not have considered the testimonies of Calixta de los Santos and Jaime Carulasan because they are incredible and are contradictory to each other. Appellant also claims that the injuries of Luzviminda were caused by her aunt who continuously whipped her with coconut leaves after finding her half naked in the house of Egon. He further explains that when Calixta saw Luzviminda, without her panties, in the kitchen of the house, the latter was only urinating. Lastly, appellant insists that he could not have raped Luzviminda as he considered her a relative.

We cannot agree with appellant that there is no sufficient basis for the judgment of conviction. Although the victim was not able to testify in court due to her mental illness, the facts and circumstances surrounding in this case clearly prove the commission by the appellant of the crime of rape against her person.

Under Article 335 of the Revised Penal Code, rape is committed if the offender had carnal knowledge of a woman

and such act is accomplished under 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 twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.”

The findings of the medico-legal officer who examined Luzviminda the day after the incident showed that the victim had sexual intercourse very recently and that force was applied on her as evidenced by the presence of numerous abrasions, lacerations and other injuries. As to the identity of the offender, the aunt of the victim and witness Jaime Carulasan were positive that it was appellant whom they saw inside the room with the girl, his private organ still exposed although he belatedly tried to avoid being identified by putting off the light and scampering away.

As to the testimonies of Calixta de los Santos and Jaime Carulasan, We reiterate the oft-repeated rule that inconsistencies and contradictions on minor matters do not affect the credibility of such testimonies.

On the contrary, it is the testimony of the appellant which appears unconvincing. It is hardly believable that Calixta de los Santos would mercilessly whip her already physically weak and very frightened niece on the sensitive parts of her body causing all those injuries found on her by the medico-legal officer. Furthermore, the explanation of appellant that the victim was just urinating in the kitchen when Calixta de los Santos and Jaime Carulasan arrived is incredible. In the first place, it is not probable that a young, unmarried lady like Luzviminda would venture to go alone to a very dark room in a stranger's house without bringing any lamp or any other form of illumination with her. Besides, it does not seem to be a practice of women to remove their panties in order to urinate. Pulling them down is sufficient for the purpose.

We also reject the contention of appellant that since he considers Luzviminda as his relative, his claim of innocence is fortified. Apparently, appellant got strongly attracted to Luzviminda because, as described by his own witness, she very was very beautiful that night.[6] If there were cases of men raping their own daughters, with more likelihood there could be cases of men raping their distant relatives. Moreover, the family of Luzviminda does not consider appellant as their relative.

We also take into consideration the fact that appellant failed to show any motive on the part of the parents of Luzviminda to fabricate charge against him. There was also no reason given by him for Calixta testifying against him when his own mother declared that Calixta had good relations with them before the incident.[7] This observation holds true as well for the other prosecution witness Jaime Carulasan whom appellant considered as a close friend.[8]

The guilt of appellant is all the more made evident by the fact that his father interceded to settle the case.

WHEREFORE, In view of the foregoing, the Decision of the lower court is hereby **AFFIRMED** with costs against appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Medico-Legal Report, Exh. C.

[2] Page 30, Brief for accused-appellant.

[3] Decision, Appendix to the Brief for accused-appellant.

[4] This cited provision is reproduced verbatim in Section 5, Rule 110 of the 1985 Rules on Criminal Procedure, as amended.

[5] U S. vs. De la Santa, 9 Phil. 22 (1907).

[6] Page 664, TSN, December 18, 1974.

[7] Page 685, TSN, December 23, 1974.

[8] Page 352, TSN, August 6, 1975.

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