

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE LUALHATI, DEFENDANT-APPELLANT.

G.R. No. 66038. March 16, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Appellant Vicente Lualhati was charged with Rape by his common-law wife's 11-year-old daughter, Josephine Dimaunahan, in a complaint (Exhibit D, p. 1, Records) filed in the Municipal Court of Candelaria, Quezon. After the preliminary investigation, the case was forwarded to the Court of First Instance of Quezon, where the Provincial Fiscal filed on March 21, 1979 the following information against the appellant:

"That in or about the month of June 1978, at Barangay Masalucot 2, in the Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of roce (sic) and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Josephine M. Dimaunahan, a minor, 11 years of age, against her will.

"That in the commission of the above-described crime, the following aggravating circumstances were present: relationship, the accused being the step-father of the offended party, and dwelling.

"Contrary to law." (Annex A, p. 6, Rollo.)

As summarized in the People's brief, (p. 92, Rollo), the facts are:

"Complainant Josephine Dimaunahan was born on January 7, 1967 (p. 5, tsn, Sept. 10, 1980). About eight (8) years before the June, 1978 incident in question, her mother separated from her father and started to live with appellant Vicente Lualhati without the benefit of marriage (pp. 36-40, tsn, Jan. 7, 1981; pp. 5-6, tsn, Nov. 19, 1981; pp. 7-12, tsn, Dec. 10, 1981; pp. 3-4, tsn, Jan. 14, 1982). She likewise lived with appellant who supported her, took care of her studies and treated her like his own daughter (p. 5, tsn, Sept. 10, 1980; pp. 13-14, tsn, Dec. 10, 1981; pp. 4-5, tsn, Jan. 14, 1982).

"Sometime in June, 1978, while complainant's mother was at work, appellant and complainant were alone in the house in Masalukot II, Candelaria, Quezon, appellant had sexual intercourse with complainant (pp. 9-15, tsn, Sept. 10, 1980; pp. 8-14, tsn, Oct. 8, 1980; pp. 11-16, tsn, Oct. 21, 1981; pp. 4-5, tsn, Nov. 3, 1982). It appeared that even prior to June, 1978, appellant had already several sexual relations with complainant (pp. 8-9, 20-23, 26, tsn, Jan. 7, 1981; p. 20, tsn, Oct. 20, 1981)."

Upon arraignment on November 13, 1979, the accused pleaded not guilty (p. 120 Records).

On January 5, 1980, the accused, through counsel, filed a motion to dismiss (p. 168, Records) on the ground that the complaint charged more than one offense, namely:

"That on or about the month of June, 1978, and for sometime prior and subsequent thereto, x x x the accused Vicente Lualhati wilfully, unlawfully and feloniously have carnal knowledge of the complainant Josephine M. Dimaunahan x x x." (Emphasis supplied.) (Exh. D, p. 1, Records).

On the basis of the Fiscal's Opposition (p. 195, Records) alleging that the accused was being tried on the Information which charged only one offense committed "in or about the month of June 1978," the trial judge denied the motion to dismiss (p. 197, Records).

On December 11, 1978, the accused filed another Motion to Dismiss (p. 44, Records), alleging that he had been pardoned by the offended party, her mother and grandmother. Attached to the Motion to Dismiss was the joint affidavit of desistance signed by the offended party, her mother and grandmother on December 11, 1978 (p. 45, Records).

On December 14, 1978, the offended party executed and filed an affidavit alleging that her father abandoned her at the age of two (2) years and three (3) months, without providing for her support and studies, and that the same were provided by her mother and grandmother who, on the same date, executed a joint affidavit to the same effect (p.46, Records).

On January 6, 1979, the Prosecuting Fiscal filed an Addendum to the Opposition to the Motion to Dismiss (p. 63, Records). He alleged therein that the express pardon given the accused was invalid for the offended party did not have "a will of her own", being merely eleven (11) years old when the crime was committed; that Rodolfo Dimaunahan, father of the offended party, executed an affidavit objecting to the pardon given to the accused; and that, as the father, he still possessed the "patria protesta" over the offended party in spite of his having abandoned her.

In an Order dated March 7, 1979, the trial court denied the motion to dismiss on account of the insistence of the victim's father to prosecute the accused, absent judicial pronouncement depriving him of parental authority over the offended party, a child below twelve (12) years old (p. 73, Records).

On November 9, 1979, a Motion to Quash (p. 117, Records) was filed by the accused. This was denied on November 15, 1979 by the trial court (p. 126, Records).

After trial, the court a quo, convicted the accused of rape, and imposed upon him the penalty of reclusion perpetua (p. 549, Records).

Hence, this appeal in which the appellant alleges that the trial court erred:

1. in not holding void the complaint of the offended party charging the accused with more than one offense;
2. in giving due course to the information filed by the prosecuting fiscal against the accused, there being no valid complaint against him;
3. in not giving effect to the pardon given to the accused by the offended party, her mother and grandmother; and
4. in giving the father of the offended party authority to prosecute the accused, notwithstanding the fact that he had abandoned her while a child two years old and had not provided for her support and studies" (p. 79, Rollo.)

Those assignments of error raise only two issues, namely: (1) whether there was a valid complaint against the appellant; and (2) whether the pardon given to him by the offended party, her mother, and grandmother extinguished his criminal liability, in spite of the objection of the victim's father.

On the first issue, the appellant contends that the complaint is void because it charges at least three (3) crimes of rape, namely: (1) that which was committed "on or about the month of June, 1978;" (2) that which was committed "sometime prior to said period;" and (3) that which was committed "subsequent thereto." (p. 168, Records.)

The argument has no merit. Attached to Josephine's complaint was her sworn statement (Exh. E, p. 2, Records), taken before S/Sgt. Domingo V. Averon, Jr. of the 21st CIS Detachment at Camp Guillermo, Nakar, Lucena City on August 8, 1978, wherein, she categorically affirmed that Vicente abused her before the start of classes in June, 1978. That affidavit, which may be considered part of the complaint required by law, cures any ambiguity in the complaint regarding the number of offenses committed by the accused (*People vs. Babasa*, 97 SCRA 672). Discrepancies between the accusation and the complaint as to time of occurrence of the carnal copulations in rape do not affect any essential right of the accused, where the acts occurred within the period of time alleged in both writings and the difference noted in other respects was of a formal, rather than a substantial, character. (*Delos Santos vs. People*, 69 Phil. 321.)

Furthermore, Section 10, Rule 110 of the 1964 Rules of Court provided:

Sec. 10. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit."

With respect to the efficacy of the pardon given to the appellant by his victim, her mother, and grandmother, Article 344 of the Revised Penal Code provides:

"Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. - x x x

"The offenses 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 cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes."

In *People vs. Miranda* (57 Phil. 274), this Court interpreted paragraph 3 of Article 344 as follows:

"Paragraph 3 of the legal provision above-quoted prohibits a prosecution for seduction, abduction, rape, or acts of lasciviousness, except upon a complaint made 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. It does not prohibit the continuance of a prosecution if the offended party pardons the offender after the cause has been instituted, nor does it order the dismissal of said cause. The only act that according to Article 344 extinguishes the penal action and the penalty that may have been imposed, is the marriage between the offender and the offended party." (Emphasis supplied.)

While the *Miranda* case involved the crime of seduction, the ruling therein is applicable to rape inasmuch as the prosecution of both offenses is covered by Article 344. The rationale of the law on the prosecution of private crimes is simple: The law deems it the wiser policy to let the aggrieved woman and her family decide whether to expose to public view or to heated controversies in court the vices, faults and disgraceful acts occurring in the family (*People vs. Babasa*, 97 SCRA 672). However, when, as in the case at bar, the pardon is given after the filing of the complaint in court, it comes too late to hide the shameful occurrence from public notice.

Although the accused herein pleaded not guilty when arraigned, he admitted having carnal knowledge of Josephine many times, even prior to June 1978. His allegation that he was "tempted" by her would not mitigate, much less exculpate, him. In statutory rape it is not necessary to prove that the victim was intimidated or that

force was used against her (People vs. Jones, 137 SCRA 166).

WHEREFORE, the decision of the trial court finding Vicente Lualhati guilty beyond reasonable doubt of rape and imposing upon him the penalty of reclusion perpetua is affirmed. Pursuant to present judicial policy, the appellant is ordered to pay the offended party moral damages in the increased sum of P25,000, and the costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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