

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE RAMIREZ, ACCUSED-APPELLANT.

G.R. No. 70744. May 31, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Pursuant to Rule 124, Section 12, of the Rules of Court, this case was certified to Us by the Intermediate Appellate Court for review in the light of the following antecedents:

In a verified complaint filed with the Municipal Trial Court of Tandag, Surigao del Sur, ALMA LAWANGON accused FELIPE RAMIREZ of the crime of rape. After proceedings in said court, the case was elevated to the Regional Trial Court where an information for rape was filed in Criminal Case No. 1128. The information alleges:

"That on the 30th day of June 1983, at 12:00 o'clock noon, at barangay Telaje, in the municipality of Tandag, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, FELIPE RAMIREZ, by means of force, violence and intimidation did, then and there willfully, unlawfully and feloniously have a carnal knowledge of ALMA LAWANGON, a woman of 14 years of age, against the will of the latter to her damage and prejudice.

"CONTRARY TO LAW. (Article 335 of the Revised Penal Code) with the aggravating circumstances that the crime was committed with abuse of confidence and that advantage was taken of superior strength." (Expediente, p. 2.)

After trial, the following judgment was rendered:

"Premises considered, this Court finds Felipe Ramirez guilty beyond doubt of Rape as defined and penalized under Article 335, par.1 of the Revised Penal Code. With one mitigating circumstance of being 70 years old, and applying the Indeterminate Sentence Law, this Court hereby imposes upon Felipe Ramirez an indeterminate imprisonment ranging from TEN (10) YEARS and ONE (1) DAY of Prison Mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of Reclusion Temporal as maximum; and he is hereby ordered to pay P10,000.00 as moral damages to Alma Lawangon." (Id., p. 78.)

It is to be noted that the trial court found no abuse of confidence or superiority in the commission of the crime. However it mistakenly held the presence of the mitigating circumstance of age notwithstanding the fact that the accused was not over 70 years. (Revised Penal Code, Art. 13, par. 2.)

The accused appealed and because of the sentence the appeal was properly directed to the Intermediate Appellate Court where he made the following assignment of errors:

"I. THAT THE DECISION OF THE COURT A QUO IS VOID ON THE GROUND THAT THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE CASE.

"II. THAT THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT TO THE TESTIMONIES OF THE PROSECUTION'S WITNESSES WHICH ARE HIGHLY INCONSISTENT,

INCREDIBLE AND UNRELIABLE.

"III. THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT." (Brief, p. 1.)

The appellant prayed that the decision of the trial court be set aside and that he be acquitted. Upon the other hand, the Solicitor General contended that the trial court committed no error and prayed "that the appealed decision be affirmed in toto."

The Intermediate Appellate Court did not agree with the appellant and agreed partly only with the appellee as witness the following unentered judgment:

"WHEREFORE, with the sole modification as to the penalty which should be raised to reclusion perpetua as provided by law, the appealed judgment, being in all other respects in accordance with law and the evidence, should be, as it is hereby, AFFIRMED, with costs. Since under the Judiciary Act, the penalty of reclusion perpetua or life imprisonment can only be imposed by the Supreme Court, We refrain from entering judgment and forthwith, We hereby certify this case and elevate the entire records hereof to the Supreme Court for review (People vs. Daniel, 86 SCRA 511; People vs. Ramos, 88 SCRA 486, 490; People vs. Centeno, 108 SCRA 712)."

This is now a review of the case at bar.

The Intermediate Appellate Court correctly rejected the claim that the trial court did not acquire jurisdiction over the case because the information was signed only by the Fiscal but not by complainant Alma Lawangon. For the expediente shows that Alma filed a verified complaint for rape against Felipe Ramirez in the Municipal Trial Court of Tandag, Surigao del Sur. The rule is that when the offended party in the crime of rape has executed and subscribed to a complaint, the prosecution before the court may be initiated by means of an information signed by the Fiscal alone. (People vs. Cerena, 106 Phil. 570 [1959].)

Left to be considered is the sufficiency of the evidence which the appellant claims is inadequate to overcome the presumption of innocence in his favor. On this score We quote from the decision of the Intermediate Appellate Court:

"The Prosecution's evidence discloses that Conchita Villa was a laundrywoman of appellant Felipe Ramirez. Their houses were some 200 meters apart in Bgy. Telaje, Tandag, Surigao del Sur. At about 11:00 a. m. of June 20, 1983, Conchita sent Alma Lawangon, her 14-year old daughter by her first marriage, to Ramirez' house to get clothes for laundering. When she reached Ramirez' house, Alma entered the bedroom to get the clothes and as she was counting the pieces of clothing to be laundered, Ramirez silently entered the room and wrapped a diaper across her mouth. As Alma tried to remove the diaper, Ramirez threatened her with a knife, then wrapped a nylon rope around her body including her arms. Again, she tried to resist but Ramirez threatened her with a knife. After tying her up, he carried her to the bed, took off his short pants and her panty and went on top of her. He inserted his fingers into her vagina and later his penis and while he was having intercourse with her, Conchita called for her. Ramirez told Alma to keep quiet otherwise he would kill her. After Conchita had called thrice, Ramirez stood up, untied her, put on his short pants and while still buttoning his pants, he proceeded to the door and opened it. Conchita saw Ramirez still buttoning his pants as he opened the door and she asked him what he had done to Alma but Ramirez replied that he did not do anything. Alma then emerged from Ramirez' house looking very pale and nervous. Conchita asked Alma what Ramirez had done to her but the latter did not answer and then both mother and daughter headed for home. When they arrived home, Conchita again asked Alma what appellant had done to her but Alma did not answer and despite Conchita's asking, Alma persisted in her silence. The next morning, June 21, 1983, Alma revealed to her mother what Ramirez had done to her. Conchita took Alma to the Surigao del Sur Provincial Hospital at about 3:00 p.m. where Alma was found by Dr. Joey L. Hugo to have suffered lacerations in her hymen at 3:00

o'clock, 9:00 o'clock and 11:00 o'clock positions. The lacerations were incompletely healed and no spermatozoa was found inside her vagina which admitted one finger with no resistance and two fingers with difficulty and pain.

"On July 5, 1983, Alma gave her statement to the Tandag Police and, on the same day, she subscribed to a complaint for rape before the Municipal Trial Judge of Tandag, Surigao del Sur. On July 6, 1983, Conchita also gave her statement.

"The appellant's version, on the other hand, is that Alma voluntarily offered herself to him provided that he would give her money which she needed very badly. He claimed that he agreed to her request and told her to go inside his room because he would first lull his grandchild which he was babysitting to sleep; that he later followed Alma inside his room and found her already lying in bed; that he sat by her side, raised her skirt and discovered that she had already removed her underwear; that he kissed her and touched her private parts such as her breast and vagina while Alma looked up and smiled at him; that he continued touching her private parts but he discovered that his own genital organ could no longer stand erect so he asked her to hold the same in order to arouse him; that despite Alma's consent, his organ would no longer respond so he told Alma that it was useless; and that it was in such situation when Conchita Villa called out for Alma so he immediately put on his pants and opened the door.

"x x x x x x x x.

"Appellant also questions the sufficiency of the evidence adduced by the prosecution, pointing to the alleged inconsistencies and lack of trust-worthiness of Alma and of her mother Conchita. Specifically, he points to the two women's version that it took them 30 minutes to negotiate the distance between their house and that of the appellant which was only 200 meters. A cautious reading of the transcript reveals that neither Alma nor Conchita declared that it took them 30 minutes to negotiate the distance of 200 meters between their house and that of the appellant. Conchita simply stated that Alma was sent by her to the appellant's house at 11:00 a. m. but when Alma did not return immediately, she (Conchita) herself went after her and reached the appellant's house at 12:00 noon (pp. 4-5, tsn., Sept. 20, 1983; p. 41, tsn., Sept. 21, 1983).

"Appellant also assails as incredible Alma's version that she was gagged with a diaper, tied with a nylon rope and restrained with a piece of wood; that since the rape was allegedly committed in a room, it was not necessary for him to bring such materials to fulfill his lustful desire; and that there was absence of bruises, contusions or hematoma on Alma's body.

"We find the appellant's claim to be scarcely meritorious. He did not have to equip himself with such items because normally, a diaper, a piece of rope and wood are articles commonly found in a house and particularly so in the appellant's abode because he had an infant grandchild which he was babysitting. Moreover, it was necessary for the appellant to tie up Alma otherwise he may not be able to accomplish his purpose because he was 70 years old and Alma was only 14 years old. The absence of bruises, contusions and hematoma in Alma's body can be explained by the fact that there was actually no physical struggle because Alma was threatened with the appellant's knife and the rape took place in the appellant's bed.

"Appellant also claims that the medical certificate showed that the lacerations in her hymen were already healed. We find this assertion to be incorrect because what the medical certificate states is that the lacerations were incompletely healed or, as Dr. Joey Hugo explained, the lacerations were in the process of healing at the time of his examination. This is plausible because the rape occurred on June 20, 1983 while the hymeneal examination took place on the afternoon of the next day, June 21, 1983 and, according to said doctor, the lacerations of the hymen usually heal within two or three days.

"On the other hand, appellant's version that it was complainant Alma Lawangon herself who voluntarily agreed to submit to sexual intercourse with him in consideration of P25.00 appears highly incredible. Alma was absolutely without motive to testify falsely against the appellant (*People vs. Terobias*, 103 SCRA 321; *People vs. Tejada*, 107 SCRA 176). Considering her extreme youth, her virginity, the fact that she and the appellant

were neighbors and that the amount allegedly promised by the appellant of P25.00 was too small and insignificant, the appellant's version defies belief. On the other hand, the fact that Alma went through the embarrassment of submitting herself to an examination of her private parts and to a police investigation and the absence of any motive by her to concoct the charge against the appellant all heavily militate against the appellant's pretense of voluntariness of the complainant (People vs. Sambangan, 125 SCRA 726)."

We have reviewed the records of the case and We agree with the Intermediate Appellate Court that the guilt of the appellant has been demonstrated beyond reasonable doubt. We further agree with the Intermediate Appellate Court that the appropriate penalty is reclusion perpetua because under Art. 335 of the Revised Penal Code rape is punished by said penalty and since reclusion perpetua is a single indivisible penalty it should be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. (Art. 63, par.1, R.P.C.) In this case there are no attendant circumstances so that with more reason reclusion perpetua should be imposed.

WHEREFORE, the conviction of the appellant for the crime of rape is hereby affirmed. He is sentenced to suffer the penalty of reclusion perpetua; to indemnify the complainant P25,000.00; and to pay the costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., on leave.

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