

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO ESTREBELLA, ACCUSED-APPELLANT.

G.R. No. 71464. August 04, 1988

Ponente: PARAS, J.

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PARAS, J.:

Accused Romeo Estrella pleaded not guilty to the crime of rape allegedly committed as follows:

"That on or about the 25th day of October, 1981, in the Municipality of Mandaluyong, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation upon the person of the undersigned, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent.

"Contrary to law.

Mandaluyong, Metro Manila.

March 24, 1982.

(Sgd.) JOY ALCALA Y ADVINCULA"

Complainant

(p. 4, Rollo)

After due trial, the court rendered a decision^[1] the dispositive portion reading as follows:

"WHEREFORE, premises considered, the Court finds accused Romeo Estrella guilty beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the complaining witness, Joy Alcala y Advincula, in the sum of P30,000.00 and to pay the costs.

"SO ORDERED." (p. 24, Rollo)

Accused assails said decision, submitting before Us the following:

ARGUMENTS

I

The trial court erred in convicting the accused-appellant of the crime of rape despite the insufficiency of evidence adduced by the prosecution to prove his guilt beyond reasonable doubt.

II

The trial court gravely erred in trying the case on ground of lack of jurisdiction. (p. 34, Rollo)

From the testimonies of the witnesses for the prosecution Dr. Erlinda Marfil, Dr. Maximo Reyes, Fernando Alcala and Wilfredo Davan, the following facts are gathered:

As per result of the psychiatric and psychological examination conducted by Dr. Erlinda Marfil of the National Bureau of Investigation (NBI) on the person of complainant Joy Alcala y Advincula, it was established that said

com-plainant is a mental retardate (Exhs. "A", "A-1" and "A-2") whose chronological age is thirteen but her mental age is below that (only six or seven).

When Dr. Maximo Reyes, senior NBI medico-legal officer did a physical and genital examination on the person of the complainant on October 26, 1981, a day after the alleged commission of the offense charged, he found that the outer genitalia (i.e. labia majora and labia minora) showed healing abrasions on the posterior aspect and the presence of bleed-ing. An internal examination showed congestion of the posterior of the vestibular mucosa, meaning there was reddening and inflammation of that particular portion. In ordinary parlance, such irritation in the genitalia of the complainant could be caused only by the sex organ of a male in erection. Dr. Reyes concluded that the complainant could have had sexual intercourse with a man on or about the alleged date of commission, however, there was no complete penetration as the hymen was intact, and elastic. (Exh. "B-3")

Fernando Alcala, brother of the complainant, testified that Romeo Estrella is their neighbor. On October 25, 1981 at about 3:00 p.m., as he was about to take a bath, he saw the accused under the house of Crisanto Cuevas sitting on a long bench with the zipper of his pants opened. He also saw the legs of a woman around the waist of the accused with the latter making some movements. He did not readily recognize who the woman was until he went to the faucet and saw accused stand up. Recognizing the female partner of the accused as his mentally retarded sister, witness Fernando immediately went to where accused was and boxed him. His sister who was frightened ran away while the neighbors tried to pacify Fernando and Romeo Estrella. The latter was able to disengage himself from the former, but another brother of complainant, named Armando, ran after Romeo Estrella and was able to catch up with him. The two brothers then brought the accused to the police precinct of Mandaluyong. Fernando's testimony was corroborated by Wilfredo Davan, another witness for the prosecution.

Accused denied that he had sexual intercourse with complainant. Through his testimony as the sole witness for the defense, accused alleged that while he was resting under the house of his godfather on October 25, 1981 at around 3:00 o'clock in the afternoon, Joy Alcala suddenly arrived. He called her and the latter sat on the bench where he was sitting. He told Joy Alcala to go to the house of his sister to get his clothes as he was going home to Bulacan. However, she did not go at once because she was asking money from him. While he and Joy were talking, her brother Fernando Alcala arrived and suddenly hit him. He did not do anything because Fernando was drunk. When he was on his way home, Fernando Alcala and his brother Armando, stopped him and then boxed him until he fell down. He asked them why they hit him but they did not answer. He further averred that he used to see Joy Alcala play with her private part by inserting her two fingers. In fact whenever he saw her playing with herself he usually gave her a spanking.

Appellant's defense is denial of the offense charged. That he did not rape complainant is allegedly supported by the findings of Dr. Maximo Reyes that there was no tear or laceration in her hymen. He further argues that "(g)rantedly arguendo but without admitting that rape is committed, here is however, no evidence adduced that complainant was forced or intimidated by the accused", or that the sexual intercourse was against her will and consent but that, it was mutually voluntary, as gleaned from the testimonies of Fernando Alcala and Wilfredo Davan who testified to the effect that they did not hear any word or conversation between the two (accused and complainant) while performing the sexual act.

Appellant's arguments deserve no consideration.

Based on the medical and physical examination of the genital organ of complainant conducted by Dr. Maximo Reyes (Exh. "B"), Joy Alcala had sexual intercourse with a man on October 25, 1981 due to the presence of abrasion and congestion and bleeding in the genitalia, a physical condition consistent with sexual intercourse. Physical evidence is of the highest order and speaks more eloquently than all witnesses put together. (People vs.

Bardoje 99 SCRA 388) Furthermore, such medical findings confirm the testimonies of Fernando Alcala and Wilfredo Davan that they saw accused Romeo Estrella having carnal knowledge with Joy Alcala on said date under the house of Crisanto Cuevas. The fact that the hymen was not lacerated does not negate rape. We have held that penetration by entry of the lips of the female organ even without rapture of hymen suffices to warrant conviction for rape (People vs. Conchada 88 SCRA 683, People v. Ytac, 95 SCRA 644).

It is established by the medical and psychological examination that complainant is a mental retardate. Sexual intercourse with a woman who is deprived of reason or one who is weak in intellect to the extent that she is incapable of giving rational consent to the carnal intercourse constitutes rape. In this type of rape the employment of force or intimidation on the part of the man and resistance on the part of the woman are not essential. In the instant case the fact that complainant did not offer any resistance did not mean that she consented, for clearly she could not comprehend the full implications of the libidinous act. Surely, she deserves the protection of the law.

In his second assignment of error, appellant insists that the trial court did not acquire jurisdiction to try the case because the complaint was filed by complainant who was a minor and a mental retardate contrary to the provisions of Rule 110, Secs. 4 and 5 of the Revised Rules of Court and Art. 344 of the Revised Penal Code, the pertinent portions reading as follows:

"The offended party, even if she were a minor, has the right to institute the prosecution for the above offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority." (Rule 110, Sec. 4, Rules of Court; Rule 110, Sec. 5, 1985 Rules on Criminal Procedure)

"x x x x x 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. x x x"

(Also, Article 344 of the Revised Penal Code)

Again, appellant's argument holds no water.

It is of course well-settled that jurisdiction over the subject matter of an action - in this case the crime of rape - is and may be conferred only by law, and that jurisdiction over a given crime not vested by law upon a particular court, may not be conferred thereon by the parties involved in the offense. (Manila Railroad v. Atty. General, 20 Phil. 523; Perkins v. Roxas, 72 Phil. 514, cited in Valdepenas vs. People, 16 SCRA 871). But the aforementioned provision of Art. 344 does not determine the jurisdiction of our courts over the offenses therein enumerated. It could not affect said jurisdiction, because the same with respect to the instant crime is governed by the Judiciary Act of 1948, not by the Revised Penal Code, which deals primarily with the definition of crimes and the factors pertinent to the punishment of the culprits. The complaint required in said Art. 344 is merely a condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties. And such condition has been imposed out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial. (Samilin v. Court of First Instance of Pangasinan, 57 Phil. 298, 304, cited in Valdepenas v. People, supra)

In the case at bar, while the complaint may have been technically defective in the sense that complainant was incompetent, this defect has been cured when complainant's brother Fernando Alcala took the witness stand for the prosecution. The brother's testimony shows the consent and willingness of the family of complainant, who can not give her consent obviously, to have the private offense committed against the latter publicly tried.

Substantially, this is what is required by the rules. Evidently, by undergoing trial, the family of complainant chose to denounce the injustice committed against the latter in public and thus agreed to bear the personal effects of said exposure. Un-doubtedly, therefore, the trial court had jurisdiction to try the case.

WHEREFORE, premises considered, the guilt of the accused has been proved beyond reasonable doubt. The assailed decision is hereby **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Sarmiento, JJ., concur.

[1] Penned by Judge Cicero C. Jurado of the Regional Trial Court, Branch CLXI, Pasig.

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