

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES BUGTONG, DEFENDANT-APPELLANT.

G.R. No. 75853. January 31, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

What makes this case of rape most unfortunate is that the victim is a fifteen-year old lass with a mental age of between five (5) and eight (8) years and a numerical I.Q. of 47.

Irene Cutiam, the minor complainant, was born on December 30, 1968 in Sitio Duban, Tublay, Benguet. The accused, Andres Bugtong, is her neighbor.

Sometime in July, 1984, Luisa Cutiam noticed that the stomach of her daughter Irene was growing bigger and bigger. Dr. Salome Pilit, a government physician who conducted a medical examination confirmed that Irene was pregnant. Irene, at first, would not reveal the identity of the man responsible for her condition, but when she felt something moving inside her belly, she confessed to her mother Luisa that accused raped her and that her refusal to talk earlier was due to the fear that accused would make good his threats to kill her should she squeal.

With this information, Luisa, together with Irene, went to the Acop Tublay Police Station to report the crime which resulted in Irene's pregnancy. Irene gave birth to a baby boy later on.[1]

Andres Bugtong was thereafter charged before the Regional Trial Court of La Trinidad, Benguet with the crime of Rape allegedly committed as follows:

"x x x the above-named accused by means of force and intimidation and threats, did then and there wilfully, unlawfully and feloniously have sexual intercourse and carnal knowledge of one Irene Cutiam, a fifteen-year old girl against her will and consent".[2]

On accused's plea of not guilty, trial ensued. When Irene was called to the witness stand, it was observed that she had difficulty understanding the questions propounded to her. On motion of the fiscal, she was made to undergo psychological testing which revealed that she had an Intelligence Quotient (IQ) of only 47, equivalent to the mental age of a person between the ages of 5 and 8 years, far below her actual age of 15 years. Her mental retardation was classified as moderate.[3]

Her testimony, as summarized by the trial court, is as follows:

"On November 13, 1984, Irene Cutiam testified. x x x One day in January 1984, she was sent by her mother Luisa Cutiam to the house of Andres Bugtong, the herein accused to pay her account to the latter in the amount of TEN PESOS (P10.00). This fact of indebtedness and payment of the same was previously testified on by Luisa Cutiam.[4] Witness claimed that when she handed the money to Andres Bugtong, the latter grabbed her other hand and placed her on the bed, and when she tried to shout, the accused covered her mouth with his hand and allegedly threatened her by saying: 'If you will report the matter, I will kill you, anyway our house (sic) are near each other.[5] After having uttered those threatening words, Irene was apparently released from

the hold of the accused as could be inferred from the following:

Q - After saying that, what is the next thing he did, if any?

A - While he was removing his pants, I tried to open the door but it was locked then he came again and pulled me.

Q - And when he came again to pull you, where did he bring you?

A - In their bed just the same, Sir.

Q - What did he do when you were already in bed?

A - He did the act and after doing the act he opened the door and let me go out.[6]

x x x x x x x x

"On recross-examination, complainant disclosed that at one time the accused came to their house when she was with her two younger brothers. The accused sent the two boys to the mountain to gather guavas and after they have left, had again sexual intercourse with her; that when the two boys came back and knocked at the door, accused barred her from opening and again was threatened with death if she would do so; that she just kept on crying until the accused sneaked out through the other door of the house.[7]

Accused Andres Bugtong, testifying on January 23, 1985 gave the following version:

"x x x He and his wife are farmers with a vegetable garden near their house and another one which is farther. They usually start working early in the morning and go home for breakfast after having watered the plants and then go back to continue with their garden works (sic). At 2:00 o'clock noon they go home for lunch after which the wife goes back to the garden while the accused sometimes stays behind for some works (sic) at home. They have two houses which are near each other. Seven (7) of their eight (8) children occupy one of these two houses while he and his wife stay in the other house.[8] Occasionally especially during harvesting season, they used to engage the services of Irene Cutiam to help them in the garden.

"One day in January 1984, Irene came to their house after lunch. Andres Bugtong was then alone. Without any word, she just entered the one-room house, sat on the bed and kept on smiling and never talked although repeatedly asked by the accused of what she needed because he was then about to leave for the garden. He served her with coffee and while both of them were drinking, the accused, without any word sat beside the complainant, who in turn leaned on the former with her breast on his left shoulder. At this juncture, the accused said:

Q - And what happened after that?

A - So I told her, 'your breast is big.'

Q - What did she answer you if any?

A - None, she was just smiling.

Q - So what did you do?

A - And so I put my left arm around her shoulders.

Q - What did she do when you put your left hand or arm around her shoulder?

A - I took hold of her breast.

x x x x x x x x

Q - And what did she do when you held her breast?

A - She was placing down her coffee and then she encircled her two arms around my body (Witness illustrating his both hands.).[9]

At this stage when accused was already sexually aroused, he laid down the complainant on the bed and after closing the door, he removed his clothes, sat between the legs of the former, lifted her skirt and when he noticed that complainant had no panty, he proceeded with the sexual intercourse with both hands holding her shoulders while the latter took hold of his waist. This was the first sexual intercourse which was repeated four or five times during the succeeding months of 1984. All were done in his house after lunch time. Accused said further that during all these sex contacts with complainant and thereafter, no words were uttered neither they (sic) conversed with each other. He only learned that the latter was already pregnant after this case was filed. (Ibid., pp. 12-16)[10]

Giving credence to the prosecution's version, the trial court rendered judgment finding Andres Bugtong guilty beyond reasonable doubt of the crime of Rape as defined in Article 335 (1) and (2) of the Revised Penal Code and sentencing him to suffer the penalty of Reclusion Perpetua; to recognize the child born to Irene Cutiam as a result of the crime; to indemnify the complainant in the sum of Twenty Thousand (P20,000.00) pesos as moral damages and to pay the costs. From said judgment, Bugtong interposed the present appeal.

He alleges that:

"The lower court erred:

I

IN TAKING JURISDICTION OF THE CASE

II

IN CONVICTING THE ACCUSED AS DEFINED IN ART. 335 (1) and (2), AS AMENDED, OF THE REVISED PENAL CODE.

IIIN NOT DISMISSING THE CASE.[11]

Appellant contends that as rape is a personal offense which, under Article 334 of the Revised Penal Code and Section 4, Rule 110 of the Rules of Court, now Section 5, Rule 110 of the 1985 Rules on Criminal Procedure, must be prosecuted upon a complaint filed by the offended party, the trial court erred in assuming jurisdiction over the instant case on the basis of the Information signed by the fiscal alone.

Only recently, did this Court reiterate its ruling on the meaning and import of this requirement. We said in *People vs. Hon. Santiago Tanada*, G.R. No. L-32215, October 17, 1988, that:

"x x x In the 1966 case of *Valdepenas v. People* this Court, through then Associate, later Chief Justice Roberto Concepcion clarified:

. . . It is true that pursuant to the third paragraph of Art. 344 of the Revised Penal Code,

. . .the offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party of her parents . . .

. . .The provision does not determine, however, the jurisdiction of our courts over the offenses therein enumerated. It could not affect said jurisdiction, because the same 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 culprit. The complaint required in said Article 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.[12]

x x x x x x x x

This ruling was followed in the subsequent case of *People v. Babasa* where the Court, citing the *Valdepenas* case, ruled that Art. 344 was not enacted for the specific purpose of benefiting the accused. When it is said that the requirement in Article 334 that there should be a complaint of the offended party or her relatives is jurisdictional, what is meant is that it is the complaint that starts the prosecutory proceeding. It is not the complaint which confers jurisdiction on the Court to try the case. The Court's jurisdiction is vested in it by the Judiciary Law.

In the case at bar, it is evident that the prosecution for rape was initiated by the offended party herself with the assistance of her mother. The Information filed by the Fiscal said so, thus:

"The undersigned 3rd Assistant Provincial Fiscal, upon a sworn complaint originally filed by the offended party accuses Andres Bugtong of the crime of Rape. x x x "[13]

And extant on record Exhibit "B",[14] the criminal complaint[15] filed by Irene Cutiam with the assistance of her mother. The appellant's insinuation that the Information should have been signed and sworn to by the complainant is incorrect for it is not necessary for the complainant to sign and verify the Information for rape filed by the Fiscal.[16]

Based on the foregoing, no error can be imputed to the trial court in taking cognizance of the Information filed by the fiscal.

Appellant questions next the trial court's finding that he is guilty of the crime of rape as defined in Article 335 (1)

and (2) of the Revised Penal Code. He contends that since it is clear from the allegations in the Information that the offense charged falls under par. 1 of Art. 335, to find him guilty of rape under par. 2 thereof is violative of his constitutional right to be informed of the charges against him.

There is merit in this contention. While the conviction of accused-appellant under paragraphs (1) and (2) of Article 335 of the Revised Penal Code appears to be an innocuous error as these paragraphs refer merely to the modes of commission of the same crime of rape punishable by the same penalty of reclusion perpetua, the harm inflicted upon accused-appellant gains considerable proportion when we consider not only the no-win situation in which appellant was placed by reason of such conviction, but more importantly, the surprise attendant to his conviction for a crime under a mode of commission different from that alleged in the information.

Having been charged with Rape allegedly committed thru force or intimidation, it is to be expected that appellant should focus his defense on showing that the sexual intercourse complained of was the result of mutual consent, rather than of force or intimidation. This defense, however, has been rendered futile and ineffective by the appellant's further conviction under par. (2) of Art. 335, for even if he should succeed in convincing us that the sexual act under consideration was born out of mutual consent, he nonetheless remains liable under par. (2) of Art. 335, wherein consent of the offended party is not a defense, the latter being considered to be legally incapable of giving her consent.

Furthermore, and more importantly, as herein appellant was tried on an information charging him with rape committed thru force and intimidation, his conviction for rape committed when the woman is deprived of reason or otherwise unconscious would be violative of his constitutional right as an accused to be informed of the nature and cause of the accusation against him.[17]

This is not to say however, that the conviction of accused-appellant should be set aside altogether. Only his conviction under par. (2) of Article 335 of the Revised Penal Code is nullified as his guilt of the crime of rape committed thru force and intimidation, as charged in the Information, has been proven beyond reasonable doubt.[18]

That accused-appellant succeeded in obtaining carnal knowledge of Irene thru force and intimidation has been established by Irene's testimony that appellant uttered the following threat:

"If you will report the matter, I will kill you, anyway our house (sic) are near each other." [19]

with respect to which we share the Solicitor-General's observations, thus:

"At first blush, it would seem that the force employed by the appellant and the resistance put up by Irene would not meet the degree of force and resistance required to qualify the sex act for rape. However, it is to be stressed that force and intimidation are not limited to physical force. It includes the moral kind such as fear especially in the case at bar where it was established that Irene had the mental capacity of a child between five (5) to eight (8) years old". [20]

Moreover, it has been ruled that the force used need not be irresistible. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point.[21]

WHEREFORE, except for the modifications that (1) the conviction of accused-appellant under paragraph (2) of Article 335 of the Revised Penal Code is set aside and (2) the civil indemnity to be paid to the victim is increased to P30,000.00, the appealed decision is hereby AFFIRMED in all other respect.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

- [1] tsn, pp. 1-6, Oct. 4, 1984
- [2] p. 7, Rollo
- [3] p. 32, Rollo
- [4] t.s.n., p. 13, October 4, 1984
- [5] t.s.n., p. 3, Nov. 3, 1984
- [6] t.s.n., pp. 3 & 4, Nov. 13, 1984
- [7] Ibid., pp. 20-22 Rollo, pp. 24-27
- [8] t.s.n., pp. 3-5, Jan. 23, 1985
- [9] t.s.n., p. 10, January 23, 1985
- [10] pp. 28-29, Rollo
- [11] p. 2, Appellant's Brief; p. 48, Rollo
- [12] Samilin v. CFI of Pangasinan, 57 Phil. 298, 304
- [13] p. 7, Rollo
- [14] p. 3, Folder of Exhibit
- [15] The Criminal Complaint filed by Irene Cutiam reads:

"CRIMINAL COMPLAINT"

"The undersigned offended party and complainant, under oath, accuses Andres Bugtong of the crime of Rape, committed as follows:

"That in and about the month of January, 1984, and subsequent thereto, in the Municipality of Tublay, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Andres Bugtong, by means of force and intimidation and threats, did then and there, wilfully, unlawfully, and feloniously have sexual intercourse and carnal knowledge of the undersigned against her will and consent.

CONTRARY TO LAW.**(SGD)**

IRENE CUTIAM

Offended Party

Assisted by:

Thumbmarked

LUISA CUTIAM

(Mother)

"SUBSCRIBED AND SWORN to before me this 24th day of July, 1984 at La Trinidad, Benguet, Philippines.

ASTERIO A. MARRERO

Provincial Fiscal"

[16] People vs. Cerena, 106 Phil. 570.

[17] Sec. 19, Art. IV, 1973 Constitution; Sec. 14 Art III. 1987 Constitution

[18] See People vs. Tarroza, No. 2932-R, May 13, 1949, 47 O.G. 2449

[19] t.s.n., p. 3, November 3, 1984

[20] p. 7, Brief for the Appellee; p. 64, Rollo

[21] People vs. Momo; 56 Phil. 86; People vs. Jimenez, 98 Phil. 137)

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