

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DICK OCAPAN, ACCUSED-APPELLANT.

G.R. No. 78492. May 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Accused-appellant Dick Ocapan and Joselyn Ocapan, the woman who lived with him in an ostensible marital relationship, were charged on March 11, 1985 before the Regional Trial Court of Lanao del Norte at Iligan City with the complex crime of rape with serious illegal detention.

The case against Joselyn Ocapan was dismissed while Dick Ocapan was convicted and sentenced accordingly for the crime of serious illegal detention. The decision of the trial court was appealed to the Court of Appeals which elevated its decision to this Court for final determination in accordance with Section 13 of Rule 124 of the Rules of Court which provides:

"Whenever a Criminal Cases Division should be of the opinion that the penalty of death or life imprisonment should be imposed in a case, the said Division after discussion of the evidence and the law involved, shall render judgment imposing the penalty of either death or reclusion perpetua as the circumstances warrant, refrain from entering judgment and forthwith certify the cast and elevate the entire record thereof to the Supreme Court for review."

and with the ruling in *People v. Daniel* (86 SCRA 511).

The decision of the Court of Appeals penned by Associate Justice Vicente Mendoza and concurred in by Associate Justices Josue N. Bellosillo and Hector C. Fule reads as follows:

"The accused-appellant, Dick Ocapan, and his common-law wife, Joselyn Ocapan, were accused of rape with serious illegal detention in the Regional Trial Court of Lanao Del Norte. The information, dated March 11, 1985, alleged:

'That on or about January 17, 1985, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, accused Dick Ocapan conspiring and confederating with his common-law wife, Joselyn O. Ocapan, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with one Arlene Yupo, a minor and who was working as househelper of the said accused; that thereafter, in order to prevent the said Arlene Yupo from reporting to the proper authorities, detained and deprived her of her liberty far more than five (5) days.'

"Later, on motion of the City Fiscal, the trial court dismissed the case against Joselyn Ocapan on May 23, 1985 on the ground that there was no prima facie case against her. The case proceeded with respect to Dick Ocapan who pleaded not guilty to the charge. Trial was thereafter held. The prosecution versions is as follows:

"The offended party, Arlene Yupo, was househelper of the accused-appellant, Dick Ocapan, and the latter's common-law wife, Joselyn Ocapan. In the evening of January 17, 1985, Joselyn Ocapan made Arlene drink

half a glass of Tanduay Rhum, as a result of which she felt drowsy. She therefore went to bed, but as she was about to fall asleep, somebody knocked on the door. When she opened it, she saw the accused-appellant Dick Ocapan. Dick Ocapan had a knife and threatened to kill her if she shouted. He pushed her to the floor, placed himself on top of her, tore her blouse and fondled her breasts. He then pulled up her skirt, kissed her and pulled down her underwear and inserted his finger into her vagina. Arlene said she lost consciousness and when she came to, she felt some pain and found her blanket stained with blood. The accused, who was still in the room; gave her money and warned her not to tell anybody about the incident, or he would kill her.

"The next day, Arlene told Joselyn about the incident. Joselyn told her not to tell anybody and asked her to stay, but as she insisted on going home, Joselyn slapped her. Joselyn locked her inside a room whose only window was closed. According to Arlene, the ground below was muddy and there were many broken glasses, making it dangerous for her to jump to the ground. Besides, the accused and Joselyn guarded her. Arlene said she was not allowed to go out, except to go to the toilet. However, as she refused to eat, she became weak and so, on January 23, 1985, after five days of detention, the accused-appellant finally released her. According to Arlene, she stayed at the Cristan Commercial until January 29, 1985, when she saw her aunt, Saturnina Dagting, passing by and called her to tell her what had happened to her. At 7:00 in the evening of that day, she was taken by her mother and her aunt to the police station where she reported the incident. Later she was examined by Dr. Carmina Barte, who found that the hymen had healed lacerations at 1.4 and 6 o'clock positions, and that such lacerations could have been caused from one week to one year before.

"On the other hand, the defense presented evidence to show that Arlene Yupo and the accused-appellant were lovers and that Arlene complained to the police only because her relationship with the accused-appellant had been discovered by the latter's common-law wife, Joselyn Ocapan, and that it is not true that Arlene Yupo had been detained. According to the accused-appellant, Arlene and he became lovers in September, 1984 and that they first had sexual intercourse on September 20, 1984, after which he said he found that Arlene was no longer a virgin. The accused-appellant said he wanted to go to bed with Arlene on January 17, 1985 but it was Arlene's menstrual period. According to him, in the evening of January 19, 1985, as they were about to have sex, his common-law wife, Joselyn, suddenly came home from the Molave Disco House, where she was an entertainer and noticed that Dick was perspiring. This prompted her to go to the room of Arlene, where she found her completely naked under the blanket.

"Arlene denied having an affair with the accused-appellant but the latter admitted that he and Arlene were lovers. On January 20, 1985, Joselyn drove the accused-appellant out of the house, but kept Arlene because she needed her to look after their children. Joselyn finally dismissed Arlene on January 23, 1985.

"The defense also presented Juliet Pasco, who said that twice, on January 19, 1985 and January 20, 1985, she and Arlene and a certain Caloy went to a place called Abuno to gather young coconuts and, on January 21, they went to the Big Dipper Restaurant where they had beer, with Arlene paying the bill. Obviously, the purpose of her testimony was to show that Arlene was under no restraint at a time when she claimed she was detained. This witness said that on January 22, 1985 she accompanied Arlene to Kanaway to see a herb doctor who found her to be pregnant and prescribed a drink, ('camias') which made Arlene menstruate. On January 23, 1985 she said, Arlene transferred to the Cristan Commercial.

"On October 7, 1985 the trial court rendered judgment dismissing the rape charge on the ground that the offended party had not filed a complaint, but finding the accused-appellant guilty of serious illegal detention. The dispositive portion of the trial court's decision states:

'In view of the foregoing, considering that the prosecution failed to present a signed complaint of the offended party the case of rape against the accused is hereby dismissed. However, with regards to the crime of serious illegal detention, the accused is hereby sentenced after considering the indeterminate sentence law and there being no mitigating nor aggravating circumstance, to suffer a penalty of from 12 years and 1 day of reclusion temporal as minimum to reclusion perpetua as maximum and to indemnify the offended party the sum of P20,000.00 as

moral and exemplary damages.'

"Hence, this appeal. The accused-appellant contends:

"(1) That the information against him was filed by the City Fiscal without giving him the right to be heard in a preliminary investigation and that his motion for reinvestigation was summarily denied by the trial court.

"(2) That the evidence does not support the finding that he detained the offended party Arlene Yupo from January 17 to January 23, 1985.

"(3) That since the information was for the complex crime of rape with serious illegal detention, it was error for the trial court to split the crime into two separate offenses of rape and serious illegal detention.

"We shall deal with these contentions in their order.

"First. The record shows that on March 6, 1985 the accused-appellant, with the assistance of counsel, filed a written waiver of the 'right to the Second Stage of Preliminary Investigation' with the Municipal Trial Court. Accordingly, the case was remanded to the Fiscal's Office for the filing of the corresponding information in the Regional Trial Court. (Rec. pp. 11-12) Nonetheless, a reinvestigation was conducted by the City Fiscal which on April 25, 1985 recommended the dismissal of the case with respect to Joselyn Ocapan. On the basis of this recommendation, the trial court ordered the case against Joselyn Ocapan dismissed. There is, therefore, no basis for the accused-appellant's claim that he was denied the right to a preliminary investigation.

"Moreover, it appears that on May 24, 1985, the accused-appellant pleaded to the charge and took no further step to raise the question of denial of the right to preliminary investigation either to this Court or to the Supreme Court. Instead, he entered into trial. He thus waived whatever right he might have to preliminary investigation. (People v. Lambino, 103 Phil. 504 (1958); People v. Magpalo, 70 Phil. 176 (1940); People v. Oliveria, 67 Phil. 427 (1939))

"Second. The accused-appellant cites the testimony of the offended party, Arlene Yupo, to the effect that '(she) was detained by her (Joselyn Ocapan) inside the room' (TSN, 10, Aug. 15, 1985). The accused-appellant argues that, therefore, it was not he who detained Arlene. The accused-appellant also cites the testimony of Arlene that 'He (the accused-appellant) usually went out during the evening' (Id. p. 13) to show that he could not have kept watch over her during her detention.

"The testimony of Arlene Yupo is taken out of context. What Arlene said was this:

"COURT

When you insisted that you will go home, what was the reply of Joselyn Ocapan?

"A

She refused.

"COURT

What did she do to you, if any?

"A

She slapped me.

"COURT

After slapping you, what else did she do to you?

"A

I was detained by her inside the room.

"COURT

How many days were you locked inside the room?

"A

Five days

"RECORD:

Witness is on the brink of tears.

"COURT

From Jan. 18 when you were locked inside the room, did you notice the accused Dick Ocapan?

"A

He was there.

"COURT

What was Dick Ocapan doing, if any?

"A

They were watching outside

(TSN, p. 10, Aug. 15, 1985)

"On the other hand, when Arlene said that Dick Ocapan, the accused-appellant, 'usually went out during the evening,' she was answering the question of the trial court as to the work of the accused-appellant. She was not referring to the period of her detention. (TSN, p. 13, Aug. 15, 1985)

"The accused-appellant also contends: 'Since the accused was no longer at his residence where Arlene Yupo claimed to have been detained, how could he be held liable for illegal detention?' That the accused-appellant was allegedly driven out of his house on January 20, 1985 was his own testimony (TSN, p. 6, September 19, 1985) and that of his wife, Joselyn (TSN, p. 21, Aug. 16, 1985). As far as the prosecution is concerned, Dick Ocapan was not driven out of their house. On the contrary, the offended party testified that she could not leave the house of the accused-appellant because the latter and his wife were guarding her.

"Nor is there merit in the claim of the accused-appellant that the trial court relied, on the weakness and supposed inconsistencies of the defense evidence rather than the strength of the prosecution evidence. In finding the accused-appellant guilty, the trial court stated:

"The prosecution presented sufficient proof showing that Arlene Yupo was raped by the accused Dick Ocapan on January 17, 1985 and detained up to January 23, 1985 but had to allow her to leave the house because by then Arlene Yupo was not eating anymore and was becoming weak presumably because of shock suffered by her. The accused denied having raped Arlene Yupo and claimed that he did not even have sexual intercourse with her on January 17, 1985 because Arlene Yupo was menstruating and had sexual intercourse only on January 19, 1985 and that was the date when they were discovered by his common law wife. He also claims that Arlene Yupo had been his sweetheart since September 15, 1984 and they had sexual intercourse for several times. However, the court finds that the testimonies of the witnesses for the accused to be incredible and contradictory. The accused claims that he did not have sexual intercourse with Arlene Yupo on January 17, 1985 because the latter was

menstruating but the witness for the accused Juliet Pasco testified that on January 22, 1985 they went to see a quack doctor because of the delayed menstruation of Arlene Yupo and it was only after Arlene Yupo drank, 'camias' on January 22, 1985 that her menstruation came. According to Joselyn Ocapan, the common-law wife of Dick Ocapan, she discovered Arlene Yupo and the accused had sexual intercourse on January 19, 1985 when she went home from her work as a hostess in the Molave Disco House and she confronted Arlene Yupo at 9:00 o'clock in the morning and that she did not dismiss Arlene Yupo until January 23, 1985 because there was no one who could take care of her children in the house if she would drive her away. Yet the witness Juliet Pasco testified that on January 19, 1985 they went on an excursion to Abuno to eat young coconuts, going back there again on January 20 to get coconuts which were eaten by Dick Ocapan; that on January 21, 1985 they went drinking beer at the Big Dipper at 7:00 o'clock in the evening and stayed for two hours; that on January 22, 1985 they went to Kanaway to consult a quack doctor about the condition of Arlene Yupo. Certainly this is in conflict with the testimony of Joselyn Ocapan who claimed that she confronted Arlene Yupo regarding her relationship with Dick Ocapan on January 20, 1985 and would not dismiss Arlene Yupo because she needed her to watch her children. If it is true that Arlene Yupo was confronted regarding her illicit relationship with Dick Ocapan on January 19, 1985 she would not have gone gallivanting to Abuno with the witness Juliet Pasco going back there again on January 20, 1985 and then on January 21, going out to drink. If the claim of Joselyn Ocapan that she did not dismiss immediately Arlene Yupo because she needed her to watch her children were true, then Arlene Yupo could not have gone to Abuno on January 19 and 20 and go out again in the evening of January 21 and 22 with Juliet Pasco as she would be watching the children. Not only did the testimonies of Juliet Pasco and Joselyn Ocapan contradict each other but their testimonies were so full of inconsistencies that it could not merit credence. Juliet Pasco even admitted that she had made several mistakes during the questioning by the court, mistakes that could not have been made by a truthful witness. The same thing can be said of Joselyn Ocapan. She stated that she testified because she loves Dick Ocapan (p. 19, TSN August 16, 1985) but later she also testified that she does not love him anymore (p. 21, TSN, August 16, 1985).

"The accused himself also admitted that there was no motive at all for Arlene Yupo to charge him for rape because according to him he never had any quarrel with Arlene Yupo at the time he last saw her up to the filing of this case against him is so flimsy that it could not merit credence. According to him Arlene Yupo filed this case against him in order to save her honor and in order that she would not be put to shame and embarrassment because their relationship was already known. A woman would not file a case for rape in order to just save her honor if she was not really raped because by doing so she would be further exposed to public ridicule.

"Third. The accused-appellant argues that the crime charged in the information is the complex crime of rape with serious illegal detention and that since the offended party did not file a complaint for this crime, the trial court did not acquire jurisdiction. He further claims that, in holding that the information charged two separate offenses, the trial court violated his constitutional right to be informed of the nature and cause of the accusation against him.

"On the other hand, the prosecution argues that the trial court erred in dismissing the charge for rape because the requirement in art. 344 of the Revised Penal Code that the crime of rape must be prosecuted by complaint of the offended party is not a jurisdictional requirement as held in *Valdepenas v. People*, 16 SCRA 871 (1966).

"Neither contention, we believe, is correct. While the information is indeed entitled, 'For Rape with Serious Illegal Detention,' it clearly charges two separate offenses, namely, rape and serious illegal detention. The accused-appellant could have objected on the ground of duplicity (Rule 110, sec. 13), but since he did not file a motion to quash on this ground in accordance with Rule 117, sec. 3(e), he must be deemed to have waived the objection. (*People v. Policher*, 60 Phil. 770 (1934))

"On the other hand, we do not think that the Supreme Court intended to reverse a uniform course of decisions

holding that, with respect to crimes against chastity, the filing of a complaint by the offended party is jurisdictional. *Valdepenas v. People*, supra, which the prosecution cites in support of its contention that such complaint is not jurisdictional, simply holds that if the offended party files a complaint for forcible abduction, the accused can be found guilty under such complaint of abduction with consent. The fact is that, in that case, both the offended party and her mother gave their assent to the complaint. Indeed, as the prosecution acknowledges, in *People v. Zurbano*, 37 SCRA 565 (1971), decided after *Valdepenas v. People*, the Court reiterated the rule that 'The filing of a complaint for rape or for any other offense enumerated in Art. 344 of the Revised Penal Code by the person or persons mentioned therein is jurisdictional.'

"We hold that the trial court correctly dismissed the rape charge for lack of complaint by the offended party. (3 Aquino, *The Revised Penal Code* 1771 (1976))

"Fourth. The trial court sentenced the accused-appellant to an indeterminate sentence of 12 years and 1 day of reclusion temporal, as minimum, to reclusion perpetua, as maximum. Because of this and contending that the evidence against him is insufficient, the accused-appellant petitions to be released on bail.

"The Solicitor General opposes the bail petition and points out that this case falls under art. 267, par. 4, of the Revised Penal Code, which prescribes the penalty of reclusion perpetual to death 'If the person kidnapped or detained shall be a minor, female, or a public officer.' Accordingly, the Indeterminate Sentence Law does not apply. In accordance with art. 63, par. 2, as there are neither mitigating nor aggravating circumstances, the penalty to be imposed must be reclusion perpetua as the lesser penalty.

"This contention is well taken. Since there is no question that Arlene Yupo was at the time of her illegal detention 18 years old and the guilt of the accused-appellant has been established beyond reasonable doubt, the accused-appellant is not entitled to bail.

"WHEREFORE, the decision appealed from is MODIFIED by sentencing the accused-appellant to reclusion perpetua. In all other respects the decision is AFFIRMED. Costs against the accused-appellant.

"The petition for bail of the accused-appellant is DENIED.

"In accordance with the ruling in *People v. Daniel*, 86 SCRA 511 (1979), let this case be forthwith elevated to the Supreme Court for final determination." (Rollo, pp. 70-78).

A careful review of the original records of this case and of the briefs and various pleadings submitted on appeal shows that the findings of facts and conclusions of law of the Court of Appeals are correct. We adopt its decision as our own.

Considering the foregoing, the accused-appellant is sentenced to reclusion perpetua. The decision of the trial court is affirmed in all other respects with costs against the accused-appellant.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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