

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO LEOPARTE, ALIAS "EMBEN,"
ACCUSED-APPELLANT.**

G.R. No. 85328. July 04, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

This is an appeal from the decision of the Regional Trial Court of Lucena, Branch 60, convicting accused-appellant Bienvenido Leoparte, alias "Emben," of the complex crime of forcible abduction with rape and imposing on him the penalty of reclusion perpetua and the indemnification of the offended party in the sum of P30,000.00.[1]

Taking an atypical but laudable stand in this case, the Solicitor General, in lieu of an appellee's brief, filed a manifestation and motion recommending the acquittal of appellant since his guilt had not been established beyond reasonable doubt. Rare though such instances may be, it is tangible proof that said government counsel, although tasked with representing the prosecution against an appeal from a judgment of conviction, yields in proper cases to the paramount consideration that while guilt should not escape, innocence must not suffer. Our task then is to subject this case to a painstaking review to ascertain the validity of the now joint submission of the prosecution and the defense.

Appellant was charged with abduction with rape in an information which reads as follows:

"The undersigned upon complaint filed by the offended party, Marinel Idea, accuses Bienvenido Leoparte alias Emben (prisoner) of the crime of forcible abduction with rape, committed as follows:

"That on or about the 16th day of September 1985, at Padre Burgos, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, moved by lewd design, did then and there willfully, unlawfully, feloniously and forcibly abduct the complainant Marinel Idea, against her will and consent by taking and carrying her away from her home and bringing her, thereafter, to different places where said accused, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously had (sic) carnal knowledge several times with the said Marinel Idea against her will and consent." [2]

Appellee narrates that the prosecution presented Marinel Idea, the alleged offended party, who testified[3] that on September 16, 1985, at about 7:00 P.M. more or less, she was returning home by the railroad tracks from the house of her brother which was about two (2) kilometers away, when appellant suddenly pulled her by the right arm threatening that if she should shout, he would kill her. Appellant then allegedly succeeded in having sexual intercourse with her at the nearby banana plantation. She declared that appellant first fondled the different parts of her body, more particularly her bust, and kissed her several times. Then he opened her thighs, inserted his fingers and later, his penis inside her vagina. She allegedly resisted the appellant, but the latter threatened to kill her with a pointed weapon if she would not surrender herself to him.

After the alleged assault on her honor, appellant brought her to the house of his sister, arriving there at around 8:00 P.M. Appellant's sister, his nephews and nieces were present. There, appellant had carnal knowledge of her three times, despite her resistance and her telling appellant not to do it because she was getting married to another man. However, appellant allegedly boxed her in the thigh and again threatened to kill her if she would not submit to his wishes.

The following day, September 17, 1985, at about 7:00 A.M., they left the house of appellant's sister and proceeded to the house of appellant's uncle, Vicente Liwag, located at Barangay Marao, Padre Burgos, Quezon. Appellant introduced her to his uncle, to the latter's wife and to their children telling them that she and appellant had eloped. She allegedly denied what appellant said, but his uncle did not believe her. They remained in the house of appellant's uncle for two days. During the night, they slept in a separate house which was also owned by appellant's uncle and built just beside the latter's residence. There, she was allegedly sexually abused by appellant three (3) more times at 8:00 P.M., 9:00 P.M. and, finally, at 10:00 P.M.

Leaving the residence of appellant's uncle, appellant and the offended party proceeded to the house of appellant's father, where appellant himself resided. Appellant's parents, his brothers and sisters were there. Appellant announced to his family that she eloped with him, but she allegedly told them to bring her home because her own mother, brothers and sisters must be looking for her. There, she was once again allegedly abused by appellant in a room on the third floor. The following day, her parents, accompanied by Philippine Constabulary soldiers, arrived and took her away and appellant was arrested.

Thereafter, Marinel Idea went to the municipal hall and talked to a certain Commander Aris of the Burgos Police Station, who told her to see a doctor. She consulted Dr. Umali of the Padre Burgos Hospital. She then returned to Commander Aris to consult another physician at the Quezon Memorial Hospital, which she did. She also gave a copy of the examination results to Commander Aris. Thereafter, she was investigated by Commander Aris, which investigation was reduced into writing and was marked in court as Exhibit "A."

Appellant, on the other hand, adduced evidence materially contradicting the prosecution's allegation of abduction with rape and intended to establish that appellant and Marinel Idea were lovers and that they agreed to elope that night of September 16, 1985. Hence, it is claimed complainant's going with appellant and the sexual relations between them were voluntary.[4]

The defense also presented as a witness one Pastor Opo, Barangay Captain of Barangay Marao, who testified that the accused together with the offended party went to his house and informed him that they eloped and intended to get married, so he told appellant's mother to attend to the matter so that the two could get married.[5]

On August 29, 1988, as stated at the outset, a judgment of conviction was rendered by the court below. Appellant is now before us, seeking the reversal of said decision on the following assignment of errors:

"I

THE TRIAL COURT ERRED IN TAKING JUDICIAL NOTICE OF THE COMPLAINT FILED BY MARINEL IDEA AND HER MOTHER WHICH ACCORDING TO THE TRIAL COURT IS FOUND IN THE RECORDS OF THE PROVINCIAL FISCAL;

"II

THE TRIAL COURT, NOR ANY COURT FOR THAT MATTER, DID NOT ACQUIRE JURISDICTION TO TAKE COGNIZANCE OF THIS CASE; and

"III

THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT."[6]

The first and second assignment of errors are palpably without merit. The complaint by the offended party provided for in Article 344 of the Revised Penal Code does not determine the jurisdiction of the courts over crimes against chastity but is only a condition precedent for the exercise by the proper authorities of the power to prosecute.[7]

The same not being jurisdictional, the failure of appellant to raise said issue at the trial court barred him from raising said issue on appeal, in consonance with Rule 117 of the Rules of Court, which reads:

"Sec. 8. Failure to move to quash or to allege any ground therefor. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule."

Article 344 was not enacted for the specific purpose of benefiting the accused. When it is said that the requirement in Article 344 that 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.[8] 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.[9]

The overriding consideration in determining the issue of whether or not the condition precedent prescribed in Article 344 has been complied with is the intent of the aggrieved party to seek judicial redress for the affront committed.[10] In the case at bar, the active cooperation of the offended party in the prosecution of the case, as witness, clearly indicates said intent. Moreover, the information filed by the fiscal specifically states that the same was instituted upon the complaint of the offended party.

On the third assignment of error, appellant contends that he is entitled to an acquittal. We agree.

In view of the severity of the penalties for the offense of rape, the judiciary must take extreme care to avoid an injustice to the accused. If a reasonable doubt exists, the verdict must be one of acquittal. Rape is an accusation easy to make, hard to prove, but harder to defend by the accused, though innocent. The evidence for the prosecution must be clear and convincing to overcome the constitutional presumption of innocence. Rape is an offense to which, as is often the case, only two people can testify, thus requiring the most conscientious effort on the part of the arbiter to weigh and appraise the conflicting testimonies. If a reasonable doubt exists, the verdict must be one of acquittal.[11]

In the case at bar, the evidence for the People is undeniably insufficient to sustain a conviction. The uncorroborated, vacillating and inherently improbable testimony of the offended party has itself created doubts as to the guilt of the accused. For one, it failed to establish the presence of violence or intimidation which is the common element of the component offenses charged here as a complex crime. A number of circumstances, culled from the testimony of the offended party, belies her claim that she was forcibly abducted and raped by appellant.

Graphic illustrations thereof are found in the following observations of the Solicitor General which we quote with approval:

“1. From September 16, 1985 to September 20, 1990 appellant and complainant transferred from one house to another. They travelled by the road, in broad daylight at that, meeting several people on the way. Complainant, therefore, had more than ample opportunity to seek the help of other people and free herself from appellant if indeed she was abducted and abused by the latter. She met several members of appellant's family and relatives. At least one of them could have disfavored the alleged abduction and could have helped complainant had there been any perceivable indication of resistance on her part. On the contrary, the allegation of appellant's sister that she suggested to bring complainant home because she knew complainant's mother, but yet complainant refused as she would rather be with appellant. This assertion of appellant's sister on the witness stand remains un rebutted.

“2. Significantly, the house of appellant's sister where she and appellant spent the night after the first sexual intercourse by the banana plantation is just a stone's throw away from the P.C. Detachment (tsn Leoparte, November 18, 1987, p. 11). Right there and then, complainant could have readily sought the help of the P.C. authorities if she wanted to. That she did not only points to the inevitable conclusion that indeed she eloped with appellant.

“3. Per complainant's own testimony, the first in the series of sexual encounters between her and appellant occurred at the banana plantation around 7:00 p.m. of September 16, 1985. The details of this first sexual intercourse were revealed during the cross-examination. The banana plantation adverted to is about 2 kilometers away from the railroad track where allegedly appellant first accosted complainant (tsn Idea, September 18, 1986, p. 30). There, while she was sitting down in a squatting position, appellant started to remove her clothings: first her maong shorts, then her panty, the blouse, and the skirt (Ibid, Nov. 27, 1986, p. 16), and appellant also removed her brassiere. While appellant was engaged in the ceremony of removing all her clothings and underwear (according to complainant she was wearing several clothings and underwears one after the other), he was kissing her on the cheeks (Ibid, p. 10). Then appellant transferred towards her back in order to loosen and remove her bra. From behind appellant continued kissing her on the lips and cheeks, at the same time caressing her nipples with his left and right hands (Ibid, p. 13). Later, when both of them were totally naked, appellant made her lie down on a banana leaf which appellant had earlier prepared as cover (Ibid, p. 18). And the sexual act was consummated.

"This vivid description coming as it does from complainant herself of the preliminaries and the sexual union itself between her and appellant cannot be anything else but a manifestation of a mutual passion and longing for each other. Certainly, the foregoing circumstances belie any pretense on the part of the complainant that she offered resistance thereto. On the contrary complainant's testimony is pure and simple lovemaking, immoral though it may be, yet still lovemaking in the true sense of the art. For, a rapist, whose only objective at the moment is the satisfaction of his lust, would not understandably have the time much less the concern to remove all of his victim's clothing, including his own, and indulge in the sexual act preceded as it was by such intimate and elaborate foreplay. That the sexual union was consummated when appellant and complainant were in total nakedness, appellant having removed complainant's dress and underwear with such ease, only signifies that she was a willing partner to the love tryst. In fact, complainant while describing the sexual intercourse, never mentioned on her own initiative any form of resistance from her. For that matter, the resistance she claims to have employed, albeit weakly, was only in response to the question of counsel, aware perhaps that without resistance the complaint for rape against appellant is doomed. Worse still is the reason advanced by complainant for resisting the sexual act. She allegedly resisted appellant not because she does not like it but simply because she was already getting married to another man.

"In the same vein, the subsequent sexual intercourses between complainant and appellant in a house of the latter's uncle, where only the two of them stayed for two nights, and in appellant's own house, were no less than part of their pre-marital honeymoon. They indulged in the sexual activity while being completely naked and with such frequency and regularity. No resistance ever came from complainant except the lame allegation that she was getting married to another man.

"4. As complainant's theory of abduction with rape crumbles, appellant's claim that they eloped because they are sweetheart gains more solid grounds. Complainant admitted that the various woman's dresses and underthings in appellant's possession were hers. However, she failed to explain why they were all in appellant's possession. The only logical explanation is that which was offered by appellant. That when he and complainant met on the night of September 16, 1985, she was carrying with her some clothes, aside from what she was wearing. Here again the physical facts of the case belie any claim of abduction. For when a woman leaves her own house with some extra clothes with her, the theory of elopement is more credible than the allegation of abduction.

"5. Appellant's claim that he and complainant eloped because they were lovers is further fortified by the un rebutted testimony of Pastor Opo, the Barangay Captain, who categorically stated that appellant and complainant appeared before him seeking his help so that they could be married. He even reduced their statements into writing and let them sign it. The prosecution's inability to present evidence to rebut this damaging allegation only proves that the charge of abduction with rape is more imaginary than real.

"6. Finally, it is intriguing how complainant's parents and the P.C. authorities were able to trace that she was with appellant. Her parents must have had some idea of the blooming love affair between her and appellant such that when she disappeared her parents knew right away where to locate her. It can, therefore, be safely assumed, without fear of contradiction that the criminal case against the appellant was initiated by the family of the complainant and the latter was only freed to sustain the same." [12]

The recital of the foregoing circumstances, taken not only from the defense evidence but from that of the prosecution itself, cannot but support the claim of appellant that the offended party went with him voluntarily and that their sexual relations thereafter were with their mutual consent. We are accordingly convinced that, as prayed for by appellant and recommended by the Solicitor General, a verdict of not guilty should be handed down in this case.

WHEREFORE, the judgment of the trial court is hereby REVERSED and SET ASIDE and accused-appellant Bienvenido Leoparte is ACQUITTED of the crime charged, with costs de oficio. His immediate release from confinement is hereby ordered, unless he is being held on other legal grounds.

SO ORDERED.

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

[1] Penned by Judge Eriberto U. Rosario, Jr.; Rollo, 28-37.

[2] Rollo, 4.

[3] Ibid., 86-89.

[4] Ibid., 89-91.

[5] Ibid., 92.

[6] Ibid., 52.

[7] People vs. Tañada, etc., 166 SCRA 360 (1988); People vs. Bugtong, 169 SCRA 797 (1989).

[8] People vs. Babasa, etc., 97 SCRA 672 (1980).

[9] Samilin vs. Court of First Instance of Pangasinan, 57 Phil. 298 (1932); Valdepeñas vs. People, 16 SCRA 871 (1966).

[10] People vs. Ilarde, etc., et al., 125 SCRA 11 (1983).

[11] People vs. Cabading, G.R. No. 74352, June 6, 1989.

[12] Rollo, 98-104.

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