

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERONIMO GOLES, DEFENDANT-APPELLANT.

*G.R. No. 91513. December 21, 1990*

Ponente: GANCAYCO, J.

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### GANCAYCO, J.:

The conviction of the defendant-appellant Geronimo Goles for the rape of a 20-year old mental retardate is the subject of this appeal.

The facts of this case as found by the trial court are as follows -

On October 11, 1987 at about 3 o'clock in the afternoon, the victim Jessie Sajol, a 20-year old mental retardate, while on her way to the house of Ernesto Paragsa, met the appellant along the road. The appellant took hold of the victim, dragged her away from the road brought her to a nearby grassy area and forced her to the ground. The appellant managed to pull down the victim's kneepants and underpants afterwhich he took off his pants. The victim tried to run away while the appellant was removing his pants but he pulled her closer to him and threatened her with a bolo and said that he would kill her if she would resist. While the victim was lying on the ground, the appellant opened her legs, boxed her thigh and succeeded in having sexual intercourse with her. Thereafter, Maria Sajol, the mother of the victim, saw her daughter crying, along the road, near the scene of the incident. When queried by her mother, the victim declared she was raped by Geronimo Goles, the appellant. She immediately brought her daughter to the house of Goles, who, when confronted, denied having raped her. Hence, mother and daughter reported the matter to the police before whom they executed their respective affidavits.[1]

The following day the victim and her mother went to see Dr. Manuel C. Ozaraga who conducted a physical examination of the victim, with the following results:

#### "MEDICAL CERTIFICATE

"Jessie N. Sajol, 20 yrs. old, single residing at Nazareth, Sta. Juana, Tagbina, Surigao del Sur examined by the undersigned on Tuesday October 12, 1987 at about 11:45 AM with the following findings;

"The patient is mentally retarded

White curdish discharges on the left and right labia majora inner portion

Tenderness when one finger was attempted to be inserted in the vaginal canal.

Bleeding dominant on the porterior vaginal wall.

Discharges mucoid in nature coming from the vaginal canal mixed with blood.

Discharges also noted on the cervical mucosa.

Laboratory examination revealed negative finding for sperm.

Impression; compatible with rape.

(Sgd.) MANUEL C. OZARAGA, M.D.

Attending Physician"[2]

On October 19, 1987, a criminal complaint signed by Maria N. Sajol and Jessie Sajol with the conformity of the Station Commander, Conrado A. Oraiz, was filed in the Office of the Provincial Fiscal of Surigao del Sur.[3]

On October 20, 1987, an information was filed in the Regional Trial Court of Bislig, Surigao del Sur, Br. 29 accusing Geronimo Goles of the crime of rape committed against Jessie Sajol.[4]

On October 31, 1987, the appellant was arrested and detained at the provincial jail of Bislig. At his arraignment on January 22, 1988, he entered a plea of not guilty. Trial ensued.

The court a quo rendered judgment on November 3, 1988 finding the appellant guilty beyond reasonable doubt of the crime of rape, sentencing him to a penalty of reclusion perpetua and ordering him to pay the aggrieved party Jessie Sajol the amount of P30,000.00 as moral damages and P5,000.00 as exemplary damages.[5]

In the appeal before Us, the appellant assigns the following errors:

- 1) that the trial court had no jurisdiction to hear the case because the information was not signed by the complainant, and
- 2) that the guilt of the appellant was not proved beyond reasonable doubt.

Anent the first assignment of error, the appellant avers that the information accusing him of the crime of rape was not signed by the complainant or by her parents; hence, the lower court did not acquire jurisdiction to try and decide the case. In support of this theory, appellant cites Section 5, Rule 110, 1985 of the Rules on Criminal Procedure, as amended, which provides that "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, x x x."

The Court had occasion to reject this argument. The requirement that the offense of rape must be prosecuted upon complaint filed by the offended party is found in Article 344 of the Revised Penal Code[6] and the aforesaid Section 5 of Rule 110. Expounding on the meaning and significance of this requirement, this Court held in *People vs. Hon. Santiago Tañada*[7] -

"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 or 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.

x x x

This ruling was followed in the subsequent case of *People v. Babasa* where the Court, citing the *Valdepenas* case, ruled that Article 344 was not enacted for the specific purpose of benefiting the accused. When it is said that the requirement in Article 344 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, the prosecution for the crime of rape was commenced by the filing of the criminal complaint which was signed not only by the complainant but also by her mother in accordance with Rule 115, Section 5 considering that the complainant is mentally incompetent.[8] This criminal complaint was the basis for the preliminary investigation conducted by the fiscal and the subsequent filing of the information in court. Nowhere in the law is it required that the complainant likewise sign and verify the information for rape filed by the fiscal.[9] Indeed, the very information filed by the fiscal reads:

"The undersigned, on complaint under oath, hereby accuses GERONIMO GOLES of the crime of RAPE, committed as follows:

That on or about the 11th day of October, 1987, at about 3:00 o'clock in the afternoon, more or less, at Sitio Nazareth, barangay Sta. Juana, municipality of Tagbina, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with the use, intimidation and violence, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with the complainant Jessie Sajol against her will and consent, to the damage and prejudice in the following amounts, to wit:

P30,000.00 - as moral damages; and,

P 5,000.00 - as exemplary damages.

CONTRARY TO LAW: (Article 335 of the Revised Penal Code)."[10]

The Court takes note of the reference in the first paragraph to the sworn complaint of the offended party filed with the fiscal by the phrase "on complaint under oath." This goes to show that said criminal complaint was in effect reproduced as part of the information.

During the trial said complaint of the offended party was presented in evidence marked as Exhibits B-B-1.[11] There was thus sufficient compliance with the requirement of the law and the trial court correctly assumed jurisdiction over the case.

Indeed, in the case of *People vs. Sunpongco*,[12] where the criminal complaint filed by the offended party for the purpose of preliminary investigation was not presented in evidence during the trial and where the information was filed by the fiscal, this Court ruled that the trial court can take judicial notice of the complaint that was forwarded with the records of the preliminary investigation to the court, without necessity of its formal introduction in evidence.

The appellant, in his second assignment of error, points out that the trial court failed to prove his guilt beyond reasonable doubt. For his defense, he claims that he and the supposed aggrieved party are sweethearts and at the time of the alleged commission of the crime, they purposely met pursuant to an agreement. He further alleged that there was consent to have sexual intercourse but the act was not consummated because of the arrival of the mother of complainant. This was in fact confirmed by the mother of complainant who testified that he merely used his finger and by the medical certificate which indicated that no sperm was found. There was also no sign of injury on the victim negating the theory that there was a struggle by the victim or that force was employed on her person. There was not even a torn dress presented as evidence. Even the complainant's alleged mental retardedness is

contradicted by her membership in different social and religious organizations in the community.

The arguments raised by appellant are devoid of merit.

The appellant would have the Court believe that he and the victim are sweethearts who mutually consented to have sexual intercourse, but like in many other rape cases[13] where this same defense had been raised, the Court is not persuaded. He did not present any proof like a letter or a ring perhaps, to support his allegation that he and the victim are sweethearts. Despite his claim that they met for the first two times at the house of his uncle, he did not present said uncle or any other member of the household to prove his theory. The further fact that the victim is a mental retardate makes his story incredible. In her defective state of mind, complainant could not have induced appellant to nurture a desire to have her for a sweetheart. Besides, she could not have possessed the capacity to understand the meaning having such a relationship with him.[14]

It does not appear that the complainant or her mother has any ill-motive to falsely testify against the appellant.[15] Indeed, if the charge was not true, the victim's mother would not have rushed to appellant's house to confront him and, immediately thereafter, reported the matter to the authorities. As held in one case where the victim was also a mental retardate, it would be preposterous to assume that the victim, whose intelligence quotient is admittedly low, could have concocted the grave charge of rape, or that she and her mother would go into the trouble of having her medically examined, going to court and advertising to the whole world she had been raped if the charge was merely invented.[16]

Moreover, the testimony of the mother corroborates the story of the victim. She saw her daughter crying along the road who immediately told her what transpired. If there was no truth to the charge, the victim would not have been in such a state and she would not have told her mother that she was raped ("gilogos" in the Visayan dialect) by the appellant.[17] Mrs. Sajol even saw for herself the exact spot where the crime happened with the cogon grass still pressed down. The trial court correctly considered the statements made by the victim to her mother immediately after the incident as part of the *res gestae*. [18]

As to the appellant's argument that the victim's mother confirmed his claim that he did not rape her, the records show that the victim's mother testified that "Geronimo Goles told us that, I did not rape her but I just used my fingers." [19] This is mere hearsay since she only repeated what the appellant told her when he was confronted and this in no way confirms his allegation that he merely used his fingers. At most, this is a self-serving statement which cannot prevail over the categorical statement of the victim that the accused inserted his penis inside her vagina. [20]

Relative to the finding that no sperm was found, it has been repeatedly held that the presence of sperm cells is not indispensable to prove the offense of rape. [21] The examination disclosed that there was bleeding dominant on the posterior vaginal wall as well as discharges, mucoid in nature, coming from the vaginal canal mixed with blood and discharges on the cervical mucosa which would indicate that there was penetration of the victim's vagina. In fact, the attending physician concluded that the condition of the victim is compatible with rape. The victim likewise testified that she felt pain in her vagina during coitus and that she was bleeding after the incident. [22] Besides, by the time the examination was conducted, the victim had already washed her private parts and had urinated several times thus washing away the sperms which may have been present in her vaginal canal. [23]

The absence of injury on the person of the victim does not negative rape. [24] It is a doctrine well-settled that in order to consider the existence of the crime of rape, it is not necessary that the force and/or intimidation employed in accomplishing it be so great or of such character as could not be resisted, it is only necessary that the force and intimidation used by the culprit be sufficient to consummate the purpose which he had in mind. [25] The victim

had initially resisted the advances of the appellant and she even shouted twice for help; however, the appellant threatened to kill her if she did not consent and at the time he had in his possession a bolo. The threat to her life was sufficient to instill in the childlike mind of the victim a fear so great that she had no choice but to give in to the lustful desires of the appellant. The positive declaration of complainant that the appellant threatened to kill her should be given more weight than the simple denial of the accused[26]

The further fact that no torn dress was presented by the prosecution does not negate rape.[27] The absence of a torn dress or panty is explained by the fact that the victim no longer offered any resistance by reason of the intimidation employed upon her by the appellant.

At any rate, physical intimidation prior to sexual intercourse is not necessary for rape to be committed considering the mental deficiency of the victim such that she is incapable of giving consent to the sexual act.[28] It is for this reason that the appellant makes much of the alleged membership of the victim in different social and religious organizations to counter her supposed deficient mental state. From the testimony of the victim's mother, it can be seen that she is a member of a church organization and as such member she helps in cleaning and weeding the church premises,[29] activities which a mental retardate is not incapable of doing. The fact that the victim is a mental retardate should not stop her or her parents from making her useful to the community.

Indeed, the trial court found the version of the prosecution to be more credible, which finding is amply supported by the evidence on record, for which reason the Court upholds the judgment of the court a quo finding the appellant guilty beyond reasonable doubt of the offense of rape as charged.

The indemnity awarded should be increased to P40,000.00.

WHEREFORE, with the above modification as to the indemnity, the judgment of conviction is hereby AFFIRMED in all other respect, with costs against the appellant.

### **SO ORDERED.**

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Exhibits C-C1, and D-D1.

[2] Exhibit A, page 74, Rollo.

[3] Exhibits B, B1, pages 69-70, Rollo.

[4] Page 9, Rollo.

[5] Penned by Judge Martin V. Vera Cruz.

[6] "Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. - xxx 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, xxx."

[7] 166 SCRA 360 (1988); cited in *People vs. Bugtong*, 169 SCRA 797 (1989).

[8] Rule 115, Section 5 provides as follows: "The offended party, even if she were a minor, has the right to initiate prosecution for the abuse offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority x x x ."

[9] *People v. Bugtong*, supra.

[10] Page 9, Rollo. (Underscoring supplied.)

[11] Page 3, Decision; page 16, Rollo.

**[12] 163 SCRA 222, 230 (1988).**

[13] People vs. Murallon, G.R. No. 85734, September 13, 1990; People vs. Timbang, G.R. No. 88403, August 30, 1990; People vs. Veloso, 148 SCRA 60 (1987); People vs. Manzano, 118 SCRA 705 (1982).

[14] People vs. Gallano, 108 SCRA 405 (1981).

[15] People vs. Timbang, *supra*.

[16] People vs. Olmedillo, 116 SCRA 193 (1982).

[17] Page 3, T.S.N. July 11, 1988.

[18] Sec. 36, Rule 130, Revised Rules of Court.

[19] Page 3, T.S.N., July 11, 1988.

[20] Pages 13, T.S.N., July 11, 1988.

[21] People vs. Ando, 180 SCRA 412 (1989); People vs. Ocampo, 143 SCRA 428 (1986); People vs. Oydoc, 125 SCRA 250 (1983); People vs. Balane, 123 SCRA 614 (1983); People vs. Lood, 117 SCRA 467 (1982); People vs. Coderes, 104 SCRA 255 (1981); People vs. Bawit, 102 SCRA 797 (1981); People vs. Bautista, 102 SCRA 483 (1981).

[22] Pages 13 to 15, T.S.N., July 11, 1988.

[23] Page 11, T.S.N., July 11, 1988.

[24] People vs. Alcantara, 126 SCRA 425 (1983); People vs. Copro, 126 SCRA 403 (1983).

[25] People vs. Franco, 114 SCRA 737 (1982); People vs. Murallon, *supra*.

[26] People vs. Ando, *supra*.

[27] People vs. Balane, 123 SCRA 614 (1983); People vs. Opena, 102 SCRA 755 (1981).

[28] People vs. Palma, 144 SCRA 236 (1986); Babanto vs. Zosa, 120 SCRA 834 (1983).

[29] Pages 8 to 9, T.S.N., July 11, 1988.

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