

[G.R. No. 129894, August 11, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SEVERINO GONZALES Y DE VERA, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

Being of the opinion that accused-appellant should have been sentenced to *reclusion perpetua*, the Court of Appeals,^[1] to which this case had originally been appealed, certified it to us pursuant to Rule 124, §13 of the Rules of Court.^[2]

The information^[3] alleged:

At the instance of the private complainant Sharon Morandarte Gonzales, in her complaint under oath filed before the Municipal Trial Court of San Pedro, Laguna, the undersigned 3rd Assistant Provincial Fiscal of Laguna, accuses Severino Gonzales y De Vera of the crime of Kidnapping with Attempted Rape, committed as follows:

That about and during the period beginning the early evening of October 24, 1989, to the late morning of October 26, 1989, in the Municipality of San Pedro, Province of Laguna, Republic of the Philippines and within the jurisdiction of this Honorable Court, accused Severino Gonzales y De Vera, enticed Sharon Morandarte Gonzales, a female fourteen (14) years old minor, to ride with him in a motorized tricycle going home to Adelina I Subdivision and while on board the running tricycle, accused did then and there wilfully, unlawfully and feloniously poke a knife on the body of Sharon Morandarte Gonzales, telling her not to move and shout and by force, accused detained, kept and locked her with hands, feet and mouth tied in a room of his house and while said Sharon Morandarte Gonzales was in captivity, detained and restrained for a period of about twenty-two (22) hours, accused, with lewd design, did then and there attack, assault her honor and by means of force and intimidation, committed attempted rape on her person, against her will and to her damage and prejudice.

CONTRARY TO LAW.

The prosecution presented the complainant, Sharon Gonzales, and Dr. Carmelita Belgica, the medico-legal officer who examined her.

Complainant testified that at around 7 p.m. of October 24, 1989, while she was in front of the Meralco Office in San Pedro, Laguna waiting for transportation to take her home to Adelina I Subdivision, accused-appellant, who was then riding on a tricycle, came along and offered her a ride. As accused-appellant was her neighbor and her grandfather's friend, she accepted the offer.^[4] She sat between the driver and accused-appellant inside the tricycle. When they passed the Kimberly Clark Phils. compound in San Pedro, Laguna, accused-appellant suddenly pulled out a

knife ("balisong") from his pocket and poked it at the right side of complainant. He warned her not to shout or he would kill her. Complainant was taken to accused-appellant's residence at Adelina I Subdivision. It was then 8:30 p.m. Complainant was brought inside a room and her hands and feet were bound, while her mouth was gagged. She was left in the room.^[5]

The next day, October 25, 1989, accused-appellant brought her food. He removed the handkerchief covering her mouth and told her to eat. However, she refused to eat, afraid that he placed something in the food. This made accused-appellant angry. As a result, complainant was gagged again.^[6]

At about 3 o'clock that afternoon, accused-appellant came back to the room where complainant was being held captive. He was naked and had a knife. He released complainant's hands and legs and led her to another room of the house where he ordered her to undress. As she refused, accused-appellant threatened her with a knife. After removing her clothes, accused-appellant pushed complainant to the floor, kissed her all over her body, and tried to force himself on her, but he failed as complainant fought back.^[7]

Then, complainant felt something warm trickling down the inside of her right thigh. Accused-appellant apparently had a premature ejaculation which embarrassed him. Hence, after wiping off the semen, he told complainant to put on her clothes. He bound her hands and feet again, covered her mouth, and brought her back to the other room.^[8] As complainant again refused to eat the food he gave her, accused-appellant got infuriated and pulled her hair.^[9]

At around noon of October 26, 1989, accused-appellant told complainant to take a bath because he was going to take her to Manila. He released her hands and feet and removed the handkerchief covering her mouth. When accused-appellant left the room, complainant made a dash for freedom by passing through the front door. She proceeded to her house located just behind that of accused-appellant, but she found the gate locked.^[10]

Complainant then took a tricycle to Liceo de San Pedro. She attended classes until 5:45 p.m. without telling anyone about her ordeal. On her way home, she saw accused-appellant in front of the Luzon Development Bank. She ran towards the market, where she was able to get a tricycle which took her home. Complainant told her mother what happened. Her grandfather accompanied her to the Municipal Police Station of San Pedro where she executed an affidavit^[11] before Pfc. Reynaldo S. Arcibal.^[12]

On November 20, 1989, a complaint^[13] for Kidnapping with Attempted Rape was filed by complainant before the Municipal Trial Court of San Pedro. After summary examination was conducted, probable cause for kidnapping with attempted rape was established against accused-appellant. He was then arrested on December 9, 1989 pursuant to a warrant issued on December 5, 1989. The defense filed a motion for reconsideration praying that the complaint be modified to abduction.^[14] 14 Id., pp. 15-16.14 This was granted by the court which issued an order changing the offense to forcible abduction. However, on January 17, 1990, the Provincial Fiscal disagreed and filed an information for Kidnapping with Attempted Rape with the Regional Trial Court of Laguna.

Accused-appellant testified in his own behalf. He denied that he kidnapped complainant and attempted to rape her. He claimed that on the evening of October 24, 1989, complainant went to his house and asked to be allowed to spend the night there because she was afraid her mother would scold her for coming home so late. Despite his misgivings, accused-appellant said he agreed to let her sleep in his house. Since the room of his sister was locked, complainant had to sleep on the floor in his room. The next morning, complainant did not leave. She pleaded with him instead to let him stay for two more days until October 26, 1989, when she decided she would return home. He said he left the complainant in the house on October 25, 1990 without locking the doors and she could have left if she wanted to because he neither tied her up nor gagged her.^[15]

On November 5, 1991, the trial court rendered its decision finding accused-appellant guilty of Serious Illegal Detention and Attempted Rape and sentencing him to suffer a prison term of 14 years, 8 months, and 1 day of *reclusion temporal*, as minimum, to *reclusion perpetua*, as maximum, for the crime of Serious Illegal Detention, and to suffer a prison term of 2 years, 4 months, and 1 day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, for the crime of Attempted Rape. The trial court ruled:

The Supreme Court held that where the accused deprived a woman of her liberty and detained her for sometime, as in the case at bar, the crime committed is that of serious illegal detention.

Likewise, there is an attempt when the offender commences the commission of the crime directly by overt acts but does not perform all of the acts which constitute the crime by reason of some cause or accident other than his own voluntary desistance. In the case at bar, the accused attempted to insert his penis in the private organ of the offended party but was unable to do so because of the resistance offered by the latter. The crime committed was attempted rape as there was no penetration of the female organ.

The accused was charged with the crime of Kidnapping with Attempted Rape under Article 267 in relation to Article 335 of the Revised Penal Code. There is no complex crime here under Art. 48 of the Revised Penal Code because the accused neither committed a single act which constituted two or more grave or less grave felonies nor an offense which is a necessary means for committing the other. Hence, the information alleges two distinct and separate offenses.

The rule is that an information must charge only one offense. The rule however admits an exception in cases of complex crimes. When more than one offense is included in an information, the accused should move to quash such information.

In the case at bar, the accused thru counsel should have objected to the information on the ground that more than one offense is charged therein. As the accused failed to interpose an opposition, he is deemed to have waived his right to be tried for only one crime. Accordingly, there can be no objection to the submission of evidence to show the guilt of the accused of both offenses charged in the information. Consequently, since the evidence is sufficient, accused can be convicted of the two offenses charged, which have been established beyond reasonable doubt.

In sum, the crimes committed by the accused Severino Gonzales are Serious Illegal Detention under Article 267 and Attempted Rape under Article 335 of the Revised Penal Code.

WHEREFORE, premises considered, this Court finds the accused Severino Gonzales guilty beyond reasonable doubt of the crimes of Serious Illegal Detention under Art. 267 of the Revised Penal Code and Attempted Rape under Art. 335 of the Revised Penal Code and absent any mitigating or aggravating circumstances and applying the Indeterminate Sentence Law, he is hereby sentenced as follows:

1. With regard to the crime of Serious Illegal Detention, to suffer an indeterminate penalty ranging from fourteen years, eight months and one day of *reclusion temporal* as minimum to *reclusion perpetua* as maximum, together with all the accessory penalties set by law; and
2. As regards the crime of Attempted Rape, to suffer an indeterminate penalty, ranging from two years, four months and one day of prision correccional as minimum to eight years and one day of as maximum, together with all the accessory penalties set by law, plus costs.^[16]

Accused-appellant appealed to the Court of Appeals which held:

WHEREFORE, the decision of the trial court is hereby AFFIRMED with the modification that as regards the crime of Serious Illegal Detention, appellant should be, as he is hereby, sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties set by law. Costs against accused-appellant.^[17]

On motion of accused-appellant, the records of the case were elevated to this Court pursuant to Rule 124, §13 of the Rules of Court.

Accused-appellant assigns the following errors allegedly committed by the trial court:

- I. THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS WHICH WAS REplete WITH INCONSISTENCIES AND CONTRADICTIONS AND IN DISREGARDING THE THEORY OF THE DEFENSE.
- II. THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT SEVERINO GONZALES GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING WITH ATTEMPTED RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE.^[18]

First. Accused-appellant points out the following as rendering the testimony of complainant unworthy of credence: (1) complainant did not run when he was opening the door of his house; (2) she did not shout for help when her house is just next door; (3) accused-appellant could be so careless as to leave her with hands and feet untied on the afternoon of October 26, 1989; and (4) complainant did not go home but instead went to school to attend classes after allegedly escaping from him.

We find these observations well taken. The elements of Kidnapping and Serious Illegal Detention under Art. 267 of the Revised Penal Code are as follows:

1. That the offender is a private individual.
2. That he kidnaps or detains another, or in any other manner, deprives the latter of his liberty.

3. That the act of detention or kidnapping must be illegal.
4. That in the commission of the offense, any of the following circumstances is present:
 - (a) That the kidnapping or detention lasts for more than 5 days; or
 - (b) That it is committed simulating public authority; or
 - (c) That any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
 - (d) That the person kidnapped or detained is a minor, female, or a public officer.^[19]

The essence of illegal detention is the deprivation of the victim's liberty. There must be a showing of actual confinement or restriction of the victim, and such deprivation was the intention of the accused-appellant. There must be a purposeful or knowing action to restrain the victim because taking coupled with intent completes the offense.^[20] In the case at hand, we note several material inconsistencies and unnatural courses of action in complainant's testimony which negate her accusation that accused-appellant deprived her of her liberty.

One, complainant testified that she accepted accused-appellant's offer to give her a ride in the tricycle because she trusted him, being her neighbor and her grandfather's friend. There would, therefore, be no need for accused-appellant to force her at knife point to go with him. If his intention was to kidnap her, he could easily have done so without using force which would only attract the attention of others.

If, on the other hand, what complainant meant was that accused-appellant had to poke a knife at her side to make her go with him to his house, her testimony remains incredible. Complainant admitted that accused-appellant was no longer holding her when the latter was opening the door of his house, and she could have ran and shouted for help. She inexplicably did not do this. Complainant testified:

Q Was there any door in getting inside the house?

A Yes, sir.

Q And the accused did not use a key in opening that door?

A He used a key, sir.

Q At the time when he used that key he removed the knife from your side because he used that hand in opening the door, is it not?

A Yes, sir.

Q You did not take that opportunity in running away because the accused was busy opening the door with a key?

A Because the knife, he transferred it to the left hand and poked it at me.

Q At that occasion nobody was holding you anymore because the two (2) hands of the accused was busy with some other activity?

A Yes, sir.^[21]