

## FIRST DIVISION

[ G.R. No. 124391, July 05, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER  
YPARRAGUIRE Y SEPE, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

After his indictment<sup>[1]</sup> and trial, accused-appellant appeals from his conviction for the crime of rape of a mental retardate. <sup>[2]</sup>Pursuant to Republic Act No. 8353, the Anti-Rape Law of 1997, rape is a crime against person which may be prosecuted *de officio*. However, considering that the alleged rape was committed in 1994, which was prior to the effectivity of R.A. 8353, we apply the old law and treat rape as a private crime.

The facts as narrated by the trial court are:

"On March 24, 1994, at about 11:00 o'clock in the evening, while complainant Charmelita D. Ruina, an invalid and mentally retarded, was on her bed at the store of her mother at the Public Market at Carrascal, Surigao del Sur, where she and her mother lived, accused Elmer Yparraguirre alias "Lalo" entered her room, the door of which was not locked because her mother went to the store of her elder sister. Upon getting inside, he undressed himself and approached the Complainant who was apparently awake. He caressed her and sucked her breasts. She shouted for help but nobody came to rescue her, perhaps because it was late already in the evening and her voice was not loud enough to be heard at the distance as, in fact, it could be heard at only about three to five meters away x x x. Accused told her to keep quiet and when she put up some limpy resistance, he boxed her. He then removed her panty went on top of her and inserted his manhood into her most private part. She felt pain. After raping her, he left her room. Soon her mother, Sanselas Leongas Ruina, arrived. She reported to her the incident. The following morning, accused went back to the store and apologized for what he did and promised not to do it again. But his plea would not mollify Sanselas. She took the complainant to the Madrid (Surigao del Sur) District Hospital for physical examination. Dr. Carlo P. Altrecha recorded the following findings in the Medical Certificate that he issued on March 26, 1994:

POLIO MYELITIS-MENTALLY RETARDED PPE:

- ABRASION, AT THE LEVEL OF THE MID-CLAVICULAR AREA, BOTH, LEFT AND RIGHT.

- CONTUSION, BOTH BREAST, LEFT AND RIGHT.
- CONTUSION, AT THE LEVEL OF THE 8TH THORACIC RIB, ME-AXILLARY LINE, RIGHT.

#### GENITALIA:

- LABIA MAJORA: NO CONGESTION, NO HEMATOMA.
- LABIA MINORA: CONGESTED, SLIGHT SWOLLEN.
- VAGINAL ORIPICE: CONGESTED, SLIGHT SWOLLEN HYMEN NOT INTACT.
- VAGINAL SMEAR FOR THE PRESENCE OF SPERMATOZOA: NO SPERMATOZOA SEEN."<sup>[3]</sup>

Appellant did not testify in court but instead relied on the lone testimony of his father, who alleged that the complaint for rape was filed as a result of a "misunderstanding" between appellant and the mother of the victim.

In this appeal, the basic issue raised by appellant is that the trial court never acquired jurisdiction over the case because the complaint was signed and filed by the chief of police and not by the complainant.

Appellant's contention has no merit. Section 5, Rule 110 of the Rules on Criminal Procedure provides in part:

"The offense 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, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. In case the offended party dies or becomes incapacitated before she could file the complaint and has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph."

Pursuant to the afore-quoted provision, the offended party can initiate a prosecution for rape even if she is a minor, unless she is incompetent or incapable of doing so upon grounds other than her minority. Although the victim in this case is no longer a minor, it is undisputed that she is a mental retardate and suffering from physical deformity. No woman would come out in the open, inform the authorities of the injustice done to her, make a statement of what had happened unless her purpose is to redress the wrong done against her honor. Once the violation of the law becomes

known through a direct original participation initiated by the victim, the requirements of Article 344 of the Revised Penal Code (RPC), to the effect that the offense of rape "shall not be prosecuted except upon a complaint filed by the offended party or her parents," are satisfied. Said provision is not determinative of the jurisdiction of courts over the private offenses because the same is governed by the Judiciary law, not the Revised Penal Code which deals with the definition of felonies and their punishment. Stated differently, the complaint required in Article 344 is but a condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties. Such condition was 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.<sup>[4]</sup> The complaint simply starts the prosecutory proceeding but does not confer jurisdiction on the court to try the case<sup>[5]</sup> because the overriding consideration in determining whether the condition precedent in Article 344 has been complied with is the intent of the aggrieved party to seek judicial redress for the affront committed.<sup>[6]</sup>

Article 344 was not enacted for the specific purpose of benefitting 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 in the court to try the case. The court's jurisdiction is vested in it by the Judiciary Law.<sup>[7]</sup>

Going now to the merits of the case, the gravamen of the crime of rape is the sexual congress of a woman by force and without consent.<sup>[8]</sup> These elements have been proven beyond reasonable doubt to concur in this case. The evidence shows that appellant boxed the victim in the neck and slapped her on the face while she was alone and lying in bed on that fateful night. When she shouted for help, appellant told her to keep quiet. Appellant then began sucking her breasts and her vagina. Then he removed her panty and forcibly had sexual intercourse with the mentally retarded victim causing pain in her private part. Her testimony in the oral deposition confirms the statements she made in the vernacular in her affidavit earlier executed. Thus,

P - Unsa may imong guibuhat paghikita nimo niadtong tawo nga miduol kanimo.

T - Misinggit ako.

P - Unsay guibuhat niadtong tawo sa imong pagsinggit?

T - Iyang guitampa ang akong baba, dayon mipatong siya kanako.

P- Unsay sunod nga guibuhat niadtong tawo sa dihang mipatong na siya kanimo?

T- Iyang guidun-an ang akong tiyan, apan kay mikisikisi man ako iyang guisumbag ang akong kilid dayon guihubo ang akong baro ug guisunod usab dayon ang akong pante.

P - Unsay sunod nga guibuhat niadtong tawo kanimo sa tapos niya