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FIRST DIVISION

[G.R. Nos. L-32267-70. March 26, 1979]

PEDRO BARBA, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CRIMINAL LAW; RAPE; ACCUSED CANNOT BE HELD GUILTY OF SIMPLE SEDUCTION, WHERE THE SAME IS NOT WARRANTED BY WORDING OF THE INFORMATION. — Where it is alleged in the information that the accused, "by means of force, threat and intimidation did then and there, unlawfully and feloniously have carnal knowledge of the complainant" against her will, the accused under such allegations cannot be legally convicted of simple seduction for the same is not warranted by the wording of the information, which did not alleged deceit."

APPEARANCES OF COUNSEL

Antonio G. Sosito for petitioner.

Solicitor General Felix Q. Antonio, Assistant Solicitor General Eduardo C. Abaya and *Solicitor Tomas M. Dilig* for respondent.

DECISION

FERNANDEZ, *J.*:

This petition for *certiorari* assails the joint decision of the Court of First Instance of Catanduanes in four criminal cases[1] convicting the petitioner of the crime of simple seduction based on four separate informations charging him with rape committed by means of force and intimidation.

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[1] Criminal Cases Nos. 2117, 2118, 2119 and 2120, all entitled "*The People of the Philippines vs. Pedro Barba*", *Rollo*, pp. 28-38.

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The allegations in the respective informations are:

In Criminal Case No. 2117

"That on or about the first week of October, 1968, in the morning, in the barrio of Cabugao, Municipality of Bato, Catanduanes, and within the jurisdiction of this Honorable Court, said accused Pedro Barba, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant LENY TRAMPE, against her will.

CONTRARY TO LAW."[2]

In Criminal Case No. 2118

"That on or about the middle of November, 1968, about noontime, in the barrio of Cabugao, Municipality of Bato, Catanduanes, and within the jurisdiction of this Honorable Court, said accused Pedro Barba, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant, LENY TRAMPE, against her will.

CONTRARY TO LAW."[3]

In Criminal Case No. 2119

"That on or about the last week of November, 1968, about noontime, in the barrio of Cabugao, Municipality of Bato, Catanduanes, and within the jurisdiction of this Honorable Court, said accused Pedro Barba, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant LENY TRAMPE, against her will.

CONTRARY TO LAW."[4]

In Criminal Case No. 2120

"That on or about the first week of December, 1968, in the morning, in the barrio of Cabugao, Municipality of Bato, Catanduanes, and within the jurisdiction of this Honorable Court, said accused Pedro Barba, by means of force, threat and intimidation, did then and there

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[2] Annex "B", *Rollo*, p. 39.

[3] Annex "B-1", *Rollo*, p. 40.

[4] Annex "B-2", *Rollo*, p. 41.

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wilfully, unlawfully, and feloniously have carnal knowledge of the complainant LENY TRAMPE, against her will.

CONTRARY TO LAW."[5]

After joint trial of these four criminal cases, the Court of First Instance of Catanduanes convicted the accused of simple seduction on the following findings:

"The evidence fully establishes the fact that Leny Trampe, who is a young girl of only fifteen years, had sexual relations with a man and because of which she was delivered of a baby girl on August 20, 1969, which subsequently died on October 5 of the same year. Leny has pointed to the accused as the only one responsible for her predicament. Indeed, if Leny's pregnancy was the result of her relations with another man, it is hardly conceivable that she would point to him as the one responsible. And assuming that Simplicio Trampe, sometime in the past in his business relations with the accused might have harbored ill feelings against him because of suspicion on the part of Trampe that the accused was cheating him of a part of the proceeds due him from the catch in his concession, that fact alone, in the opinion of the Court could hardly be sufficient to induce Leny of her father to point to him as the one responsible for her pregnancy if in fact it was caused by another man. The defense put up by the accused deserves scant consideration from the Court. It bears the telltale marks of fabrication and amounts to an imposition upon its credulity.

The Court, however, entertains serious doubts that the accused's sexual relations with Leny had been accomplished by means of force and intimidation. From the ocular inspection conducted by the Court of the site of the alleged attacks, which is a piece of swampy land on the sea-coast of Cabugao covered by nipa palms and bushes of about a few feet high connected by a street leading to the main *barrio* about two hundred meters away and cut midway by a footpath both of which are admittedly used by fishermen going to the sea at any hour of the day or night, there is ample ground to doubt that the accused would have or could have taken advantage of Leny if the girl herself did not welcome his advances, although it is possible that if he had wanted to force himself upon her the accused could have easily overpowered Leny who is very small and scarcely five

[5] Annex "B-3", *Rollo*, p. 42.

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feet in height in contrast to the physical proportions of the accused who is a man of well built physique and from the observation of the Court is about five feet five inches or five feet six inches tall. The condition of the place, as the Court saw it, could have discouraged any man from forcing his attentions upon any woman he might meet unless he were a maniac devoid of any sense of elementary decency. But if two lovers with a tryst would meet there and hide either beneath the bushes or at the foot of the nipa palms, there is enough cover and there is no doubt that they could satisfy themselves specially at certain hours when the place is deserted because the fishermen are out in the sea. The Court is intrigued by the fact that the accused could have abused Leny four times if it were not because she was a willing party. Otherwise, if it were true that she had been attacked she might have avoided the place altogether. Her explanation that she was continually threatened by the accused while plausible must be taken very cautiously. The medical certificate issued by Dr. Masagca clearly shows multiple carnal indulgence.

Upon the other hand, it is admitted by the accused that he was very familiar with Leny because she used to go to his house to collect the rentals due to her father from the concession. And they live in the same *barrio* not far from each other. Under the circumstances, it is safe to assume that the accused could have been attracted to the *girl and taking advantage of her youth and lack of experience he* won her affection and proceeded to seduce her. When the inevitable result of their relations began to show and Leny's parents became aware of her condition and demanded an explanation Leny, as could be expected from a girl of tender age and most probably to save herself from the wrath of her parents or the family from the scandal and the ignomity of the relation lied and told them that she had been the unwilling victim of the accused. The parents themselves, being only human, could not have been expected to require another explanation and thus accomplish their own humiliation before the public were only too willing to accept their daughter's explanation.

Under the circumstances, the Court is fully persuaded to believe that the crime committed by the accused is not rape but simple seduction and the various instances of sexual access recited by Leny must be considered not as separate and distinct offenses but as mere incidents in the continuing offense. Consequently, the charges contained in the four indictments must be considered as one offense."[6]

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[6] Decision, *Rollo*, pp. 28, 33-36.

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The lower court sentenced the accused "to suffer the penalty of six (6) months imprisonment and the costs."[7]

The petitioner contends that he cannot be convicted of the crime of simple seduction because this offense is not alleged in the four informations filed against him.

The issue, therefore, is whether or not the allegations in the four informations charging the accused, petitioner herein, with rape necessarily included the offense of simple seduction.

The trial court, in convicting the petitioner of the crime of simple seduction relied on the case of *People vs. Cariaso*[8] wherein this Court reversed on appeal the conviction for rape and forthwith held the accused guilty of qualified seduction.

The petitioner stressed that the allegations of the four informations only charged rape committed by means of force and intimidation which did not necessarily include the essential elements of simple seduction as defined and penalized in Article 338 of the Revised Penal Code.[9]

The contention of the petitioner is meritorious.

Indeed, the four informations do not alleged deceit which is essential in simple seduction. It is thus clear that the trial court erred in convicting the accused of simple seduction upon the basis of the four informations charging rape committed by means of force and intimidation.

The trial court apparently misappreciated the facts of *People vs. Cariaso*.[10] The allegations of the complaint in said case are:

"That on or about January 16, 1924, and in the municipal district of Siraway of the Province of Zamboanga, Philippine Islands, the

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[7] *Rollo*, p. 38.

[8] 50 Phil. 884.

[9] "Art. 338. Simple Seduction. — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*."

[10] *Supra*.

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said accused who was then and there a teacher in the public school named 'Siokon Settlement Farm School' and as such in charge of the education and instruction of the Mora Ubbang, 11 years of age, voluntarily, illegally and criminally lay with said Ubbang girl against her will. Contrary to law and within the jurisdiction of this court."[11]

The Supreme Court convicted Juan Cariaso of qualified seduction because:

"After examining the evidence we find it proven, beyond a reasonable doubt, that the accused had carnal relations with the offended party on the occasion referred to in the complaint.

"It has not been sufficiently proved that the offended party at that time was less than 12 years of age, nor that the act consummated was against her will. And, giving the accused the benefit of the reasonable doubt which we entertain on these two points, there are no grounds for declaring him guilty of the crime of rape.

"He, however, according to the allegations of the complaint, was then 'a teacher in the public school named 'Siokon Settlement Farm School,' and as such was in charge of the education and instruction of the Mora Ubbang,' and said accused, according to the testimony of Cristino Buendia, a witness for the defense, 'was in charge of the field work of the school and, at the same time, taught the second grade of said school' (p. 40, t.s.n.). And, according to the offended party's testimony at that time she was a pupil of the third grade in said school and was working in the field known as the school garden (p. 6, *Ibid*).

"Although the accused was not the teacher of the third grade class which the offended party attended and which the trial court referred to in remarking that he 'was not, however, in charge of the class which the offended party attended on the day in question,' nevertheless, he was in charge of the education of the offended party in agricultural matters, because he was in charge of the field work of the school according to the witness for the defense, Cristino Buendia.

"And we hold that this relation of the accused to the offended party is sufficient to make the seduction, which we understand was

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[11] 50 Phil. 884.

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voluntary, punishable under the provisions of article 443 of the Penal Code. The term 'teacher,' employed in this article, includes not only teachers who give academic instruction, but also those of trade schools. (Decision of the Supreme Court of Spain of December 15, 1883, vide 3 Viada, Codigo Penal, pp. 136, 137.)" [12]

In *People vs. Castro*, this Court said:

"We do not make any finding that he committed qualified seduction. Since he was definitively and squarely charged with rape, he cannot be convicted of qualified seduction. The complaint in this case is not susceptible of being construed as charging qualified seduction. It is alleged in the indictment that Castro, 'by means of force and intimidation,' wilfully had carnal knowledge of Miguela Micua against her will. That charge does not include qualified seduction. Much less can qualified seduction include rape. Hence, Castro cannot be convicted of qualified seduction under the rape charge (See Secs. 4 and 5, Rule 120, Rules of Court). The rape charges did not place him in jeopardy of being convicted of qualified seduction. He is entitled to be informed of the nature and cause of the accusation against him (Sec. 1(c), Rule 115, Rules of Court; Sec. 1(17), Art. III, Old Constitution; Sec. 1(19). Art. IV, New Constitution).

"The instant case is different from *People vs. Alvarez*, L-34644, January 17, 1974, 55 SCRA 81, where the accused was charged with having raped his thirteen-year-old sister-in-law and was convicted of qualified seduction. The charge in that case, as in the Samillano case, *supra*, although nominally for rape, contained the elements of qualified seduction."[13]

This ruling was reiterated in *People vs. Ramirez*[14] where this Court set aside the appealed conviction for rape and declined to hold the accused guilty of qualified seduction because the allegations in the information could not be construed as charging qualified seduction.

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[12] 50 Phil. 885-886. Reiterated in *People vs. Alvarez*, 55 SCRA 81 and *People vs. Samillano*, 56 SCRA 573 where both accused were charged with rape but the complaints alleged the elements of qualified seduction.

[13] 58 SCRA 473, 479-480.

[14] 69 SCRA 144.

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In the more recent case of *People vs. Paragsa*[15] this Court reversed the appealed judgment convicting the accused of rape, and held that he could not be legally convicted of simple seduction "for the same is not warranted by the wording of the information, which did not allege deceit x x x."

WHEREFORE, the decision appealed from is set aside, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio Herrera, JJ.,* concur.

FIRST DIVISION

[G.R. No. L-38649. March 26, 1979]

FACILITIES MANAGEMENT CORPORATION, J. S. DREYER, and J. V. CATUIRA, *petitioners, vs.* **LEONARDO DE LA OSA AND THE HONORABLE COURT OF INDUSTRIAL RELATIONS,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; RIGHT OF FOREIGN CORPORATION NOT DOING BUSINESS IN THE PHILIPPINES TO SEEK REDRESS. — The object of Sections 68 and 69 of the Corporation Law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. It was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order

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[15] L-44060, July 20, 1978.