

# Conflicting Decisions On The Interpretation Of Paragraph 3 Of Article 344 Of The Revised Penal Code

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Paragraph 3 of Article 344, Revised Penal Code:

*The offenses of seduction, abduction, rape and 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.*

The filing of the complaint under the above provision is jurisdictional. (*U. S. vs. de la Santa*, 9 Phil., 22; *U. S. vs. Bautista*, 40 Phil. 735). The law gives the offended party a preferential right by placing her in the first rank for the filing of the complaint. The complaint of the aggrieved party is sufficient and the court or judge thereby acquires jurisdiction over the person of the accused and the subject matter of the action although the offended party is under age and said complaint be presented personally by her without the intervention of her parents, grandparents, or guardian, unless she is incapable or incompetent to do so upon other legal grounds, restrictive of her juridical personality and civil capacity to appear at the hearing. This right of the offended party is not exclusive, but is successively reposed by law upon her parents, grandparents, or guardian. Justice Araullo, in interpreting section 1 of Act 1773, which pro-

vision is similar to the article in question, said: "If the offended party who is under age does not file or does not want to file the complaint for the prosecution of her offender, her parents, grandparents or guardian being under obligation to render protection to those who are under their power and lawful guardianship and to represent them in the exercise of all the actions which may redound to their benefit, they disjunctively and in the order they appear in said act can file said complaint." (*U. S. vs. Bautista, supra*). So also it has been held to be not only the privilege of the persons named in said paragraph 3 of Article 344 of the Revised Penal Code but also their private duty toward the offended party and their public duty toward the state to initiate this prosecution if the circumstances in their judgment and discretion make the prosecution expedient having in mind the welfare of the minor. (*People vs. Roa*, G. R. No. 40027). We see, therefore, that when the only incapacity of the offended person is based on the fact that she is under age, she may bring the action alone, and if she does not choose to, her parents, grandparents, or guardian, successively in the order named, may bring the action for her.

But up to what age is the offended person to be considered under age such that her parents,

grandparents, or guardian may file the complaint if she does not file it? The provision in question is silent on this point, and the decisions of our tribunals on the matter are irreconcilably conflicting.

The Court of Appeals held in a case that a complaint for acts of lasciviousness filed by the mother of the offended girl who is 17 years old did not confer jurisdiction upon the courts. (*People vs. Mapotol*, 35, O. G. 1153). And yet, hardly a month later, the same Court decided that when the victim is below 21 years old, her father is duly authorized to file the complaint against her abductor. (*People vs. Palafox*, 35 O. G. 1652).

The decisions of the Supreme Court not only leave the confusion as hopeless as ever, but even add to it. In the early case of *U. S. vs. Bautista*, *supra*, it was clearly inferred that when the offended party was below the age of majority, her parents, grandparents, or guardian might file the complaint for her. But in two later decisions the Supreme Court held that the complaint filed by the father of the aggrieved girl who was below eighteen years of age validly conferred jurisdiction on the Court. (*People vs. Ubay*, G. R. No. 19656; *People vs. Varela*, G. R. No. 45564). It seems to follow that even if the offended person is below the age of majority, which is twenty-one under our laws, if she is eighteen years or over her father can no longer bring an action against her violator. But, again, in another decision the Court laid down the ruling that the complaint filed by the father of the victim who was above twelve but below eighteen

was not demurrable, since "it does not appear that she had reached either age of consent or her legal majority." (*People vs. Roa*, G. R. No. 40027).

When, therefore, does the right of the parents, grandparents, or guardian to prosecute the offender cease? In other words, when does the law leave to the offended party the sole and exclusive right to file the complaint? When we consider that it is the proper filing of the complaint under said Paragraph 3 of Article 344 of the Revised Penal Code that grants power to the courts to try persons accused of the crimes mentioned therein, then we must submit that a definite ruling on the point in question is imperative.

And we beg to submit, further, that the more tenable of the various decisions of the courts on this matter is that which may be inferred as laid down in the case of *People vs. Ubay* and *People vs. Varela*, *supra*; that until the offended party has attained the age of eighteen, either she alone, or her parents, grandparents, or guardian, successively in the order named, may prosecute her offender; but when she has reached eighteen years or over only she can file the complaint. Under our laws twenty-one is the age of legal majority, and unless otherwise incapacitated, anyone at that age or over is fully competent to contract obligations and to appear in court without necessity of a guardian. But for the purposes of the prosecution of crimes against chastity the legal incapacity of the offended person to file a complaint is not, nor has it been expressly stated, the incapacity by reason of non-age of the offended

girl, but by reason of any other legal or physical impediment determinative of the restriction of her juridical personality. (*U. S. vs. Cruz and Reyes*, 20 *Phil.* 363; *U. S. vs. Narvas*, 14 *Phil.*, 410; *U. S. vs. Ortiz and Regalado*, 19 *Phil.*, 174; *U. S. vs. Bautista*, *supra*). Although, therefore, there is no doubt that a girl twenty-one years of age or over must file the complaint on her own initiative and in her name in order to validly confer jurisdiction upon the courts, it does not necessarily follow that at any time before then her parents have the right to file the complaint if she does not file it.

For just as the law has recognized in an individual who has attained the age of majority, and not otherwise incompetent, full capacity and freedom to exercise rights, perform duties, and contract obligations; so also has the law, in certain cases, recognized in a woman of eighteen, or over, sufficient maturity and judgment to decide problems pertaining to her personal and moral life. Hence a girl of eighteen may marry with-

out necessarily complying with the formal requisite of securing her parents' consent to the marriage. (Act 3613, Sec. 10). So, also, the Revised Penal Code, in defining the crimes of qualified seduction, simple seduction, and abduction with consent, provide among the essential requisites therefor that the victim be above twelve and below eighteen years of age. (Act 3815, Secs. 337, 338, 343.)

If a girl at eighteen is considered old enough to understand the nature and consequences of marriage such that she does not even have to obtain the consent of her parents to enter into it; if at that age she is presumed to be no longer susceptible to cajolery and deceit such that violations of her chastity cease to be the crimes they would otherwise be, it would seem but logical that there be granted to her, upon reaching that age, the same amount of reason and discretion such as to exclusively vest in her the right to determine whether or not to prosecute her violators.