



Do Amaral, Carlos Alberto v. Appeals Court of the State of São Paulo

S.T.F. Ct. Report No. 1.636-2, Relator: Marco Aurelio, 10.9.1991, 206, Diário da Justiça[D.J.], 04.10.91 (Braz.).

Country: Brazil

Region: Americas

Year: 1991

Court: Supremo Tribunal Federal [Federal Supreme Court]

Health Topics: Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to due process/fair trial, Right to privacy

Facts

A defendant in a rape case petitioned a writ of Habeas Corpus before the Federal Supreme Court against the Court of Appeals decision because the survivor refused to be subject to physical exam and the jurisprudence gives extra weight to witness evidence in absence of such exam. The second argument was that the Court of Appeals considered a conviction based only on the word of the victim, who works at a massage parlor as a prostitute.

Decision and Reasoning

Habeas Corpus was denied. The Court stated that, since the victim was not a virgin, but married and had children, the physical exam was dispensable. The existence of semen in the vagina is not essential for the configuration of the crime, which requires forcing a woman to have sexual intercourse through violence. The Court stated that evidence from witnesses was difficult to obtain, since this was an event rarely seen by others. The Court also ruled that for purposes of defining whether a crime took place, the woman's daily conduct was not to be examined. The fact that the victim was a sex worker meant nothing, especially when the people who gave testimony made it clear that the perpetrator, threatening her with a firearm, forced her to walk, unclothed, to a certain room, while the other participants in the crime carried out the robbery.

Decision Excerpts

The Public Prosecutor's Office appealed the decision, and had the absolution changed into a conviction; the criminal review appeal filed was not granted. The Federal Public Prosecutor's Office gave an opinion favorable to the granting of the habeas corpus and the denial of the order. According to this opinion, the testimonial evidence showed the sexual violence and the involvement of the Petitioner and Arrestee, who, armed, consciously adhered to the illicit proposal of the material author of the rape, coercing the victim and the others present. The victim was heard during the police investigation phase, and during the trial, five witnesses confirmed the rape and the conscious and decisive participation of the Arrestee. In line with this, the refusal of the victim to submit to the corpus delicti exam cannot be considered in benefit to the perpetrator. On page 194, the Honorable Sub-Attorney General of the Republic, Dr Mardem Costa Pinto, transcribed the decision of this Court, according to which, "when the victim of the rape is a married woman, the corpus delicti exam is not necessary, especially when there is testimonial evidence regarding the fact" - habeas corpus number 67.703-7-SP Rapporteur Justice Sydney Sanches, Decision published in the Diário da Justiça of December 1, 1989, page 17.760.