

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EXPEDITO LOPEZ, ACCUSED-APPELLANT.***G.R. No. L-45084. August 31, 1984*

Ponente: FERNANDO, C.J.

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The feeling of sympathy for complainant in this appeal from a conviction for rape, then a girl of thirteen at the time of the alleged offense, was a natural reaction. Moreover, the accused, appellant Expedito Lopez, was the live-in paramour of her aunt, elder sister of her mother de facto, if not de jure, a relative. A careful and thorough examination of the records of the case reveals, however, that her testimony was insufficient. Neither force nor intimidation was shown. If this were a case of statutory rape, there would have been no need for such evidence. She was, however, more than twelve years of age. Lacking such proof, the constitutional presumption of innocence^[1] comes to the rescue of appellant. We reverse.

Complainant testified that on June 11, 1973, at around one o'clock in the afternoon, she was at the house of her maternal aunt, Francisca Tuazon, who was living with appellant Expedito Lopez.^[2] He borrowed P0.60 from her and asked her to buy cigarettes for him.^[3] She did so and gave him the cigarettes.^[4] He then called her to go inside the room where he was.^[5] After closing the door, he held her hand and laid her on the floor and took a pillow and a blanket.^[6] She was quite nervous.^[7] He then covered her face with the blanket and went on top of her.^[8] Then her panties were removed and his trousers too.^[9] That enabled him to perform the sexual act.^[10] As if aware of the unsatisfactory character of their testimony, she testified at a later stage that she was a little bit suspicious of his motive.^[11] Nonetheless, she obeyed him as he told her that he would tell her something.^[12] There were no other people inside the house, although her grandmother was asleep downstairs.^[13] After appellant had carnal knowledge of her, he did nothing further.^[14] She ran to the street, waiting for a ride to Laoac.^[15] When asked how she felt, she answered her private parts ached. To the question of the lower court Judge about her feelings, she replied: "My feeling was also hurt."^[16] Again when the Judge asked her why she proceeded to Laoac, she replied: "To tell my mother what happened."^[17] That was done.^[18] Then her mother and a sister took her to Dagupan City where she was examined by Dr. Fe Manaois.^[19] According to such medical examination: "This is to certify that Miss Eligrace Abalos, 13 years of age, female, single, Filipino, and a resident of Laoac, Manaoag, Pangasinan, has been attended in this hospital on June 11, 1973 at 6:13 P.M. for: - Patient conscious, coherent, cooperative, ambulatory; - Not menstruating; - P.E. apparently no external signs of physical injury; - Abdomen - apparently no abnormal findings; - External genitalia - hymen reveals old healed laceration at 3:00 and 9:00 o'clock; - Internal Examination - Vagina admits one (1) finger easily, two (2) with difficulty, cervix closed, firm and non-tender, body of uterus not enlarged adnexae - negative, slight white vaginal discharge; - Vaginal smear for spermatozoa; - Vaginal Smear - Positive for spermatozoa * * *."^[20]

On cross-examination, after being reminded of her testimony that before the alleged rape she was called by appellant to buy cigarettes for him and that she did so, she was asked if it was the time when she saw her grandmother asleep in the lower floor of the house, a question she answered in the affirmative.^[21] She then went

on to state by way of reply to a line of questions that he had "a hard time inserting his [male organ] into [her] private part." [22] The whole incident lasted for thirty minutes, but she could not remember how long a time elapsed before there could be a penetration. [23] She testified that she was in tears. [24] There was nothing she could do because her "two hands were held by him." [25] She likewise recalled the pain she had to endure. [26] She added that while removing his trousers with one hand, appellant held her with the other hand. [27] The Presiding Judge asked whether he used both hands to control her, and she answered: "Yes, sir." [28] He did not have a gun or any other weapon. [29] When asked why she did not cry for help when she knew all the while that her grandmother was down-stairs, she answered that "I was afraid when he told me that he will kill me if I will shout." [30] When further reminded by the Court that he had no weapon at that time, she replied, "he might strangle me." [31] The blanket, according to her when the Judge referred to it, covered her face even before he went on top of her. [32] As it was flimsy and transparent being a flour sack, she could see what the accused was doing. [33]

Now for the appellant's version. In his direct testimony, after admitting that he was the accused and that he knew complainant, he stated that he was presently living, without the benefit of marriage with Francisca Tuazon, her aunt. [34] He denied the truth of her testimony that on June 11, 1973 in the early afternoon, he brought her into a room in the house of Francisca Tuazon, locked the room and then had a sexual intercourse with her. [35] He affirmed he did no such thing. [36] He likewise denied that he used force or intimidation. [37] He testified that on June 11 or at any other time he did not have carnal knowledge of complainant. [38] He admitted that on that particular day, she along with her first cousin Evangeline, and her grandmother, Corea, took lunch with him. [39] He then identified Corea as his mother-in-law, being the mother of Francisca Tuazon and Imelda Abalos, her younger sister and mother of complainant. [40] Together with Evangeline, she left the house after lunch. [41] He did not know where they went. [42] Appellant remained for more than twenty minutes, conversing with his mother-in-law. [43] Then he went down and proceeded to his piggery, leaving the latter. [44] After around twenty to twenty-five minutes with Felizardo Viloria, a helper, he went to his house to sleep in the balcony. [45] He did not wake up until around five o'clock or past five o'clock. [46] After being reminded of his denial that he was guilty of rape, he was asked the reason why she accused him. He answered that he suspected that she had ill-will against him as her mother seemed to have a great liking for him but he did not marry her, having chosen her elder sister for his mate. [47] When the lower court Judge, after his denying anew that he did not have a carnal knowledge of complainant, commented that perhaps what he meant was that he did not use force, he answered: "No Ma'am." [48]

As stated at the outset, the constitutional presumption of innocence had not been overcome. The testimony of complainant, even if viewed in the most favorable light, did not indicate that force was used when the sexual act was committed. Lacking such indispensable element, there was no need for the accused to testify. A motion to dismiss would have sufficed. It is of the essence of the accusatorial system that the burden of demonstrating guilt falls on the prosecution. The standard to satisfy the constitutional requirement of the presumption of innocence being overcome is that culpability be shown beyond reasonable doubt. [49] Accordingly, the judgment, as noted, must be reversed.

1. For a conviction of rape to be affirmed, it must be shown that force or intimidation was utilized for the carnal knowledge of a woman. [50] What does the evidence for the prosecution show? Complainant was asked to buy cigarettes with appellant borrowing the amount of P0.60 from her. She did as she was told. Upon her return, she was then asked to go inside the room where he was. He closed the door, held her hand, laid her on the floor and took a pillow and a blanket. Then he went on top of her, removed her panties and his trousers too, and performed the sexual act. That was all. Clearly then, there was lacking the element of force and intimidation. Rather there was obedience on her part to what was asked of her. She testified that she was a little bit suspicious of his motive

but nonetheless there was no resistance. Instead there was acquiescence. The law requires that there be evidence of force or intimidation. Such evidence is lacking. As noted in the ponencia of Justice Torres, in the first leading case on the subject, *United States v. de Dios*,^[51] where no struggle ensued and no resistance was offered by complainant, her assent being shown tacitly by her yielding as shown by her "quietude and passivity", no conviction is proper.^[52]

2. It is undisputed that the grandmother of complainant, Corea Rovillos, was sleeping downstairs at the same house. It was, therefore, to be expected if there was resistance on the part of complainant that she would have cried for help. Her grandmother certainly could see to it that no such act could have been perpetrated. She did not do so. There was no cry for help. There is pertinence to this excerpt from *People v. Belmonte*,^[53] where the lower court was reversed it being shown that complainant "did not shout to awaken her sister Julita who was just sleeping nearby."^[54] In another case, *People v. Jervoso*,^[55] the verdict again was one of reversal of a conviction by the lower court it appearing that "during the entire incident, even after appellant had returned his gun to its holster, complainant did not shout for help or make any outcry, although there were several houses close to the scene of the crime."^[56] What is worse is that in this case, the grandmother, Corea Rovillos, even testified for the defense explaining a possible motive for the action having been instituted by the mother of complainant: "The reason why is that because these two sisters have grudge against each other because Expedito courted the older sister and did not mind the younger one and so that was the result of the misunderstanding until it went to the extent where there were many branches. (sic)"^[57]

3. From the foregoing, one conclusion emerges. The conviction should be set aside, the guilt of appellant not having been proved beyond reasonable doubt.

WHEREFORE, the appealed decision of the lower court dated July 30, 1976 is reversed and the appellant, Expedito Lopez, is acquitted.

Makasiar, Aquino, Escolin, and Cuevas, JJ., concur.

Abad Santos, J., see dissenting opinion.

[1] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[2] Transcript of Stenographic Notes, Session of July 9, 1974, 4.

[3] Ibid.

[4] Ibid.

[5] Ibid, 5.

[6] Ibid.

[7] Ibid.

[8] Ibid, 7.

[9] Ibid.

[10] Ibid, 8.

[11] Ibid.

- [12] Ibid.
- [13] Ibid, 9.
- [14] Ibid, 10.
- [15] Ibid.
- [16] Ibid.
- [17] Ibid.
- [18] Ibid.
- [19] Ibid, 12.
- [20] Exhibit C.
- [21] Ibid, 17-18.
- [22] Ibid, 32.
- [23] Ibid.
- [24] Ibid, 33.
- [25] Ibid.
- [26] Ibid, 33-34
- [27] Ibid, 24.
- [28] Ibid.
- [29] Ibid.
- [30] Ibid, 35.
- [31] Ibid.
- [32] Ibid, 38.
- [33] Ibid.
- [34] Ibid, Session of May 8, 1976, 2.
- [35] Ibid, 3.
- [36] Ibid.
- [37] Ibid.
- [38] Ibid, 4.
- [39] Ibid.
- [40] Ibid.
- [41] Ibid.
- [42] Ibid.

[43] Ibid, 6.

[44] Ibid.

[45] ibid, 7.

[46] Ibid.

[47] Ibid, 8.

[48] Ibid, 9.

[49] Cf. *People v. Dramayo*, L-21325, October 29, 1971, 42 SCRA 59.

[50] Article 335 of the Revised Penal Code insofar as relevant reads: "ART. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

[51] 8 Phil. 279 (1907).

[52] Cf. Ibid, 282. Both Pacheco and Viada, well-known commentators were cited. According to Pacheco: "The crime of rape is not to be presumed; consent and not physical force is the common origin of acts between man and woman. Strong evidence and indications of great weight will alone support such a presumption." The well-known commentator Viada expresses a similar opinion in the following words: "Should the records disclose that some hesitation was shown by the woman or that she had contributed in some way to the realization of the act, this will perhaps constitute an offense very different from that of rape." Ibid, 282-283.

[53] G.R. No. 58199, July 5, 1983, 123 SCRA 335 (per Relova, J.)

[54] Ibid, 340.

[55] G. R. No. L-36530, September 29, 1983, 124 SCRA 765 (per Escolin, J.)

[56] Ibid, 771. The following decisions of recent vintage speak to the same effect: *People v. Estacio*, L-54221, January 30, 1982, 111 SCRA 537; *People v. Apat*, L-28323, June 29, 1982, 111 SCRA 620; *People v. Sison*, L-45857, October 27, 1983, 125 SCRA 369; *People v. Olalia*, G. R. No. 50669, March 12, 1984, 128 SCRA 139.

[57] T.s.n., Session of May 17, 1976, 128. The mother of the complainant is the younger sister. Expedito Lopez is the paramour of the older sister.

DISSENTING OPINION

ABAD SANTOS, J.:

I cannot give my assent to the fallo that "the appealed decision of the lower court dated July 30, 1976 is reversed and the appellant, Expedito Lopez, is acquitted."

The ponencia of the Chief Justice stresses that the testimony of Eligrace Abalos who claimed to have been raped "fell short of that degree of persuasiveness as to the element of force being used."

It may be true that actual force was not employed on Eligrace but I submit that she was intimidated to submit to the lust of the appellant and the law is clear that rape is committed not only by the use of force but by intimidation

as well. (Revised Penal Code, Art. 335 (1).)

The testimony of Eligrace reveals very clearly the use of intimidation:

"ATTY. FERRER:

"Q And when he was removing his pants, he needs his two hands to hold on?

"A He hold me with one hand, and the other he was removing his pants.

"Q And while he was doing this, he was already on top of you?

"A He was already on top, sir.

"Q What was he wearing then?

"A Short pants.

"COURT:

"Q He used his both hands to control you?

"A Yes, sir.

"Q His left hand control your right hand and the left hand?

"A Both of his hand. His right hand, he was re-moving his pants.

"Q You mean to say he used his right hand in removing his pants, and his left hand, he used it to control your two hands. His right hand was the one he used in removing his pants?

x x x x x x x x

"A Yes, sir.

"COURT:

"Q Why did you not cry for help when he was trying to abuse you as you said?

"A Because I was afraid when he told me that he will kill me if I will shout. (pp. 34-35, tsn, July 9, 1974)"

It should be noted that Eligrace was then barely thirteen years old. She had just graduated from elementary school and was younger than any of the three children of the accused. Upon the other hand the accused was then already forty-two years old. He was the live-in paramour of Eligrace's aunt, Francisca Tuazon; Francisca was already his second paramour; and he had sired three children. In the light of these facts, there can be no doubt that the accused had a moral ascendancy and influence over Eligrace such that he could easily intimidate her. And jurisprudence holds that where the girl is of a tender age while the accused is one who exercises strong moral and physical influence over her, the degree of force or intimidation need not be acute. Thus in *People vs. Modelo*, L-29144, Oct. 30, 1970, 35 SCRA 639, 648, this Court held:

"[I]t is clear from the testimony of the offended party that appellant, a full grown man of more than 40 years of age, employed force upon her. She held her by the shoulders; then forced her to lie down, and then took off her panty. In the second place, we don't know what kind of 'resistance' was expected to be offered by a young innocent 13-year old girl against the common-law husband of her mother, of whom she must have been so much awed that when he told her not to tell her mother about what he had done to her, she meekly answered: 'Yes, father.'"

The Chief Justice, then an Associate Justice, concurred in the decision.

It is unthinkable that Eligrace would willingly yield her body to the accused considering her tender age and considering further that he was the "husband" of her aunt. And the flat denial of the accused that he did not have sex with Eligrace is belied by the fact that the medical examination which was immediately conducted on her person revealed that she was positive for spermatozoa. And since Eligrace could not have contrived her story because she promptly informed her mother of her plight, the alien matter found in her body could have come only from the accused.

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