

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. IGNACIO JOVEN, DEFENDANT AND APPELLANT.*G.R. No. L-36022. May 22, 1975*

Ponente: FERNANDO, J.

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Fate apparently dealt a low blow to the Orbeso family when on the evening of November 30, 1970, the daughter, Ruby, not even fifteen then, alone in the rented room in a house at Agdao Beach, Davao City, where she was living with her mother, who was then away for the night, was, according to her complaint for rape, compelled to submit twice because of force to the sexual advances of the accused Ignacio Joven, also a boarder in the same house. There was no denial of the acts of intercourse having taken place, but the accused would insist that complainant did so willingly, the explanation, according to him, being that she was his sweetheart. He would stress likewise his continued presence in the room until the dawn of the next day and the absence of any outcry on her part, which could have been heard by those staying in the adjoining rooms. His testimony as to the absence of any force being employed was corroborated by another boarder, who occupied the adjacent room, and the owner of the house itself. The lower court preferred to believe the girl's version and sentenced him to reclusion perpetua. The severity of the penalty inflicted under the circumstances where, as is not unusual in rape cases, there is a conflict of testimony as to what actually did transpire, led us to peruse with greater care the records of the proceeding. There is of course the sympathy naturally aroused by the sad plight that befell this young girl of tender years. At the same time, it cannot be gainsaid that there is the constitutional presumption to innocence which can be overcome only by proof beyond reasonable doubt.[1] As will be more fully explained, a careful scrutiny of testimony coming from the complainant and the accused fails to yield the conclusion that a finding of guilt is warranted. We have to reverse.

The disparity in the versions offered by the contending parties cannot obscure certain indubitable facts. The accused did not by the use of force or deceit gain entrance into the rented room where the sordid incident took place. There was no denial of the version by him and his two witnesses that earlier in the evening the complainant was with a group, included in which was the accused, engaged in drinking and light banter. It could very well be that the euphoric feeling induced by this young girl's imbibing the tuba wine led to the relaxation of what could be inhibiting factors. Once inside the room, and with the accused apparently being a suitor whose advances had not been spurned, to put it at its mildest, it was not unexpected that sexual intimacies would take place. It could very well be that the young lady did not initially agree to indulge in an act of intercourse. Under the circumstances, however, with coaxing and cajoling on the part of the accused, there was nothing unlikely in the stage of sexual congress being reached. What is more, it happened twice. There could have been a third time, except that it was foiled because the chair on which it was attempted gave way due to the combined weight of the participants. The man had no weapon with which to intimidate the complainant. There were no intimations that there was opposition on her part. She did not yell or scream. The two witnesses on either side of the room, separated only by a thin plywood partition, certainly would have been aware of any shouts of protest. One of them testified to having heard heavy breathing. That certainly was not indicative of rape. Moreover, to repeat, the accused stayed

until dawn. Even early the next morning, they were seen together.

It is to be admitted that this recital leans more towards the narration of the accused and his two witnesses rather than on that of complainant. This is so partly because there was no attempt to rebut their testimony, the provincial fiscal having rested the case after the accused left the witness stand. In the light of the above, the quantum of proof necessary to overcome the constitutional presumption of innocence was not met. Hence, acquittal ought to have been the proper verdict.

1. The accused has in his favor the presumption of innocence. That is a mandate of the fundamental law. It may be noted that even when the previous Organic Act did not so provide, a defendant, according to the early case of *United States vs. Asiao*,^[2] decided in 1902, with Justice Torres as ponente, "must be presumed to be innocent until [his] guilt is proven by satisfactory testimony and even in case there is a reasonable doubt as to [his] innocence [he is] entitled to acquittal."^[3] The burden of proof is thus on the prosecution to demonstrate guilt. Every vestige of doubt having a rational basis must be removed. More specifically, where the offense charged is rape through force, there must be a showing of compulsion being resorted to and coercion being employed. The element of voluntariness must be lacking. If there be an indication of willingness, even if half-hearted, the complaint must be dismissed. "It is well-settled," according to Chief Justice Moran in *People vs. De Castro*,^[4] "that when 'some hesitation was shown by the woman, or that she had contributed in some way to the realization of the act,' there is no rape."^[5] That is a doctrine that goes back to *United States vs. De Dios*,^[6] a 1907 decision. Justice Torres, who penned the opinion, made use of the above formulation of Viada as to the presence of some hesitation on the part of the complainant or her contributing in some way to the realization of the act. In addition, he cited Pacheco, whom he referred to as a "learned commentator."^[7] Thus: "'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.'"^[8] The most careful scrutiny of the records of this case, to repeat, fails to reveal the existence of that kind of evidence that would suffice to overcome the presumption of innocence.

2. The opinion of the Court is not to be misinterpreted. It goes no further than to acknowledge that the proof submitted on behalf of complainant did not measure up to the exacting standard required in cases of this nature. In the light of the applicable constitutional provision and the authoritative precedents requiring full respect for the constitutional rights of an accused, a reversal is called for. That is all that the decision amounts to. What cannot be ignored is that while the accused is not legally culpable, what he did was morally reprehensible. He was in his thirties, a married man, although separated from his spouse for the last five years. He took unfair advantage of a susceptible young girl still in her teens, living in a drab environment, hopeful of an improvement in her situation, likely to yield her trust and her person to a more experienced character, one knowledgeable in the ways of the world. The accused of course did impress on the lower court his good faith, based on the erroneous belief that he was not precluded from a second marriage as the existing marital bonds would be dissolved once the seven-year period of the absence of his wife would be completed. Even then, he ought to have refrained from conduct that would leave her good name and her reputation in tatters. As a matter of fact, her insistence that she was not a voluntary participant to the sexual act but a victim of force employed by the accused could be ascribed to her sense of shame and her desire that the esteem in which she was held should not be diminished. Also, there was the fear of the mother, who herself was not blameless for leaving her daughter alone and unprotected that fateful evening. This is a case then where complainant is to be pitied, certainly not to be censured. Nonetheless, there is nothing that the penal law could do for her under the circumstances. The offense of rape through force was not shown to have been committed.

WHEREFORE, the decision of the lower court of January 25, 1972 finding the accused guilty of the crime of rape

and sentencing him to reclusion perpetua is reversed and set aside. The accused, who has been in custody ever since his arrest, is entitled to be released forthwith.

Barredo, Antonio, Aquino, and Concepcion Jr., JJ., concur.

[1] The present provision on constitutional presumption to innocence reads as follows: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified." Art. IV, Sec. 19 of the Constitution. The presumption to innocence in the same language was provided for in Art. III, Sec. I, par. 17 of the 1935 Constitution.

[2] 1 Phil. 304.

[3] Ibid, 306.

[4] 84 Phil. 118 (1949).

[5] Ibid, 121.

[6] 8 Phil. 279.

[7] Ibid.

[8] Ibid. Cf. *People vs. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81 and *People vs. Reyes*, L-36874-76, Sept. 30, 1974, 60 SCRA 126.

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