

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ENRIQUE EGUAC, DEFENDANT-APPELLANT.*G.R. No. L-36082. December 29, 1977*

Ponente: FERNANDO, J.

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The main reliance in this appeal from a conviction for the crime of rape by Enrique Eguac is the constitutional presumption of innocence.[1] It is the contention of counsel that the proof coming primarily from the offended party falls short of the standard of demonstrating guilt beyond reasonable doubt. It is true that there is need to scrutinize most care-fully the version as testified to by the complainant to avoid the possibility of injustice being committed. A conscientious appraisal of the transcript as well as the other evidence presented yields the same conclusion arrived at by the lower court. There is more than ample justification for the finding that rape was indeed committed by appellant. In addition to complainant's recital of the sexual abuse inflicted on her, there was the impartial testimony coming from the doctor who conducted the physical examination. The constitutional presumption of innocence clearly has been overcome. A reversal is far from indicated. We affirm, with modification as to the pecuniary penalty imposed.

It appears from the testimony of the complainant Fermina Manginsay that on the afternoon of March 9, 1970, she was selling tuba at Sitio Cogon, in the barrio of Tubod, San Juan, Siquijor.[2] After about an hour, at 5:30 of the same afternoon, she went home accompanied by appellant Eguac, her partner in that business and her brother-in-law, his wife being her younger sister.[3] They took a shorter way, a footpath, and upon reaching the middle of such trail he asked her to stop as he had something to tell her, all the while holding her by the arm.[4] Not agreeable to such a suggestion, she managed to free herself and to run away from appellant.[5] He soon overtook her, however, and notwithstanding her efforts she was held firmly by him.[6] She was pushed down and when she fell to the ground, he placed himself on top of her. [7] Once again, she was able to free herself momentarily and to get up, but he never let go of her completely and was able to push her down once more. [8] He placed himself anew on top of her, at the same time warn-ing her not to shout for help — although she managed to do so in a loud voice —because if she did she would be killed as he had a hunting knife with him.[9] She did continue struggling to escape from him, but she did not succeed.[10] He kissed her twice and pulled off her panties; after which he was able to perform the sexual act.[11] Then when he was through he told her not to tell her husband about what happened but she said she was going to report the occurrence.[12] She immediately went to see the Chief of Police, Leon Ontolan, of the Municipality of San Juan who sent a policeman to apprehend appellant, and it was done on the evening of the same day, March 9, 1970 at around 10:00 o'clock.[13] Thereafter they went to the municipal building of San Juan, and, upon being asked by the Chief of Police what appellant did to her, she answered that she was raped.[14] From the municipal building, they went to a hospital at Siquijor where she was examined medically by Dra. Antonia Igana Ladion. She suffered wounds or abrasions in her buttocks, right hip and right foot.[15] She was given a more thorough examination the next day, March 10, 1970, by the same doctor.[16]

The first witness called was Dra. Antonia Igana Ladion who performed the medical examination on the complainant not only on the evening of the occurrence, March 9, 1970, but likewise the next morning. As noted in the medical certificate prepared by her after such examination, complainant suffered from linear and multiple abrasions in the sacro-lumbar region, upper back and face; contusions at the right hip as well as the left wrist.[17] Also, there was this finding in such medical certificate: "Vaginal and cervical smears reveal occasional sperm cells and a small grain of sand." [18] The lady doctor was likewise questioned extensively by the court. She explained that it was she who conducted the examination of complainant as she "was the physician on duty that night, your Honor." [19] She was examined because "she came to the hospital claiming that she was raped." [20] That was her request. [21] She informed the doctor "that earlier that night, she was walking home from the tabo; that she was attacked by the person who was with her." [22] As to the finding of vaginal and cervical smears revealing occasional sperm cells and a small grain of sand, she explained further: "The sperm cells, we already found under the microscope. We got the smear and examined it under the microscope because that cannot be seen by the naked eye." [23] She affirmed that such sperm cells were extracted from "the cervical smear." [24] It was taken from "the vagina." [25] When asked as to what is the implication of such sperm cells being found therein, this was her answer: "That shows that a male has introduced the same." [26]

The decision convicting appellant of the crime of rape and sentencing him to reclusion perpetua was premised on the above evidence, the lower court accepting the version of the complainant rather than that offered by the defense. Appellant admitted that sexual intercourse was in fact committed, but it was his submission that there was consent on the part of the complainant. The lower court, however, was not convinced that the sexual act was not accompanied by force or intimidation. A perusal of the sixteen-page brief of appellant is quite revealing. The defense was hardly touched upon. Instead, as was noted at the outset, the emphasis in the first three errors assigned was the failure of the prosecution to prove the guilt of appellant beyond reasonable doubt, as a result of which the constitutional presumption of innocence should prevail. Also, as previously set forth, such a contention does not suffice for a reversal.

1. An excerpt from a recent decision, *People v. Andal*, [27] finds relevance: "There would appear to be more than sufficient basis to warrant the conclusion that the constitutional presumption of innocence cannot be availed of by the appellants. The medical findings constitute mute but eloquent proof of the ordeal to which she was subjected. She survived the grilling attendant to an intensive cross-examination; at the most, only minor inconsistencies were revealed. The one undeniable fact was that she was the unfortunate victim of a brutal act. * * * The constitutional presumption of innocence must yield to what had been so amply and persuasively demonstrated." [28]

2. More specifically, the first error assigned harped on the force employed by him not "being sufficient to vitiate her consent." [29] Then the brief went on to state: "In order that a crime of rape can be committed, complainant must prove that anent her verbal refusal, she exerted or showed physical struggle taxing her powers to the utmost, so it may not be fairly inferred that she was just concerned with saving appearances than with defending her honor." [30] Two recent cases by this Tribunal were thus ignored by him. In *People v. Gan*, [31] this Court, through Justice Antonio, held: "It is an accepted rule that the force employed in rape need not be so great nor of such character as could not be resisted. It is only that the force used by the accused be sufficient to enable him to consummate his purpose." [32] In *People v. Olden*, [33] the then Justice, now retired Chief Justice, Makalintal, reiterated such a view: "Appellants point out that even assuming that they had sexual intercourse with Edwina Maranga, there is no evidence that they employed force or intimidation. It is true that she could have shown greater physical resistance to their advances than she actually did. Another woman would probably have tried to fight them off, even to the jeopardy of life or limb. But not all women are of the same mettle. What is clear and indisputable here is that Edwina was far from being a willing victim, and if her protestations lacked vigor and vehemence, it was obviously because of the fact that some of the men who took turns with her were armed with

guns and others with bolos which they displayed to cow her into submission. If there was no appreciable force employed, there was definitely intimidation." [34] There was reference in the brief of appellant to *United States v. Villarosa*, [35] a 1905 decision. That was a mistake on his part. It suffices to cite this portion of the decision of Justice Torres as ponente: "It is a doctrine well established by the courts that in order to consider the existence of the crime of rape it is not necessary that the force employed in accomplishing it to be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose which he had in view. (Judgment May 14, 1878, supreme court of Spain.) A simple reading of the medical certificate and the testimony of the physician who examined and attended the outraged girl fixes the measure of the character and class of force used by the defendant in the act of rape." [36]

3. The last sentence of the Villarosa opinion is particularly apropos. For the coherent straightforward testimony of complainant was reinforced by the certifications of the attending physician. [37] It is quite obvious that she was subjected to physical force. How else account for the abrasions, linear and multiple in the sacro-lumbar region, upper back, arms and face; the contusions in the left wrist and the right hip; as well as the shallow wound in the left sole? As was certified to by the attending physician likewise, the injuries would require from five to nine days to heal in the absence of complication. The defense that the sexual act was entered into freely and voluntarily was thus completely negated. There is more-over, the attendant circumstance, as noted in the lower court decision, that the complainant was so grievously offended by what was done to her that immediately upon reaching her home "she wasted no time and reported directly to the Chief of Police of San Juan who was also residing in Tubod on the very night when she arrived there." [38]

4. The futility of inspiring belief in the defense offered that there was consent on the part of complainant is thus apparent. Nor should a semblance of plausibility be imparted to such a defense by the laborious effort to show the alleged improbability of what was testified to by her. All that is needed to render unmistakable its rather flimsy character is to go over her recital as to what did transpire, to which she adhered notwithstanding an intensive cross-examination. Appellant likewise did attempt to have the lower court look upon the sexual act as devoid of the element of force by his testimony that it was complainant who initiated him one evening in 1962, eight years before this occurrence, in the mysteries of sex, as a young man of sixteen, then living in her house upon the request of her husband who had to go to Mindanao. [39] Nor was that the only time, so again he did testify, as in 1964 there was a repetition of such intimacy, this time likewise when the two of them were living in the same house, the husband being providentially absent. [40] If such were indeed the case, still the defense that there was no force was not made out for the only question involved in this prosecution was whether on the night of March 9, 1970, he was guilty of raping complainant. In the light of the evidence of record, the conclusion that rape was committed was more than fully justified, the constitutional presumption of innocence not sufficient to call for exculpation even as reinforced by the assertion that previously such favors were enjoyed by him with the acquiescence, it not at the instigation, of complainant. In the light of the above, there is no warrant for reliance on the constitutional presumption of innocence.

5. There is, to quote from the recent decision of *People v. Villamala*, [41] "less than full awareness of the principle invariably followed by this Tribunal that on the question of the credence to which the conflicting versions of prosecution and defense are entitled, the answer given by the trial court is generally viewed as correct and thus entitled to the highest respect." [42] It is worthwhile repeating that even in the absence of such a well-settled doctrine, a fair and impartial appraisal of the evidence fails to yield the conclusion that appellant is entitled to acquittal. The facts as proven justified the decision now sought to be reversed.

6. The last error assigned to the effect that the lower court erred in attaching legal significance to a statement of appellant not under oath elicited from him without the aid and assistance of a lawyer need not be discussed. The

conviction of the accused was predicated on the testimony of complainant as well as that of the attending physician. There was more than sufficient proof beyond reasonable doubt for a finding that the accused was guilty of the crime of rape. It is true that reference was made in the decision to a statement of appellant on the night he was apprehended. That was all. It certainly was not made the basis for the conclusion reached. Even on the assumption, therefore, that an error was committed, it was a harmless error. The evidence credible and competent on which a finding of guilt could be made was more than sufficient.

WHEREFORE, the decision of October 18, 1972, finding appellant guilty beyond reasonable doubt of the crime of rape as defined and penalized in the third paragraph of Article 335 and sentencing him to reclusion perpetua is affirmed, the only modification in the aforesaid decision consisting of increasing the indemnity to complainant Fermina S. Manginsay to P12,000.00. Costs against appellant.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.
Santos, J., on official leave.

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

[2] T.s.n., Session of May 4, 1972, 3-4.

[3] Ibid, 4.

[4] Ibid, 5.

[5] Ibid, 5-6.

[6] Ibid., 6.

[7] Ibid.

[8] Ibid, 6-7.

[9] Ibid, 7.

[10] Ibid, 7-8.

[11] Ibid, 8.

[12] Ibid.

[13] Ibid, 10.

[14] Ibid, 11.

[15] Ibid, 12.

[16] Ibid, 13.

[17] T.s.n., Session of February 5, 1971, 5-6.

[18] Ibid, 9.

[19] Ibid, 14.

[20] Ibid, 15.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25] Ibid, 16.

[26] Ibid.

[27] L-39763, March 8, 1976, 70 SCRA 30.

[28] Ibid, 35-36.

[29] Brief for Appellant, 6.

[30] Ibid, 6-7.

[31] L-33446, August 18, 1972, 46 SCRA 667.

[32] Ibid, 677.

[33] L-27570 and 27571, September 20, 1972, 47 SCRA 45.

[34] Ibid, 52-54,

[35] 4 Phil. 434.

[36] Ibid, 437.

[37] Cf. Vide, Exhibits A and B.

[38] Decision, 6.

[39] T.s.n., Session of May 6, 1972, 47-48.

[40] Ibid, 48-50.

[41] L-41312, July 29, 1977.

[42] Ibid. Cf. *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 239; *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Cawili*, L-30543, July 15, 1975, 65 SCRA 24; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37148, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574.

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