

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICANOR ALVAREZ, DEFENDANT-APPELLANT.***G.R. No. L-34644. January 17, 1974*

Ponente: FERNANDO, J.

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The existence of grave misgivings as to appellant Nicanor Alvarez committing the crime of rape for which he was sentenced to reclusion perpetua, misgivings engendered by the telltale circumstances of time and place, caused hesitancy on the part of this Tribunal to grant his petition to withdraw his appeal, submitted after the briefs for both the State and the defense had been filed and the case was ready for decision. More specifically, it is not easy for the judicial conscience to be at ease with the conclusion that his guilt had been shown beyond reasonable doubt on such tenuous and ambiguous proof as that of the offense having been perpetrated on June 6, 1969 in a small room where appellant, his wife, his infant son and the offended party, his sister-in-law, had retired for the night, without any outcry or visible sign of protest on her part, without any weapon to intimidate her being used, and what is more, without her reporting such alleged assault to her parents until January of 1970 when she was close to her eighth month of pregnancy. It may further be remarked that such an appraisal of the matter was aided considerably by the well-documented, both as to facts and the law, and, therefore, highly persuasive, brief of counsel de oficio, the late Attorney Alberto Cacnio. This is not to say, however, that for having taken advantage of a young teenager over whom appellant did exercise moral ascendancy, he should be exculpated. If he were not to suffer for such a misdeed, that would be an affront to one's sense of justice. It is fitting and appropriate therefore that such an act falls within the concept of qualified seduction. For that crime, appellant should be held responsible.

It was on the basis of a complaint for rape signed by the offended party herself that an information was filed on May 11, 1970 against appellant Nicanor Alvarez. It is worded thus: "That on or about June 6, 1969, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did, then and there, wilfully, unlawfully and feloniously raped and have sexual intercourse with the herein complaining witness, [Loreta T. dela Concepcion], a virgin 13 years of age and sister-in-law of the herein accused, while she was asleep by putting himself atop of her body, against her will and without her consent." [1] At the hearing, two witnesses testified for the prosecution, a certain Dr. Honesto Marco, who issued a medical certificate after examining the complainant on January 23, 1970, fully seven months and sixteen days after the alleged rape, to the effect that she was in an advanced stage of pregnancy, something rather obvious from her physical condition, [2] and the complainant. It was therefore solely on the basis of the testimony of the offended party herself that the lower court, in the decision now on appeal, found appellant guilty beyond reasonable doubt of the crime of rape. There is need then to dwell at length on what was testified to by her. After identifying appellant and stating that he was a brother-in-law, his wife being an elder sister, [3] she was asked whether she was the complainant, and after answering affirmatively, identified her amended complaint. [4] When asked why she filed a case against her brother-in-law, this was her reply: "Because of what had happened to me. He raped me in his house in June 1969." [5] The next inquiry was why she was in his house, to which she had this to say:

"Because he asked permission from my father that I should take care of his [accused's] son." [6] She admitted that both the son, then almost one year old, and her sister were in the house. [7] The location of the house of the accused in Filoville Subdivision in Naga City was next mentioned. [8] From 5:00 o'clock in the afternoon of June 6 up to the following morning, she was there precisely to take care of the baby. [9] When she arrived in the afternoon at five o'clock the day before, the accused was not present, returning only at around 9:00 o'clock that evening. [10] The next question was what happened afterwards, to which she responded: "Something happened. He raped me." [11] This was followed by a query as to whether it occurred in the presence of the sister, and without hesitation, she affirmed categorically: "Yes, sir." [12] The fiscal then sought to ascertain whether the sister offered any opposition to such act of her husband. There was equally a categorical denial thus: "No, sir." [13] Then, when questioned as to where the wife was sleeping when the husband returned at 9:00 o'clock in the evening, she replied: "In the sala." [14] As to the complainant herself, it "was also there in the sala where she slept." [15] The distance was about six meters away. [16] The child was beside the mother. [17] When asked whether she resisted the alleged rape, she answered: "Yes, I resisted, but I could not overcome his strength, because he was stronger than me - I was already weak." [18] Then the fiscal specifically sought to determine whether she shouted. This was her response: "As I said, I was weak and tired. After I tried to shout my voice came out and that was the time when I called for my sister." [19] As to whether that shout came after she had been raped, again she affirmed categorically: "I was already raped." [20] She repeated that she was not able to shout while she was being raped because her voice could not come out, as she "was already tired." [21] As to how the act was perpetrated, she stated that she "felt that his body was over [her] body." [22] She maintained that she was asleep at the outset, but after waking up, she resisted, but he, on the other hand, "stayed there and continued doing [it]." [23] She added that during that time, he threatened to kill her if she ever revealed to anybody what was done. [24] The Court then took over the examination, and when reminded that after being raped, she said she was able to shout, there was a query as to whom it was addressed, and she answered: "To the wife of the accused, my sister." [25] She was, however, "not able to wake up." [26] She did allege that she reported to her sister the following morning, but surprisingly, the sister "did not say any word." [27] Nor did she notice whether she got angry or not with her husband. She admitted that while she did struggle, no part of her dress was torn. [28] She did not, however, report to her mother or father "because [she] was afraid and that [she] might be punished, because [she knew] that what had happened to [her] was bad." [29] It was not after January of 1970 that she informed her parents, causing the court to make this relevant observation, "So, [it was] already 8 months from the time you were raped?" [30] When asked, on cross-examination, why she kept the incident a secret for a period of several months, her answer was that she "was afraid of the accused and [her] parents." [31] Again, the court took over the questioning, asking why that was so, and she answered: "He might do it again." [32] When asked specifically whether all that the accused would do, if he would thus get mad, was to rape her again, she was candid enough to admit: "Yes, sir." [33] To complete the story, it must be mentioned that a child was born on March 15, 1970, a little over nine months after the above occurrence.

In the light, or more appropriately, the obscurity, of the above testimony, what need is there to analyze the evidence offered by the appellant, the only other witness? For the insufficiency of the above declaration of the accused was quite glaring. It would be to overturn a host of doctrines as to the indispensability of showing the guilt of an accused beyond reasonable doubt to justify a conviction. There is, moreover, the constitutional presumption of innocence, which clearly has not been overcome. [34] There is no justification then for the decision now on appeal. It is thus evident why, as mentioned at the outset, the holding that appellant was guilty of rape through the use of force or intimidation [35] cannot stand. It is different, of course, as will be shown, as far as his culpability for qualified seduction is concerned.

1. Considering the severity of the penalty in prosecutions for rape and the difficulty attending the ascertainment of

the facts as they did occur, the judiciary being left to choose between what usually are conflicting versions from the only two parties who could truthfully testify on the matter, it is imperative that the utmost caution be shown. Nowhere is the oft-quoted aphorism of Chancellor Van Fleet to the effect that evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, in conformity with the common experience and observation of mankind, of more relevance than in cases of this character.[36] Reference to the rigorous analysis and appraisal in the well-written brief of counsel de oficio, so logical and realistic, would demonstrate that credulity had not only been strained by the version of the offended party; it had snapped. Thus: "The story of the incident as elicited in the * * * complaining witness's testimony, that is, that she was raped before the very eyes of her sister, wife of herein accused-appellant, without the latter raising a finger, challenges human credulity. Viewed from human observation and experience, not even a confirmed sex maniac would dare do his thing before the eyes of strangers, how much more for a healthy husband before the eyes of his very wife? Then, again, her testimony that her sister before whose very eyes the alleged raping incident took place did not lift a finger to help her, mocks at human sensibility. In the natural course of things, this piece of evidence is repugnant to common experience and observation in that the natural reaction of a wife would be that of righteous indignation rather than passive [acquiescence] and the natural response of a sister would be to protect the virtue of a younger sister from the abuse of her husband." [37]

This is another case therefore where an excerpt from *People vs. Dramayo*, [38] on the primacy of the constitutional presumption of innocence is highly relevant. Thus: "Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime has been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." [39]

Appellant is therefore entitled to a reversal of the decision insofar as it would hold him liable for rape.

2. It does not follow, however, that appellant's exculpation from the offense of rape means that his responsibility is merely moral and not penal in character. If that were so, it may be, considering the facts of this case, cause for right-thinking men and women to discern a gap or fissure in the legal order, one that cries moreover to be bridged. Our criminal law is not susceptible to such a reproach, it being clear from the information that the elements of the crime of qualified seduction [40] were included in the facts alleged. [41] He cannot be heard to complain thereafter that he is entitled to complete acquittal. As a matter of fact, in his defense, rightfully given credence by us, he did admit his having taken advantage of an inexperienced adolescent, the younger sister of his wife, to whom he ought to have been bound by the closest ties of affinity, considering also, as testified to by him, how close she felt towards him. As early as 1908, in the leading case of *United States vs. Arlante*, [42] the penalty for qualified seduction was rightfully visited on an accused whose conduct was similar to that of appellant. The facts, as set forth in the very able opinion of no less than Chief Justice Arellano, reads as follows: "That the accused had carnally abused two orphan girls, relatives of his wife, who were sheltered in his house; that they respectively gave birth to a boy and a girl, one of them on the 5th of November, 1905, this being the one who now files the complaint for seduction, and the other on the 15th of October of the same year, the latter appearing in the case as a

witness for the prosecution." [43] To the possible objection that in that case the offended parties were sheltered in the house of the accused, reference may be made to a latter portion of the same opinion where Chief Justice Arellano pointed out: "And even though the accused were not, as a matter of fact, in charge of the keeping of the offended girl, it is beyond doubt that, as she was a domestic, the crime is included within paragraph 1 of said article. 'Upon the word domestic being employed in said legal provision segregating it from that of servant, the term is applied to persons usually living under the same roof, pertaining to the same house, and constituting, in this sense, a part thereof, distinguishing it from the term servant whereby a person serving another on a salary is designated; in this manner, it has been properly used.'" [44] There is a Court of Appeals decision, *People vs. Lauchengco*, [45] penned by Justice Gutierrez-David and concurred in by Justices Alex Reyes and J. B. L. Reyes, all three of whom served in the Supreme Court, that follows closely the Arlante ruling thus: "We believe that this contention of the appellant is untenable and that he was properly charged and convicted of qualified seduction. He was the master of the house. The offended party was not a mere servant. She was treated as one of the accused's family because she was the cousin of appellant's wife. Hence, in his capacity as head of the family and master of the house, appellant was, for all intents and purposes, the custodian of the complainant. But even though he were not clearly or formally entrusted with the custody of the offended party, it is beyond doubt that, as the latter was serving in his house or was therein as a domestic a term embracing 'persons usually living under the same roof, pertaining to the same house, and constituting, in this sense, a part thereof' * * * the appellant, upon taking advantage of his authority and abusing the confidence and trust reposed on him as master of the house, violated the provisions of paragraph 1 of Article 337 of the Revised Penal Code." [46] The latest case in point, *People vs. Fontanilla*, [47] this Court speaking authoritatively through the voice of Justice Castro, indicates why it is not deceit, but rather, abuse of confidence, that qualifies this offense. As was made clear by him: "Anent the said marital promise, Fontanilla also claims that there is no evidence on record supporting its veracity. Granting this to be correct, it is nevertheless settled that deceit, although an essential element of ordinary or simple seduction, does not need to be proved or established in a charge of qualified seduction. It is replaced by abuse of confidence. When the offender is a public officer, a priest or minister, a servant, domestic, tutor, teacher, or under any title is in charge of the education or keeping of the offended woman, as in the present case, the act is punishable although fraud or deceit may not have been used or, if employed, has not been proved. The seduction of a virgin over twelve and under eighteen years of age, committed by any of the persons enumerated in art. 337 'is constitutive of the crime of qualified seduction' * * * even though no deceit intervenes or even when such carnal knowledge were voluntary on the part of the virgin, because in such a case, the law takes for granted the existence of the deceit as an integral element of the said crime and punishes it with greater severity than it does the simple seduction * * * taking into account the abuse of confidence on the part of the agent ((culprit), an abuse of confidence which implies deceit or fraud.'" [48]

Nothing remains to be added except that in a situation like the present, where, in keeping with Filipino mores, a younger sister is called upon to be of help to those born ahead of her and to stay, even if intermittently, in the latter's house, especially so after marital ties are formed and children born, may give rise to situations of this character, considering that among the poorer elements of our society, all the members of a family are huddled together within the briefest confines, and insistence on personal modesty and privacy is practically out of the question. If the moral ascendancy of a brother-in-law, instead, were used for immoral purposes, then, certainly, there is more than ample justification for adherence to the view first announced in the landmark Arlante decision that thereby the offense of qualified seduction was in fact committed.

Wherefore, the judgment of the lower court of November 18, 1970, finding the accused guilty beyond reasonable doubt of the crime of rape, is reversed and set aside, and another decision entered in its place, finding him guilty beyond reasonable doubt of the crime of qualified seduction and given the indeterminate penalty of six months of

arresto mayor as minimum and two years eleven months and ten days of prision correccional as maximum. He is sentenced further to recognize the child born of such relationship and to pay P5,000.00 as damages. No pronouncement as to costs.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Information dated May 11, 1970.

[2] T.s.n., Session of June 10, 1970, 1.

[3] Ibid., Session of July 27, 1970, 6.

[4] Ibid., 6-7, Exhibits B. B-1 and B-2.

[5] Ibid., 7.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid., 8.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] Ibid., 10.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Ibid., 19.

[32] Ibid.

[33] Ibid.

[34] According to Article III, Sec. 1, par. 17 of the 1935 Constitution, now Article IV, Section 19 of the Revised Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[35] According to Article 335 of the Revised Penal Code: "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. The crime of rape shall be punished by reclusion perpetua. Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death. When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death. When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (As amended by Rep. Act No. 2632 and Rep. Act No. 4111)."

[36] Cf. *People vs. Macatangay*, 107 Phil. 188 (1960).

[37] Brief for the Accused-Appellant, 9-10.

[38] L-21325, Oct. 29, 1971, 42 SCRA 59.

[39] Ibid., 64.

[40] According to Article 337 of the Revised Penal Code: "The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by prision correccional in its minimum and medium periods. The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age. Under the provisions of this Chapter seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein."

[41] As was held in the leading case of *United States vs. Lim San*: "From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. * * * That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged," 17 Phil. 273, 278-279 (1910).

[42] 9 Phil. 595. Cf. *United States vs. Santiago*, 26 Phil. 184 (1913); *United States vs. Bautista*, 40 Phil. 735 (1920); *United States vs. Santiago*, 41 Phil. 793 (1917); *People vs. Carias*, 50 Phil. 884 (1924); *People vs. Bautista*, 76 Phil. 184 (1946); *People vs. Fontanilla*, L--25354, June 28, 1968, 23 SCRA 1227.

[43] Ibid., 596.

[44] Ibid., 597.

[45] 45 O.G. 3485 (1948).

[46] Ibid., 3488-3489.

[47] L-25354, June 28, 1968, 23 SCRA 1227.

[48] Ibid., 1242.

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