

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GAUDENCIO SARMIENTO, DEFENDANT-APPELLANT.***G.R. No. L-46833. December 28, 1979*

Ponente: FERNANDO, C.J.

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The belief shared by philosophers and jurists of the extreme difficulty that confronts the law in pursuance of moral values finds confirmation in the many instances of prosecutions for rape.[1] Apparently, the call of the flesh is at times much too insistent to be resisted. The hapless victim is thus left with no alternative except to prosecute the offender. Rightfully so, the Revised Penal Code[2] imposes a penalty ranging from reclusion perpetua to death. Never is such a response more justified than when the victim is a child of tender years. This appeal presents such a case, complainant being only eleven years of age at the time the act was perpetrated. Accordingly, after trial duly had, the lower court sentenced appellant Gaudencio Sarmiento to the penalty of reclusion perpetua. In the brief filed by his counsel, reversal is sought on the ground that the constitutional presumption of innocence had not been overcome.[3] A careful study of the evidence, however, discloses that the proof adduced is of such character that the stage of moral certainty as to the guilt of the accused had been reached. Accordingly, with modification as to the damages awarded, we affirm.

The eleven-year old complainant, Rosalina Malagayo,[4] in this prosecution for rape, a resident of Burgos St., Sto. Domingo, Nueva Ecija,[5] was on September 21, 1974, at about noontime sent by her aunt, Maria Malagayo, on an errand to buy candy and soap[6] from the neighborhood sari-sari store of one Felicing Matic.[7] It was barely twenty meters away and located at the same street.[8] The complainant, in compliance with such order, went as directed to such store,[9] but upon reaching it was immediately pulled inside by appellant Gaudencio Sarmiento,[10] son-in-law of Felicing Matic.[11] She was then forcibly dragged up the stairs of the house.[12] When they reached the second floor, he started kissing and fondling her breasts.[13] All the while, she struggled to free herself.[14] Appellant, a few moments later, still with the use of force, brought Rosalina downstairs[15] and there again took liberties with her, by continuing to kiss and fondle her.[16] She was in tears and cried out[17] in protest but to no avail. Not satisfied with what had been done so far, appellant raised her by the armpits and dropped her unceremoniously on a nearby papag.[18] While she was thus lying prone, he hit her on both thighs, unzipped his pants, and started to have sexual intercourse with her.[19] He succeeded in partially inserting his male organ,[20] but perhaps due to her tender years, he could not go any further. Appellant, while conscious of the pain caused her, continued to resist and even summoned for help by shouting *Nanay ko po, Nanay ko po*. [21] Her aunt, Maria Malagayo, who was at home, heard her niece's cries for help.[22] She immediately rushed towards the store.[23] Reaching the place, she was able to see complainant lying on her back in a papag while appellant was on top of her in the act of one having sexual intercourse.[24] All she could do at the time was to shout.[25] Thus caught by surprise, he let Rosalina go and ran upstairs.[26] Both complainant and her aunt then left the store and immediately proceeded to the house of Barrio Councilman Narciso Domingo to whom they reported the incident.[27] He then took them to the PC headquarters at Baloc, Sto. Domingo where they filed a complaint against the appellant.[28] The municipal police was likewise informed.[29] Complainant was then

subjected to a physical examination at the Emergency Hospital.[30] The medical certificate issued showed: "1. Contusion with ecchymosis, left thigh, inner aspect, middle 3rd; 2. Contusion with ecchymosis, right thigh, inner aspect, middle 3rd; 3. Labia majora; presence of multiple skin excoriation, both sides inner aspect from below-upward to the clitoral region; 4. Introitus: tight, with thin frenulum; 5. Hymen: no evidence of fresh lacerated wound; admit index finger." [31] The complaint for rape was thereafter filed.

The lower court found such testimony entitled to full credence and belief. As was explicitly stated in the decision: "A very close and critical scrutiny of the evidence as a whole fails to lessen our moral certainty that the crime of rape was committed upon the person of this little child of less than twelve (12) years old, and that the accused, Gaudencio Sarmiento, was guilty, thereof." [32] Nor could the lower court be susceptible to the charge that the evidence for the defense was not duly taken into consideration. Fully eight pages of the appealed decision were devoted to showing the futility of the labored effort of appellant to escape just retribution. [33] To repeat, the guilt of the accused had been shown beyond reasonable doubt.

1. Counsel for appellant, in seeking a reversal, as noted at the outset, argued that the evidence for the prosecution failed to overcome the constitutional presumption of innocence. Reliance on such a guarantee is understandable. This Court has ever been vigilant in stressing the importance of such a right. This excerpt from *People v. Dramayo* [34] possesses relevance: "Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had 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." [35] That stage was not reached in the following cases of prosecution for rape: *People v. Alvarez*; [36] *People v. Barbo*; [37] *People v. Castro*; [38] *People v. Joven*; [39] *People v. Ramirez*; [40] *People v. Poblador*; [41] and *People v. Quiazon*. [42] The result necessarily in each instance was an acquittal. There are, of course, many more decisions where the accused did not fare as well, the defense of the constitutional presumption of innocence having been found decidedly unpersuasive. Mention may be made of four recent cases where the conviction was upheld: *People v. Molina*, [43] *People v. Cawili*, [44] *People v. Andal*, [45] and *People v. Tigulo*. [46] So it should be in this appeal.

2. Neither is appellant any more convincing when the labored effort of his counsel was directed on the failure of the lower court to appraise the facts correctly. What was said in the most recent case of *People v. Tigulo* comes to mind: Thus: "To bolster their argument of the constitutional presumption of innocence not having been overcome, appellants would impugn the findings of fact. Counsel did try his best to make out a case for a reversal but the attempt was unsuccessful. It is understandable why. The principle well-entrenched in our jurisprudence is that the conclusion reached by the trial judge which has the opportunity to observe the witnesses testify as to what did transpire is entitled to full respect unless of course it could be demonstrated that there was a failure to judge correctly the significance of a fact or circumstance or what is worse, that it was ignored. The first case of such consequence, *United States v. Pico*, came from the pen of Justice Moreland, a 1910 decision. Since then, this Court has been committed to such a view." [47] This citation from the opinion of *People v. Molina*, [48] is equally in point: "Moreover, if there is anything apparent from our past decisions on rape cases, with the offended parties being young and immature girls from the ages of twelve to sixteen, it is that there is considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under

control. In the appropriate language of Justice Antonio, speaking for this Court in *People v. Gan*: 'It is undisputed that the victim of the heinous offense was only a young girl of 14 years, a virgin, innocent and unsophisticated, and as a student of a religious school, there is no reason for her to concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial; if she was not motivated solely by a desire to have the culprit apprehended and punished. No young Filipina of decent repute would publicly admit that she had been criminally abused, unless that is the truth. For it is her natural instinct to protect her honor.' It was not an easy task therefore for appellant, considering the state of the law, to elicit a favorable response to his plea for acquittal."^[49]

3. This opinion may fitly close with these words from *People v. Andal*,^[50] so appropriate in the light of the facts disclosed: "There would [thus] appear to be more than sufficient basis to warrant the conclusion that the constitutional presumption of innocence cannot be availed of by the [appellant]. 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. At so early an age, she was [sexually assaulted]. * * * Even now, she has to live with the memory of such a shocking event. The feeling of shame and humiliation remains. She was innocent, but to her young immature mind, there was something degrading in what occurred. That it was so inexplicable made it all the more unendurable. She is, therefore, at the very least, entitled to the justice which the law accords one in her unfortunate situation, [there being] a showing of the guilt beyond reasonable doubt of the party * * * accused. The constitutional presumption of innocence must yield to what had been so amply and persuasively demonstrated."^[51]

WHEREFORE, the judgment is modified by increasing the damages to P12,000.00 but without requiring appellant to pay P5,000.00 for moral damages. In all other respects, the decision dated July 14, 1977 is hereby affirmed. Costs against appellant.

Barredo, Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.
Abad Santos, J., did not take part.

[1] Cf. Olafsen, *Society, Law and Morality* 435-505 (1961).

[2] Cf. Article 335 of the Revised Penal Code (1932).

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

[4] T.s.n., Session of September 30, 1975, 4-5.

[5] *Ibid.*, 5.

[6] T.s.n., Session of February 13, 1976, 7-8.

[7] *Ibid.*, 8.

[8] *Ibid.*

[9] T.s.n., Session of September 30, 1975, 7.

[10] *Ibid.*, 9.

[11] T.s.n., Session of October 11, 1976, 4.

[12] T.s.n., Session of September 30, 1975, 9.

[13] Ibid., 9-10.

[14] Ibid., 10.

[15] Ibid., 10-11.

[16] Ibid., 11.

[17] Ibid.

[18] Ibid.

[19] Ibid., 12-13.

[20] Ibid., 14.

[21] Ibid., 15.

[22] T.s.n., Session of February 13, 1976, 9.

[23] Ibid., 10.

[24] Ibid., 10-12.

[25] Ibid., 11.

[26] Ibid., 13.

[27] Ibid., 14-15.

[28] Ibid., 15-16.

[29] Ibid., 17.

[30] Ibid., 18.

[31] Exhibit C.

[32] Decision, 12.

[33] Cf. Ibid., 4-11.

[34] L-21325, October 29, 1971, 42 SCRA 59.

[35] Ibid., 64.

[36] L-34644, January 17, 1974, 55 SCRA 81.

[37] L-30988, March 29, 1974, 56 SCRA 459.

[38] L-33175, August 19, 1974, 58 SCRA 473.

[39] L-36022, May 22, 1975, 64 SCRA 126.

[40] L-30635-6, January 29, 1976, 69 SCRA 144.

[41] L-41129, April 29, 1977, 76 SCRA 634.

[42] L-44299, August 31, 1977, 78 SCRA 513.

[43] L-30191, October 27, 1973, 53 SCRA 495.

[44] L-30543, July 15, 1975, 65 SCRA 24.

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

[46] L-34334, November 7, 1979.

[47] Ibid. Pico is reported in 15 Phil. 549. The other cases cited follow: *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 259; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37184, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. Rapada*, L-31243, Oct. 28, 1977, 80 SCRA 63; *People v. Gorgoles*, L-40885, May 18, 1978, 83 SCRA 282; *People v. Conchada*, L-39367-69, Feb. 28, 1979, 88 SCRA 638.

[48] L-30191, October 27, 1973, 53 SCRA 495.

[49] Ibid., 500-501. *People v. Gan*, L-33446 promulgated on August 18, 1972 is reported in 46 SCRA 667. The excerpt is found in 675-676.

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

[51] Ibid., 36-37.

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