

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO FONTANILLA, DEFENDANT-APPELLANT.

G.R. No. L-25354. June 28, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The appellant Mariano Fontanilla was prosecuted in the justice of the peace court (now municipal court) of San Fernando, La Union for qualified seduction. The criminal complaint, signed by the offended woman Fe Castro and filed on February 28, 1961, charged

"That on or about the month of September, 1960, and for sometime subsequent thereto, in the Municipality of San Juan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with grave abuse of confidence and authority, seduce and have sexual intercourse with the offended par-ty Fe Castro, a domestic in the house of the said accused, located at Allangigan, San Juan, La Union, the offended party being then a virgin over 12 years but under 18 years of age."

After trial, the court, on November 27, 1962, found that "the guilt of the accused has been proved beyond reasonable doubt," and accordingly sentenced him to "an indeterminate pri-son term from four (4) months of arresto mayor as maximum to two (2) years and four (4) months of prision correccional and to pay the costs." The accused was further ordered "to pay the sum of Five Hundred Pesos (P500.00) as moral damages to the offended party or to her parents."

Fontanilla forthwith appealed to the Court of Appeals which subsequently certified the case to us in a resolution dated September 25, 1965, on the ground that the jurisdiction of the court a quo, inter alia, is in issue.

The following, in paraphrase, are the assigned errors:

1. The justice of the peace court of San Fernando, La Union had no jurisdiction to try and decide this case because the alleged offense was committed outside its territorial jurisdiction and at the same time does not fall within the compass of its original jurisdiction;
2. The lower court erred in finding that the accused had sexual intercourse with Fe Castro repeatedly and that he had told her a number of times that he will separate from his wife Magdalena Copio and will marry her, which was the reason why Fe Castro consented to the sexual intercourse;
3. The lower court erred in relying heavily on the testimony of Fe Castro, considering that her testimony is hazy and self-contradictory;
4. The lower court erred in totally disre-garding the evidence adduced by the appellant;
5. The lower court erred in failing to consider in favor of the accused the delay in the filing of the complaint, which delay is not convincingly explained and which renders the accusation suspi-cious; and
6. The lower court erred in ordering the appellant to pay the sum of P500 in moral damages to the offended

party or to her parents.

The evidence for the prosecution discloses that in Sep-tember, 1960 Fe Castro, a fifteen-year old virgin, was brought by her mother to the house of the appellant and his second wife, Magdalena Copio, a sister of the complaining witness' mother, to serve as a helper. The Fontanilla spouses had been married for two years but were childless, although the appellant had grown-up children by his first marriage who were domiciled elsewhere.

Fe Castro testified that during her stay in the house of Fontanilla for about three months from September to shortly be-fore Christmas of December, 1960, the accused succeeded in having carnal knowledge of her repeatedly, the total number of times she could not recall. She was certain, however, that the accused consummated the first sexual intercourse with her one night in September, about a week after her arrival, when the ac-cused intruded into her bedroom, placed himself on top of her and fondled her nipples. She added that he was able to gain ac-cess to her room because the wooden bar used to lock the door did not prevent the said door from being opened when pushed from the outside. She also declared that prior to this incident, the accused had made amorous overtures and advances toward her. Aside from giving her money, the accused repeatedly promised to abandon his wife to live with her.

"Q. - You told us that Mariano Fontanilla had been giving you money. Are there other circumstances that led you to the sexual intercourse?

"A. - He told me, 'Come now let us play. I am go-ing to separate your aunt because I love you more than my wife.'

"Q. - For how many times had Mariano Fontanilla been promising you this?

"A. -He was telling me all the time."

Fe Castro farther testified that she subsequently repeated-ly yielded to the carnal desires of the accused, as she was induced by his promises of marriage and frightened by his acts of intimi-dation. The accused made love to her during the day when his wife was away and at night when the latter was already asleep. Their intimacies lasted for almost three months until her aunt, the wife of the accused, caught them in flagrante on the kitchen floor. The following day she returned to her parents, and revealed everything to her mother two days later.

Mariano Fontanilla, testifying in his defense, admitted that Fe Castro actually lived in his house from September to De-cember, 1960, not as a helper, however, but in consideration of her being a niece of his wife, and was treated as their own child. He vehemently denied having had carnal knowledge of her, as there was never an occasion during which he could have taken advantage of the chastity of his ward, because at night her room was locked and during the day he was out in the farm.

"Q. - When the offended party testified before the Court she stated that the first time you had sexual intercourse with her was a certain night in September and you said to her, 'You are very beautiful. Come let us play.' What do you say to this allegation?

"A. - I did not do that, sir.

"Q. - How is it possible or will circumstances afford you of getting inside her room and take advantage of her being a woman?

"A. - No, sir. It cannot be.

"Q. - Why could it not be that you could enter the room and take advantage of her woman-hood?

"A. - Because the room is locked."

x x x x x

"Q. - The offended party further testified in Court that you did the sexual intercourse daily, one in the day time and one in the nighttime. Will you mention before this Honorable Court if you can commit sexual intercourse in the day time?

"A. - That cannot be, sir.

"Q. - Why could you not possibly do the sexual in-tercourse in the day time?

"A. - Because I am in the farm, sir.

"Q. - Sometimes when you are in the farm, during lunch time Fe Castro would bring your food in the farm?

"A. - No, sir.

"Q. - And when you go home to your house in the day time for example you take your lunch. So it is possible for you to have sexual intercourse with the offended party?

"A. - No, sir. It is not possible during day time.

"Q. - Who are your companions in your house in the day time?

"A. - My wife and also our neighbor who used to come."

Fontanilla declared that another reason why it was not possible for him to seduce Fe Castro was that his sexual capabilities had waned considerably because of old age, as he was already 52 years old at the time of the supposed commission of the crime charged. He admitted that despite the fact that he had been married for only two years to his second wife, he made love to her only once a week. Under these circumstances, it was impossible for him to have indulged in sexual intercourse with Fe Castro twice daily.

The accused advances the theory that the instant case was filed against him upon the malevolent instigation of one Avelino Gapasin, an uncle of Fe Castro, who wielded strong influence over her, adding that the complainant herself was envious of his (Fontanilla's) children of the first marriage who received some salary from their employment. This allegation was indirectly corroborated by a witness for the defense, Mayor Antonio Aquino of San Juan, La Union, who testified that he endeavored to settle the case by proposing that the accused pay P50 which was due to Fe Castro as her share in the cultivation of tobacco, but the complaining witness through Avelino Gapasin refused the offer and the latter then insinuated that the amount of P2,000 should be paid, which sum he believed would be sufficient reparation for "the honor destroyed."

Magdalena Copio, 51-year old wife of the accused, corroborated her husband's statement that they indulged in sexual intercourse only once a week. She also stated that during the three months that Fe Castro stayed with them, there was no unusual incident or sexual relation between her husband and her niece. She denied having caught the accused in a compromising situation with the offended party. She also testified that she slept regularly from 7:00 p.m. to 12:00 midnight, after which she seldom could go back to sleep, and that she was easily awakened by the slightest noise. She categorically declared that her husband slept with her in the same bed every night.

For the first time on appeal, Fontanilla challenges the jurisdiction of the court a quo - the justice of the peace court of San Fernando, the capital of La Union - alleging that it had no jurisdiction to try and decide this case, for two reasons: (1) the crime charged according to the indictment was committed in San Juan, a municipality outside the territorial jurisdiction of the court a quo; and (2) original jurisdiction over the crime of qualified seduction belongs exclusively to the court of first instance, and not to the justice of the peace court of the provincial capital.

The appellant's theory finds no basis in the then governing provisions of the Judiciary Act when the instant action

was commenced on February 28, 1961. It is a settled rule that the jurisdiction of a court is determined by the statute in force at the time of the commencement of the action.[1] The pertinent statutory provision then in force was section 87(c), paragraph 3, of Republic Act 296, as amended by Republic Act 2613, which unequivocally provided that "Justices of the peace in the capitals of provinces and Judges of Municipal Courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed prison correccional or imprisonment for not more than six years or fine not exceeding three thousand pesos or both. . ." (underscoring supplied) It is therefore beyond dispute that under the then existing law all offenses committed within the province, provided that the penalty prescribed did not exceed prison correccional or a fine not exceeding P3,000 or both, were triable by the justice of the peace courts of provincial capitals. Since the penalty prescribed for qualified seduction under article 337 of the Revised Penal Code is prison correccional in its minimum and medium periods, the instant case was clearly within the periphery of the concurrent jurisdiction of the court a quo.

It was only on June 22, 1963, more than two years after the institution of the case at bar, that the above-cited provision of the Judiciary Act was amended by Republic Act 3828. The pertinent provision is now section 87(c), paragraph 4, which, as amended, reads:

"Municipal judges in the capitals of provinces and sub-provinces and judges of city courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within their respective jurisdictions, in which the penalty provided by law does not exceed prison correccional or imprisonment for not more than six years or fine not exceeding six thousand pesos or both. . ."

Republic Act 3828 introduced two significant changes: (1) the concurrent jurisdiction of municipal courts in the capitals of provinces and sub-provinces and of city courts with the courts of first instance has been territorially localized and limited to the proper offenses committed "within their respective jurisdiction," while previously said courts could take cognizance of the proper offenses committed "within the province;" and (2) the proper offenses cognizable include those where the pecuniary (fine) does not exceed P6,000, an increase over the previous P3,000 limit.

The first of the above-mentioned changes unmasks the fallacy of the appellant's theory that even under the then existing provision, the concurrent jurisdiction of the justice of the peace courts of provincial capitals with the courts of first instance was already confined to their respective territorial limits. If this were true, then Congress would have had no reason to enact the foregoing amendment which eliminated the phrase "within the province" and in its place substituted the delimiting phrase "within their respective jurisdictions."

The foregoing notwithstanding, the appellant insists that justice of the peace courts of provincial capitals, like the court a quo, have no jurisdiction over the crime of qualified seduction because of the provisions of article 345 of the Revised Penal Code by virtue of which the court must, in addition to the imposition of a prison term (prison correccional minimum to medium in case of qualified seduction) which the accused must suffer, require him to indemnify the offended woman, to acknowledge the offspring unless the law should prevent him from so doing, and in every case to support the offspring. The theory of the appellant is that the imposition of the enumerated civil liabilities increases the punishment, thereby divesting the justice or the peace courts of the capitals of provinces of jurisdiction and consequently confining original and exclusive jurisdiction over the offense to courts of first instance.

This contention is obviously untenable because section 87(c), paragraph 3 [now sec. 87(c), paragraph 4] of the Judiciary Act grants the justice of the peace courts (now municipal courts) of provincial capitals concurrent jurisdiction with courts of first instance over offenses for which the penalty provided by law does not exceed prison correccional or imprisonment for not more than six years or fine not exceeding P3,000 (now P6,000). This

concurrence of jurisdiction is based upon the duration of the imprisonment and/or of the amount of the fine imposable, irrespective of the civil incidents or obligations which may attach to the offense charged. So that any civil liability attaching to the offense concurrently cognizable by the courts of first instance and the justice of peace courts provincial capitals can also be imposed by the latter because these have been conferred jurisdictional parity.

The appellant cites as authority for his theory the case of *U.S. vs. Bernardo*,^[2] a seduction case in which this Court, with a slim majority of four justices (three justices dissented), said:

“These obligations imposed upon the culprit ordinarily exceed the amount of the penalty fixed by the law as being within the jurisdiction of the justice of the peace court and comprise, moreover, by virtue of the forced recognition imposed by article 135 of the Civil Code, the special determination of the civil status of the offspring which resulted from the crime, consequently, although the said crime of seduction is only punished by the penalty of *arresto mayor*, a judgment of conviction cannot be pronounced by a justice of the peace, on account of his lack of jurisdiction.

"But disregarding the amount of the indemnity, whatever it be, according to the conditions and circumstances of the offended party and of the one obliged to furnish the same, which amount might be greater than that fixed by law as within the jurisdiction of justice of the peace courts, the acknowledgment of the resulting offspring, one of the findings which the sentence must contain, establishes by force of law the civil status of the child whose acknowledgment is necessarily upon the guilty party; so with much less reason could the crime fall within the jurisdiction of the justice of the peace court, inasmuch as, in accordance with specific legal provisions, only the judge of the Court of First Instance can make such pronouncements.”

As correctly contended by the Solicitor General, however, "there is a big difference between the case of *U.S. vs. Bernardo*, supra, and the present case, in that while the *Bernardo* case involved the original exclusive jurisdiction of the justice of the peace courts, the present case touches a concurrent jurisdiction of the justice of the peace courts in the capitals of the provinces and Courts of First Instance." Furthermore, "It would be going a long way to say that an indemnification or a restitution or a reparation is a fine or an imprisonment under any definition found in the criminal law of any country. The jurisdiction of the court is determined by the amount of the fine and imprisonment. An indemnification or a reparation or a restitution is merely an incident of the crime. The jurisdiction of the court is not fixed by the incident but by the nature of the crime itself. Legally speaking, the nature of the crime is determined by the punishment imposed. . . . The jurisdiction of courts of justice of the peace over crimes being determined exclusively by the amount of the fine and imprisonment imposed by law, that is by the legal nature of the crime, and in no manner and to no extent whatever by the civil incidents which accrue to the person injured by the commission of said crime, such courts have jurisdiction of the crime presented in the case at bar, the punishment prescribed by law for such crime being (then) simply *arresto mayor*."^[3]

We now proceed to the merits of the case.

The atmosphere of secrecy and privacy which pervades the commission of crimes against chastity, coupled with the consequent dearth or even absence of witnesses, constrains the courts to rely in no small measure upon the uncorroborated testimony of the complaining woman whose testimonial and personal credibility assumes pivotal importance. It is against this situational backdrop that we proceed to discuss the issues of fact posed by the appellant.

Fontanilla contends, among others, that the court a quo erred in finding there that there is evidence to show that he had sexual intercourse many times with the complainant Fe Castro. We disagree. After a thorough study of the record, we find that the complainant's testimony, in direct as well as in cross-examination, is entitled to essential credence. She declared that Fontanilla had carnal knowledge of her one night in September, 1960 in the house of

the former where she was staying as a maid, and that since then up to December of the same year, Fontanilla had sexual intercourse with her repeatedly, sometimes at night, sometimes in the daytime, but always when his wife was asleep or away. Significantly, convincing proof of the first sexual intercourse would suffice to affirm the conviction of the appellant without necessity of proving the subsequent instances of carnal liaison. The following frank and revealing testimony of the offended woman appears on record:

"Q. - When you were with the Fontanillas, do you know if there was anything unusual that took place?

"A. - He fooled me.

"Q. - Who fooled you?

"A. - Mariano Fontanilla.

"Q. - What do you mean by fooled you?

"A. - He had sexual intercourse with me."

x x x x x

"Q. - When did Mariano Fontanilla start having sexual intercourse with you?

"A. - One week after my arrival in their house.

"Q. - For how many times did Mariano Fontanilla have sexual intercourse with you?

"A. - Very often when I was in their house."

x x x x x

"Q. - For how many times after September?

"A. - I could not count anymore, sir."

x x x x x

"Q. - Do you mean to tell us that he had been having sexual intercourse with you during the three (3) months you stayed with them?

"A. - Always.

"COURT:

"Q. - Now, usually what time did you have that sexual intercourse?

"A. - Day and night.

"Q. - And where did you do sexual intercourse during the day time?

"A. - When I iron their clothes in their house.

"Q. - Was there no other person in that house during the day when you have been ironing clothes?

"A. - The wife is not there.

"Q. - Do they have any children?

"A. - They have no children."

x x x x x

"Q. - When you left the house of Mariano Fontanilla and returned to your house in barrio Allangigan, was it with the consent of Mr. & Mrs. Mariano Fontanilla?

"A. - They allowed me to go home.

"Q. - Why did you go home?

"A. - I left, sir, because the wife of Mariano Fontanilla discovered what we have been doing."

When asked upon cross-examination to narrate the circumstances surrounding the first intercourse, Fe Castro testified thus:

"Q. - Now, what were you doing in your room when Mariano Fontanilla first came in?

"A. - I was already sleeping.

"Q. - And how were you awakened from your sleep?

"A. - When I woke up, he was on top of me holding my nipples."

x x x x x

"Q. - Can you remember the date of the week when Mariano Fontanilla consummated his first sexual intercourse with you?

"A. - I don't remember the date.

"Q. - Do you remember what time? In the morning or afternoon?

"A. - Night time.

"Q. - Do you remember what were the actual words of Mariano Fontanilla when he consummated his first sexual intercourse with you?

"A. - 'How beautiful are you, my daughter! I wish I could marry one as beautiful as you. Come let us play.'

"Q. - After he uttered those words, what did he do to you?

"A. - He was placing his private parts in mine.

"Q. - Do you mean to say he did not remove your panties first?

"A. - He removed it.

"Q. - Did you offer any objection when he made those acts to you?

"A. - He told me that 'If you are going to move, I am going to club you.'

"Q. - And you never uttered a word of what he is doing?

"A. - I did not complain anymore because I was afraid."

x x x x x

"Q. - Now, it was in the evening of that day when he started caressing you in the kitchen when he had that first sexual intercourse with you, is that right?

"A. - Yes, sir, the same night he came to the room."

x x x x x

"Q. - This room where you had your intercourse with the accused, was there a lock in the door?

"A. - There is a piece of wood that is used as a bar but if you push it, it will be opened."

The foregoing testimony of the aggrieved woman belies the contention of Fontanilla that there is no evidence showing that he had carnal knowledge of Fe Castro. Of course no other witness was presented by the prosecution to corroborate the testimony of the victim with respect to the actual act of seduction, nor to the amorous overtures of the accused before the first sexual intercourse, nor to their subsequent carnal acts. But this is quite understandable because aside from Fontanilla and Fe Castro, there was only one other person in the house of the accused -- his wife, who was either asleep or away when the two indulged in their illicit love-making. As previously intimated, the final verdict would principally hinge on the testimonial and personal credibility of the complaining witness.

Assailing the credibility of the complainant, Fontanilla contends that Fe Castro had malevolent and ulterior motives for filing this case against him. He alleged that Fe Castro was envious of his children by his first marriage who had some income. In our view, this is a flimsy rationalization which the accused, significantly, did not even attempt to substantiate.

Fontanilla also argues that Fe Castro was induced and pressured by her uncle Avelino Gapasin to file the criminal complaint. Testifying on this point, Mayor Antonio Aquino of San Juan, La Union, stated that he tried to settle the case by propos-ing that the accused pay the complainant P50 as the latter's alleged share in the tobacco harvest and that this proposal was re-fused, however, by Fe Castro, thru Gapasin, on the ground that the amount offered would not even be sufficient to defray the ex-penses for the delivery of the child which the victim mistakenly thought she was conceiving as a result of Fontanilla's carnal know-ledge of her. Aquino also claimed that Gapasin insinuated that any compromise amount must be equal to the "honor destroyed" and he, Gapasin, suggested P2,000.

The foregoing testimony was presented by the defense to prove its allegation that Fe Castro was pressured into filing the case at bar. Standing alone, Gapasin's objection to the proposed compromise does not prove that he induced the victim to de-nounce Fontanilla in court. On the contrary, from the actuations of Gapasin it can be inferred that he was just trying to protect the interests of his niece who was offered so meager an amount as settlement for an offense which caused the latter the irredeema-ble loss of her virginity. Furthermore, it is on record that prior to the overtures at settlement, the complaining witness had al-ready gone to the office of the provincial fiscal of La Union to file charges against Fontanilla. Aquino himself admitted upon cross-examination that he had requested Fiscal Crisogono Bautista to postpone the filing of the complaint to enable him to settle the case, and that the proposed compromise was his idea and made upon his own initiative. This admission shows that the filing of the instant case preceded, and was not due to, the failure of the alleged proposed compromise.

The appellant further contends that the complainant's tes-timony does not merit credence because it is hazy and self-contradictory. He argues that if it is true that he repeatedly pro-mised to marry Fe Castro in order to deceive her into submitting to his carnal designs, why did the latter allegedly consent to the continuance of their illicit liaison even after it was evident that he would not fulfill his promise to marry her? A situation like this, says the appellant, borders on the incredible and suggests that there was actually no promise of marriage and consequently there was no resultant carnal relation between him and the com-plaining woman.

This "unthinkable" situation pointed out by the appellant was quite reasonably explained by the complainant in a frank, albeit embarrassing, reply contained in her sworn statement (exh. A-1) taken in the office of the provincial fiscal of La Union on January 31, 1961. Upon interrogation, Fe Castro declared:

"Q. - Despite his many promises which he never fulfilled, why did you still continue to have relationship with

him?

"A. - Because I was beginning to like him and enjoy this sexual intercourse."

Underscoring the above statement of Fe Castro, Fontanilla claims that it exposes in fact the fabricated nature of the case against him, because for a woman to continue having sexual relations with a man even after a patent breach of the latter's promise of marriage, is unthinkable and alien to human experience. We believe, on the contrary, however, that the said statement of the aggrieved woman does not make her testimony incredible for it evinces basic honesty and sincerity on her part, even to the extent of admitting something which could conceivably put her to shame and ridicule.

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.[4] 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." [5]

It is likewise contended for the appellant that the testimony of the complainant is unbelievable because while she denounced the perverse and criminal conduct of the accused, in the same breath she described the relation between the accused and his wife as harmonious and cordial. The alleged inconsistency in this regard is more apparent than real. A man could hide his evil motives and immoral conduct behind a deceptive facade. And it stands to reason that a husband who has illicit relations with a woman who resides in the same house where he dwells with his wife would even be over-solicitous with the latter to camouflage his infidelity.

Fontanilla also challenges the credibility of Fe Castro's account regarding his having been discovered by his wife in the act of sexual intercourse with the complainant on the kitchen floor. He argues that had such a discovery actually been made, the natural reaction of his wife would have been to lay hands on both of them (Fe Castro and himself), with the complainant taking the most punishment since women are inherently possessive and are merciless upon those who attempt to take away their loved ones. Fe Castro did not testify on such a hostile reaction.

We are inclined to believe, however, that women are bound to react differently to the same or similar situations. There is no sufficient reason to discredit Fe Castro's testimony that when they were discovered in flagrante by Magdalena Copio, the appellant's wife and her aunt, the latter verbally chastised Fontanilla for having "fool(ed) this little girl."

The appellant's wife, then 51 years old and twice married, most probably knew that it was her 52-year old second husband, the herein appellant, who was at fault and thus spared her 15-year old niece from any punishment.

It is conceded that the testimony of Fe Castro suffers from some inconsistencies; these, however, could be attributed to her minority (she was barely 16 years old at the time of the trial), lack of education (she had reached only grade III), perceptibly low intelligence, and to the understandable partiality of a litigant to her cause. On the

whole, we find that the complainant's testimony is credible and convincing. Furthermore, we believe that no other reason impelled Fe Castro in instituting this case against her very kin, and exposing thereby her sordid experience to public scrutiny and suffering as a consequence the travail of trial, than to seek justice for herself.

The appellant further claims that the court a quo erred in failing to consider the unexplained delay in the filing of the complaint, which delay renders the accusation suspicious. It is relevant to note that the accused did not raise this issue before the court a quo. Anent the alleged delay, the Solicitor General states that it can easily be explained "by the fact that the complainant was not accusing a person who was a total stranger to her but the husband of her mother's sister. The attempt of the older people to thresh out their differences and to settle the case amicably had brought about the said delay." It appears on record that Fe Castro left the house of Fontanilla on December 18, 1960, and two days thereafter she informed her parents of what Fontanilla had done. Forthwith she and her parents decided to bring the case to court, and on January 13, 1961 Fe Castro had herself examined in the La Union Provincial Hospital, with the name of Fiscal Bautista appearing in the medical certificate as the requesting officer, which means that prior to January 13, 1961 Fe Castro had already gone to the office of the provincial fiscal presumably to complain against Fontanilla. The criminal complaint was filed only on February 23, 1961 because as previously stated, Mayor Aquino had requested Fiscal Bautista to postpone the filing of the indictment to give the former sufficient time to attempt at an amicable settlement of the case.

We now come to the basic defense set up by Fontanilla, which is a denial of his having had carnal knowledge of Fe Castro whom he admits was once his ward. His denial is anchored on two grounds: (1) there was no occasion during which he could have violated the chastity of the complainant because during the night the room of the latter was locked and during the day he was always out in the fields; and (2) at the age of 52, his sexual potency had considerably waned as proved by the fact that he had sexual intercourse with his own wife only once a week. The court a quo did not accord credence to this defense, and we are of the view that in this regard the court did not err.

The complainant testified that the wooden bar which she used to lock the door of her room did not prevent the said door from being opened when pushed from the outside. Thus, Fontanilla had easy access at night to Fe Castro's sleeping quarters. Considering the general make-up of residential houses in the barrios, we believe that the complainant's statement is essentially true.

With respect to the appellant's argument that during the day he had no opportunity of being alone with the complainant, he himself admitted upon cross-examination that there were times when he would be home earlier than his wife and would ask Fe Castro to serve him food. As there was no other person in the house during such occasions Fe Castro and Fontanilla naturally would be alone together. The appellant also admitted that whenever his wife went to market she would be away for two to three hours. He hastened to add, however, that each time his wife left for the market she advised Fe Castro to stay with their neighbor. Granting that Fe Castro would really go to their neighbor's place which was only five meters away from their house, it is not improbable that Fontanilla would call her back once his wife had left. Thus, the very record of the case belies the defense of the appellant that there was no occasion when he could have violated the chastity of his ward.

The appellant also contends that it was impossible for him to have indulged in sexual intercourse with the complainant twice a day, because even with his wife he made love only once a week. Fontanilla attributed his diminished virility to old age as he was already 52 years old at the time of the commission of the alleged crime. This declaration was corroborated by his wife, Magdalena Copio, who went to the extent of vouching that two years after their marriage they did not indulge anymore in sexual relations. We believe, nonetheless, that the appellant's claim is untenable. In the first place, the complainant did not say that Fontanilla had her twice a day during the three months that she stayed with him and his wife. When asked what time they indulged in sexual

intercourse she replied "Day and night." (t.s.n., p.6) This answer of the complainant cannot be interpreted to mean that they had sexual intercourse twice daily (one in the daytime and another at night), for said statement was in reply to a question with respect to the time when they engaged in carnal intercourse and not the frequency of their illicit love making. In the second place, there is a presumption that an adult male has normal powers of virility and the burden of proving the contrary rests on the party asserting it.[6] We believe that the declarations of Fontanilla and his wife on the former's alleged weakening potency are not sufficient to rebut this presumption. Alfred W. Herzog has cautioned that "one must be very careful not to express the opinion that a man on account of his age is either sterile or impotent." [7] Hence, a party who claims loss of virility, or waning potency for that matter, must bolster his assertion clinically with the aid of a competent and expert witness.

On the other hand, the prosecution presented Dr. Magno K. Guerrero, the physician at the La Union Provincial Hospital who examined the victim. Dr. Guerrero testified that the hymen of Fe Castro showed "incomplete healed lacerations at 9 & 3 o'clock positions on the face of a watch, edges of which are sharp and easily coactable." He explained that healed lacerations would suggest that the injury happened six months, more or less, prior to the date of examination. In the case at bar, since per medical findings the hymen of the complainant showed "incomplete healed lacerations," then this fact would indicate that the injury occurred less than six months before February 12, 1961, the date of the medical examination of Fe Castro. Significantly, said period corresponds to the time when Fe Castro stayed as a helper in the house of the Fontanilla spouses. Upon cross-examination, Dr. Guerrero testified:

"Q. - Dr. Guerrero, you stated that it (the laceration) should last less than six (6) months counting from?

"A. - From the time I examined."

x x x x x

"Q. - Disregarding the history of the patient, from your observation of the patient, how many sexual intercourse could have caused the lacerations taking into consideration the condition of the hymen?

"A. - Several intercourses because of the laxity of the vaginal canal and it admits three (3) fingers.

"Q. - How many intercourses could have caused that?

"A. - Several. More than ten (10) times."

x x x x x

"Q. - And those lacerations could be caused ten (10) times or more?

"A. - Ten times or more.

Q. - How many more?

"A. - Another ten (10) times more."

It is clear from the above testimony that Fe Castro had experienced numerous distinct acts of sexual intercourse, a fact which affirms her claim that the appellant had carnal knowledge of her repeatedly during her three-month stay in his house. There is no evidence on record that Fe Castro, then a 15-year old single girl was unchaste prior to her living with the Fontanilla spouses. Such being the case, her virginity before she was seduced by the appellant must be presumed. Presumption of a woman's virginity arises whenever it is shown that she is single, and continues until overthrown by proof to the contrary.[8] This is in accord with the presumption of innocence which "includes, also, that of morality and decency, and, as a consequence, of chastity." [9]

We are of the considered opinion that the findings of fact reached by the court a quo are substantially correct. This, apart from the rule that "as far as credibility and veracity of witnesses are concerned, the conclusions of the lower court command great weight and respect, on the ground that the trustworthiness of witnesses and the merit of the defenses by the accused, are in the peculiar domain of the trial court." [10] In the case at bar, we see no reason for departing from this doctrine, there being no showing that "some fact or circumstance of great importance to the case has been overlooked in the records or misapplied or its significance misunderstood by the lower court." [11]

The appellant finally contends that the lower court erred in ordering him to pay P500 in moral damages to the offended party or to her parents. Ironically, this contention is correct in two respects. The first is that the award of P500 in moral damages is inadequate. We have heretofore stated that the complainant was a virgin, there being no proof to the contrary, and that she was deflowered by the appellant. The loss of her virginity, at the hands of the appellant, together with the attendant shame and scandal, entitles her, in the view of this Court, to the sum of P2,500 in moral damages. Her future as a woman is definitely impaired, and the resultant prejudice against her engendered in the male population of the barrio where she resides cannot be blinked away. The second error of the lower court is in making the award payable to the offended party or to her parents; which award is, by the very wording of the judgment, in the alternative. Article 2219 of the New Civil Code provides that moral damages are recoverable by the offended party in the cases of "seduction, abduction, rape, or other lascivious acts" and that the "parents of the female seduced, abducted, raped, or abused . . . may also recover moral damages." (underscoring supplied) The conviction of the accused suffices as a basis to adjudge him, in the same action, liable for an award of moral damages, without independent proof thereof, to the victim and her parents, because the law presumes that not only the woman who was seduced, abducted, raped or abused, but as well her parents, naturally suffer besmirched reputation, social humiliation, mental anguish, and wounded feelings. In the case at bar, moral damages must be awarded to the offended woman and her parents, not to either of them, as ordered by the court a quo.

ACCORDINGLY, the judgment appealed from is affirmed, with the modification that the appellant is ordered to pay the sum of P2,500 in moral damages to the offended party and her parents. Costs against the appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] *People vs. Paderna*, L-28518, January 29, 1968; *Aquisap vs. Basilio*, L-21293, December 29, 1967, 1967D PHILD 874, 876.

[2] 19 Phil. 265.

[3] Justice Moreland's dissenting opinion in *U.S. vs. Bernardo*, *supra*.

[4] *U.S. vs. Arlante*, 9 Phil. 595.

[5] *U.S. vs. Santiago*, 41 Phil. 787.

[6] *Gardener vs. State*, 7 S.E. 144.

[7] Herzog, *Medical Jurisprudence* (1931), p. 806-807.

[8] *U.S. vs. Alvarez*, 1 Phil. 351.

[9] Valdepeñas vs. People, L-20687, April 30, 1966 (SCRA, vol. 16, p. 871), citing 6 Moran, pp. 28-29, 1963 Edition).

[10] People vs. Evaristo, L-14520, February 26, 1965; See also People vs. Lumayag, L-19142, March 31, 1965; People vs. Jaravata, L-22029, August 15, 1967 (SCRA, vol. 20, p. 1014).

[11] People vs. Castro, L-20555 and L-21449, June 30, 1967 (SCRA, vol. 20, p. 543).

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