

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTORIO LAGUISMA Y SORIANO, DEFENDANT-APPELLANT.***G.R. No. L-46297. June 19, 1980*

Ponente: FERNANDO, J.

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It is readily admitted in the exhaustive and learned brief submitted by counsel Pablito V. Sanidad of appellant Victorio Laguisma, who was convicted for the crime of rape and sentenced to reclusion perpetua, that the offense in question is "a most detestable crime." [1] Such a characterization becomes more apt, considering that the complainant was, at the time of its alleged commission, "a young girl, eleven years old." [2] Counsel seeks the reversal of the conviction, relying on this dictum of Sir Matthew Hale: "Charges of rape are very easy to make and hard to dispute." [3] While the impassioned plea of counsel on behalf of his client is backed up by a painstaking analysis of the evidence, it cannot be said that his effort suffices for an acquittal. Nor did his submission gain strength by the stress laid on the appraisal by the lower court, which in his opinion could have been more favorable to his client's cause. It is undoubted that on questions of credibility, the finding of facts of the judge a quo, while not conclusive, is entitled to great respect. Moreover, a careful and detailed study of the records of the case justifies the conclusion that the constitutional presumption of innocence had been overcome. [4] Guilt had been demonstrated beyond reasonable doubt. We affirm.

At the time of the alleged commission of the offense, September 27, 1974, complainant Veneranda Fernandez was only 11 years, 10 months and 13 days. [5] She was then enrolled in the St. Louis Elementary School, being in the sixth grade. [6] At 4:30 in the afternoon of such day, while she was on her way home, walking along General Luna Street, Baguio City, she saw appellant Victorio Laguisma Soriano near the Corazon Drug Store in the vicinity of the parking place for jeeps bound for New Lucban. [7] Pulling her by the hand and telling her that they would take some refreshment, she was taken, notwithstanding her refusal, to a canteen near the Corazon Drug Store, where they drank soft drinks and ate some bread. [8] He left her for a while, but asked her to wait. [9] Upon his return to the canteen, he told her that they would go somewhere. [10] Again, complainant refused, but appellant succeeded nonetheless to have her ride with him in a jeep with only the two of them as passengers. [11] They were seated beside each other on the left rear seat. [12] The jeep brought them outside the compound of the botanical garden, known as the Imelda Park, in Baguio City. [13] This time, she was again prevailed upon to go with appellant inside a small hut therein located, the success of appellant in obtaining her grudging consent being caused by his getting her books and other school materials. [14] It was then about 5:00 o'clock in the afternoon when they entered the said hut. [15] Once inside the hut, appellant spread his raincoat on the floor, undressed himself, and told complainant to lie down on the raincoat, but at first she would not. [16] It was only her fear that led her to comply. [17] She was forced to remove her panties. [18] Appellant then placed himself on top of her, staying in that position for about five minutes. [19] She was aware that appellant was able to put his organ into hers because she felt pain, although bearable. [20] Still naked, appellant sat on the floor in a corner of the hut, with her beside him. [21] Then he made her sit on his lap, again notwithstanding her refusal, by pulling her to him and holding her waist tightly. [22] She narrated that thereby he was able to place his organ in hers, as she felt pain. [23] Accused

then put back his clothes on, at which time a policeman, Patrolman, Warlito J. Vallo, with two other men, arrived.[24] The policemen saw the complainant and appellant standing about a meter away from the hut and noticed that complainant was crying.[25] When the accused was asked by Patrolman Vallo what the latter did to the complainant, he replied that they were only embracing and kissing.[26] Both complainant and the accused were then taken to the police station for further investigation.[27] While the act was being perpetrated inside the hut, Aurelio Poyaoan, a gardener in the Botanical garden, was getting ready to leave his work as it was already time to do so, and was able to see what happened as the hut had no door shutter.[28] There was direct testimony from him that he saw appellant forcibly remove her panties while she was lying on the floor of the hut and that appellant then undressed himself.[29] The accused then went on top of the complainant and had sexual intercourse with her.[30] That led him to call for a policeman, but when they arrived, appellant and the complainant were no longer in the hut.[31] They nevertheless went inside the hut, where they saw several drops of wet sperm cells on the floor.[32] Complainant was investigated in the Baguio City Police Department.[33] Her statement was reduced to writing.[34] Later, she went with her uncle and aunt to the Baguio General Hospital, where she was examined by Dr. Arturo Luczon, a physician of said hospital.[35] His finding was summarized thus: "Reddening of the labia majora, without abrasions or injury, reddening of the labia menora, no laceration noted in the hymen, presence of white milky discharge from the vaginal canal." [36]

As set forth at the outset, the decision must be affirmed.

- An appraisal of the six errors assigned yields the conclusion that the main reliance of appellant is on the alleged failure to overcome the constitutional presumption of innocence. That is not surprising. This Court has never been reluctant to give it force and effect whenever warranted. In the language of *People v. Dramayo*: [37] "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." [38] If the lower court had been remiss in giving life to such a fundamental principle, then it should be taken to task. Such is not, however, the case. The evidence of record objectively viewed sustains the conclusion it reached.

- Nor was the cause of appellant bolstered by the attack launched in the exhaustive brief of counsel on the findings of fact by the lower court. Of the six errors assigned, four deal with such alleged failing. The weakness of such an approach is apparent. There is a host of decisions to the effect that as the trial judge had the opportunity to observe the witnesses testify concerning the events that did take place, the conclusion arrived at is entitled to full respect, unless, of course, it could be demonstrated that he failed to appreciate the significance of a relevant fact or circumstance or, what is worse, that it was ignored. So it has been since the opinion of Justice Moreland in *United States v. Pico*, [39] a 1910 decision. Since then, this Court has been committed to such a view.

- To be more precise, the first assigned error complains against the lower court giving full credence and weight to the testimony of the complainant as well as the alleged eyewitnesses; the second assigned error, a corollary to the first, with the lower court refusing to hold that complainant's credibility "was completely destroyed by her testimony" on the presence of force or intimidation; the third, with the lower court giving "undue weight and importance to the testimony of another prosecution witness, Patrolman Warlito Vallo;" and the fourth assigned error, with the failure of the lower court to lend "credence to the clear, positive and convincing evidence of appellant and his witnesses." It is apparent therefore why, in the light of the authoritative precedents, the vigor with which counsel for defendant-appellant presented his side of the case did not suffice. To be more precise,

fully five pages of the brief for appellant[40] were devoted to the alleged lack of credibility and probability of the testimony that there was sexual intercourse, one of the main points stressed being that such "incident allegedly [happened] in broad daylight." [41] A few pages later, the testimony of the alleged eyewitness Aurelio Poyaoan was subjected to the withering attack. Counsel stated the following: "The witness admits that ordinarily the inside of the Benguet Hut is [dim]; but asserts that on the day and hour of the incident the same was not true because the rays of the shining sun strike the frontage of the Benguet Hut. Was the sun really shining: Was Poyaoan telling the truth? Is he reliable?" [42] Then he proceeded: "The final arbiter in this controversy is of course the weather bureau or [Pagasa] (Philippine Atmospheric, Geophysical and Astronomical Services Administration), as it is now called, which is the government office that keeps and holds faithful records of the weather conditions all over the country. * * * What does the records of the [Pagasa], which is the final authority, have to say about the sun shining on the afternoon of September 27, 1974?" [43] To the question asked by him as to whether from the records of the Pagasa, there was any sunshine visible between the hours of 5:00 and 6:00, this was the reply of his witness: "Between the time 5 to 6 in the afternoon of that day, September 27, 1974 as per our observation and our official record, [there was no sun-shine on that particular time,] 5 to 6 p.m." [44] Then he asked the rhetorical question: "Who should be believed now? The alleged eyewitness who relies from memory, or [nature] itself as reflected in official, accurate, recorded government files of the [Pagasa]? Who is telling a lie now, Poyaoan or [nature] as contained in the official records of the government?" [45] For him, the answer is obvious: "The statement of Aurelio Poyaoan regarding the [sun shining] is vital because without it the rest of his testimony becomes of no moment. This is because without the sun shining he would admit that inside the Benguet Hut would be [dim] and of poor visibility. Without the sun shining too he would also be caught categorically stating a [falsehood]." [46] Thus counsel impaled himself in the horns of dilemma. Either the incident was improbable because it happened in broad daylight, as set forth in an earlier portion of his brief, or the eyewitness could not have seen the alleged act as the sun was not shining at that particular time and it was already dark. He could not have it both ways. His effort to make out a case for the appellant could not be rewarded with success as it did suffer from the seeds of internal contradiction. It may be added that the reproach hurled on the character of the complainant because of her alleged failure to stick to the truth could be more aptly characterized as a manifestation of his skill at cross-examination. The rather dark picture of the character of complainant painted by him suffers from rhetorical excess. It detracts from its persuasive-ness. All talk about force, even if in the guise of destroying complainant's credibility, is lacking in relevance, considering that the offense was committed against a girl below the statutory age. It is as simple as that. To repeat, the trial judge was convinced that such was the case, believing as he did the evidence for the prosecution. The defense was unable to cast doubt sufficient to call for an acquittal. Necessarily, conviction of appellant was indicated. So he concluded. The compulsion exerted by the host of decisions earlier referred to as to the respect accorded his findings of fact precludes the grant of the plea for the reversal of the judgment.

- The fifth alleged error imputed to the lower court is that it should have acquitted the defendant-appellant. This particular assignment of error need not be discussed in the light of the foregoing. The thrust of the argument advanced as to the sixth alleged error concerning the failure to use the medical evidence as a basis for acquittal is that complainant is still physically a virgin. [47] Appellant therefore would deny the truth of the allegation that on the two occasions in the Benguet Hut, there was sexual intercourse. As far back as *People v. Oscar*, [48] a 1925 decision, it was held that a showing of full penetration is not necessary to convict an accused. That same year, in *People v. Hernandez*, [49] the basis for conviction was "partial penetration." [50] In *People v. Eriña*, [51] promulgated the next year, the same approach was followed, as shown by this relevant excerpt: "It has been suggested that the child was of such tender age that penetration was impossible; that the crime of rape consequently was impossible of consummation; and that, therefore, the offense committed should be treated only as abusos deshonestos. We do not think so. It is probably true that a complete penetration was impossible, but

such penetration is not essential to the commission of the crime; it is sufficient if there is a penetration of the labia."[52]

- This opinion can fitly close with a reite-ration of the settled law that where the victim is a young girl of tender years, consent on her part is not a defense.[53] It is understandably why. That is to manifest the deep concern of the state for the welfare of a child. Such an approach vitalizes further the concept of parens patria.[54]

WHEREFORE, the lower court decision of January 29, 1977, convicting Victorio Laguisma y Soriano of the crime of rape and sentencing him to reclusion perpetua, as well as the award of P12,000.00 as damages to the offended party is affirmed. The award of moral damages to be paid the mother of the offended party is set aside. No costs.

Barredo, Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

[1] Brief for the Appellant, 1.

[2] Ibid.

[3] Ibid., 2.

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

[5] T.s.n., Session of November 26, 1974, 14.

[6] Ibid.

[7] Ibid., 15-16.

[8] Ibid., 16.

[9] Ibid.

[10] Ibid.

[11] Ibid., 17.

[12] Ibid.

[13] Ibid., 17-18.

[14] Ibid., 18.

[15] Ibid.

[16] Ibid., 18-19.

[17] Ibid., 19.

[18] Ibid., 22.

[19] Ibid., 19.

[20] Ibid.

[21] Ibid., 19-20.

[22] Ibid., 20.

[23] Ibid.

[24] T.s.n., Session of January 15, 1975, 67.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] T.s.n., Session of March 24, 1975, 4-6.

[29] Ibid., 6-7.

[30] Ibid., 7.

[31] Ibid., 7-8.

[32] Ibid.

[33] T.s.n., Session of November 26, 1974, 22-23.

[34] Ibid.

[35] Ibid.

[36] Ibid., 6-8 and Exhibit A.

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

[38] Ibid., 64. From *People v. Molina*, L-30191, October 27, 1973, 53 SCRA 495, to *People v. Tigulo*, L-34334, November 7, 1979, at least eighteen cases may be cited where *Dramayo* was invoked.

[39] 15 Phil. 549. To mention only some of the recent cases, reference may be made to *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. Villa-mala*, L-41312, July 29, 1977, 78 SCRA 145; *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.

[40] Brief for the Defendant-Appellant, 25-29.

[41] Ibid., 26.

[42] Ibid.

[43] Ibid. 31-32.

[44] Ibid., 32.

[45] Ibid., 33.

[46] Ibid., 34.

[47] Brief for the Defendant-Appellant, 72.

[48] 48 Phil. 527.

[49] 49 Phil. 980 (1925).

[50] Ibid., 983.

[51] 50 Phil. 998 (1927).

[52] Ibid., 999.

[53] Cf. *People v. Celis*, L-26977, Sept. 30, 1970, 35 SCRA 129; *People v. De la Cruz*, L-28810, March 24, 1974, 56 SCRA 84; *People v. Gonzales*, L-39926, July 31, 1974, 58 SCRA 265; *People v. Ignacio*, L-35494, Sept. 18, 1974, 60 SCRA 11; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. De Jesus*, L-38309, Oct. 23, 1978, 85 SCRA 686; *People v. Mariano*, L-45966, Nov. 10, 1978, 86 SCRA 288; *People v. Conchada*, L-39367-69, Feb. 28, 1979, 88 SCRA 683; *People v. Francisco*, L-37481, Sept. 28, 1979, 93SCRA 351; *People v. Laspardas*, L-46146, Oct. 23, 1979, 93 SCRA 638.

[54] In addition to *People v. Conchada*, *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114 and *People v. Cawili*, L-30543, July 15, 1975, 65 SCRA 24 may be cited.

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