

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEVERINO CUETO, DEFENDANT-APPELLANT.

G.R. No. L-46697. August 25, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

Severino Cueto appealed from the decision of the Court of First Instance of Oriental Mindoro, convicting him of rape, sentencing him to reclusion perpetua, and ordering him to pay Evelyn Cauyan moral and exemplary damages in the sum of P20, 000 and to acknowledge the offspring, a baby boy named Ruben Cueto (Criminal Case No. P-691).

Instead of upholding that judgment of conviction, the Solicitor General filed a manifestation recommending the acquittal of the accused.

Complainant Evelyn Cauyan, single, finished second year high school. She was already twenty-one years old when the alleged rape was committed (she was born on September 20, 1952). She was the only witness who testified that the twenty-one year old Severino Cueto (whom she had known at the grade school) had forcible sexual intercourse with her on a certain night in June, 1974, the exact date of which she could no longer recall.

Her version is that on that night, she slept beside Magdalena Roco in the latter's house. During the night (the approximate hour was not mentioned), she woke up. Magdalena was no longer at her side. Evelyn noticed that Cueto was in the room undressing himself. She did not make any outcry when she saw Cueto.

Cueto placed himself on top of her, embraced and kissed her, fondled her breasts and at the same time removed her dress and panty. She "struggled" and "fought back". He threatened to kill her if she shouted. He was able to have carnal intercourse with her. She was then having her regular menstruation. She did not scream. She did not describe how she struggled and resisted Cueto's advances. She did not even testify as to what she did after the alleged rape.

She complained to the police only on January 10, 1975. She submitted to a medical examination on February 7, 1975 when she was already eight or nine months pregnant. She filed the complaint for rape against Cueto on February 10, 1975, which was the date when her child, named Ruben Cueto, was born. On May 19, 1975 she signed a statement withdrawing her complaint because Cueto's brother promised to pay her P1,000. That promise was not fulfilled.

So that Evelyn's credibility and the sufficiency of her evidence may be evaluated, we are reproducing below her uncorroborated, spurtive or spasmodic testimony as to how she was allegedly raped by Cueto, who was unarmed, which testimony was elicited by means of leading questions:

"Q. Are your parents still living? - A. Yes, sir.

Q. What is the name of your mother? - A. Anicia Medrano Cauyan, sir.

Q. What is the name of your father? - A. Vicente Cauyan, sir.

Q. Were you already a resident of Bongabon, this province, in the month of June, 1974? - A. Yes, sir.

Q. In what place? - A. Middle of the town, sir.

Q. With whom? - A. With my grandmother, sir.

Q. Sometime in the month of June, 1974, do you remember if you had gone to a movie at that place? - A. I can no longer remember, sir.

Q. Do you remember if you had slept at another house aside from your house on the night of June, 1974? - A. Yes, sir.

Q. Whose house? - A. Owned by Magdalena Roco, sir.

Q. In what place? - A. By the seashore of Bongabon, sir.

Q. Why did you sleep in the house of Magdalena Roco on that night of June, 1974? - A. Because she requested me to accompany her to sleep in her house, sir.

Q. Is this Magdalena Roco married or single? - A. She is a widow, sir.

Q. Aside from Magdalena Roco, who were the other companions, if you still remember, when you slept in the house? - A. None, sir.

Q. While you were sleeping on the night of one of the days of June, 1974, do you remember if something had happened on your body, particularly on your womanhood? - A. There was.

Q. What was that? - A. I was raped, sir.

Q. By whom? - A. By Severino Cueto, sir.

Q. If that Severino Cueto is inside this courtroom, will you please point to him? - A. Yes, sir. That man. (Witness pointing to a man who when asked answered that his name is Severino Cueto).

Q. What was the position of this Severino Cueto on the first time that you noticed his presence in that house? - No answer.

Court: Do not be ashamed. Tell the whole truth.

A. He was totally naked, sir.

Q. With this Severino Cueto totally naked, what did he do to you? - No answer.

Court: Why can't you answer this question propounded to you by the Fiscal? Are you ashamed that there are so many people around, so you want the audience to be excluded? - A. It is not necessary, your Honor.

Court: In that case, answer the question now propounded by the Fiscal.

Fiscal: Q. Upon seeing Severino Cueto naked, like when he was born, what did he do to you? - A. He went on top of me, sir.

Q. With Severino already on top of you, what did you do? - A. I struggled with him, sir.

Q. With Severino over you and you said you were struggling, what did he do to you, particularly to your body or to the dress you were wearing? - A. He undressed me, sir.

Q. Were you wearing any panty at that time? - A. Yes, sir.

Q. What did Severino do with that panty you were wearing at that time, in connection with this case? - A. He removed my panty, sir.

Q. While Severino Cueto was removing your panty on the night of June, 1974, what did you do? - A. I fought back, sir.

Q. With you struggling and with you fighting back by reason of the attempt or assault of this Severino Cueto, what did the latter tell you, if he said anything? - A. He told me not to shout, sir, because if I will shout, he is going to kill me.

Q. When you were already undressed and without already a panty and with Severino Cueto already naked from top to bottom, what did he do to you? And with him over you, what did he do to you? - A. He inserted his private part to my private part, sir.

Q. What did you feel when this Severino Cueto inserted his private part into your private part? - A. It was painful, sir.

Q. With the private part of Severino Cueto already inserted into your private part and by reason of which you already felt pain, what did this Severino Cueto do next? -No answer.

Fiscal: May I be allowed to propound directly?

Court: Do that.

Q. (by Fiscal): When Severino Cueto already had his private part inserted into your private part and by reason of which you felt pain, did Severino Cueto move his body up and down? - A. Yes, sir.

Q. While this Severino Cueto was doing x x x the up-and-down movement, while his penis was inserted into yours, did you likewise feel pain? - A. I felt pain, sir.

Court: Did you feel if any blood oozed from your private part while Cueto was performing the act? - A. Yes, your Honor, there was blood oozing from my private part.

Q. (by Fiscal): How many times did Severino Cueto use you during the night of June, 1974? That single night? -A. Only once, sir.

Q. After that sexual act, did Severino Cueto leave the house? - A. He left the house, sir.

Q. Before he left the house, do you remember if he had told you something? - A. Not to report the incident to anyone, sir.

Q. During the time that you first noticed that Severino Cueto was naked, and already on top of you, where was that Magdalena Roco? - A. Magdalena Roco was not beside me, sir.

Q. Which house is near to the house of Magdalena Roco? A. There is no house near the house of Magdalena Roco, sir.

Q. Did you leave the house of Magdalena Roco that morning? - No answer.

Q. Did you go home to the house of your lola in the morning following the night when you were abused? - A. Yes, sir, the following morning after the incident.

Q. Right after the sexual abuse on you by this Severino Cueto, did you not notice something on your private part aside from feeling pain? - No answer.

Q. Upon your return to the house of your lola or your grandmother, what did you do? - A. I reported the incident to my mother, sir.

Q. You are referring to your mother, Anicia Cauyan? -A. Yes, sir.

Q. What did your mother do in the fate of your complaint that you were abused by Severino Cueto? - A. She got mad, sir.

Q. By reason of the fact that she got mad and she got angry, what did she do? - No answer.

Q. As a result of that abuse on you by Severino, what happened to you, particularly to your body? - A. I became pregnant, sir.

Q. Were you able to give birth by reason of that pregnancy? - A. Yes, sir.

Q. Was it a boy or a girl? - A. A boy, sir.

Q. What is his name? - A. Ruben Cueto, sir.

Q. Why did you affix the surname Cueto to that first name, Ruben x x x - A. Because he is the father of my

son, sir.

Q. Have you had any carnal act with any other man before the night when you were abused by Severino Cueto? -A. No, sir, only with Severino Cueto who abused me.

Q. Right after the abuse on you by Severino Cueto, have you had any act with any other man other than Severino Cueto before the birth of Ruben Cueto? - A. No, sir.

Q. Where is your son now, named Ruben Cueto? A. There, sir. (Witness pointing to a boy held by a woman).

Q. Is this the boy Ruben Cueto as a product of a sexual intercourse made on you by Severino Cueto? - A. Yes, sir.

Q. Do you remember if you were examined by a physician by reason of your pregnancy which ultimately you gave birth to that promising boy named Ruben Cueto? - A. Yes, sir, by Dr. Vilorio.

Q. Do you remember if you were investigated by members of the police force of Bongabon by reason of this complaint of yours against Severino Cueto? - A. Yes, sir.

Q. (by Fiscal): Do you remember likewise if you signed a complaint against this Severino Cueto by reason of his abuse on you? - A. Yes, sir.

Q. I am showing to you a criminal complaint which appears on page 1 of the records and which we pray that this be marked as Exh. B for the prosecution, please look over the signature appearing therein above the typewritten name Evelyn Cauyan and tell this Honorable Court whether this is your own signature? - A. (Witness looking over subject signature). This is my signature, sir.

Q. Likewise appearing on page 4 of the records is a Sinumpaang Salaysay and which we pray that this be marked as Exh. C for the prosecution, will you please tell us whether this is the same affidavit which you had executed by reason of this complaint of yours? - A. This is the affidavit I am referring to, sir.

Fiscal: We pray, if your Honor please, that the signature appearing in the criminal complaint be encircled, and that the same be marked as Exh. B-1, and that the signature of the same witness appearing on page 4 of the record, which is already marked as Exh. C, be marked also as Exh. C-1.

Q. Try to explain x x x that the incident happened x x x in the month of June, 1974 x x x a seeming delay in the

filing of this criminal complaint x x x on February 12, 1975? Why was there a delay in the filing of the complaint? - No answer.

Fiscal: I withdraw.

Q. Who is caring for this Ruben Cueto, your son? -A. My mother, sir.

Q. Who is providing your son food and clothing? -A. My mother, sir.

Q. After the filing of this complaint against Severino Cueto, try to remember x x x if this Severino Cueto had approached you or your mother in connection with this case? -A. No, sir, he did not.

Fiscal: I think that is all for the witness. (6-22 tsn March 12, 1976).

CROSS-EXAMINATION FOUR DAYS LATER

Q. I heard you last Friday say that you went to school in Bongabon, Oriental Mindoro, is that correct? - A. That is correct, sir.

Q. You finished your grade school in Bongabon, Oriental Mindoro? - A. No, sir. I finished my second year high school.

Q. When you were in your grade school, you had come to know of Severino Cueto, is that correct? - A. Yes, sir.

Q. You had come to know of Severino Cueto because he was your classmate? - A. No, sir, not in that way.

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Q. You were with Severino Cueto in the grade school, is it not? - A. No, sir.

Q. But he was in the same school at Bongabon, Oriental Mindoro when you were in the elementary school? - A. No, sir.

Q. In high school, where you studied, did you come to know whether Severino Cueto was studying in the same school? A. No, Sir.

Court: When for the first time did you come to know Severino Cueto, prior to the incident? - A. For a long time, your Honor.

Q. (by defense counsel): You had a store in your place in Bongabon, Oriental Mindoro? - A. Yes, sir.

Q. Since 1974? - A. Yes, sir.

Q. You were selling liquors in that store? - A. Yes, sir.

Q. There were times when persons who drink liquor went there? - A. Yes, sir.

Q. You were the one who attended to them, is it not? -A. No, sir.

Q. You had companions in that store in 1974, have you? - A. Yes, sir.

Q. Will you please tell the Honorable Court who were your companions in that store? - A. Magdalena Roco, sir.

Q. Do you recognize Lita Cordero? - A. Yes, sir, I know her.

Q. She was with you in 1974 in that store of yours in Bongabon, is that correct? - A. Yes, sir.

Q. How about a certain Anicia, do you know her? -A. She is my mother, sir.

Q. In that store, you had seen Severino Cueto frequenting that same place? - A. No, sir.

Q. But (persons) other than Severino Cueto went there? -A. Yes, sir.

Q. Severino Cueto was courting you, is it not? -A. No, sir.

Q. Sometime in June, 1974, according to you, you went to a moviehouse? - A. Yes, sir.

Q. You went with Magdalena Roco? - A. Yes, sir. Q. You also went with Severino Cueto, is that not correct? - A. No, sir.

Q. The husband of Magdalena Roco was with you, is it not? - A. The husband of Magdalena Roco was with us attending the movie, sir.

Q. After seeing the movie, according to you, you were invited by Magdalena Roco to sleep with her, is that not correct? - A. Yes, sir.

Q. You went direct from the movie to the place of Magdalena Roco? - A. Yes, sir.

Q. Your parents did not know that you went with Magdalena Roco in her place? - A. With the consent of my mother, sir, I slept with Magdalena Roco.

Q. Did you ask her permission when you went there? -A. Yes, sir.

Q. That was before you went to the moviehouse with Magdalena Roco? - A. Yes, sir.

Q. That place of Magdalena Roco is located where? -A. Near the seashore of Bongabon, sir.

Q. What is the name of that place? - A. It is commonly called 'Aplaya', sir.

Q. That is the place of Aling Pawang Lazaro, is that not correct? - A. Yes, sir.

Q. And according to you, there is only one house in that place? - A. Yes, sir.

Q. And that house is owned by whom? - A. I know the owner of that house, sir, and it is owned by Magdalena.

Q. That is the place where you went and decided to sleep, is that correct? - A. Yes, sir.

Q. With Magdalena and her husband? - A. No, sir. The husband was not in the house.

Court: You slept beside Magdalena or in another room far from her? - A. We slept side by side, your Honor.

Q. (by defense counsel): Where was the husband of Magdalena Roco after coming from the moviehouse? - A. The husband of Magdalena Roco went to San Isidro to his true wife, sir.

Q. So there were only the two of you, Magdalena and you, sleeping in the house of Magdalena Roco? - A. Yes, sir.

Q. And you slept there with Magdalena Roco until the following morning, is that correct? - A. Yes, sir.

Q. After coming from the movies, you went with Magdalena Roco and slept in her house the whole night, is that not correct? - A. Yes, sir.

Q. You have not seen anyone who went to that house that evening (when) you slept with Magdalena Roco in her house? -A. There was, sir.

Q. Who was that person? - No answer.

Court: The trouble with this case is (that) the accused is scot-free because he was allowed bail. We do not know if the accused has been threatening (the complainant). That is why she cannot answer the question of the counsel for the defense. Alright, the municipal court fixed the bail at P18, 000. 00 and now afterwards, it was lowered to P15, 000. 00. Now the accused is ordered to raise his bail bond to P40, 000. 00 and if not he will be arrested within fifteen (15) days or else he will be jailed. Alright, try to question her again. Let us find out.

Q. (by defense counsel): Who was that person who went there in that house that night? - A. Severino Cueto, sir.

Q. Severino Cueto went there because you invited him? -A. No, sir.

Court: Is it not a fact that before that night in June, 1974 Severino Cueto was writing you love letters? - A. No, your Honor.

Q. (by defense counsel): Did Severino Cueto wake you up that night? - A. No, sir.

Q. How were you able to discover that Severino Cueto was in the house of this Magdalena Roco? - A. Because

of the brightness of the moon, sir.

Court: When did you recognize him for the first time that night in June, 1974 and under what circumstances and where was he at the time? - A. He was near me, your Honor, and he was undressing and he was standing removing his clothes.

Q. (by defense counsel): When he undressed before you, you were with Magdalena Roco? - A. No, sir.

Q. Where was Magdalena Roco at that time? - A. She was no longer beside me, sir. (Nawala na po).

Court: So you were alone while you were asleep and Magdalena Roco left you? - A. Yes, your Honor.

Q. Do you know what time was it when you found out that Magdalena Roco was no longer asleep beside you? -A. I do not know the time, sir.

Q. But according to you, you slept with Magdalena Roco that whole night? - A. Yes, sir.

Q. When Magdalena Roco left you that night, according to you, did she come back? - A. No more, your Honor.

Q. (by defense counsel): So, it is not true that you and Magdalena Roco slept together the whole night that time? -A. I was left alone while I was sleeping, sir.

Q. After Severino Cueto undressed before you that night, you approached him, is it not? - x x x A. No, sir.

Q. Who was the first, or what did you do when you saw Severino Cueto undressing himself? - A. I resisted him, sir.

Q. While Severino Cueto was undressing himself, you were watching him, is that not correct? - A. No, sir.

Q. Do you mean to tell the Honorable Court that after Severino Cueto undressed himself, he approached you? - A. Yes, sir.

Q. And went on top of you? - A. Yes, sir.

Q. And you allowed him to go on top of you? - A. No, sir.

Q. What did you do when Severino lay on top of you? -A. I resisted him, sir.

Q. You resisted him by embracing Severino Cueto, is that correct? - A. No, sir.

Q. When he went on top of you, were you undressed? -A. No, sir.

Court: Ask if she undressed also when she saw Severino Cueto already undressed. - A. No, your Honor.

Q. (by defense counsel): You did not undress because you were already undressed at the time when Severino Cueto went on top of you?

Court: That will be against the natural course of things. Consider that the witness is mentally retarded. Ask another question.

Q. (by defense counsel): When Severino Cueto went on top (of you), he kissed you? - A. He kissed me, sir.

Q. He kissed you on your cheeks? - A. On my cheeks, sir.

Q. He kissed you how many times? - A. Many times, sir.

Q. While he was kissing you many times, he was also embracing you? - A. Yes, sir, he was embracing me at the same time.

Q. Did he kiss you on your breast? - A. No, sir.

Court: But did he fondle the same? - A. Yes, your Honor. He fondled my breasts.

Q. (by defense counsel): For several times? - A. Yes, sir.

Q. When he fondled your breasts, you were excited, is it not? - A. No, sir.

Q. But the hair of your arms rose? - A. No, sir.

Q. But you were thrilled by the kiss and the fondling of your breasts? - A. No, sir.

Q. What did you feel when Severino was kissing you several times and fondled your breasts several times? - A. I felt pain, sir.

Q. So when Severino Cueto was kissing you and fondling your breasts for several times, you felt pain? - A. Yes, sir.

Court: And at the time that he was kissing you and fondling your breasts, the accused was on top of you, is it not? -A. Yes, your Honor.

Q. (by defense counsel): What else did Severino Cueto do after kissing you and fondling your breasts several times? -A. He undressed me, sir.

Q. Because you consented to be undressed? - A. No, sir.

Court: Was he able to undress you? - A. Yes, your Honor.

Q. When you said that you were undressed, what apparel do you refer to? - A. My dress and my panty, sir.

Q. (by defense counsel): After you were undressed by Severino Cueto, did he remain on top of you? - A. Yes, sir, he remained on top of me.

Q. With all the wearing apparel on your body, he was undressing you one by one of your wearing apparel? - A. He removed all my clothing suddenly or all at once, sir.

Q. That included the panty you were wearing? - A. Yes, sir.

Q. But he remained on top of you? - A. Yes, sir.

Q. So that he was removing your panty with his two hands pushing your panty? - A. Yes, sir. (4 to 24 tsn March 16, 1976).

CONTINUATION OF CROSS-EXAMINATION TWO WEEKS LATER

Q. After your panty had been removed with the two hands of the accused, pulling down the same towards his back, he went on kissing you again for several times? - A. Yes, sir.

Q. In several parts of your body? - A. Yes, sir.

Q. Including your private part? - A. No, sir.

Q. He held you and embraced you tightly? - A. Yes, sir.

Q. And while he was embracing you, the two of your hands were at his back? - A. No, sir.

Court: While he was embracing you, what did you do in particular? - A. I fought back, your Honor.

Q. (by defense counsel): The accused abused you only once? - A. Several times, sir.

Q. The first time when he abused you, that occurred when he first went on top of you? - A. Yes, sir.

Q. And that went on for three or more times after? -A. Yes, sir.

Court: How many times, if you remember? - A. Three times, your Honor.

Q. (by defense counsel): You have felt the pain? - A. Yes, sir.

Q. You have felt the pain after he had contact with you on that night or was it during the time that he was doing the act? -A. After I have been sexually abused, sir.

Q. And that pain lasted for only one day? - A. For one week, sir.

Q. And that you had again sexual contact with the accused after that one week? - A. None, sir.

Q. According to you, blood oozed from your vagina. That was one week after the night when the accused Severino Cueto had sexual intercourse with you? - A. Yes, sir.

Court: When you said that one week after Severino Cueto abused you you had blood in your private part, was it the regular menstruation? - Make it of record that the witness did not answer but the Court will ask another question.

Q. In June, 1974, you said you were raped by the accused. Were you already having your regular menstruation? - A. Yes, your Honor.

Q. At the time that you were allegedly raped by the accused, did you have your regular menstruation that night? - A. I have, your Honor.

Q. (by defense counsel): And your menstruation stopped one week or two weeks from that night in question? - A. One week after I have been abused, sir.

Q. But you conceived of a child because of that? - A. Yes, sir.

Q. And that child was born when? - A. February 10, 1975, sir.

Q. And you said that the father of that child is the accused Severino Cueto? - A. Yes, sir.

Q. After the week menstruation had stopped, did you have another sexual intercourse with Severino Cueto? - A. None, sir.

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Q. On January 10, 1975, you executed an affidavit? -A. Yes, sir.

Q. Who prepared this affidavit for you? This affidavit was taken by PFC Sales, do you know him? - A. Yes, sir.

Q. Who were asking questions in the affidavit you executed? - A. Patrolman Sales, sir.

Q. When Patrolman Sales was asking you, who were present aside from you? - A. None, sir, except the two of us.

Q. And who gave the answers stated in this affidavit? -A. I, sir.

Q. And the signature atop the name Evelyn Cauyan, whose signature is that? - A. Mine, sir.

Q. I am showing you another writing which bears similar signature, the same appearing on page 4 of the records. Please tell us whose signature is this marked as Exh. C-1? - A. Mine, sir.

Defense counsel: And we pray, your Honor, that this affidavit dated May 19, 1975 of Evelyn Cauyan be marked as Exh. 1 for the defense.

Fiscal: May we manifest that this Exh. 1, which is a sort of an affidavit dated May 19, 1975 is not subscribed (sworn) before any administering officer but only signed by the complainant, your Honor.

Defense counsel: That is true, your Honor, and the contents of which substantially read as follows:

'Ako, Evelyn Cauyan, ganap sa edad, dalaga, at naninirahan sa Bongabon, Silangang Mindoro, ay nagsasabi ng katotohanan at naaayon sa batas ng mga sumusunod:

'Na ako ay nagdemanda o naghabla laban dito kay Severino Cueto ng panggagahasa sa Mababang Hukuman ng Bongabon, Lalawigan ng Silangang Mindoro;

'Na ang nasabing habla ay akin ng pinawawalang bisa sa dahilang ang pagkakahabla ko ay hindi ko ganap na kagustuhan kundi ito ay labag sa aking kalooban;

'Na ang sinumpaang salaysay na ito ay ginawa ko upang mawalang bisa ang nasabing habla.

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And we pray, your Honor, that the last two paragraphs be bracketed and be marked as Exh. 1-A for the defense.

REDIRECT EXAMINATION

Q. (by Fiscal): In this affidavit which is already marked as Exh. 1 and which you had already identified your signature, please remember who prepared this Exh. 1? - A. Pedro Casao, sir.

Q. Do you remember if this person by the name of Pedro Casao held any position in that municipality of Bongabon? -A. He is called "attorney", sir.

Q. Do you remember the reason why you affixed your signature on this Exh. 1 which was prepared by Pedro Casao, according to you? - A. Yes, sir. I was promised that a certain amount shall be given by them.

Q. Who promised you that in consideration of your signature in Exh. 1 you would be given a certain amount? - A. Mang Ipe, brother of Severino Cueto, sir.

Q. Aside from you and aside from Pedro Casao, who were present when you signed this Exh. 1? - A. Lita Cordero and Rudy Arellano, sir. Those were the persons who were present.

Q. In what place was this Exh. 1 presented to you for signature and in fact you signed the same? - A. In our house because according to them, that was the instruction of Municipal Judge Garcia, sir.

Q. Who told you that the instruction of Judge Garcia was to sign the same? - A. That was the information given me by the brother of Severino Cueto, sir.

Q. Do you have any companion at that time in your house when you signed this Exh. 1? - A. Yes, sir, Lita Cordero.

Q. Where was your mother when you signed this Exh. 1? -A. She was out of our residence as she was at Dolores, Quezon, sir.

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Q. When you were promised a certain amount by reason of your signature in Exh. 1, did you in fact receive the same? -A. None, sir, not even a single centavo.

Q. How much was promised to you? - A. They promised to give me P1,000.

Q. Before signing Exh. 1, did you have any occasion to read the same or was it read to you by, say, Pedro Casao? -A. Yes, sir, I read the contents of Exh. 1 before signing the same.

Court: Did you not tell Pedro Casao or the brother of Severino Cueto that you will sign the document after you were paid the P1,000 promised you? - A. No, your Honor. I was asked to sign and they will immediately deliver the P1,000, your Honor.

Q. (by Fiscal): You stated in the cross-examination that you had a menstruation during the sexual intercourse on the night of the month of June, 1974, while in the direct examination you stated that right after the sexual intercourse blood oozed from your vagina. Now, please tell this Honorable Court which of the two really happened? - A. That blood oozed on (from) my vagina immediately after having been abused, sir.

Q. Now, for how long have you been having your monthly menstruation before June, 1974? - A. For less than a year, sir.

Q. You stated that blood oozed from your vagina right after the sexual intercourse. Which was bigger in quantity the blood by reason of your menstruation or the blood by reason of the sexual intercourse? - A. The volume of blood is greater that particular evening, sir.

Q. Try again to recoup your memory and try to recall and remember what really transpired after the sexual intercourse on the night of June, 1974. For purposes of clarification, did you have really your menstruation right after the sexual intercourse on the night of June, 1974? - A. No, sir, I did not have menstruation immediately after that sexual intercourse.

Q. When you were again asked on cross-examination you said that the accused Severino Cueto had sexual intercourse for several times. For clarification, are you referring to the manner by which the accused had his push-and-pull movement or did he rest after one sexual intercourse and resumed again for another sexual intercourse? - A. I am referring to the insertion and putting out of his penis, sir.

Q. Now, again you stated in cross-examination that there was pain in your vagina right after the first sexual intercourse. My question is this for clarification. Did you ever feel any pain at the initial insertion of the penis of the accused on the first intercourse in the night of June, 1974? - A. Right on the initial insertion of the penis of the accused I felt the pain.

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Q. Have you had any intercourse with any other man before Severino Cueto had sexual intercourse with you in the night of June, 1974? - A. No, sir.

Q. Right after the night of June, 1974 when the accused Severino Cueto had sexual intercourse with you, have you had any other inter courses with him or with any other men? - A. None, sir.

Court: If the same offer of P1,000 is given to you now, would you be willing to withdraw the complaint against the accused and you will forgive him? - A. No, your Honor.

RECROSS EXAMINATION

Q. Because of that promise of P1,000, you voluntarily signed this Exh. 1? - A. Yes, sir, because I was promised that I will be given the amount of P1,000.

Q. If you were not promised, you would not have signed this Exh. 1? - A. No, sir. I will not sign had I not been promised.

Court: At the time that you signed that Exh. 1 on May 19, 1975, did you deliver already or not? - A. I have already given birth, your Honor.

Q. (by defense counsel): According to you, during the cross-examination, you had menstruation one week after the night when Severino Cueto abused you? - A. No, sir.

Q. So that you are already withdrawing your previous answer that you had menstruation one week after the night in question? - A. No, sir, and I am now rectifying my previous answer to the cross-examination.

Q. The only time that you went to the doctor was on February 7, 1975? - A. Yes, sir.

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Defense counsel: I am through with this witness, your Honor." (1-12 tsn March 30, 1976).

"Experience has shown that unfounded charges of rape or attempted rape have not infrequently been preferred by women actuated by some sinister or ulterior and undisclosed motive, and convictions for such crimes should not be sustained without clear and convincing proof of the guilt of the accused. It is the duty of the courts in such cases to scrutinize with the utmost care the story told by the complaining witness, especially when it appears that

she did not make an immediate outcry or that there was any unexplained delay in instituting criminal proceedings." (U.S. vs. Bay, 27 Phil. 495).

Applying these guidelines to the instant case, we are of the opinion that the testimony of the complainant does not prove beyond reasonable doubt that Cueto raped her. Her testimony lacks spontaneity and does not ring with truth and candor. It is not clear, positive and convincing.

The complainant did not offer any tenacious resistance to the alleged sexual assault. Her declaration that she was raped and that she struggled and fought back are mere conclusions which are not sufficient to dispel the impression that she tacitly consented to the sexual intercourse. (The commission of rape without outside assistance is possible but is a rare case. 2 Cuello Calon, Derecho Penal, 12th Ed., p. 535, note 5).

"The crime of rape is not to be presumed. Consent and not physical force is the common origin of acts between man and woman." "Should the records disclose that some hesitation was shown by the woman or that she had contributed in some way to the realization of the act, this will perhaps constitute an offense very different from that of rape." (Pacheco and Viada, cited in U.S. vs. De Dios, 8 Phil. 279, 282-3).

As noted by Justice Street, in crimes against chastity, the testimony of the complaining woman should not be received with precipitate credulity. When the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of most value in judging matters of this kind (People vs. Fausto, 51 Phil. 852, 856). A conviction for rape based on the uncorroborated testimony of the complaining woman requires that her story should be carefully examined and weighed. The accused should not be convicted unless the complainant's testimony is impeccable and rings true throughout (People vs. Ariarte, 60 Phil. 326).

Moreover, the delay in the filing of the complaint and the fact that the complaining girl did not submit immediately to a medical examination generate doubt as to Cueto's guilt. The explanation for the seven-month delay in the filing of the complaint, which was that Evelyn's mother did not want her husband to know of the alleged rape, is not satisfactory. Evelyn herself, being of age, was competent to file the complaint. She should have acted with promptitude if it were true that she was the unwilling victim of a grievous outrage.

In passing, it may be noted that complainant's mother admitted at the hearing in the lower court on February 21, 1977 that Evelyn was then living with her common-law husband, Ely Rosales.

The accused pleaded the defense that Evelyn was a prostitute. He declared that he had sexual intercourse with her in March, 1974 and that he paid her twenty pesos. It is not necessary to assess the veracity of that defense. We are satisfied that the prosecution's evidence has not established the commission of rape in this case.

WHEREFORE, the lower court's judgment is reversed and defendant-appellant Cueto is acquitted. Costs de oficio.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Concepcion, Jr., J., did not take part.

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