

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NECESIO IMBO, DEFENDANT-APPELLANT.***G.R. No. L-36759. August 31, 1982*

Ponente: FERNANDO, C.J.

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as to the injuries sustained by her and her conduct in stabbing the accused when on a chance meeting, she stabbed him by way of vindicating the dishonor suffered by her, more than justify the decision finding the accused, now appellant, guilty of rape and sentencing him to reclusion perpetua. We affirm.

The difficulty, recognized and acknowledged, in the decision-making process where the prosecution is for rape, arises from the fact that usually only the participants can testify as to the alleged sexual abuse. The accused may deny such an occurrence, put up the defense that he was somewhere else, or allege the consent on the part of the complainant. The court then is left with no choice but to exert the utmost effort to determine the likelihood that a sexual act did take place and under what circumstances. Such choice is not always easy. As set forth in the ponencia of Justice de Castro in *People v. Clarin*,^[1] it "is a well-settled rule that for the lone and uncorroborated testimony of the offended party to be sufficient to convict for the crime of rape, it must be clear and free from any serious contradiction."^[2] There are instances, however, where unknown to the participants to the incident, there may be an eyewitness. This is one such case, for appellant was identified not only by the complainant Amancia Villalon but also by an eyewitness Marciano V. Anqui.^[3] More-over, the facts attested in the medical certificate^[4]

The testimony of the complainant Amancia Villalon was primarily the basis of the judgment of conviction. According to her, on the eve of the town fiesta of Valencia, Negros Oriental, October 11, 1964, Nicolas Delfino was making preparations in his house at Bo. Mampas, with the help of Amancia and her husband, Gregorio, who lived about 350 meters away.^[5] The occurrence took place while she was on her way back to Delfino's house. Returning to her home to get a frying pan, a blanket, and a diaper for her child, she was suddenly accosted by appellant.^[6] He held her hands, covered her mouth and kicked her in the right thigh, causing her to fall to the ground on her back, thus giving him the opportunity to place himself on top of her.^[7] He covered her mouth with his left hand, unsheathed his scythe with his right hand, pressed it to her throat, and then raised her dress.^[8] The dress,^[9] which was buttoned in front was torn open, exposing her underwear. After tearing off her underwear,^[10] he then proceeded to consummate the sexual act, her efforts to ward him off having proved unavailing.^[11] The accused was warned by Amancia that he would be reported to her husband, but he appeared to be unconcerned, for as he told her he had been a barrio captain.^[12] Amancia went back to Delfino's house, but finding that her husband was drinking tuba, she decided not to tell him anything as yet for fear that he would cause trouble.^[13] There were two eyewitnesses, Marciano Anqui and Longobardo Patron, who were passing by at the precise time that appellant was forcing Amancia Villalon to the ground, and were able to observe the accused raising the dress of Amancia, removing her underwear, and having carnal knowledge of her.^[14] When they noticed that the accused was armed, they hurriedly left for fear that appellant would attack them if he saw

them, decided to keep quiet about what they saw, and only upon learning Amancia had told her grandmother that she was raped by appellant, did they reveal their knowledge.[15] Amancia first reported the abuse on her person to the Chief of Police of Valencia, Hilarion Delfino, an uncle of the accused, and was informed that she would only be wasting her time if she filed a complaint and it would be better for her to "settle" the matter.[16] Because of such attitude, Amancia went to the Chief of Police of Bacong, an adjoining town, complained to him, and was advised to look for witnesses.[17] On October 15, 1964, Amancia Villalon submitted herself for medical examination by Dr. Severino M. Kho, Municipal Health Officer of Valencia.[18] She was found to have (a) an abrasion on the chest, (b) contusion on the right thigh, and (c) scratch wounds on both her upper extremities.[19] The abrasion and scratches were caused by fingernails while the contusion by a hard object.[20] In the early morning of October 24, 1964, Amancia Villalon happened to meet the accused, and remembering what he did to her, she stabbed him and then surrendered to the Philippine Constabulary, giving the reason for stabbing him the fact that he raped her on October 11, 1964.[21]

In lending credence and belief to the testimony of Amancia and one of the eyewitnesses, Marciano Anqui, the Court was satisfied that the constitutional presumption of innocence had been overcome. The task was rendered easier not only by the nature of such evidence which certainly met the standard of being clear, consistent and free from any contradiction, but also because of the inherent weakness of the defense. As stressed in the brief of the Office of the Solicitor General,[22] the witnesses relied upon by appellant, Hilarion Delfino, the Chief of Police, as well as Nicolas Delfino, are both related to appellant, a circumstance, of course, not of itself sufficient to call for the summary rejection of the testimony as to its accuracy. Its lack of persuasiveness though, reflected in the eleven-page brief of appellant, certainly justified the decision now on appeal.

The judgment of conviction, to repeat, calls for affirmance.

1. The constitutional presumption of innocence cannot be relied upon. It was intimated in the brief of appellant that it could. Such is not the case. There is no merit to the first error assigned, which assailed the finding of the trial court in according full credit to the testimony of the complainant and to the second error which likewise raised the same point as regards the testimony of the eyewitness Marciano Anqui. All that needs be said in refutation is to call attention to the medical certificate,[23] which indicated in no uncertain terms the injury sustained by complainant as a result of the force exerted on her person and her subsequent conduct, when complainant, in a chance meeting of appellant, stabbed him to show how much she resented the sexual abuse and to vindicate her honor by an act of revenge. It was the lawyer of appellant who called the attention of the lower court to her being prosecuted for frustrated homicide and her being sentenced after a plea of guilty to four months and one day. Independently, therefore, of her testimony and that of Marciano Anqui, both of which certainly on their face bore evidence of adherence to the truth, the invocation of the constitutional presumption of innocence would be unavailing.[24]

2. The principal defense of appellant is alibi. He would have the Court believe that on the night of October 11, 1964, he was in the house of his uncle, Hilarion Delfino, helping make preparations for the town fiesta. Hilarion Delfino, an uncle, and another uncle, Nicolas Delfino so testified. Even discounting the bias of such witnesses, it cannot be said that the defense was entitled to belief. For such an allegation to commend acceptance, the standard of full, clear, and satisfactory evidence must be met. There must be a showing that the accused was at such a distance away that it would not be possible for him to have been at the scene of the crime. Moreover, appellant was positively identified as the perpetrator of the crime. What other conclusion can there be then than that the defense put up by appellant must be rejected? There is this excerpt from *People v. Cuda-lina*: [25] "It suffices to state that this Court when confronted with the defense of alibi in rape cases has invariably found it unconvincing and unsatisfactory." [26]

3. One last word. There is this rather startling admission coupled with a derogatory imputation in the eleven-page appellant's brief of counsel Elpidio D. Unto: "The truth is that although these facts are not borne

out in the records of this case, the offended party was suspected by the husband of having amorous relations with the accused-appellant. Their amorous relations had been, in fact, the common talk in their community." [27] For a lawyer to base his argument on "facts not borne out in the records of this case" is an impropriety that cannot be overlooked. What is worse, he had the temerity to impute unchaste conduct on complainant, without any basis in the evidence. At the very least, counsel must be admonished against such objectionable conduct which certainly casts doubt on his professional standing.

WHEREFORE, the judgment of conviction is affirmed.

Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur. Barredo and Guerrero, JJ., no part.

[1] L-47200, October 30, 1981, 108 SCRA 680.

[2] Ibid, 693. The following cases were cited: *People v. Dazo*, 58 Phil. 420 (1933); *People v. Nebres*, 58 Phil. 903 (1933); *People v. Ariarte*, 60 Phil. 326 (1934); *People v. Delfinado*, 61 Phil. 694 (1935); *People v. Lacuna*, L-38463, December 29, 1978, 87 SCRA 364.

[3] There was another eyewitness, Longobardo Patron, who also saw what happened but was not called to the witness stand.

[4] Exhibit A.

[5] T.s.n., Session of July 2, 1970, 12-13 and T.S.n., Session of February 21, 1972, 48-49.

[6] Ibid, 10-12.

[7] Ibid.

[8] Ibid, 13-14.

[9] Exhibit C.

[10] Exhibit D.

[11] T.s.n., Session of July 2, 1970, 14-16.

[12] Ibid, 16-17.

[13] Ibid, 20.

[14] Ibid, Session of August 13, 1970, 32-35; 41-42; 61-64.

[15] Ibid.

[16] Ibid, Session of July 20, 1970, 20-21.

[17] Ibid, Session of July 2, 1970, 21-22.

[18] Ibid, 22.

[19] Exhibit A.

[20] T.s.n., Session of July 21, 1970, 5.

[21] Ibid, Session of July 3, 1970, 27; Session of August 14, 1970, 35-37; and Session of March 28, 1972, 3-5.

[22] The brief was submitted by then Acting Solicitor General, now Justice, Hugo E. Gutierrez, Jr., assisted by

Assistant Solicitor General Reynato S. Puno, and Solicitor Romeo C. de la Cruz.

[23] Exhibit A.

[24] Cf. *People v. Dramayo*, L-21325, October 29, 1971, 42 SCRA 59, which set forth the standard of moral certainty being met, accusation in itself not being synonymous with guilt. From *People v. Molina*, L-30191, October 27, 1973, 53 SCRA 495, to *People v. Cuison*, L-51363, July 25, 1981, 106 SCRA 98, at least twenty-one more cases may be cited where *Dramayo* was invoked.

[25] L-34969, April 29, 1975, 63 SCRA 499.

[26] *Ibid*, 507. Fifteen cases were cited from *People v. Sardoma*, 79 Phil. 607 (1947) to *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114. After *Cudalina*, reference may be made to *People v. Cawili*, L-30543, July 15, 1975, 65 SCRA 24 and *People v. Villa-mala*, L-41312, July 29, 1977, 78 SCRA 145. The past year, the defense of alibi was relied upon but to no avail in *People v. Yutila*, L-32791, Jan. 27, 1981, 102 SCRA 265; *People v. Arias*, L-40531, Jan. 27, 1981, 102 SCRA 303; *People v. Terrobias*, L-48944, Feb. 26, 1981, 103 SCRA 321; *People v. Boado*, L-44725, March 31, 1981, 103 SCRA 607.

[27] Brief for the Accused-Appellant, 5.

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