

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO EGOT, DEFENDANT-APPELLANT.*G.R. No. L-42962. April 30, 1984*

Ponente: FERNANDO, C.J.

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The condemnation that attends the commission of the crime of rape is never as severe as when the offended party is below twelve years of age. A recent expression of such an attitude is found in the opening sentence of the ponencia of Justice Abad Santos in *People v. Malate*[1] in these words: "There should be a special place in hell for child molesters for they are men who are dirty, despicable, deviable and the dregs of society." [2] There is all the more reason, therefore, for this Court in reviewing a conviction for such offense to satisfy itself that it is supported by proof of the clearest and most unequivocal character. Considering further that in this appeal, outside of the fact that the victim is below the age of consent, the accused is the stepfather of the hapless girl, it is even more imperative that the conflicting testimonies be subjected to the most thorough and exhaustive analysis. As will be shown, there is nothing in the competent and credible evidence of record to justify a reversal of the conviction of appellant Pedro Egot for the crime of rape, for which he was sentenced to suffer reclusion perpetua and to indemnify the offended party in the amount of ten thousand pesos (P10,000).

In the decision now on appeal, the lower court first set forth the testimony of the offended party as well as of the resident physician of Rizal Memorial Hospital of Dapitan City, a certain Dra. Filipinas S. Nielo, and thereafter, the testimony of the accused, now appellant Egot. After such narration, the decision went on to state: "The physical evidence shows that the complainant has been raped. She charged her stepfather of raping her once on the night of December 23, 1971 and again on the night of December 27, 1971. It is very difficult for this court to believe that this 11 year-old girl, of average mentality, would invent the [charge] against her own stepfather whom she considered as her father if it were not true that she was abused by the latter." [3] In the appealed decision, there was also a summary of the testimony of complainant Ligaya de la Cruz. She stated that on December 23, 1971, appellant with his one-year old son, Jose Egot, together with her and her sister Heidee, one year younger, she being at that time eleven, were in their house in Barra, Dipolog City. Her mother was at the time in Dumaguete City convalescing after a tumor operation. Late that night, she was awakened by the weight of a man on top of her. She recognized him as her stepfather, appellant Egot. She struggled and tried to extricate herself, but she was overpowered. Nor was she able to shout for help as he held her by the neck and threatened to choke her. Thus, he was able to consummate the sexual act. At the time of the coition and afterwards, he repeatedly threatened to kill her if she revealed to anybody what happened. That was the reason why for sometime, she could not reveal what was done to her on that night and on December 27, when again he abused her sexually. In the evening of April 24, 1972, however, her mother saw appellant inside her mosquito net. Her mother's suspicion was thus aroused. Complainant was then asked questions, prompting her to relate her sordid experience with appellant. On May 15, 1972, she was examined by Dr. Filipinas Nielo, resident physician of the Rizal Memorial Hospital in Dapitan City. The medical certificate showed the following findings: "(1) Vagina admits 1 finger freely. (2) Old lacerations at 6, 12, 3 o'clock. Note: Vaginal smear for sperm cell taken -

negative.”[4] There was also testimony that the old lacerations of the hymen at 6:00 o'clock, 3:00 o'clock and 12:00 o'clock positions on the face of a clock could have been caused by the insertion of a male organ into the private parts about five (5) months before the examination.[5] The lower court could thus conclude: "These findings of the medical examiner which indicated that the injuries suffered by the complainant [occurred] some five months before examination confirmed the claim of the complainant that she was raped in the month of December, 1971 or five months before May 15, 1972.”[6] There is, moreover, persuasive force to this paragraph in the appealed decision: "The accused did not present any other witness. He did not present Romy Ranila whom he claimed slept with him in their house on the night of December 23, 1971, when Ligaya and her sister Heidee allegedly left the house and did not return that night. He also did not present Marievic Cuevas who is his next door neighbor to confirm his claim that Ligaya went with Marievic Cuevas in the evening of December 23, 1971.”[7]

There is, as is quite apparent from the above, more than sufficient support for the judgment of conviction. The constitutional presumption of innocence,[8] the ground on which this appeal is based, has thus been overcome. To repeat, affirmance is indicated.

1. It is of the essence of the accusatorial system grounded in the due process school of criminology that there be moral certainty of guilt to offset the constitutional presumption of innocence. It follows then that to justify conviction no doubt could reasonably be entertained as to the fact of an offense having been committed precisely by the person on trial. "Accusation," to recall *People v. Dramayo*,[9] "is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies.”[10] Appellant contends that there was no compliance with such a standard. Counsel in the three-page brief filed with this Court assigned as the lone error the failure to overcome the constitutional presumption of innocence there being no proof of guilt beyond reasonable doubt. He argued that appellant could not have committed the crime imputed to him as he "appears [to be] a good family man and provider, having amassed some properties and had built 2 houses for his family; "is a likeable fellow, too, [having married] his widowed wife twice, first at a civil ceremony, and later at the Roman Catholic Church; * * *.”[11] There is clearly a non sequitur in this submission. The fact that appellant is endowed with such sterling qualities hardly justifies the conclusion that he did not inflict on his stepdaughter the act imputed to him. To cast doubt on the sufficiency of evidence submitted by the prosecution, counsel referred to the complaint for rape having been "filed about five months after the alleged commission of the crime [with such] delay not credibly explained.”[12] In appellee's brief,[13] there was an admission of such "delay in the filing of the case.”[14] It was explained why: "On April 24, 1972, Ligaya dela Cruz told her mother what happened to her on December 23, 1971. On May 15, 1972 Ligaya was examined by Dr. Nielo. On September 28, 1973 the complaint for rape was filed with the Office of the City Fiscal of Dipolog. Ligaya's silence from December 23, 1971 to April 24, 1972 was due to her fear of the accused, who threatened her with death and who unquestionably had moral ascendancy over her and to her tender age. As to why the complaint was filed only on September 28, 1973 despite the fact that Angela Recentes [mother of complainant] learned of her daughter's misfortune as early as April 24, 1972, the reason was that Angela must have thought of the grave consequence that might befall accused and her family should she then report the matter to the police authorities. She gave accused a chance to reform, to which act of charity, accused reacted by maltreating his benefactor.”[15] In his effort to cast doubt on the sufficiency of the evidence, counsel next attacked the character of the mother thus: "Defendant-appellant's wife who instigated the filing of the case here is evidently without scruples and not morally irreproachable herself as shown by the following: (a) She is said to have a 'paramour'; and (b) She left the conjugal home with the pretext of buying goods with which to replenish the stocks of their sari-sari store, returning only after 6 days without any purchase made; and again, with the pretext of buying clothes to sell, she left the conjugal home May 1, 1972 and returned only on May 8, 1972, again without bringing home anything. These escapades do not sit well as against a woman said to have a paramour.”[16] As in the two other previous arguments, the persuasive force appears to be nil. It would be an affront to reason to conclude that just because the mother has a paramour, she

concocted this charge against appellant. That is no way to refute the indubitable fact that the 11-year old girl had been deflowered at about the period alleged by her in her testimony as corroborated by the medical certificate of Dra. Nielo. It cannot be reasonably doubted then that appellant is guilty as charged.

2. The futility of this appeal is thus apparent. Complainant testified that she resisted the indecent assault of appellant. She did not have to do so. As pointed out in *People v. Conchada*:^[17] "Nor can there be any weight accorded to the observation made in the brief that complainant apparently failed to manifest any resistance to the sexual abuse committed on her person. Thus, in *People v. De la Cruz*, this Court, through Justice Aquino, stated: 'Appellant's attempt to discredit complainant's story by observing that she had "made no outcry" during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below twelve years of age force or intimidation need not be present.' Again, through the same ponente, there is this holding in the subsequent case of *People v. Gonzales*: 'The crime committed by Gonzales is simple rape or rape without the attendance of any of the qualifying circumstances mentioned in article 335 of the Revised Penal Code. Its basic element is the carnal knowledge of a girl below twelve years of age.'"^[18]

3. In the decision now on appeal, the appellant was sentenced to serve the penalty of reclusion perpetua and to indemnify the victim in the sum of ten thousand pesos (P10,000.00). Reference was therein made, however, to the testimony of the complainant that she was raped a second time by appellant on December 27, 1971. If there were a definite finding that such indeed was the case, then two penalties of reclusion perpetua ought to have been imposed and the indemnification should have been double the amount, two offenses having been committed. When, therefore, only one penalty of reclusion perpetua was imposed, it must have been because the lower court did not give credence to the statement of the complainant that rape was once again committed on December 27, 1971. When she testified on direct examination, most of the questions asked by private prosecutor dealt with what happened on December 23, 1971.^[19] The reference to what allegedly took place on December 27 was based on bare assertions in answer to a slightly leading question as to whether the rape on December 23, 1971 was the first and the last time. She replied: "No, he did it again, Sir."^[20] When asked as to when was the second time, she answered: "On December 27, Sir."^[21] Also, when the complainant was asked likewise on direct examination whether on December 27, 1971, her mother was still in Dumaguete City or was back in their house in Barra, Dipolog City, her answer was: "She was already here."^[22] On cross-examination, she again reiterated that her mother returned on or before December 27, 1971.^[23] On December 23 with her mother away, it is easily understandable why rape could have been perpetrated, but on December 27, with her mother in the house, it is not easy to lend full weight and credit to the bare assertion that she was raped a second time. That seems to be the thinking too of the Office of the Solicitor General. In the brief submitted for appellee, in its counter-statement of facts, there was no reference whatsoever to the alleged rape on December 27, 1977. That accounts for its plea that the decision be affirmed, except for the modification that indemnification be increased to twelve thousand pesos (P12,000.00).

WHEREFORE, the lower court decision dated November 27, 1975 is affirmed with modification, affirmed as to the penalty of reclusion perpetua being imposed on appellant Pedro Egot and modified as to the indemnification to the offended party, Ligaya de la Cruz, the amount being increased to P12,000.00. No costs.

Makasiar, Aquino, Concepcion, Jr., Guerrero, and Abad Santos, JJ., concur.

De Castro and Escolin, JJ., did not take part.

[1] L-40791, September 11, 1982, 116 SCRA 487.

[2] *Ibid*, 489.

[3] Decision of the lower court dated November 27, 1975, 10.

[4] Exhibit "C"

[5] Decision, 4.

[6] Ibid.

[7] Ibid, 9.

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

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

[10] Ibid, 64.

[11] Brief for Appellant, 2.

[12] Ibid.

[13] It was filed by the then Acting Solicitor General, now Intermediate Appellate Court Justice, Vicente V. Mendoza and the then Assistant Solicitor General, now I.A.C. Justice, Jose F. Racela, Jr.

[14] Ibid.

[15] Ibid, 5-6.

[16] Appellant's brief, 2.

[17] L-39367-69, February 28, 1979, 88 SCRA 683.

[18] Ibid, 693-694. People v. De la Cruz, L-28810, March 27, 1974, is reported in 56 SCRA 84. People v. Gonzales, L-33926, July 31, 1974, is reported in 58 SCRA 265.

[19] T.s.n., Session of March 10, 1975, 6, 8.

[20] Ibid, 8.

[21] Ibid.

[22] Ibid, 10.

[23] T.s.n., Session of April 7, 1975, 7, 9.

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