

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ISAGANI IBANGA, DEFENDANT-APPELLANT.***G.R. No. L-39502. September 24, 1983*

Ponente: FERNANDO, C.J.

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There is relevance to this excerpt in *People v. Imbo*[1] in the disposition of this appeal from a conviction for the crime of rape: "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." [2] There is, however, this difference. In addition to the complainant and the accused, now appellant, one Ernesto Esteleides testified as to the likelihood of the offense having taken place. On behalf of appellant, there is testimony from Romeo Secreto who was on the ground floor when the rape was allegedly committed. After a careful study of the evidence of record, there is sufficient ground for the belief that the constitutional presumption of innocence [3] was not over-come.

It is, accordingly, our judgment that there was a failure to obey the mandate of the Constitution, which as authoritatively construed, calls for proof beyond reasonable doubt. Hence reversal is indicated.

Complainant Clarissa Punzalan testified that she was alone in her house on the afternoon of December 29, 1970 as her parents, brothers and sister were away on different errands. [4] At around five o'clock, a close friend, Danilo Panganiban, arrived at her residence but instead of going up, inquired from her where her parents were. [5] He left being told that they were not there. [6] A few minutes later, appellant Isagani Ibanga, accompanied by a friend, Romeo Secreto, made their appearance. [7] Appellant immediately went directly to the balcony where Clarissa was, while Secreto stayed at the ground floor of the house, seated himself and started reading comics. [8] After an exchange of remarks between appellant and Clarissa, the former approached her and thereafter embraced and kissed her. [9] She did not submit willingly, struggling to free herself from his embrace, and clinging to the balustrade of the balcony to prevent him from bringing her inside a bedroom. [10] Her strength, however, was no match for that of appellant, and he succeeded in dragging her inside the bedroom. [11] Once inside, he closed the door, forced Clarissa down on a bed, poked a gun at her breast and warned her not to shout or do anything. [12] The accused then removed his trousers and pulled down her bermuda shorts and panties. [13] Thus was the sexual intercourse consummated. [14] During such time, she continued resisting, kicking and boxing appellant and shouting for help from Romeo Secreto who was downstairs, with these words: "Tulungan mo ako, may ginagawang kawalanghiyaan ang kasama mo." [15] Her pleas went unheeded, no assistance being given by Secreto. [16] Afterwards, appellant, together with Romeo Secreto left, but, before leaving, made the threat that she would be harmed if she should tell anyone of such occurrence. [17] Shortly after the arrival of her sister that same afternoon, the offended party immediately related what had happened to her, and four (4) days thereafter, the

offended party together with her parents went to the police authorities to file a complaint against the accused.[18]

The version of appellant, as set forth in his brief, follows: "That in the afternoon of December 29, 1970, he was with four others, namely, Danilo Panganiban, Boy, Ruben and Romeo, all surnamed Secreto eating young coconuts at a place located south of the complainant's house at Barrio Dacanlao. Isagani, Ruben and Boy went home ahead leaving behind Danilo and Romeo. While Danilo and Romeo were on their way passing in front of Clarissa's house, the latter called for Danilo and requested him to convey her desire to see Isagani. This had been clearly shown and established by Danilo Panganiban, who is a third cousin of both Clarissa and Isagani. Defendant-appellant as informed, (sic) and Romeo Secreto then departed from the house of Eugenio Secreto and proceeded to the house of Clarissa; while approaching the house, they were already seen by Clarissa and defendant-appellant went upstairs to the balcony where Clarissa was, while Romeo Secreto proceeded to the ground floor and read comics. Clarissa wanted to elope with defendant-appellant, but the latter did not accede. This again had been proved by Romeo Secreto. The facts further show that said complainant Clarissa formerly had a crush on the defendant-appellant who was a Combo player and a basketball player and in fact they had been sweethearts for sometime but the defendant-appellant broke the same as he discovered that Clarissa had many boyfriends. That afternoon, the complainant was not wearing a bermuda but a mini-skirt, and she wanted to elope as she had been scolded and beaten by her father and to which (sic) the defendant manifested denials as they had already broken their engagement. Thereafter, defendant-appellant and Romeo Secreto left." [19]

To repeat, a study of the evidence of record calls for the reversal of the judgment of conviction.

1. There is no question as to appellant being in the house of complainant at that particular time the alleged occurrence was imputed to him. Both prosecution and defense are agreed on that point. The difference lies in the fact that while complainant alleged that he just went there with his friend Secreto, appellant, through the testimony of Danilo Panganiban, maintained that he was sent for by her.[20] He did not stop there. He pointed out that Romeo Secreto was with him; they were riding in one bicycle.[21] He was corroborated by Romeo Secreto who was on the wheel of such bicycle.[22] He recalled her exact words: "Hoy, Danny, pakisabi mo kay Ganie (sic) na magpunta siya rito." [23] Complainant did not deny that both Panganiban and Secreto passed by her house but she asserted that she talked only to Panganiban [24] who inquired about her parents and was informed that they were not there.[25] The version of Panganiban and Secreto appears to be the more credible. When appellant was informed of the request of complainant, there were two other persons present, Boy Secreto and Ruben Secreto.[26] Either of them could have been called to the witness stand by the prosecution so that they could refute what was testified to by Panganiban and Secreto. Neither one was. The testimony as to the complainant having sent for appellant is thus entitled to credence and belief.

2. The next question is what happened on that occasion. As could be expected, both prosecution and defense had diametrically opposed versions. There is no need to repeat what was testified to by complainant as to her having been raped. Appellant, in his testimony, when asked whether or not he committed the alleged rape, categorically answered: "No, sir." [27] After a few more questions, he then stated that according to Panganiban, "Clarissa was asking me to go to her house." [28] At first, he refused to believe him because when he "passed by the house of Clarissa and [he] saw Clarissa and she saw [him] and [he] said if she really wanted to talk to [him] she should have told [him] herself." [29] But he proceeded to the house of complainant nonetheless as Romeo Secreto told him "that I was really being called by Clarissa and that he is willing to accompany me." [30] Thus accompanied by Romeo Secreto, he proceeded to her house.[31] When she was asked if she really sent for him, "she said yes and she invited [him] to go up." [32] Only he went up as Romeo Secreto who was with him was not invited to do so; [33] instead, Secreto proceeded to the ground floor "because it also serves as a receiving room." [34] When both of them were seated at the balcony, he asked her why she wanted him to see her.[35] This was her response:

"She asked at once if I would like to go with her to elope." [36] He in turn asked her: "Why should I go with you, what happened that you are going to go away (layas)?" [37] She explained why: "Clarissa said that she was scolded by her father and she was beaten up." [38] She added the reason for such action on the part of her father: "That she came late from a party and that she usually go (sic) out in a 'lupakan' and sometimes she passed the night somewhere else." [39] He explained further, by way of refuting Clarissa's statement that he had a gun, that there was no truth to it, he not having "handled a gun but [he had] seen a gun." [40] Up to the time he was testifying, he had not done so, having handled only "a wooden gun that [he used] in the PMT." [41] While he admitted that he was a security guard, his job as such did not require him to do so as he only checked "those persons who go out because [his] uncle is also associated with the owner of the shop." [42] He answered categorically that at no time that afternoon while he was in the house of Clarissa did he enter any bedroom on that house as he "just stayed as far as the balcony." [43] Later on, he gave lie to the allegation of the complainant that he "courted her but she refused to accept [him]." [44] The truth, according to him, is "siya ang nagkagusto." [45] As he was told by another friend that she had a crush on him, they become sweethearts in June of 1970, but by December they were no longer so, their relationship having ended in August of 1970. [46] This was the reason, according to him: "Because she had many boyfriends, and one time I saw her with a man at the beach in our place [and] the people have a common knowledge that she had many boy-friends." [47] Nor during such period did they have any sexual intercourse. The most he could remember is that he had kissed her twice in a dance. [48] He was quite categorical that in the afternoon "of December 29, 1970, while [he] and Clarissa were in the latter's house, there [was nothing] that passed between [them outside of their conversation]." [49] He stated that at the most, for five to ten minutes, "seated on a chair in their balcony," [50] they were merely "conversing." [51] Likewise, all the while, while he was in the balcony, Romeo Secreto was on the ground floor. [52] He could see him because "their floor is made of bamboo slats." [53] He and complainant talked "about basketball [games] because her father is a coach in basketball." [54] She was wearing a mini-skirt, [55] not bermuda shorts. When asked to explain why complainant should testify as to the rape having been committed when there was no truth to it, his assumption was "she had a liking for [him]." [56] He closed his direct testimony by saying that for a period of five months, when the warrant of arrest was not served on him, he had occasion to see the mother of complainant whom he called Ate Fely, as well as complainant. [57] When he asked her why there was such a complaint as he had done nothing wrong, she told him "that she was afraid of her parents and they were threatening to kill her." [58] During those five months likewise from January to May before he was arrested, he continued "playing the combo and playing basketball." [59] On redirect examination, complainant denied the allegations of appellant as to what did transpire, but there was no denial of his assertion that he did not carry a gun. [60] There was also this damaging admission from her. She claimed that she was a high school graduate of "Immaculate Concepcion (sic) College." [61] On cross-examination, she admitted that while she studied in such college for the first two years, she was enrolled in the Calaca Academy for the third year and she finished high school in Batangas Southwestern College. [62]

3. The decisive question is whether the prose-cution was able to introduce evidence showing appellant's guilt beyond reasonable doubt. It cannot be said it succeeded in such a task. What was testified to by complainant must be weighed in the scales against that of the appellant. Whatever probative value did attach to her version suffered further with the testimony of an eyewitness, Romeo Secreto. There was no question that he was on the lower floor. He was therefore in a position to observe what happened when complainant and appellant were together in the balcony. Complainant in alleging rape was quite emphatic as to her not submit-ting willingly, struggling to free herself from appellant's embrace and clinging to the balustrade of the balcony to prevent appellant from bringing her to the bedroom. [63] Moreover, even after she was inside, she did not stop her resistance; according to her, she kicked and boxed appellant and shouted for help from Romeo Secreto who was downstairs with these words: "Tulungan mo ako, may ginagawang kawalanghiyaan ang kasama mo." [64] Secreto, however, denied that there was such a plea for help. As noted earlier, he was on the ground floor of the house of complainant. [65] He

could see what occurred thereafter as the floor of the house is made of bamboo slats.[66] He even remembered that there were three chairs in the balcony.[67] All he observed was that complainant and appellant spent the time conversing with each other while he, Secreto, was reading comic books.[68] He was extensively cross-examined by the prosecuting fiscal.[69] Nothing which in any way contradicted what was testified to by him was elicited. There is, on the record, therefore, a statement of an eyewitness corroborating appellant's testimony. The prosecution called another witness, Ernesto Esteleides, to the stand. At the time he testified in 1972, he was fourteen years old.[70] On the afternoon of December 29, 1970, at about 5:00 o'clock, he was passing by the house of the complainant on his way to buy Cortal tablets.[71] When asked as to whether he knew of any unusual incident that happened, his answer was he saw Clarissa Punzalan being dragged by Isagani Ibanga." [72] She in turn "was trying to get herself loose from Isagani Ibanga." [73] He referred to her as fighting and boxing appellant. [74] After she was dragged inside, all he could say was that he "heard some noise (kalampagan) inside their house and Clarissa Punzalan was crying." [75] He was five meters away when he observed the incident and remained apparently rooted on the spot for fifteen minutes. [76] Even after fifteen minutes he still heard noise, in the vernacular, kalampagan. [77] Then he noticed appellant leaving the house of complainant. [78] He stated that he saw, on the ground floor, Romeo Secreto "seated." [79] It may be considered that Esteleides testified according to what he saw and what he heard. Certainly, however, his testimony failed to prove that rape was in fact committed. It fell far short. On cross-examination, such deficiency became even more evident. During the fifteen minutes that he was observing the scene, he admitted that "Clarissa did not say a word that [he] heard." [80] He admitted likewise that while she saw him, she did not ask for his help. [81] Complainant and appellant stayed in the room "for five minutes." [82] Then he referred to appellant leaving the house after five minutes; he himself waited for two more minutes before he left. [83] He likewise admitted that Secreto, who was on the ground floor, "was just sitting there." [84] They did not talk to each other. [85] Nor did he call the attention of Secreto as to the incident that he witnessed. [86] His answer to the last revealing question on cross-examination was that while there was kalampagan or kalabugan he never bothered to find out what it was all about. [87] It would appear, therefore, that Secreto's testimony is the more credible of the two.

4. From the above facts, the conviction cannot stand. This excerpt from *People v. Gabiana* [88] finds application: "The fundamental right to the presumption of innocence calls for the utmost respect. So it has been the consistent ruling of this Court. It follows, to paraphrase *People v. Dramayo*, that accusation may not be equated with guilt. The prosecution must successfully discharge the burden of proof that the offense had been committed and the person responsible for that commission is the accused. The standard has always been proof beyond reasonable doubt. That goes back to the 1903 decision of *United States v. Reyes*. While absolute certainty is not demanded by law for the conviction to be sustained, 'moral certainty,' in the language of *United States v. Lasada*, 'is required, and this certainty is required as to every proposition of proof requisite to constitute the offense.'" [89] This Court, ever mindful of such constitutional mandate, did in several recent decisions reverse convictions for rape. We have no choice but to do so once again.

WHEREFORE, the decision on appeal finding appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua is reversed and appellant is acquitted. He is entitled to be released from imprisonment forthwith unless detained for some other valid cause according to law.

Makasiar, Aquino, Guerrero, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

De Castro, J., on sick leave.

[1] G.R. No. L-36759, August 31, 1982, 116 SCRA 355.

[2] Ibid, 357.

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

[4] T.s.n., Session of October 6, 1971, 3-9.

[5] Ibid, Session of May 16, 1972, 21.

[6] Ibid, 22.

[7] Ibid.

[8] Ibid, 23.

[9] Ibid, Session of September 8, 1971, 4.

[10] Ibid, 5.

[11] Ibid.

[12] Ibid.

[13] Ibid, 6.

[14] Ibid.

[15] Ibid, Session of May 16, 1972, 14; 16.

[16] Ibid.

[17] Ibid, Session of September 8, 1971, 9.

[18] Ibid, 11.

[19] Brief for the Defendant-Appellant, 2-3. Counsel for Appellant cited T.s.n., sessions of December 12, 1972, 5-31, 40-62; February 12, 1973, 18-19; and February 13, 1973, 14-15, 22-23.

[20] T.s.n., Session of December 12, 1972, 9-13.

[21] Ibid, 11.

[22] Ibid, 48.

[23] Ibid.

[24] T.s.n., Session of March 6, 1973, 63.

[25] Ibid.

[26] T.s.n., Session of December 12, 1972, 8.

[27] T.s.n., Session of February 13, 1973, 7.

[28] Ibid, 11.

[29] Ibid, 11-12.

[30] Ibid, 12.

[31] Ibid.

[32] Ibid, 13.

[33] Ibid.

[34] Ibid.

[35] Ibid, 14.

[36] Ibid.

[37] Ibid.

[38] Ibid, 15.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid, 16.

[43] Ibid, 17.

[44] Ibid, 18.

[45] Ibid.

[46] Ibid, 19.

[47] Ibid, 19-20.

[48] Ibid, 20.

[49] Ibid.

[50] Ibid, 21.

[51] Ibid.

[52] Ibid.

[53] Ibid.

[54] Ibid, 22.

[55] Ibid, 23.

[56] Ibid, 24. Evidently, this portion of the transcript missed something as such a thought was merely repeated.

[57] Ibid, 27.

[58] Ibid.

[59] Ibid.

[60] T.s.n., Session of March 6, 1973, 62-72.

[61] Ibid, 65-66.

[62] Ibid, 79-80.

[63] Ibid, Session of September 8, 1971, 5.

[64] Ibid, Session of May 16, 1972, 14; 16.

[65] Ibid, Session of December 12, 1972, 52.

[66] Ibid.

[67] Ibid, 54.

[68] Ibid.

[69] The question and answer covered forty-five pages of the stenographic notes.

[70] T.s.n., Session of May 16, 1972, 28.

[71] Ibid, 29-30.

[72] Ibid, 30.

[73] Ibid.

[74] Ibid, 31.

[75] Ibid.

[76] Ibid, 31-32.

[77] Ibid, 32.

[78] Ibid.

[79] Ibid, 33.

[80] Ibid, Session of September 26, 1972, 10.

[81] Ibid.

[82] Ibid.

[83] Ibid, 11.

[84] Ibid, 12.

[85] Ibid, 13.

[86] Ibid.

[87] Ibid, 16.

[88] L-39716, September 30, 1982, 117 SCRA 260.

[89] Ibid, 264. Cf. *People v. Leones*, L-48727. Sept. 30, 1982, 117 SCRA 382; *People v. De la Cruz*, L-39919, Oct. 19, 1982, 117 SCRA 672; *People v. Romero Jr.*, L-43805, Oct. 23, 1982, 117 SCRA 897; *People v. Montez*, L-54439, Nov. 2, 1982, 118 SCRA 124; *People v. Velasquez*, L-35241, Feb. 28, 1983, 120 SCRA 847; *People v. Camarce*, L-47806, March 25, 1983, 121 SCRA 174; *People v. Montes*, L-34051, May 26, 1983.

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