

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AURELIO CUDALINA ALIAS ORIL, DEFENDANT-APPELLANT.***G.R. No. L-34969. April 29, 1975*

Ponente: FERNANDO, J.

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It is a difficult task that confronts the accused Aurelio Cudalina in this appeal from his conviction for the crime of rape. The offended party, Asuncion Cachuela, was quite categorical and straight-forward in her narration of how the offense was committed. Its persuasive worth was emphasized by the steps immediately taken by her after the perpetration of the act to see to it that the offender be proceeded against. She had two witnesses, one of whom was the barrio captain.[1] The defense offered was that of alibi which failed to elicit credence and belief. While counsel Antonio A. Nieva submitted an exhaustive brief wherein he made valiant efforts to dis-credit the testimony of the offended party, it does not suffice for a reversal. We affirm.

In the ably-written decision of the then Judge Placido C. Ramos, there is this summary of the testimony of the offended party and her two witnesses. Thus: "From the evidence of the prosecution, it appears that on the night of November 1, 1970, which is All Saints Day, while Asuncion Cachuela was in her house at barrio Butao, Cuyapo, Nueva Ecija, the accused came up to the house at about 8:30 o'clock in the evening followed by one Abundio. In the house then were Asuncion Cachuela, her common-law husband Ignacio Biag, and Marcelo Biag. Upon his arrival, Cudalina remarked that he had come to attend the celebration of All Saints Day, thus, Asuncion Cachuela presented him with a plate full of cakes. Cudalina, however, remonstrated that he did not want cakes but wine. Asuncion Cachuela answered that there was no wine but only cakes. The accused, however, saw wine in a glass which was then used as an offering to the souls of the departed but Cudalina, disrespecting this ceremony, took the wine and drank it. Not being satisfied with this, he asked for more and at the same time handed P1.00 to Asuncion Cachuela with which to buy wine. Asuncion Cachuela refused to accept the money and instead suggested to him that he himself [buy] the wine. This made him angry and Cudalina took his .45 caliber gun and pointed it at Asuncion Cachuela. Abundio, however, prevented him and warned him that the gun might cause accident. Fearful of Aurelio Cudalina, Asuncion Cachuela sent her son Fred Santiago to get wine and bought a bottle of Sy Hoc Tong which Cudalina opened and afterwards he, with Abundio and Marcelo Biag, drank the wine. Later on, a daughter of Asuncion Cachuela, Tessie Santiago, together with some visitors from Tarlac arrived. Abundio and Marcelo Biag then left but Cudalina remained in the house and told Asuncion to introduce him to the visitors. After he had been introduced to the visitors, Aurelio Cudalina departed. When the visitors had left, Ignacio Biag and Asuncion Cachuela went to bed together with their children Orlando Biag and Juanito Biag. Orlando Biag was then six years old and Juanito five years. At past 12:00 o'clock in the evening, Aurelio Cudalina returned and woke her up and her husband Ignacio Biag. When they were already awakened, Aurelio Cudalina told Ignacio Biag to cook chicken and prepare arroz caldo. Ignacio Biag tried to excuse himself by saying that he had stomach trouble but Aurelio Cudalina forced him to make the arroz caldo. She then lighted five candles and lay down. Not long after [Ignacio Biag in the meanwhile having gone out], Asuncion Cachuela felt that somebody was coming up the house who at first she thought to be Ignacio, but she saw he was Aurelio Cudalina, the

accused. She asked him what he wanted to get and Aurelio Cudalina admonished her, 'Do not talk. I want to do something to you.' Asuncion Cachuela stood up and pushed him but the latter took hold of her dress below the neckline and embraced her. Asuncion Cachuela wanted to shout but Aurelio drew his pistol and pointed it at her face saying, 'if you shout, this is your last.' Aurelio Cudalina then tore her pantie, half-slip and dress and forced her to lie down. She was struggling but could not do anything as Aurelio Cudalina was strong and as a result Aurelio Cudalina succeeded in having sexual intercourse with her. After he was through, he threatened her not to talk otherwise he would kill her and all her children. The dress Exhibit C, half-slip, Exhibit C-1, and pantie, Exhibit C-2, when presented in Court revealed torn portions. After leaving the house, Aurelio Cudalina left behind a flashlight, Exhibit D. When Cudalina had gone, Asuncion Cachuela went to the house of Andang Bagalay and requested her to accompany her to the barrio captain but Andang Bagalay answered that she was afraid as they would pass by the house of Aurelio Cudalina who might waylay them. * * * At five o'clock in the morning of the following day, Asuncion Cachuela requested Ignacio Biag to accompany her to the barrio captain but Ignacio Biag suggested [to] her to see his brother Marcelo Biag as he was going to dry the reaped palay which was then wet. Marcelo Biag and Asuncion Cachuela went to the house of the barrio captain of Butao, Teodoro Jose, Jr., and [told] him what Aurelio Cudalina had done to her, showing to the barrio captain her torn dress, half-slip and pantie, and they went * * * to the office of the chief of police where the corresponding complaint was filed, * * *." [2]

The defense of alibi was duly noted. Thus: "Aurelio Cudalina set up the defense of denial and alibi. He denied having raped Asuncion Cachuela. He declared that at about five o'clock on the afternoon of November 1, 1970, Apolonio Bondoc, Magdalena Bautista, Emiliano Magno, Victoriano Biag and he were under the house of Victoriano Biag in the subdivision of Butao, Cuyapo, drinking wine. The drinking lasted for about half an hour. After drinking, Emiliano Magno and Aurelio Cudalina left the house of Victoriano Biag and proceeded to the place where they were going to guard. On the way, however, according to Aurelio Cudalina, they met Asuncion Cachuela who asked where he was going and he answered to the farm; that Asuncion Cachuela remarked that as it was [the feast] of all souls, he should go to the house of those he was courting; that he told her that she should not consider him like she [were] a prostitute, and the cause of trouble with her mother; that Asuncion Cachuela cried over this insulting remark; that they left her and proceeded to the farm [which] they reached between seven and eight o'clock in the evening; that in the farm he saw Flor Mendoza; that he stayed guarding in the farm until the next morning at 8:00 o'clock when they left; and that while guarding the farm from November 1 to November 2, he had a bolo and a flashlight furnished him by the hacienda. He denied having left a flashlight in the house of Asuncion Cachuela on the morning of November 2, 1970. He denied, too, having in his possession on the night of November 1, 1970, a pistol, as according to him, the hacienda was not providing them with firearms." [3] Further: "Corroborating Aurelio Cudalina, Emiliano Magno declared that Aurelio Cudalina was the chief security guard of Milmore; that at about 4:00 o'clock on the afternoon of November 1, 1970, he and Aurelio Cudalina left their posts at Milmore and proceeded to the landholding of the hacienda at barrio Mayantoc, Nampicuan; that on their way, they dropped by the house of Victoriano Biag who offered them drinks; that after drinking for half an hour, Aurelio Cudalina and he left the house of Victoriano Biag and proceeded to barrio Mayantoc, Nampicuan; that on their way to Mayantoc, they met Asuncion Cachuela and an argument ensued between her and Aurelio Cudalina but he did not hear what was it about; that after the argument, he and Cudalina proceeded to Mayantoc; that they reached Mayantoc between six and seven o'clock in the evening where they saw their co-security guard Flor Mendoza; that they stayed there until the early hours of the following morning where they watched the palay of the hacienda; and that Aurelio Cudalina did not leave the place. Flor Mendoza, another guard to the hacienda declared that he saw Emiliano Magno and Aurelio Cudalina between seven and eight o'clock on the evening of November 1, 1970, at Mayantoc where he was guarding and that Cudalina stayed with him all the night and left at about 5:00 o'clock on the morning of November 2, 1970." [4]

After thus analyzing with care and circumspection the evidence of both the prosecution and the defense, Judge Ramos reached this conclusion: "As a whole, therefore, the evidence conclusively shows and proves that Aurelio Cudalina on the morning of November 2, 1970, by means of force, committed rape on the person of Asuncion Cachuela." [5] The accused was then found guilty beyond reasonable doubt and sentenced to reclusion perpetua with the additional penalty of indemnifying the offended party in the sum of P12,000.00 as well as the accessories provided for by law. As set forth at the outset, there is no ground for reversal. The most careful scrutiny of the records serves only to confirm the correctness of the decision reached.

1. In fairness to counsel Antonio A. Nieva though, it must be stated that he subjected the testimony of the complaining witness to the most rigorous appraisal and came up with alleged flaws, which he termed "material" or "glaring contradictions." [6] As is not unexpected, there is an element of permissible exaggeration in such characterization. At the most, minor inconsistencies could be detected serving to confirm the candor and openness with which the complaining witness testified. Moreover, counsel ought to have realized that such an approach has to hurdle the obstacle arising from the well-settled doctrine that the greatest weight is accorded the conclusion reached by the lower court on the question of credibility. Unless it could be shown that it has not duly taken into consideration matters of significance bearing materially on the outcome, its determination is to be left undisturbed. In *People v. Manos*, [7] this Court stated the following: "At any rate, the lower court is vested with considerable discretion in determining which of the conflicting versions is to be lent credence. What was said in *People v. Gumahin* finds application in the present case. Thus: 'The findings of the lower court embodied in a well-written decision cannot only stand the test of the most rigid scrutiny but also has in its favor the well-settled principle that as far as credibility is concerned, the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies will be accorded the highest degree of respect by this Tribunal.' *People v. Tila-on* and *People v. Lumayag* were cited in support of the *Gumahin* opinion." [8] This also from *People v. Angcap*: [9] "There is need to stress anew that this Court has long been committed to the principle that the determination by a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect, unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding. So it was announced by Justice Moreland in 1915 in the first case of consequence enunciating such a doctrine. As he pointed out, in the event of a conflict in the testimony of the witnesses, 'the peculiar province of the trial court is to resolve the question of credibility, and, unless there is something in the record impeaching by fair interpretation the resolution of the trial court in relation to that question, this court will assume that he acted fairly, justly, and legally in the exercise of that function.'" [10]

2. The other ground relied upon by the accused is that the lower court ought to have given credence to his defense of alibi. This is all that he could say though in his brief: "The accused-appellant, on the other hand, has sufficiently established his defense of alibi. It was clearly shown that from the evening of November 1, 1970 to the morning of November 2, 1970, he was guarding a farm at Bo. Mayantoc, Nampicuan, Nueva Ecija. This fact was substantially corroborated by the testimonies of Emilio Magno and Flor Mendoza. The Court a quo was not justified in discrediting the testimonies of Emilio Magno and Flor Mendoza simply because they are the companions of the accused-appellant as guards. We submit that such relationship alone would not have warranted the two in defending the accused-appellant even to the extent of falsifying the truth." [11] Independently of the suspicion naturally engendered by the testimony as to his being elsewhere, coming from two close friends and associates, the attempt on his part thus to escape liability certainly could not inspire sufficient persuasion. It would not be in consonance with human experience for the offended party to face the ordeal of a public court hearing and expose herself to the embarrassment and even humiliation, although rationally her plight should only have elicited sympathy, if she were not thus abused. Moreover, considering the stiff penalty that attends the crime of

rape, it would not be in accordance with the natural course either if she would thus deliberately point to an innocent party as the perpetrator of the misdeed. Then, too, it cannot be lost sight of that the accused was too well-known to the offended party, being even addressed by her as "Uncle" as he was known to be related to her first husband,[12] to raise any rational doubt as to who committed the crime. It suffices to state that this Court when confronted with the defense of alibi in rape cases has invariably found it unconvincing and unsatisfactory.[13]

WHEREFORE, the decision of February 15, 1972 of the lower court, finding the accused Aurelio Cudalina guilty beyond reasonable doubt of the crime of rape and thus sentenced to reclusion perpetua, as well as to pay the indemnity of P12,000.00 to Asuncion Cachuela and to suffer the accessories provided for by law, is affirmed. Costs against appellant.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Teodoro Jose, Jr.

[2] Decision, Annex A to Brief for the Accused-Appellant, 39-42.

[3] Ibid, 42-43.

[4] Ibid, 43-44.

[5] Ibid, 48.

[6] Brief for the Accused-Appellant, 22.

[7] L-27791, December 24, 1970, 36 SCRA 457.

[8] Ibid, 460-461. Gumahin is reported in 21 SCRA 729. Tila-on in 2 SCRA 653 and Lumayag in 13 SCRA 502.

[9] L-28748, February 29, 1972, 43 SCRA 437.

[10] Ibid, 444. The decision of Justice Moreland is *United States v. Pico*, 15 Phil. 549 (1910). Cf. *People v. Cristobal*, L-13062, Jan. 28, 1961, 1 SCRA 151; *People v. Sarmiento*, L--19146, May 31, 1963, 8 SCRA 263; *People v. Romawak*, L-19644, Oct. 31, 1964, 12 SCRA 332; *People v. Li Bun Juan*, L-11077, Aug. 23, 1966, 17 SCRA 934; *People v. Jaravata*, L-22029, Aug. 15, 1967, 20 SCRA 1014; *People v. Tanjutco*, L-23924, April 29, 1968, 23 SCRA 361; *People v. Ricaplaza*, L-25856, April 29, 1968, 23 SCRA 374; *People v. Dorado*, L-23464, Oct. 31, 1969, 30 SCRA 53; *People v. Ablaza*, L-27352, Oct. 31, 1969, 30 SCRA 173; *People v. Pagkaliwagan*, L-29948, Nov. 26, 1970, 36 SCRA 113; *People v. Espejo*, L-27708, Dec. 19, 1970, 36 SCRA 400; *People v. Brioso*, L-28482, Jan. 30, 1971, 37 SCRA 336; *People v. Beraces*, L-25016, March 27, 1971, 38 SCRA 127; *People v. Guba*, L-29190, Oct. 29, 1971, 42 SCRA 109; *People v. Kipte*, L-26662, Oct. 30, 1971, 42 SCRA 198; *People v. Ordiales*, L-30956, Nov. 23, 1971, 42 SCRA 238; *People v. Largo*, L-28106, Aug. 18, 1972, 46 SCRA 597; *People v. Gan*, L-33446, Aug. 18, 1972, 46 SCRA 667; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 259; *People v. Abboc*, L-28327, Sept. 14, 1973, 53 SCRA 54; *People v. Cariño*, L-33608, Feb. 12, 1974, 55 SCRA 516; *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114; *People v. Renegado*, L-27031, May 31, 1974, 57 SCRA 275; *People v. Feliciano*, L-30307, Aug. 15, 1974, 58 SCRA 383; *People v. Caoile*, L-31104, Nov. 15, 1974, 61 SCRA 73.

[11] Brief for the Accused-Appellant, 34.

[12] T.s.n., Session of August 17, 1971, 4.

[13] Cf. *People v. Sardoma*, 79 Phil. 607 (1947); *People v. Canastre*, 82 Phil. 480 (1948); *People v. Maniego*, 83 Phil. 916 (1949); *People v. Napili*, 85 Phil. 521 (1950); *People v. Caisip*, 105 Phil. 1180 (1959); *People v. Linde*, 110 Phil. 637 (1961); *People v. Selfaison*, L-14732, Jan. 28, 1961, 1 SCRA 235; *People v. Orteza*, L-16033, Sept. 29, 1962, 6 SCRA 109; *People v. Modelo*, L-29144, Oct. 30, 1970, 35 SCRA 639; *People v. Amit*, L-30102, Feb. 27, 1971, 37 SCRA 793; *People v. Olden*, L-27570, Sept. 20, 1972, 47 SCRA 45; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 239; *People v. De la Cruz*, L-28810, March 27, 1974, 56 SCRA 84; *People v. Dayag*, L-30619, March 29, 1974, 56 SCRA 459; *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114.

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