

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF – APPELLEE, VS. DANIEL HAY AG, ACCUSED- APPELLANT.

G.R. No. L-38635. November 17, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Daniel Hayag appealed from the decision of the Court of First Instance of Davao del Norte, Tagum Branch VIII, convicting him of rape, sentencing him to "imprisonment for the rest of his natural life" and ordering him to pay to Esperanza Ranga ten thousand pesos as moral damages (Criminal Case No. 1210).

Issue is the trustworthiness of the interpreter's verbalization of deaf-mute's sign language. - In this alleged rape of Esperanza, 32, a farm girl and a deaf-mute, the case has been simplified by the admission of the accused, Hayag, 50, a married man with eight children, who finished grade six, that he had sexual intercourse with Esperanza nine times between 1970 and December 4, 1972 in the town of Carmen, Davao del Norte.

The ultimate issue is whether Virginia Ranga, 26, a public school teacher, a college graduate and the victim's sister, correctly and credibly interpreted and verbalized the sign language of Esperanza as meaning that Hayag raped Esperanza on October 26, 1972 or whether credence should be given to Hayag's story that the sexual intercourse on that occasion, as on other occasions, was voluntary.

Attached to the complaint for rape was a certificate from the Davao General Hospital that on December 7, 1972 Esperanza was examined and found to be "positive for pregnancy" (Exh. C or 10). However, the record does not show whether she gave birth. There was no medical examination of Esperanza immediately after the rape allegedly perpetrated on October 26, 1972.

The prosecution labored under the handicap that it could prove the alleged rape only through the sign language of the victim, Esperanza. The victim's sister, Virginia, who has communicated with her since childhood by means of sign language, was the sole available witness who could make known to her the questions on direct and cross-examination and could articulate her alleged answers for the record.

Because there was no means of checking the correctness and veracity of Virginia's interpretation and because she herself believed that Esperanza was raped by Hayag, it is not surprising that the defense counsel vehemently objected to Virginia's role as interpreter. The defense regarded her as biased and as lacking the cold neutrality of a third person acting as interpreter.

As Esperanza did not study in the school for deaf-mutes and as there was no instructor in that school available as an interpreter, the trial court had no choice but to use Virginia as the medium for communicating with Esperanza. Was she a reliable interpreter? That is the intriguing question in this case.

This Court in two cases convicted an accused of having raped a deaf-mute but in those cases an instructor in the school for deaf-mutes acted as an interpreter and the conviction was not based solely on the evidence given by the victim. In the instant case, the judgment of conviction was based exclusively on the story of Esperanza that she

was raped, a story made known through her sister, Virginia, who signed the complaint for rape.

In *People vs. De Leon*, 50 Phil. 539, the accused was charged with having raped his fifteen-year-old stepdaughter, a deaf-mute. The trial was held in the House, called "Country Home", where the accused brought the girl. She testified in sign language which was interpreted by a teacher in the school for deaf-mutes. The accused was convicted on the basis of such testimony.

In *People vs. Sasota*, 52 Phil. 281, the accused was also charged with having raped a fourteen-year-old deaf-mute. She testified with the assistance of an instructor in the school for deaf-mutes. Her testimony was corroborated by her seven-year-old sister who was present when the outrage was committed.

Seven days after the alleged rape, the victim, Rufina Barbuco, submitted to a medical examination. The doctor "introdujo su especulum en la parte genital de ella y dicha Rufina sintio' dolor por la introduccion de dicho instrumento". The accused was convicted of rape.

But in *People vs. Bustos*, 51 Phil. 385, a homicide case, the testimony of a deaf-mute, an alleged eyewitness, as interpreted by a teacher from the school for deaf-mutes, who did not teach the witness (the latter never having studied in such school) was not given credence. (See *People vs. Nava*, CA 40 O.G. 4327 and *People vs. Tezano*, CA-G.R. No. 21954-R, May 25, 1959, 7 Velayo's Digest 724. As to a deaf-mute convicted of robbery, see *People vs. Nazario*, 97 Phil. 990.)

Rules regarding communication with a deaf-mute. - At the outset, it is relevant to state the jurisprudential rules for verbalizing the perceptions of a deaf-mute.

"Although in ancient times the rule was otherwise, deaf-mutes are now generally accepted as competent witnesses. In any given case a showing must be made that the witness has a of communication, and if he has and he witness has a system of communication, and if he has and he is otherwise competent, his testimony will be received" (81 Am. Jun. 2nd 116)

"The modern rule is to the effect that deaf and dumb persons are not incompetent as witness merely because they are deaf and dumb if they are able to communicate the facts by a method which their infirmity leaves available to them, and are of sufficient mental capacity to observe the matters as to which they will testify and to appreciate the obligation of an oath; but where the person is not so educated as it is possible to make him understand the questions which are put to him he is not competent" (97 C. J. S. 454).

"The method to be employed in eliciting the testimony of a deaf-mute should be that which is best suited to attain the desired end, the particular method of examination resting largely in the discretion of the trial court. Thus, a deaf and dumb witness may be examined by means of written questions to which he gives written answers, or he may be examined through the medium of an interpreter who communicates with the witness by mean's of signs. The qualifications of a particular person to act as an interpreter for a deaf-mute rests largely in the discretion of the trial court" (98 C. J. S. 25).

The other statements of the procedure for taking the sign-language of a deaf-mute are quoted below:

"The modern and generally accepted rule is to the effect that deaf-mutes are competent witnesses where they have sufficient knowledge to understand and appreciate the sanctity of an oath and comprehend the facts as to which they wish to speak, and are capable of communicating their ideas with respect thereto" (Annotation, 9 ALR 482).

"If deaf-mutes have sufficient understanding to comprehend facts about which they undertake to speak, and appreciate the sanctity of an oath, they may give evidence by signs, or through an interpreter, or in writing, and such testimony, through an interpreter, is not hearsay" (*Bugg vs. Town of Houlika*, 84 So. 887, 9 ALR 480).

"It has been said that a court has the inherent power to elicit testimony from a competent deaf-mute by whatsoever means necessary to the end to be obtained, and that the manner in which the examination of a deaf-mute should be conducted is a matter to be regulated and controlled by the trial court in its discretion.

"However, it has also been said that the best method should be adopted. And there is authority to the effect that the method adopted will not be reviewed by an appellate court in the absence of a showing that the complaining party was in some way injured by reason of the particular method adopted.

"In fact it has been said that, in the absence of a showing as to what constituted the best method of taking a deaf-mute's testimony, it will be presumed on appeal that the trial court adopted the best method.

"As is stated in the authorities approved in *Bugg vs. Town of Houlika*, 84 So. 387, 9 ALR 480, the general rule is that deaf-mutes who are competent to testify may give evidence by signs, or through an interpreter, or in writing.

"More specifically it has been held that a deaf-mute who can read and write may testify through that medium. Thus, in *Ritchey vs. People* (1896), 23 Colo. 314, 47 Pac. 272, a deaf-mute was examined by submitting to him written questions, to which he replied in writing, which questions and answers were then read to the jury.

"And the general rule is that the evidence of a deaf-mute who can be communicated with by signs may be taken through an interpreter who understands such signs and can interpret them to the court.

"And it has been held that it is permissible to take the testimony of a deaf-mute through an interpreter by signs notwithstanding the evidence could have been written. At least where there is no showing that the interpretation by signs is not the better method.

"And especially where it appears that the witness is capable of relating the facts 'correctly' by signs, but, while able to read and write, can only communicate ideas 'imperfectly' by writing. And it is not necessary that the witness be able to read and write. However, it has been said that it would seem to be better in the case of a deaf and dumb witness who can read and write to conduct his examination in writing.

"With respect to the conducting of the examination of a deaf-mute itself, it has been held that the allowing of leading questions is in the discretion of the court. This discretion was said to arise out of the fact that 'there is always more or less difficulty in eliciting testimony' where the witness is a deaf-mute" (Annotation, 9 ALR 482-484).

Procedure followed by the lower court in qualifying Virginia Ranga as an interpreter of her sister's sign language. How to communicate with the victim, Esperanza, was the problem of the municipal judge during the preliminary examination. Esperanza knows how to sign her name and to read and write figures. That was all.

The complaint for rape, filed in the municipal court on December 26, 1972, was signed by Esperanza. Her sister Virginia certified under oath that she translated, interpreted and explained the contents of the complaint "faithfully and truthfully through sign language" to Esperanza (p. 1, Record)

At the preliminary examination, the municipal judge tested the capacity of Virginia to communicate with Esperanza. Virginia admitted that there were deficiencies in her mode of communication with Esperanza. Virginia testified:

"17. Q: (by municipal judge). How adequate is the communication between Esperanza Ranga and you? - A: Not too much but I think only a few things which she wish to convey which I do not understand.

"18. Q: Would you tell me one or two of these few things which you don't understand? - A: Those things which are very deep like for example those invisible words.

"19. Q: What do you mean by invisible words? - A: For example, the meaning of the word 'truth' whereby I

could not explain to her in one sign only the meaning of the word 'truth' but I could only explain that through other signs.

"20. Q: These signs that you employ in communicating between you and Esperanza Ranga, are these conventional signs or the 'Deaf and Dumb' signs? - A: No, sir.

"21. Q: What then are the signs? - A: Just like the actions.

"22. Q: In other words, you just contrived or improvised the signs? - A: Yes, sir.

"23. Q: For how long a time have both of you been at this means of communication? - A: Since my birth.

"24. Q: You mean that when you were born you already communicate with each other? - A: Not exactly but when I already learned to talk and she could not understand.

"25. Q: Do you still employ the same improvised signs in communicating with your older sister? - A: Yes, sir.

"26. -Q: Have you ever revised or modify (ied) these so-called improvised signs? - A: No, sir.

"27. Q: You have improvised along the way, have you? - A: Yes, sir.

"28. Q: Suppose you wanted to convey to your older sister the meaning of: 'She better dress up because you are going to bring her to the Court', How would you communicate with your sister?

"A: (The witness demonstrated by raising her two hands from the head then downward which would imply putting on the dress; her right hand placed over the nose which means, 'good or beautiful' and touch her older sister (Esperanza) on her shoulder and pointing towards her and touching both of them with the same hand gesturing towards the road and a sign indicating a roof which implies the Municipal Hall.)

"The Court is of the opinion that witness may adequately communicate with her older sister Esperanza Ranga through their improvised sign language. In view thereof, this Court hereby commissions Virginia Ranga to act as an interpreter for her sister, Esperanza Ranga, in this preliminary examination" (pp. 15-16, Record).

The municipal judge then asked Virginia to take an oath as an interpreter. After taking the oath, the judge instructed Virginia to ask Esperanza whether the latter understood the meaning of an oath. Esperanza replied by signs that she would tell the truth.

According to the sign language of Esperanza, as interpreted by Virginia, the alleged rape was committed in this manner:

"While she (Esperanza) was walking, she was pulled away from the road and then she resisted and (was) dragged until she was kicked on her leg whereby she stumbled down.

"The one (Hayag) who pulled her boxed her on her breast and on the legs and then she lost consciousness and then when she lost consciousness, she did not know what happened.

"When she regained consciousness, she found out that she was raped by the man who pulled her" (pp. 16-17, Record).

Esperanza identified the man who raped her as a person with a mole between his eyes just below his forehead. She pointed to Hayag as the rapist. Hayag and his counsel were present at the preliminary examination.

The rape was not reported because Hayag told Esperanza that she would be killed if she divulged the rape to anybody (p. 18, Record).

Hayag waived the second stage of the preliminary investigation. The case was elevated to the Court of First Instance where the provincial fiscal filed an information for rape dated February 12, 1973.

The trial court tested Virginia's capacity to communicate with Esperanza in sign language improvised by the two sisters, a procedure opposed by defense counsel, as may be seen from the following transcript:

"Private prosecutor: x x x since the complainant, your Honor, is a deaf-mute, we will present her sister as an interpreter, and we will qualify the sister to act as an interpreter, x x x

"Defense counsel: x x x we object to the competency (of Virginia) on the ground that this witness is not an expert witness to interpret the language of a deaf-mute. She would not be competent as to the sign to be conveyed to her, and finally, it would be prejudicial and biased, your Honor, x x x

"I believe, your Honor, that this case is so serious as it involves the liberty of the accused, and if we will be hasty in proceeding . . . even granting that the witness can be able to perceive and communicate, there is no definite provision in the Rules of Court that a sister could be qualified as an interpreter to a deaf-mute, x x x

"Court: xxx the Court will allow her (the sister) to be an interpreter in this case as long as she can be qualified to interpret the signs of her sister.

"Defense counsel: xxx And granting that the sister will be allowed to translate and interpret in behalf of the offended party, how will we be so sure that the sister will convey the same translation as the offended party wanted to convey to her? xxx

"Private prosecutor: Good faith is presumed, your Honor please. Bad faith is not presumed, xxx

"Court: Well, anyway, those are recorded already and in case of an appeal, those can be taken up because those will appear in the transcript of the stenographic notes, all the objections that you have raised insofar as allowing the sister of the offended party to interpret her sign language.

"Defense counsel: x x x we will submit a memorandum to that effect that the sister is the interpreter in this case, she being not competent and expert witness.

"Court: Well, she is not presented here as an expert witness. She is just being used now as an interpreter, and you are objecting to that?

"Defense counsel: xxx We are really seriously objecting.

"Court: xxx the appellate court will be guided by the stenographic transcript whether you made your observation and your objection in time before a person is allowed to be an interpreter in a case like this.

"We cannot also ask say a teacher in (the) school for deaf-mutes to be an interpreter here because, probably, if that deaf-mute did not go to the school for deaf-mutes, she would not know the sign language of the teacher.

"So, probably, this is my personal observation, that they should adapt themselves to the circumstances of the situation. Now, since their sister is dumb and cannot hear, and because they were living together, they have to devise a way by which they could communicate (with) each other, and, probably, not the same sign language in the school for deaf and dumb persons.

"So, in the interest of justice, the Court will allow the sister to interpret the testimony of the offended party." (4-11 tsn June 11, 1973).

After Virginia had taken her oath and testified that she and Esperanza had been communicating by means of sign language since childhood, she was directed to ask Esperanza's name.

Virginia made a sign to Esperanza to sign her name. Esperanza wrote on a piece of paper "Esperanza Ranga May 3, 1972" (17-18 tsn June 11, 1973).

When the trial judge directed Virginia to ask Esperanza why she was in court, Esperanza moved her head

sidewise and placed a finger on her lips. She was not able to answer that question in sign language because, as the private prosecutor himself admitted, it is difficult to formulate a "why" question in sign language (17-19, 23 tsn).

The fiscal noted that Esperanza could answer "what, where and when" questions but it would be difficult to make her understand a "why" question because "there were certain questions that she cannot easily understand" (26-27 tsn).

The following portion of the transcript is a sample of how Virginia communicated with Esperanza on direct examination:

"Q. Alright. Tell her (Esperanza) to demonstrate to kick her right leg? - A. Yes, sir. (Witness-interpreter's sister doing the same.)

"Q. Tell her to repulse or fight back an opponent when she is attacked? - A. Yes, sir. (The sister doing the same.)

"Q. Let us be specific. Does your sister know how to look (up) a date in the calendar? - A. Yes, sir.

"Q. You taught her. - A. She has an idea.

"Q. Alright. Do you have ... a calendar? - A. Yes.

xxx xxx xxx

"Q. Will you tell your sister to point to figure 7? - A. Yes, sir. (Witness-interpreter translating the same to her sister in sign language and the sister likewise pointed to figure 7.)

"Q. Tell her to point to No. 23. - A. Yes, sir. (Witness-interpreter translating the same to the sister and the sister pointing also to No. 23.)

"Q. What about the month appearing in that calendar, can she read? What is that month there appearing there in that calendar for 1973, in her sign language? xxx - A. She cannot read.

"Q. But she can read the days or the number? - A. Yes, sir.

"Q. Can she point to No. 18? (Witness-interpreter translating the same to the sister, and the sister pointing also to No. 18.)

"Q. Alright. Now, how would she communicate the month of a year. What month is she referring when she refers to a date, for example. How will she communicate that with you? - A. She will use the calendar, sir.

"Q. But she cannot read the month in the calendar, she said already. Is it not? - A. She can understand, and at least she can point.

"Q. Alright. Will you tell your sister to see in that calendar the month of July? - A. We still need to write the month, sir.

"Q. You give her a piece of paper and write there July. Then let her locate it there in the calendar. - A. Yes, sir. (Witness-interpreter doing the same and the sister located the month of July.)

"Q. Now, tell her to locate the month of November. - A. Yes, sir. (The sister locating the same.)

"Q. Will you tell her whether she knows the days in the week, like Monday, Tuesday, Wednesday, like that? - A. Yes, sir. I think she knows.

"Q. And what are the days in the week? Aide her. - A. She does not know, sir.

"Q. Do you know what day is today? Ask her. - A. Yes, sir. (Witness-interpreter translating the question to the

sister, and she pointed to June 11 in the 1973 calendar.)

"Q. Now, can you point xxx there in the calendar any day? - A. (The sister pointed to Tuesday after the question was properly translated to her by the witness-interpreter.)

"Court: Make it of record that she pointed to Tuesday.

"Q: by Court: Do you know what day is today? (Witness pointing to June 11 in the 1973 calendar.) - A: (by Witness-interpreter): She does not know, your Honor.

"Q: by Court: Do you know what is today? - (Witness pointing to June 11 in the 1973 calendar.)

"Court: I think she can adequately communicate, perhaps not to our satisfaction. Alright, xxx (To the Witness - Interpreter [Virginia]): Do you swear to interpret faithfully and to the best of your knowledge the questions to your sister and the answers that she gives to the questions? - Witness- Interpreter: Yes, your Honor.

"Court: Alright. (To private prosecutor) Your first witness.

"Private prosecutor: Our first witness is the complainant herself, your Honor.

"Court: Put her on the stand." (30-37 tsn.)

The oath was then administered to Esperanza. How it was administered is not shown in the record. It should be recalled that Virginia testified that "invisible words" like truth cannot be made known in sign language to Esperanza.

When Esperanza was asked as to her age, she wrote on a piece of paper "May 3, 1983 32" (39 tsn June 11, 1973).

Testimony of Esperanza as verbalized by her sister Virginia.- Esperanza resided in Carmen and worked in the ricefield of her brother Dencio. She used to walk from her house to the ricefield which was quite far. Upon being asked, Esperanza pointed to the figure "26" in the calendar. She worked in the ricefield on October 26, 1972 up to the time in the afternoon when the sun was in a certain position which, as calculated by the court, meant that it was approximately three o' clock.

She was on her way home alone. She sketched the road leading to the highway which was taken by her and the scene of the alleged rape (Exh. A or 2). When she reached a grassy spot along the road, her left hand was pulled by a man with a mole between his eyebrows whom Esperanza identified as Hayag who was in court. Hayag pulled her to the grassy bush. (At this point, defense counsel manifested that Esperanza did not make any sign that she was pulled to the grassy bush and that it was Virginia, the interpreter, who supplied that allegation, 47 tsn).

Esperanza resisted but Hayag kicked her in the right leg and she stumbled. Hayag choked her while she was prostrate on the ground. Asked if she was boxed, Esperanza replied that Hayag boxed her on the chest while she was standing. At this point, Esperanza went down the witness stand and demonstrated how she resisted.

Hayag removed her short pants and kissed her and then, as stated by the interpreter, she was raped. Asked the leading question of whether she was unconscious when she was raped, she replied in the affirmative and added that she regained consciousness after she was raped. Her pants were on her side on the ground. There was blood in her private part. She pushed aside Hayag.

Hayag stood up and told Esperanza not to tell anybody what happened or else he would kill her, Hayag picked up her pants and threw them over her body and left. She pat on her pants and went home crying. She was still crying when she arrived home but she did not disclose to her mother the alleged rape because of the threat made by Hayag.

Esperanza indicated in the sketch the spot where she was raped on October 26, 1972, identified as Exhibit A-2 or 2-A (63 tsn).

According to Esperanza, on December 4, 1972 she encountered Hayag in the same place but she avoided him by passing near the central school and going to the house of her sister-in-law, as indicated in the sketch, Exhibit A. She arrived home at eight o'clock in the evening and reported the rape incident to her mother.

Hayag's story.- To support his defense that his sexual intercourse with Esperanza was voluntarily consummated and was not accomplished through force or against her will, he testified that he and Esperanza, whom he had known for more than fifteen years, loved each other. They were neighbors in the town of Carmen. Hayag's daughter Ester is married to Antonio, a brother of Esperanza.

Their liaison allegedly started one morning in December, 1970 when Esperanza appeared at the foot of the stairs of his house and made a sign that she wanted to drink water. Hayag signalled her to go upstairs. He was absent from work on that day.

He went to the kitchen where Esperanza followed him. After she had drunk water, she made a sign by pointing to herself and to Hayag and placing her two fingers side by side or juxtaposing them. Hayag said that by means of that sign Esperanza wanted to convey that she and Hayag were sweethearts. Hayag nodded to show his assent to Esperanza's offer of love.

Hayag said that thereafter Esperanza embraced him and they kissed each other. After the embrace, Esperanza disengaged herself and formed a circle with her left thumb and index finger and inserted into the circle the fingers of her right hand, repeatedly making a push-and-pull movement. That signal meant that she wanted sexual intercourse. In answer to that signal, Hayag nodded.

Esperanza took off her panties and because the kitchen floor was dirty Hayag indicated to her that they would have sexual congress on the table which was clean. They performed the sexual intercourse on the table and reached the climax in about five minutes.

After they went down from the table, they embraced and kissed and Esperanza allegedly made a sign that they should repeat the sexual act. At that juncture, Florita, Hayag's daughter, barged in and saw them. They separated.

Four days later, Esperanza met Hayag at about six-thirty in the morning at the crossing or intersection of the highway going to Tagum and the road going to Tibal-og in the vicinity of the bridge and the chapel. There was a grassy spot in that place (Exh. 9 and A). There, they had sexual intercourse for about five minutes.

In the meantime, Florita reported to her mother, Adoracion, that she had seen Hayag and Esperanza in a compromising situation. Hayag and his wife quarrelled. Mrs. Hayag and her three daughters left the conjugal abode and took refuge in her mother's house in Maco. Hayag was able to persuade his wife to return to their house after he had promised not to have anything more to do with Esperanza.

For more than a year, Hayag lived up to his promise. Then, in the morning of May 12, 1972, Hayag met Esperanza on the highway while he was waiting for transportation to take him to his work as a foreman (capataz) of the Bureau of Public Highways in Mawab, Nabunturan.

On that occasion, Esperanza allegedly made a sign to him that they should have sexual intercourse, pointing to him the grassy spot where they had done it before. Hayag made a counter-sign to convey to Esperanza the message that they should have sexual intercourse after he had cleared a spot amidst the dense talahib grass.

It took Hayag three days to prepare the place of assignation (See photographs, Exh. 5 to 8). On May 15, 1973 he and Esperanza allegedly had sexual intercourse in the spot which he had cleared. Thereafter, they had six other

acts of sexual intercourse in that place. A white plastic raincoat allegedly belonging to Esperanza was used to cover the ground (Exh. 4).

Hayag specified that he had carnal intercourse with Esperanza on September 2 and 23, October 20 and 26, November 4 and December 4, 1972. Esperanza allegedly advised Hayag to remember the dates because she might become pregnant. The last three acts of sexual intercourse took place in the afternoon after Hayag had come from work and while Esperanza was on her way home from the farm (13-14 and October 26, 1972).

After each sexual intercourse, Esperanza would take Hayag's ball pen and write the date on the palm of his hand. Hayag himself did not make any record of the dates of the sexual intercourse. He committed them to memory.

In the afternoon of December 4, 1972, after Hayag and Esperanza had sexual intercourse in their usual trysting place (Exh. 5 to 8), they were seen in that vicinity by Jose Santillan, a close friend of Hayag, and by Esteban Ranga, the uncle of Esperanza, who appeared to be angry and who held her and brought her home.

Two days later, or on December 6, Hayag was arrested by Patrolmen Rolando Yambao and Samuel Casuga because Esperanza's mother and uncle had charged him with rape.

Hayag's daughter Florita and his wife Adoracion corroborated his testimony as to the quarrel between him and his wife when she learned that he had an affair with Esperanza.

Florita testified that Esperanza cried when she learned that Hayag was in prison and in sign language she allegedly made it known that she had voluntary sexual intercourse with Hayag and that, to prove that she loved Hayag, she (Esperanza) gave to Florita the plastic raincoat already mentioned (Exh. 4).

Jose Santillan, a farmer, a friend of Hayag and a neighbor of the Ranga family, testified that as a Peeping Tom or voyeur, he witnessed the sexual intercourse between Hayag and Esperanza in the afternoon of December 4, 1972 in the grassy spot mentioned by Hayag in his testimony.

The trial court reacted in disbelief to Hayag's story, it branded Hayag's version as unusual and bizarre. It concluded that Hayag took advantage of the physical defect of Esperanza and that he was under the illusion that because she is a deaf-mute she would not be able to communicate the outrage perpetrated against her.

Ruling. - Hayag's counsel de oficio contends in this appeal that the trial court erred in basing the judgment of conviction on the testimony of Esperanza in sign language as verbalized by her sister, an alleged biased interpreter.

We have conscientiously examined the record. Our conclusion is that the prosecution failed to establish the guilt of the accused beyond reasonable doubt. The culpability of Hayag cannot be made to rest on the uncorroborated story of Esperanza, as conjectured by her sister and mother. That story in itself is not clear, convincing, positive and free from suspicion. It is not impeccable and does not ring true throughout (People vs. Ariarte, 60 Phil. 326).

Lack of tenacious resistance on the part of Esperanza Ranga, her delay in reporting the alleged rape to her mother and the absence of an immediate medical examination of her private organ are circumstances creating reasonable doubt as to the commission of the rape.

From Esperanza's version, as articulated by her sister, it is at once evident that Esperanza did not offer much resistance to the alleged sexual assault made by Hayag. She did not suffer any physical injuries. Her dress was not torn. She did not attempt to free herself from the clutches of Hayag.

This is not a case of a teenage girl being raped by a strong and robust adult. This is a case of a thirty-two-year-old farm girl who was allegedly forced to have carnal intercourse by a fifty-year-old man. Her story does not contain

details as to how she repelled Hayag's attempts to ravish her. And that story was not recounted by her directly in her own words but was made known by means of sign language which was interpreted by her sister. The trustworthiness of that interpretation is doubtful.

The defense objected to such interpretation. The probability of error or fabrication in such a case is very manifest. As observed by Justice Villa-Real, that is a dangerous procedure for ascertaining the truth especially in a case where the liberty of an accused is at stake (*People vs. Bustos*, 51 Phil. 385, 390). The court and the accused have no means of checking the accuracy of the verbalization made by the interpreter who is herself interested in sending the accused to prison.

It is difficult to rape a healthy adult woman without the help of confederates or without terrifying her with a deadly weapon. If she makes a vigorous resistance, the likelihood is that the lascivious desire of her assailant would be foiled.

The resistance would, as in this case, be more effective in an open field where there are more chances of eluding the assailant or frustrating his advances. The rape committed by a man without the assistance of other persons is possible but is a rare case. (2 Cuello Calon, *Derecho Penal*, 1975 Ed., 588; *People vs. Barbo*, L-30988, March 29, 1974, 56 SCR A 459, 467.)

Then, there is the fact that although the alleged rape took place on October 26, 1972, it was only forty days later, or on December 4, that Esperanza confided to her mother (by means of signs, of course) that she was supposedly raped. Her story was not corroborated.

The uncorroborated testimony of the offended woman may be sufficient under certain circumstances to warrant a conviction for rape. Yet, "from the very nature of the charge and the ease with which it may be made and the difficulty which surrounds the accused in disproving it where the point at issue is as to whether the cohabitation was had with or without the use of force or threats, it is imperative that such testimony, should be scrutinized with the greatest caution." (*Carson, J., in U. S. vs. Flores*, 26 Phil. 262, 268.)

"In all such cases the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge. Indeed it may well be doubted whether a conviction of the offense of rape should ever be sustained upon the uncorroborated testimony of the woman unless the court is satisfied beyond a reasonable doubt that her conduct at the time when the alleged rape was committed and immediately thereafter was such as might be reasonably expected from her under all the circumstances of the case." (*U. S. vs. Flores*, pp. 268-269.)

Moreover, the case for the prosecution was irreparably impaired by the inconsistencies committed by the complainant's mother, Mrs. Ranga. She first swore that according to her interpretation of Esperanza's sign language five rapes were committed on different dates.

Then, she rectified her first affidavit and swore in a second affidavit and during the preliminary examination that only one rape was committed. (Exh. 1 and 3.)

On the witness stand, she declared that the rape was committed on December 4, 1972 but on cross-examination she declared that her daughter was abused on October 26, 1972. Contrary to the prosecution's theory, Mrs. Ranga testified that Hayag did not do anything to Esperanza on December 4, 1972 (56 and 65 tsn August 6, 1972).

WHEREFORE, the trial court's judgment of conviction is reversed and set aside. On the ground of reasonable doubt or the insufficiency of the prosecution's evidence, defendant Daniel Hayag is acquitted of the charge of rape. Costs de oficio.

SO ORDERED.

Barredo (Chairman), Concepcion Jr., Abad Santos and De Castro, JJ., concur.

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