

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS MONTALBO ALIAS “TOMMY”; DEFENDANT-APPELLANT.

G.R. No. L-38818. July 25, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The instant case was instituted upon a complaint for rape subscribed and sworn to by Nenita Perez and filed by her on May 6, 1971, with the then Municipal Court of Ibaan, Province of Batangas, reading as follows:

"The undersigned under oath hereby accuses TOMAS MONTALBO, a resident of Poblacion, Ibaan, Batangas of the crime of 'RAPE' committed as follows:

"That on or about December 19, 1970 in the evening, in the house of Tomas Montalbo, located at Poblacion, municipality of Ibaan, province of Batangas, Philippines and within the jurisdiction of this Honorable Court the above-named accused unlawfully, feloniously and wilfully grabbed me, embraced me, forced me to lie down despite my full force for struggle and resistance I offered him to prevent him to satisfy his animal lust had carnal knowledge upon me which caused me great pain and blood to come out and caused me moral damage to endure; the crime was committed with aggravating circumstances as follows: (1) Nocturnity, (2) Abuse of confidence, (3) Abuse of superior power and (4) Ignominy.'

"CONTRARY TO LAW" (p. 1, CFI rec.).

After the preliminary investigation, on May 25, 1971, an information for rape was filed, reading thus:

"The undersigned Provincial Fiscal, upon complaint of the offended party, one Nenita Perez y delos Reyes, accuses Tomas Montalbo alias Tommy of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

"That on or about the 19th day of December, 1970, at night, in the poblacion of the Municipality of Ibaan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, with the use of force and intimidation, lie with and have carnal knowledge of the offended party, the said Nenita Perez y delos Reyes, a domestic servant in the household of the said accused, against her will and consent.

"That the following aggravating circumstances were present in the commission of the crime, to wit: (1) nocturnity deliberately sought and, (2) grave abuse of confidence, said offended party being then a domestic servant in the household of the said accused.

"Contrary to law" (pp. 2-3, rec.).

On April 30, 1974, the trial court convicted the accused, thus:

"WHEREFORE, the Court finds the accused Tomas Montalbo alias Tommy guilty beyond reasonable doubt of the crime of rape charged in the information and hereby sentences him to reclusion perpetua, together with the accessory penalties, to indemnify the offended party in the amount of P5,000.00, without subsidiary

imprisonment in case of insolvency, to acknowledge the off-spring should there be any to support it, and to pay the cost. SO ORDERED" (pp. 51-52, rec.).

The Solicitor General narrated the state's evidence as follows:

"The offended party, Nenita Perez, is the daughter of a laundrywoman and a carpenter from Barrio Coliat, Ibaan, Batangas. She became a house-hold helper in the house of accused Tomas Montalbo on October 4, 1970. She was then fifteen years old. She worked for P25.00 a month (pp. 2-3 tsn, October 5, 1972).

"On November 15, 1970, Nenita Perez underwent an appendectomy at the Holy infant Hospital and was discharged on November 21, 1970 with the advice that she rest for a month. After only two weeks however, she returned to the Montalbos' house and resumed her duties because of the children (pp. 40-41, tsn, October 5, 1972; p. 8, tsn, October 18, 1972). The expenses for operation were paid by the Montalbos -- -P250.00 -- chargeable to her salary. This indebtedness of her increased to P285.00 (pp. 69-70, tsn, October 5, 1972; p. 42, tsn, August 22, 1973).

"On or about December 19, 1970, in the evening, Nenita was awakened from her sleep by her master ('Ka Tommy') shaking her feet. The accused, clad in a bathrobe, was holding a glass with a whitish substance in it and he told her to drink the contents because she was allegedly dreaming (pp. 7-8, tsn, October 5, 1972). Nenita did as told and went to the kitchen to return the glass. As she passed the living room on her way back to her room, the accused held her right hand and told her not to shout. She was able to free herself, however, and she went back to her bedroom and locked the door (pp. 10-11, tsn, October 5, 1972).

"Sometime later, Nenita sensed that the door of the bedroom was being opened. She saw the accused who told her to get up. Thinking that it was for an errand, Nenita stood up. This time the accused held her right hand and pinned it at her back, place his other hand over her mouth and told her not to shout or he would kill her. Nenita was then trying to extricate herself but the accused, holding her firmly pushed her out of the room with his knee towards the guest room about seven meters away (pp. 13-17, tsn, October 5, 1972).

"Once inside the guest room and after the door was closed, the accused forcibly put her in bed and repeated the warning if she made an outcry he would kill her. The accused then raised Nenita's dress to her waistline, forcibly removed her panty, and went on top of her. Too scared to make an outcry because of the threat, Nenita kicked and pushed at the accused who was nevertheless able to insert his private part into her private part. After moving up and down on top of her, the accused stood up and left her (pp. 17-20, tsn, October 5, 1972).

"Nenita, still feeling spent and weak, forced herself up and went to the bathroom (p. 21, tsn, October 5, 1972). Washing herself she saw that her private part was bleeding. It was painful. She slowly returned to her bedroom, changed her panty and crept back into bed. She closed her eyes but sleep eluded her (pp. 23-26, tsn, October 5, 1972).

"On May 1, 1971, fearing that the abuse might happen again, Nenita Perez left the Montalbo residence and went to Manila. She was fetched by her father the next day and brought back to their home at Barrio Coliat and it was upon her father's asking her the reason for her sudden departure that she finally related all that happened to her (pp. 26-28, tsn, October 5, 1972). Nenita's mother, Justina Perez, was then in the house of the Montalbos substituting for Nenita (p. 29, tsn, October 5, 1972), just as she substituted for her during her convalescence (p. 7, tsn, October 18, 1972). Justina learned the story from Nenita's father when she came home that afternoon. It was the next morning that she spoke about it with Nenita herself (pp. 25-26, tsn, October 18, 1972). That same morning, Justina went to the Montalbo residence to inquire from them about what she had just learned. The accused and his wife then went with Justina to fetch Nenita from her house and brought the latter with her mother back to their house. There, in front of her mother, the accused, the accused's wife (Ka Baby) and his 70-year-old mother (Nanay Carmen), Nenita confirmed the abuse done to her by the accused who, upon being so confronted, slapped Nenita (pp. 32-34, tsn, October 5, 1972; pp. 10-12, tsn, October 18, 1972). Angered at this added insult, the girl was firmly held by her mother and led out of the Montalbo residence (p. 13, tsn,

October 18, 1972).

"Mother and daughter then proceeded to the Municipal Building to file a complaint. Told to undergo a medical examination, Nenita accompanied by her parents, went to the Batangas Provincial Hospital that same day (p. 35, tsn, October 5, 1972). There, she was examined by Dra. Eufrocina V. Castillo who issued a medico-legal certificate (Exhibit 'B') embodying the following findings:

"1. Presence of healed hymenal laceration at 2, 5, and 7 o'clock.

'2. Vagina admits two (2) fingers snugly.

'3. Cervix small, closed, uterine enlarged.

'4. Smears for spermatozoa - Failed to find spermatozoa" (p. 165, rec.; Brief for the Appellee, pp. 2-5).

Appellant is an affluent business executive being the General Manager of Combined Sales and Services, Inc., with offices in Batangas City and the financial adviser of Luis Maralit, the proprietor of Margas Shell Service Stations in Lipa City and President of Combined Sales and Services, Inc..

Confronted with this accusation, appellant interposed the defense of alibi. He further alleged that this accusation is highly fabricated and framed up against him (p. 147, CFI rec.; p. 5, t.s.n., August 22, 1973).

Appellant's assignment of eight errors raises only one issue - credibility of the witnesses.

The appeal is devoid of merit.

I

WE are guided by the settled rule that the trial court has unequalled competence to consider and determine the credibility of witnesses, in view of its unique opportunity to observe the demeanor of the witnesses on the stand, an opportunity not afforded to the appellate court (*People vs. Lucas Ramos y Macasiray*, No. 50450, March 16, 1984; *People vs. Espejo*, 36 SCRA 400; *People vs. Dorado*, 30 SCRA 53).

In convicting the accused, the court a quo said:

"There is cogency in believing her reasons. Nenita Perez is a simple barrio girl, 15 years of age and born to a laundry-woman and a carpenter. She has not much formal education and so she had to accept the lowly job of a domestic servant with a measly salary of P25.00. xx x The Court has observed her not to be a woman of loose morals capable of concocting false stories. Nor has the defense shown her to be one. It is, therefore, hard to believe that she would tell a story of defloration, allow the examination of her private parts, and thereafter permit herself to be subjected to a public trial if she was not motivated solely by a desire to have the accused apprehended and punished. xx xx" (*Italics supplied*).

"xx xx Upon the other hand, the accused is an affluent business executive and he has been observed to be of temperamental disposition and must have lorded fear and ascendancy over his domestic helps including Nenita Perez" (pp. 32-33, rec.).

In a long line of decisions, this Court had manifested its marked receptivity to lend credence to the testimonies of rape victims who are young and immature girls as in the instant case (*People vs. Garcines*, 57 SCRA 653; *People vs. Savellano*, 57 SCRA. 320; *People vs. Modelo*, 35 SCRA 679; *People vs. Soriano*, 35 SCRA 33; *Delos Santos vs. People*, 69 Phil. 321; *People vs. Lomibao*, 55 Phil. 816; *People vs. Alqueza*, 51 Phil. 817; *People vs. De Guzman*, 51 Phil. 105; *United States vs. Rojo*, 10 Phil. 369).

"xx x xx Time and time again, this Court had correctly observed that no woman, especially one of tender age, would willingly expose herself to the embarrassment of a public trial wherein she would have not only to admit

but also to narrate the violation of her person, if such indeed were not the case. Far better it is in not a few cases to spare herself the humiliation if there be some other way of bringing the offender to justice" (People vs. Baylon, 57 SCRA 120). A victim of rape will not come out in the open if her motive is not to obtain justice (People vs. Dionisio Ignacio, 60 SCRA 11, citing People vs. Canastre, 82 Phil. 480). No young Filipina of decent repute would publicly admit that she had been criminally abused, unless that is the truth; for it is her natural instinct to protect her honor (People vs. Gan, 46 SCRA 667).

On direct examination, appellant testified as follows:

"Atty. dela Cruz:

xx xx xx

"Q. Now, on the basis of your testimony, taken as a whole, it would appear that the testimony of Nenita together with that of his father and mother, Pedro Perez and Justina were actually not reflecting the truth, would you know of any reason why the father and the mother and Nenita Perez would testify that you have abused Nenita Perez, if you have not done so?

"A. Yes, sir.

"Q. Will you please tell the Court what the reason was?

"A. Probably, it is because of the fact that I happen to slap her.

"Q. You made mention of a slapping incident, when (did) that slapping incident (take) place?

"A. It took place sometime on May 3, 1971.

"Q. Where?

"A. At our own residence.

"Q. In Ibaan?

"A. Yes, sir.

"Q. Will you please tell the Court why did you slap Nenita Perez on that day?

"A. It so happen, sir, because sometime on April 30, 1971 she was asked to buy something and my mother noticed that she was not returning for almost an hour or more. So she followed her and actually she found out that she was somewhere talking with a certain houseboy. And then she called her and asked her to go immediately and upon her arrival, my mother scolded her and in view of which the following morning, Nenita Perez has just deserted our place with-out our permission.

"Q. What relation has this desertion of Nenita with having slapped her?

"A. I remember it was Monday morning and I left early our place for my office here in Batangas City with an arrangement with my wife that in case I will be going to Lipa, I have to pass by her, because she was thinking of joining me. When I returned home, I notice that this Nenita with her mother was there and according to my wife, the mother was begging us to kindly accommodate Nenita to our place. At this stage, I asked Nenita why she just deserted our place with-out our permission.

"Q. And what was the answer of Nenita?

"A. Instead of giving her a good reason, she pointed to my mother and shouted on the top of her voice, 'Gawa ng putang inang matandang yaan, mura ng mura.'

"Q. To whom was this slanderous word addressed?

"A. To my mother.

"Q. And upon hearing those slanderous words, what did you do?

"A. I lost my temper and slapped her with my full strength.

"Q. And after slapping this Nenita, what happened?

"A. She shouted at the top of her voice and immediately leave our place, telling that 'Pagpapapatayin ko kayo. Hindi ako titigil hanggang hindi ko kayo napapatay, putang-ina ninyo'" (pp. 174--178, CFI rec.; pp. 32-36, t.s.n., August 22, 1973).

On the other hand, complainant's version of the incident is as follows:

"FISCAL: v xx xx xx

"Q. Before reporting this matter on May 3 to the police of Ibaan, Batangas, where did you come from?

"A. From the house of Ka Tommy, sir.

"Q. Who were your companions when you came from the house of Ka Tommy?

"A. He and his wife fetched me, sir.

"Q. Who were then with you when according to you you were fetched by the spouses?

"A. My mother, sir.

"Q. You referred to spouses, to whom do you refer to?

"A. Ka Tommy and Ka Baby, sir.

"Q. When you speak 'kinaon ako ng mag-asawa,' where did you, your mother and the spouses go?

"A. To their house, sir.

"Q. Were you and your companion able to reach the house of Ka Tommy?

"A. Yes, sir.

"Q. When was that?

"A. On May 3, sir.

"Q. Now, when you, your mother and spouses Tomas Montalbo and Baby were already in the house of Ka Tommy, what happened there?

"A. Ka Baby spoke and she told me to tell what I told my mother and I did so, sir.

"Q. How did you do so?

"A. I told her 'that is true' sir.

"Q. To whom did you refer that statement?

"A. To Ka Baby, sir, and I attested to what her husband did to me and also to Nanay Carmen, the mother of Ka Tommy.

"Q. Could you inform the Court who were the persons present at that very moment?

"A. My mother, Ka Tommy, Ka Baby and Nanay Carmen, sir.

"Q. Do you know the name of this Baby you are referring to?

"A. Benilda Chezman, sir.

"Q. After telling that to the persons present, what did Tomas Montalbo do?

"A. He slapped me, sir.

"Q. What happened next?

"A. After he had slapped me, my mother and I hurriedly left, sir" (pp. 301-304, CFI rec.; pp. 31-34, t.s.n., October 5, 1972).

The complainant's version of the slapping incident corroborated by her parents is convincing. On the other hand, appellant's version of the May 3 incident defies belief. On this point, the trial court said: "It must be pointed out that this story was testified to by the accused alone without corroboration from his mother, who had a firsthand knowledge of the same; hence, it is mere hearsay, an eleventh hour concoction tailored to provide the needed motive of Nenita Perez in instituting this action" (p. 44, rec.). As aptly stated by the Solicitor General: "It is hard to believe, firstly, that the ailing 70-year-old mother of the accused would go out of the house to follow the maid to the market as far as an entire kilometer, just because she did not return at once from an errand. The story about the houseboy is even less credible (p. 27, t.s.n., September 12, 1973). The said houseboy was not even presented to corroborate the same. Secondly, a youthful maid from the barrio feeling the heavy burden of debt, would not just leave the house of her master because she was scolded for an act that is not even a misdeed. And why go to Manila instead of simply going home? Thirdly, would a slapping induce one to file such a serious charge as rape? Moreover, against somebody one admittedly was indebted to? And to whose house, mother and daughter had gone, allegedly not about a rape case but a lesser misunderstanding? The story is simply unrealistic" (p. 165, rec.; p. 18, Brief for the Appellee).

Furthermore, no parents in their right frame of mind would expose their daughter, who is still of tender age and emotionally immature, to the certainty of public ridicule and shame, aside from permitting her to undergo such a dehumanizing experience of appearing in a rape trial, for a reason as trivial as a slapping incident. Appellant's allegation to the contrary is, therefore, absolutely against human experience and standard. Consequently, complainant's motive in instituting this action is beyond reproach. Such being the case, the complainant's testimony to the effect that she was raped by the appellant is likewise credible. Obviously, appellant's version of the slapping incident and imputation of an evil motive to the complainant is a desperate attempt to save himself from the consequences of his heinous act. His inability to find a more plausible motive for the complainant supports the trial court's finding that the motive, as presented by the appellant, in filing this case against him is an "eleventh hour concoction tailored to provide the needed motive of Nenita Perez in instituting this action."

II

Appellant's other assignment of errors are easily and ably refuted by the Solicitor General in the appellee's brief quoted with approval as follows:

"It is initially contended that the lower court erred in declaring the existence of 'continuing threats' against the life of the complainant Nenita Perez.

"It is likewise contended that the lower court erred in not declaring that the delay in the filing of the complainant is indicative of lack of merit. These two assigned errors, being closely related shall be discussed jointly.

"In her sworn statement of May 4, 1971 (Exhibit 'E'), Nenita Perez was asked:

" '8. T: -- Ito bagang mga bagay na ito ay ipinaalam mo agad sa iyong mga magulang?

S: -- Hindi po, dahil sa takot kong ako ay papatayin ni Ka Tommy.

xx xx xx

" '10. T: -- Nang maganap ang pagsasamantala sa iyo ay buwan pa ng Disyembre, 1970, bakit hindi ka agad umalis doon upang isumbong sa iyong mga magulang ang naganap sa iyo?

S: -- Sa dahilan na nga po na natatakot ako na baka ako ay kanyang patayin at ang ikalawa po ay malaki ang utang namin sa kanila, na umaabot sa halagang P285.00.' (pp. 2-3, rec.)

"Nenita declared the same thing in Court: that she could not leave because of her debt; that she went to Manila because of the threat and could not tell her mother for fear she would be made to return (pp. 69--73, tsn, October 5, 1972).

"Nenita was fifteen when she executed her sworn statement on May 4, 1971, about four months and a half from December 19, 1970 when she was abused. On said date, therefore, she was barely out of her childhood years, unlettered and a hired helper. On the other hand, the accused was her employer, a businessman, well-off and educated. He was observed by the court to be of a temperamental disposition (p. 422, rec.). There can be no doubt the accused's ascendancy over the girl especially when considered side by side with the obvious poverty and servility to the latter and her family. Not only was Nenita working at such an early age, her mother likewise performed laundry services for the Montalbos (p. 46, tsn, October 5, 1972). The mother substituted for Nenita when she was recuperating from her operation as well as when Nenita left on May 1st, 1971 (p. 7, tsn, October 18, 1972; p. 29, tsn, October 5, 1972). It is not difficult to conclude that overpowering fear initially overcame whatever anger and desire for justice she must have felt for the assault she suffered. Added to that, she owed her master P285.00, which must have seemed an enormous sum to a girl who earned a measly P25.00 a month. To those in the barrios, and even for adults with more judicious minds, paying one's debt is a matter of honor. Verily, it would have taken enormous courage and, what seemed to her then, a sense of ingratitude combined with fears of the consequences for one so young and so situated to have denounced her master there and then. Were it not for the prospect of a repetition looming and seeming worse than the state of helplessness she already was in, Nenita would have prolonged her silence -- and her doing so would not have made the abuse less criminal or less true.

"The self-serving testimony about the accused being a model husband and a paragon of virtue was correctly disregarded by the trial court. From a reading of the records alone, the testimony that if the accused could and does manhandle his own wife with more reason could he hurt a helper, appears more credible.

"Whatever delay there was in the filing of the complaint was thus sufficiently explained. It certainly does not detract from the merits of her case (People vs. Catli, L-11641, November 29, 1962). It would be too much to expect a very young unlettered girl to know the legal ill-effects of her silence.

"Refutation of the Second Assignment of Error.

"It is likewise averred that the lower court erred in declaring that the element of 'force and intimidation' was established by clear and convincing evidence.

"As testified by the offended party, once inside the guest room and the door was closed, she was told again not to shout as he would kill her (pp. 19-65, tsn, October 5, 1972). She nevertheless resisted by kicking and pushing the accused. Although her limbs were free, the accused was boxing her at the thigh. And after a while of exerting all efforts, she noticed she was weakening, feeling cold all over and getting sleepy (pp. 62-65, tsn, October 5, 1972). It may be added that only five weeks earlier, she had under-gone an operation.

"When the offended girl stated that she defended herself against the accused as long as she could, but he over-powered her and held her till her strength gave out, and then accomplished his vicious purpose there is evidence of sufficient force.' (People vs. Momo, 56 Phil. 86).

"There was, coupled with the, above force, sufficient intimidation. The threat may have been verbal, but considering the circumstances this was sufficient. Nenita was not only of tender age to be easily coerced, she had reason to be intimidated (pp, 58-59, tsn, October 5, 1972; pp. 16-18; tsn, March 9, 1973).

"Refutation of the Fourth Assignment of Error.

"It is next contended that the lower court erred in not declaring the complaining witness a liar. Appellant points out certain alleged discrepancies in the testimony of the offended party.

"First it is alleged that in the history of Nenita copied by Dra. Castillo at the back of the medical certificate she issued after examining the girl, the latter said she was used twice whereas nowhere in her testimony in court did she make reference to being abused twice (pp. 6-7, tsn, January 11, 1973). Also, that she claimed therein that she felt dizzy after drinking from the glass.

"In People vs. Gan, 46 SCRA 67, it was held by this Honorable Court that:

"Variance in testimony of victim as to number of times she was abused may be excused for when she made her first statement before the judge she was in a shocking experience and it is understandable that in such a state, confusion and even error on minor details would occur.'

"It must be remembered that when Nenita went for a medical examination she had just come from a confrontation with the accused at the latter's house. This experience alone would have agitated her but in addition, she was slapped. Obviously, she was in a troubled state. Besides, the inquiry made by Dra. Castillo did not involve a point by point examination as to how the rape was perpetrated. It was a condensed version of the event so much so that when Nenita said she felt dizzy, it did not follow that she felt dizzy immediately after drinking. From the testimony of Nenita in court, when she was already being asked in detail, she testified that it was while she was struggling with the accused who was on top of her and she was kick-ing and pushing that she felt she was weakening (p. 64, tsn, October 5, 1972).

"It is also claimed that Nenita testified that she left the Montalbo residence in a calm manner (pp. 14-15, tsn, January 18, 1974) whereas Nenita's mother testified that when they left the Montalbo residence after the slapping incident, Nenita was very angry (p. 36, tsn, October 18, 1973). Whether she was angry or not when she left the Montalbo residence, we fail to see how this would affect her case.

"And as to Nenita's declaration that December 19, 1970 was a Sunday, this could very well be due to the fact that the abuse occurred late at night and the following day was Sunday. At any rate, the information states 'on or about the 19th day of December, at night' (p. 88, rec.).

"It is respectfully submitted that whatever discrepancies there may be in Nenita's testimony, they were not deliberate lies on her part but would simply be traceable to the tender age of the offended party, her lack of sufficient education, and lapse of time. Discrepancies may be attributed to deficiencies in observation and recollection, misapprehension of the misleading and confusing questions during cross-examination, to the defective translation of the questions and answers, but they do not necessarily indicate a willful attempt to commit falsehood. (People vs. Sangalang, 58 SCRA 737). In fact, they are evidence that the witness was not coached and was answering as spontaneously and truthfully as she could.

"The credibility of a witness is addressed to the lower court, the latter being in a much better position to observe

the demeanor of the witnesses. In this case, the lower court found the testimony of the offended party logical, convincing and conclusive. Pertinent to quote here, a portion of the Decision:

"The Court has observed her not to be a woman of loose morals capable of concocting false stories. Nor has the defense shown her to be one. It is, therefore, hard to believe that she would tell a story of defloration, allow the examination of her private parts, and thereafter permit herself to be subjected to a public trial if she was not motivated solely by a desire to have the accused apprehended and punished. A woman does not easily trump up rape charges for she has much more to lose in the notoriety the case will reap for her, her honor and that of her family, than in the redress she demands' (People vs. Jose, 37 SCRA 450) [pp. 442-443, Records].

"Refutation of the Fifth Assignment of Error.

"There is likewise no error in finding the accused's defense of alibi not full, clear and satisfactory. Aside from its inherent weakness (it was purely oral evidence as against positive identification by the offended party), it failed to meet the standard laid down by this Honorable Court in many decisions: that for alibi to be acceptable, it must be shown that the place where the accused was alleged to be when the offense was committed must be located at such distance that it was well-nigh impossible for him to be at the scene of the crime (People vs. Mamangan, 59 SCRA 31; People vs. Malilay, L-27938, April 22, 1975 among others).

"The distance between the accused's residence in Ibaan, where the crime was committed, and the Maralit residence at Lipa City, where the accused was supposed to be attending a party that night of December 19, 1970, is only about fifteen (15) kilometers using the Ibaan-Lipa road. The accused and his wife testified that it took about 40-45 minutes to negotiate the distance in their jeep because of the bad roads (pp. 12-13, tsn, August 22, 1973; pp. 8-9, tsn, March 9, 1973). On the other hand, Mr. Maralit defense witness and the one whose party the accused allegedly attended, testified that he could negotiate the said distance in less than ten or twenty minutes (pp. 30-31, tsn, November 29, 1973).

"The accused also testified that he was especially requested by Mr. Maralit to entertain a particular Mr. Rances of Shell, Philippines, in order that the latter may not press collection of Maralit's debt; that this guest left the party between 10:30-11:30 p.m. although the accused himself left at 2:00 a.m. already (pp. 16-18, tsn, August 12, 1973). On the other hand, Mr. Maralit, the host, testified that the said guest left his house between 9:00 and 10:00 that night (p. 10, tsn, November 29, 1973).

"Further, the accused and his wife testified that when they left the Maralit residence at 2:00 a.m. of the next day, they gave a ride to Casimiro Santos and Teobaldo Guce, taking the former to San Fernando Air Base (a distance of about five (5) kilometers from the Maralit place) and from there taking the latter to Barrio Pinagtungulan (a distance of about 5-7 kilometers from San Fernando Air Base) before proceeding home to Ibaan via Lipa (pp. 11-14, tsn., September 12, 1973); that upon reaching Ibaan they attended the Misa de Gallo because it was already about 4:00 a.m. and the church bells were ringing (pp. 16--18, tsn, August 22, 1973; p. 15, tsn, March 9, 1975).

"The lower court considered this defense of alibi very carefully in arriving at the conclusion that it was not clearly and satisfactorily shown to be physically impossible for the accused to have committed the crime. It noted that the special guest had left between 9:00 and 10:00 per the testimony of Mr. Maralit, thus relieving the accused of this primary responsibility in the party. The distance between Ibaan and Lipa is but fifteen (15) kilometers and the accused had a jeep (pp. 8-9, tsn, March 9, 1973). The claim of the accused that they brought two persons to San Fernando Air Base and Barrio Pinagtungulan before proceeding home deserves scant consideration. These two persons were not presented to corroborate this claim. Finally, the lower court noted that while reference was made to 10:00 p.m. as the time of commission, if it had taken place later, this would not have been fatal as it would be merely a mistaken estimate of time (pp. 437-441, rec.). The young girl would not have looked at a clock while

being dragged, abused, or after the harrowing incident. Suffice that the approximate time is recalled.

"The defense of alibi is an issue of fact that hinges on credibility, and the credibility of an alibi depends much on the credibility of the witnesses who seek to establish it. In this respect, the relative weight which the trial judge assigns to the testimony of the witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. (People vs. Berdida, L-20183, June 30, 1966, 17 SCRA 520).

"The observations made by the Court a quo on the accused's defense of alibi are as noted above, consistent with the evidence on record.

"Refutation of the Sixth Assignment of Error.

"In his sixth assignment of error, appellant assails the lower court for disregarding the testimony of Dra. Eufrocina Castillo. The testimony claimed to have been disregarded refers to the information allegedly obtained by the doctor from Nenita that there was a kissing incident days before Christmas and the sexual contact two weeks after the kissing event (pp. 7-8, tsn, January 11, 1973). Appellant argues that on the basis of the above, it is totally impossible that the crime could have been committed on December 19, 1970 (p. 38, Appellant's Brief).

"Simply because the offended party used the term 'days before Christmas' in answer to the Doctor's questions regarding the kissing incident, and used the term 'weeks' with respect to the sexual intercourse which occurred after the kissing event, does not render impossible the commission of the crime on or about December 19, 1970. Two weeks before December 19, 1970 would still be 'days before Christmas.' The, doctor herself clarified: 'Not few days, she just told me it is before Christmas, sir' referring to the kissing incident (p. 19, tsn, January 11, 1973)" [p. 165, rec.; pp. 5-16, Brief for the Appellee; Italics supplied].

That the rape was actually perpetrated can be gleaned from the information taken by Dr. Eufrocina V. Castillo when she examined the complainant Nenita Perez, who told her that she was kissed and embraced by her "amo", herein appellant, while she was sleeping in the visitor's room days before she was raped by the appellant on December 19, 1970. This incident shows that appellant is so degenerate that he raped his domestic helper. Thus, the doctor's report reads:

"She was a maid of a certain Tommy since December, 1970. Last December before Christmas she happened to sleep in the visitor's quarters with an open door and when she woke up her amo was kissing and embracing her -- no sexual contact -- 2 weeks after, she was awakened by him, asked to drink water and she felt dizzy. Used 2x" (p. 253, CFI rec., Exh. '6').

WHEREFORE, FINDING THAT THE JUDGMENT OF THE TRIAL COURT IS IN ACCORDANCE WITH BOTH THE FACTS AND THE LAW, THE SAME IS HEREBY AFFIRMED, WITH THE MODIFICATION THAT THE CIVIL INDEMNITY SHOULD BE RAISED TO THIRTY THOUSAND (P30,000.00) PESOS.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

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