

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCIAL GARGOLES, DEFENDANT-APPELLANT.***G.R. No. L-40885. May 18, 1978*

Ponente: SANTOS, J.

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This is an appeal from the decision of the Court of First Instance of Cebu, Hon. Jose C. Borromeo, presiding, in Criminal Case No. CU-980, entitled "The People of the Philippines vs. Marcial Gargoles," convicting the accused of the crime of rape; sentencing him to the penalty of reclusion perpetua; ordering him to indemnify the offended party the sum of P5,000.00 as moral damages, and to pay the costs.

On March 14, 1973, the accused, Marcial Gargoles, was charged before the Court of First Instance of Cebu with the crime of rape in a Complaint,[1] the pertinent portion of which reads:

"That on or about the 2nd day of June, 1972, at about 5:30 in the afternoon or thereabout, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously take hold of the hand of one Magdalena Giducos and by means of a taxicab brought her to the Country Hotel in Mabolo, Cebu City, and upon reaching the said place, accused dragged her inside the room of said Hotel and threatened her not to shout or else a worse thing will happen to her and there by using force and intimidation and after inflicting contusions on the different parts of her body which rendered her unconscious, the said accused consummated having carnal knowledge with the herein complainant, Magdalena Giducos."

Upon arraignment, the accused entered a plea of "not guilty".[2]

At trial, the prosecution adduced the testimonies of the complainant, Magdalena Giducos, 26 years old, single, a classroom teacher at the Sta. Fe Elementary School; Dr. Ceferino B. Cunanan, the Supervising Medico-Legal Officer of the National Bureau of Investigation, Cebu Office; and Iluminada Lao, a Municipal Councilor, and Exhibit "A", the Living Case Report, 19 June 1972. The defense presented the testimonies of Dr. Felix Sabellon, a retired professor of Legal Medicine, Pablito Naval, a neighbor of the complainant and Norberto Batiancila, a subordinate of the accused in the District Engineer's Office, and Exhibit "1" and "1-A", portions of Exhibit "A".

The evidence on record, as correctly synthesized in the People's Brief,[3] establish the following operative facts of this case:

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"Sometime in September, 1970, the accused, Marcial Gargoles, an Engineer employed in the District Engineer's Office in Cebu, met the complainant, Magdalena Giducos, at an induction dance in the Sta. Fe Elementary School. (pp. 1-2, 6, t.s.n., June 27, 1973). At that time, the complainant was a classroom teacher of the Sta. Fe Community High School in the Municipality of Sta. Fe province of Cebu (p. 5, id.). In November, 1970, Marcial and Magdalena became sweethearts (p.6, id.) This relationship lasted only up to April 1971 because Magdalena discovered that Marcial was a married man with six children (pp. 6-7, id.).

"On June 2, 1972, about 5:30 o'clock in the afternoon, while Magdalena was going out of the Cebu Metropolitan Church where she heard mass, Marcial cut her way and held her hand (pp. 8-9, id.). Noting that Magdalena was jolted and surprised, the accused hurriedly remarked that he was only joking (p. 9, id.). He then invited Magdalena for snacks at Dencia's Luncheonette (p. 10, id.). At first, Magdalena refused the invitation, but later on she accepted it because of the assurance of the accused that nothing will happen to her (pp. 10-11, id.). The duo went to the Dencia's Restaurant where they ate and talked to each other (pp. 11, 13, id.). After finishing their snacks, the accused offered to bring the complainant home but the latter declined. (p. 15, id.).

"Outside the Dencia's Restaurant, Magdalena hailed a taxicab in order to go home because it was already getting dark but, to her surprise, the taxicab did not stop (id.). Then came another taxicab which stopped although she did not hail it (id.). When the door opened Magdalena thought that the accused was gentleman enough to let her take the cab ahead. She was, however, surprised when the accused got inside of the cab ahead. Once inside the cab, the accused pulled Magdalena inside and shut the door. She almost fell down when her step-in was thrown away. (pp. 15-16, id.). Magdalena attempted to shout but Marcial Gargoles, the herein accused, covered her mouth with his hand. She tried to free herself in order to escape but he clamped her feet with his right leg and held her hands with his hands, at same time placing his hand over her mouth. (pp. 16-17, id.). She heard Marcial order the driver of the taxicab to proceed to the Country Motel[\*] (pp. 17-18, id.). Upon arriving at the motel, Marcial paid the driver. Magdalena tried to remain inside the taxicab but Marcial succeeded in pulling her out because she was at the time somewhat dizzy due to air insufficiency inside the cab, considering that the windows were closed. (pp. 19-20, id.). He then pulled her towards what she thought was a wall but which turned out to be a door leading to a room which they reached without passing through the stairway (p. 20, id.).

"Noticing that there was a bed inside the room, Magdalena began to realize that Marcial had bad intentions towards her (p. 21, id.). She struggled to free herself from him but the latter tripped her. She fell on the bed with her face upwards (p. 22, id.). She kicked the stomach of the accused who was then holding both her hands. In retaliation, the accused boxed Magdalena on her thighs rendering her unconscious (id.). When she regained consciousness, Magdalena saw the accused on top of her. She felt pain in her genital organ. Besides the pain, she also felt something wet in it (pp. 23-24, id.). She pushed the accused in order to escape but the latter pulled her again. Then she discovered that she had only her blouse on. Her pants and panties were taken off. Sensing that she wanted to escape, the accused told Magdalena that she could not leave the room because the door was locked and that he had hidden her clothes. He also said that he would just bring in food and afterwards he would bring her to Leyte (pp. 23-26, id.). They stayed inside the room the whole night. About 4:30 dawn, she bluffed the accused by say-all (sic) she will go with him. He then brought her to the corner of T. Padilla and Martires streets. When Magdalena alighted, the accused told her to tell her parents about the incident because after all they will accede to his plan to marry her, she being a public school teacher. Although she did not believe in the marriage plan adverted to by the accused because he was already married, Magdalena manifested her willingness to go along with the idea so that she could escape from him, it appearing that he intended to bring her to Leyte (pp. 26-28, id.). Arriving at her house, in T. Padilla street about 5:00 o'clock in the morning, Magdalena found her brothers and sisters waiting for her there. She could not say anything, she was speechless. And as she sat down she became unconscious. (pp. 28-29, id.). When she regained consciousness, Magdalena related the whole story to her brothers and sisters. Her brothers got mad but they had to wait for the decision of their parents, considering that their father was the municipal treasurer of Madridejos, Cebu. (p. 30, id.).

"Magdalena told her parents, brothers and sisters that she would file a case against the accused. They objected to the idea. Despite their objection, Magdalena lodged a complaint against the accused and submitted herself for examination at the Regional Office of the National Bureau of Investigation in Mari-joy Building, Cebu City (pp. 31-33, id.). The medico-legal report submitted by Dr. Ceferino Y. Cunanan, Supervising Medico-Legal Officer of the NBI, who conducted the examination on the complainant, shows that the 'medical evidence

present consistent with sexual intercourse(s) with man compatible with the alleged date of on or about 2 June 1972."

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On September 26, 1974, after both parties have submitted their memoranda, the trial court rendered its decision holding, *inter alia*, that --

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"The complainant could not have possibly allowed her body particularly her private parts to be examined by a physician and she would not have possibly allowed herself to be exposed to public humiliation by testifying before the Court of what happened to her, if her purpose was merely to file false charges against the accused for the acts which he had not done. The accused did not even take the witness stand to deny the charges and the testimony of Magdalena Giducos is corroborated by the findings of Dr. Cunanan of the National Bureau of Investigation. The defense relies mainly on the testimony of the defense witness Dr. Felix Sabellon who said that from the report submitted by Dr. Cunanan marked Exhibit "A" it can be deduced that Magdalena Giducos was not a virgin and that she had previous sexual intercourses. Granting that the interpretation of Dr. Sabellon of the meaning of some words in the medical certificate Exhibit 'A' of Dr. Cunanan is correct it does not mean that the accused did not have sexual intercourse with Magdalena Giducos by force and while she was unconscious on the night of June 2, 1972. Even conceding the theory of the defense that the offended party had previous sexual intercourse and she is no longer a virgin, it does not prove that the accused is not liable for rape. In the crime of rape, virginity of the offended party is not an essential element.

"The undenied, unrebutted and uncontradicted testimony of Magdalena Giducos as corroborated by the medico-legal findings of Dr. Cunanan clearly shows that the accused had sexual intercourse with Magdalena Giducos on the evening of June 2, 1972 by means of force and intimidation and while the latter was unconscious. The accused is, therefore, liable for the crime charged.

"WHEREFORE, the Court finds the accused Marcial Gargoles guilty beyond reasonable doubt as principal of the crime of Rape punishable under Article 335 of the Revised Penal Code with Reclusion Perpetua. Consequently, said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua (Life Imprisonment), to indemnify the offended party the sum of P5,000.00 as moral damages and to pay the costs."[4]

On October 22, 1974, the trial court promulgated[5] said decision and issued an order[6] fixing the amount of the appeal bond at P25,000.00. On that same day, the accused, through his counsel, filed a notice of appeal with motion for reduction of appeal bond.[7] Notwithstanding such motion for reduction of the appeal bond, accused-appellant, nevertheless, posted an appeal bond at the original amount fixed.[8] Thus, an order for his release was issued on October 23, 1974.[9]

The records of the case having been erroneously transmitted by the trial court to the Court of Appeals,[10] the same were forwarded to this Court by the Court of Appeals on July 1, 1975.[11] The appellant and the appellee filed their briefs on November 17, 1975 and May 15, 1976, respectively.[12] This case was considered submitted for decision on July 7, 1976.

Defendant-appellant alleges that the trial court erred:

"1. IN HOLDING THAT DEFENDANT-APPELLANT HAD SEXUAL INTERCOURSE WITH COMPLAINANT MAGDALENA GIDUCOS IN THE EVENING OF JUNE 2, 1972 BY MEANS OF FORCE OR INTIMIDATION AND WHILE SHE WAS UNCONSCIOUS;

"2. IN NOT FINDING ABSENCE OF 'MANIFEST AND TENACIOUS' RESISTANCE EXERTED BY MAGDALENA GIDUCOS IN THE DEFENSE OF HER HONOR;

"3. IN HOLDING TO BE CREDIBLE THE TESTIMONY OF COMPLAINANT MAGDALENA GIDUCOS;

"4. IN TAKING AGAINST THE ACCUSED HIS FAILURE TO DENY THE CHARGES AND THE TESTIMONY OF MAGDALENA GIDUCOS;

"5. IN HOLDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF THE DEFENDANT-APPELLANT BEYOND REASONABLE DOUBT." [13]

The thrust of the first two errors assigned is that the act complained of was consummated with the consent of the complainant or at least with some degree of acquiescence on her part. Such theory does not, however, find support in the evidence on record. As aptly observed by the trial court, the undenied, unrebutted and uncontradicted testimony of Magdalena Giducos as corroborated by the medico-legal findings of Dr. Cunanan Clearly shows that the accused had sexual intercourse with the complainant by means of force and intimidation and while the latter was unconscious. It has been sufficiently shown that the accused-appellant forcibly dragged the complainant into a room in the Country Motel and there ravished her after she became unconscious by reason of the prolonged struggle and the blows inflicted on her thighs by said accused-appellant. The fact of a sexual intercourse and the contusions on the thighs of the complainant were confirmed by no less than the Supervising Medico-Legal Officer of the N.B.I., Dr. Ceferino Y. Cunanan -- a disinterested witness and a public official in whose favor the presumption of regularity in the performance of official function applies.

No direct evidence whatsoever was presented to belie the testimony of the complainant. The defense merely sought to discredit said testimony by assailing complainant's credibility.

Anent the third assigned error, a restatement of our consistent ruling in a long line of cases is in order: When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case. [14]

The defense alleges that the complainant committed several inconsistencies in her testimony.

We find, however, that the inconsistencies adverted to do not have basis in the records of the case, except for the testimony of the complainant regarding the manner by which she entered the taxicab hired by the defendant-appellant to take her to the Country Motel. On direct examination she testified that the defendant-appellant grabbed her and pulled her inside the taxicab, thus -

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FISCAL

Q. Proceed.

A. Then, after that we came out of the restaurant, Dencia's restaurant. Then I hailed a taxicab in order to go home because it was already getting dark. I was surprised why the taxicab did not stop. Then, another taxicab came by. I was surprised why it stopped when I did not hail it. Then I opened the door of the taxicab. When he opened the door, I thought he was only showing his being a gentleman by letting me get inside the taxicab ahead. To my surprise he got inside the taxicab ahead. So I thought he was going home alone. Then before he shut the door closed he grabbed me and pulled me inside the taxicab. I even almost fell down when my step-in was thrown away." [15] (Underscoring supplied.)

However, on cross-examination, she declared that she voluntarily entered the taxicab believing that the accused-appellant was gentleman, and it was only while already inside the taxicab that she was surprised when the accused started holding her hand and covering her mouth with his hand, thus -

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ATTY. MENCHAVEZ

Q. Did I get you right now that you entered the taxi with the accused in Dencia's restaurant with your own volition?

A. Voluntarily entered the taxi believing that he was a gentleman but while already inside the taxicab I was surprised when he started holding my hand and covering my mouth with his hand." [16] (Italics supplied.)

We do not, however, consider such inconsistency as sufficient to destroy the credibility of the complainant. Firstly, a closer scrutiny of the transcript of stenographic notes show that it was the fiscal's erroneous recollection of facts, as previously testified by the complainant, which could have misled the complainant in the cross-examination. The pertinent portion of the transcript of the stenographic notes reads as follows: [17]

"xxx xxx xxx

COURT

Better make your question clear.

ATTY. MENCHAVEZ

I will clarify the question your Honor. I will reform the question.

Q. Now, you said you ask for the first time the accused in the taxicab that was the time when you were pulled inside the taxi?

FISCAL

I also object to the question, on the ground that it is not clear, it is vague because at the time the accused entered into the taxi at Dencia's restaurant she was not pulled. The accused opened the door. She got in and the accused followed. She was only pulled out of the taxi when they reached Mabolo Motel.

ATTY. MENCHAVEZ

Q. Did I get you right now that you entered the taxi with the accused in Dencia's restaurant with your own volition?

A. Voluntarily entered the taxi believing that he was a gentleman but while already inside the taxicab I was surprised when he started holding my hand and covering my mouth with his hand." (Italics supplied.)

Secondly, such inconsistency does not pertain to facts of substance and value that, if considered, might affect the result of the case. It merely concerns a minor detail and cannot, thus, impair the credibility of the complainant. For even if we were to assume that the complainant did in fact enter the taxicab voluntarily, this does not necessarily prove that the crime of rape could not have been committed. The evidence on record that the accused-appellant had carnal knowledge of the complainant while the latter was unconscious is sufficient to warrant his conviction of the crime of rape since all the elements of said crime, as defined by Art. 335, par. 2 of the Revised Penal Code, namely, carnal knowledge and state of unconsciousness of the victim, are thereby shown to exist.

The fourth error assigned by defendant-appellant concerns a statement in the decision of the trial court adverting

to the non-presentation of the defendant as a witness, to wit: "The accused did not even take the witness stand to deny the charges and the testimony of Magdalena Giducos is corroborated by the findings of Dr. Cunanan of the National Bureau of Investigation." [18] Counsel for defendant-appellant now claims that the lower court took into consideration the accused's failure to take the witness stand in finding him guilty of the charge against him. [19] This, he contends, is an error, since an accused should be convicted on the strength of the evidence presented by the prosecution and not on the weakness of his defense. [20]

We have accorded unswerving fidelity to the constitutional precept that an accused is presumed innocent until the contrary is proven [21] and that, consequently, the burden of proof as to the offense charged lies on the prosecution. [22] Accordingly, an accused should be convicted on the strength of the evidence presented by the prosecution and not on the weakness of his defense. Furthermore, We have held that an accused has the right to decline to testify at the trial without having any inference of guilt drawn from his failure to go on the witness stand. [23] Thus, a verdict of conviction on the basis, solely or mainly, of the failure or refusal of the accused to take the witness stand to deny the charges against him is a judicial heresy which cannot be countenanced. Invariably, any such verdict deserves to be reversed.

Such situation does not obtain, however, in the case at bar. For while the trial court took note of the failure of the defendant to take the witness stand to deny the charges against him, the same was not the main reason, much less the sole basis, of the trial court in holding, as credible the testimony of the complainant, and in ultimately concluding that the crime of rape had been committed by the accused-appellant. The trial court explained why it believed the complainant, i.e., "(t)he complainant could not have possibly allowed her body, particularly her private parts, to be examined by a physician and she would not have possibly allowed herself to be exposed to public humiliation by testifying before the court of what happened to her, if her purpose was merely to file false charges against the accused." [24] Furthermore, the trial court likewise relied on the testimony of Dr. Ceferino Cunanan of the National Bureau of Investigation which corroborated the testimony of the complainant. [25] Thus, while the trial court might have erred in adverting to the failure of defendant-appellant to take the witness stand to deny the charges against him, said error is a harmless one, and does not warrant the reversal of the decision appealed from.

Finally, the counsel for defendant-appellant contends that the trial court erred in holding that the prosecution has proven the guilt of the defendant-appellant beyond reasonable doubt. [26]

Absolute certainty of guilt is not demanded by the law as basis for conviction of any criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense. [27] Such requirement has been complied with in the case at bar.

As aforesaid, the essential elements of the crime of rape as defined by Art. 389, par. 2 of the Revised Penal Code have satisfactorily been proven by the prosecution. Not only is the testimony of the victim on such points corroborated and un rebutted, but it has even found corroboration in the testimony of a disinterested and expert witness - Dr. Ceferino Cunanan, Supervising Medico-Legal Officer of the National Bureau of Investigation. Furthermore, this Court has, time and again, observed that it is hard to believe that an unmarried woman, like the victim who is a public school teacher, would publicly disclose that she had been raped, thereby practically foreclosing the probability of a blissful married life, exposing herself to the ordeal and embarrassment of a public trial, subjecting her private parts to examination, allowing her honor and reputation to be sullied, and heaving upon herself untold humiliation, unless she is motivated by a strong desire to bring to justice the culprit who had grievously wronged her. [28] Such considerations lead Us to the ineluctable conclusion that the guilt of the defendant-appellant of the crime charged has been proved beyond reasonable doubt.

In view of all the foregoing, We hold that the trial court committed no error in convicting the accused, Marcial Gargoles, of the crime of rape and in sentencing him to suffer the penalty of reclusion perpetua and to indemnify the offended party the sum of P5,000.00 as moral damage and to pay the costs.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against defendant-appellant.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

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[1] Records, p. 1.

[2] Id., p. 53.

[3] Pages 3-6 thereof.

[\*] Also referred to as Country Hotel.

[4] Decision of the Court of First Instance of Cebu dated September 26, 1974, pp. 11-13 (Rollo, p. 17-19).

[5] Records, p. 321.

[6] Id., p. 326.

[7] Id., p. 317.

[8] Id., p. 323.

[9] Id., p. 325.

[10] Rollo, p. 4.

[11] Id., p. 1.

[12] Id., pp. 62 and 81.

[13] Brief for the Defendant-Appellant, p. 1.

[14] People vs. Espejo, G.R. No. L-27708, December 19, 1970, 36 SCRA 400; People vs. Carandang, et al., G.R. No. L-31012, August 15, 1973, 52 SCRA 259; People vs. Cardenas, G.R. No. L-29090, April 29, 1974, 56 SCRA 631; People vs. Boduso, G.R. No. L-30450-51, September 30, 1974, 60 SCRA 60; People vs. Ancheta, G.R. No. L-29581-82, October 30, 1974, 60 SCRA 333; People vs. Pascual, G.R. No. L-27569, October 28, 1977.

[15] T.S.N., Giducos, June 27, 1973, pp. 56-58.

[16] Id., July 23, 1973, pp. 123-124.

[17] Id., pp. 122-124.

[18] Decision of the Court of First Instance of Cebu dated September 26, 1974, p. 12 (Rollo, p. 18).

[19] Brief for Defendant-Appellant, pp. 12-13.

[20] Ibid.

[21] Const. (1973), Art. IV, Sec. 19; Const. (1935); Art. III, Sec. 1, par. 17; U.S. vs. Reyes, G.R. No. 1374, December 3, 1903, 3 Phil. 3; People v. Lavarias, G.R. No. L-24339, June 29, 1968, 23 SCRA 1301; People vs. Quizon, G.R. No. L-44299, August 31, 1977, 78 SCRA 513.

[22] Rules of Court, Rule 131, Sec. 2; People vs. Dramayo, G.R. No. L-21325, October 29, 1971, 42 SCRA 59, People vs. Palacpac, et al., G.R. No. L-27822, February 28, 1973, 49 SCRA 440; People vs. Alvarez, G.R. No. L-34644, January 17, 1974, 55 SCRA 81.

[23] U.S. vs. Esmundo, G.R. No. 9398, August 22, 1914, 27 Phil. 554.

[24] Decision, p. 12 (Rollo, p. 18).

[25] Ibid.

[26] Brief for Defendant-Appellant, p. 13.

[27] U.S. vs. Lasada, G.R. No. 5324, December 28, 1910, 18 Phil. 90; People vs. Dramayo, G.R. No. L-21325, October 29, 1971, 42 SCRA 59.

[28] See: People vs. Gan, G.R. No. L-33446, August 18, 1972, 46 SCRA 667; People vs. Baylon, G.R. No. L-35785, May 29, 1974, 57 SCRA 114; People vs. Savellano, G.R. No. L-31227, May 31, 1974, 57 SCRA 320; People vs. Ignacio, G.R. No. L-35494, September 18, 1974, 60 SCRA 11.

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