

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SOLOMON BALBINO, DEFENDANT-APPELLANT.***G.R. No. L-42647. March 28, 1983*

Ponente: FERNANDO, C.J.

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In a number of appeals from convictions in rape cases, the complainant very often is a married woman.[1] The allegation is usually that she was taken advantage of in the absence of the husband. There is all the more reason then to see that the offense, if proven, be meted out the severe penalty rightly imposed by society. It should be thus considering that the usual cause for the wife being left unprotected and defenseless is the need for the head of the family to go elsewhere in pursuit of livelihood. The usual defense offered is that no such act was committed. Nor is that the only defense resorted to. In quite a number of cases, it is alleged that there was no force exerted as none was necessary, there being an existing illicit relationship or that there was resort to persuasion rather than coercion. So it is in this appeal from a conviction for the crime of rape, the sentence imposed being that of reclusion perpetua. In the brief for appellant, his counsel would have this Court believe that no force was exerted, appellant relying on the "use of sweet words of love"[2] rather than some threat or intimidation or physical harm. Such a defense clearly cannot outweigh the straightforward testimony of the complaining witness. A careful study of the records of the case leads to the conclusion that the act was perpetrated in the manner detailed by her, certainly indicative of force having been employed. The medical findings reinforce such a conclusion. Even more telling was the indignation of the complainant so deeply felt that notwithstanding her weakened condition, she gathered sufficient strength to get a bolo and threatened appellant's life. The judgment must be affirmed.

The complainant, Maria Luz Tingzon, is a married woman, with three children.[3] Her testimony as to the occurrence of the offense imputed to appellant was that on April 8, 1971, at about one o'clock in the afternoon, she was alone in the house at Macgum, New Corella, Davao, nursing her two-month old baby.[4] On that day, her spouse, together with her two other children were at New Corella to attend the Holy Week celebration.[5] It was on that hour that appellant, Solomon Balbino, arrived at her house and inquired as to the whereabouts of her husband.[6] Even when informed he was not there, appellant did not leave, engaging her in a conversation first about a rooster bought from her husband and then about her baby.[7] Complainant showed him the baby and then put her back in the cradle, whereupon appellant suddenly embraced and kissed her, avowing that he loved her very much.[8] She protested, reminding him that they are both married; they struggled for around four minutes, but her efforts to free herself from his hold was unsuccessful as she fell on the floor.[9] Appellant suddenly placed himself on top of her, held her two hands, and succeeded in having sexual intercourse despite the struggle she put up and her pleas for him to stop.[10] She was overpowered as she was still quite weak, having just given birth two months before.[11] She wanted to kick him but she failed with his legs pressed against her legs.[12] During all that time, she shouted, but to no avail, as it was raining hard and her nearest neighbor was rather far from their house.[13] After that, she pushed Solomon and told him she would report the incident to her husband, but the latter told her not to do so for anyway nobody knew it.[14] Regaining her composure, she got a bolo and assaulted

him, but he jumped out of the house.[15] Thereafter, she fell down on the floor again and when she came to her senses, her husband had already arrived.[16] She had not completely recovered from the assault, her husband had to let her drink first before she was able to relate the whole incident to him.[17] That night, she suffered from bleeding.[18] She informed him of what occurred, and the next day, they reported the matter to the police authorities.[19] On the advice of their Chief of Police, she went a day later to Tagum, Davao del Norte, where she was examined by Dr. Engracio Parreñas, Provincial Health Officer who issued a Medical Certificate[20] dated April 10, 1971 containing the following findings: "April 10, 1971. [To whom it may concern]: This is to certify that Maria Luz C. Tingzon, 26 years, married, of Bo. Macgum, New Corella, Davao del Norte has been physically examined by me and found her with the following physical injuries: Vaginal Examination 1. There are old lacerations of hymen due to multiple births. 2. Mucous membrane of the labia majora right present massive inflammatory process, less on the left. 3. Vagina is bleeding slightly. The above lesions indicate vigorous or forcible introduction of an object which led to the belief that coitus has been consummated." [21]

The lower court, being convinced of the truth complainant's testimony, bolstered as it was by the medical findings, found the accused guilty of the crime of rape. Hence this appeal. To repeat, this Court affirms the judgment with the modification that the indemnity, instead of being in the amount of P10,000.00, should be increased to P12,000.00.

- The sole error assigned was that appellant could not have been found guilty of rape considering the absence "of the essential element of 'force' in the commission" of the act. In the nineteen-page brief of the appellant, ten of the pages were devoted to a reproduction of both the direct examination and the cross-examination of complainant. After a paragraph devoted to the defense of the alleged "intimate relation" between her and appellant, the brief stressed her failing "to shout for help" and the absence of any physical resistance against the "advances of the accused." [22] Such a contention is belied by the undisputed testimony of complainant quoted earlier in the brief that due to her weakened physical condition, she was unable to ward off the assault against her person. Appellant had in his favor the element of strength. He overpowered her. He made good use of his hands and his legs. Her resistance was thus futile. The cross-examination was quite thorough. Nonetheless, she stood firm. Moreover, what she said was impressed with plausibility and had the ring of sincerity. Her immediate reaction was even more eloquent as to the act having been perpetrated against her will. She was able to muster enough strength and to get hold of a bolo. It was only the alacrity of appellant who jumped out of the window that averted what could have been a grave danger to his life. He had the opportunity to deny that the incident took place. He did not, because he could not. There is relevance to this excerpt from *People v. Ordonio*: [23] "In fairness to one charged with such a crime [rape] however, it cannot be denied that a wife none too scrupulous about fidelity to marital ties could likewise, because of such circumstance, be in a position to satisfy adulterous inclinations. If such indeed were the case, then the verdict would be one of acquittal. The question then, when as is not unusual in proceedings of this character, there is diametrical conflict in the testimony offered, is to ascertain which version is deserving of credence. The course of conduct followed by the party aggrieved from the time of the alleged perpetration of the deed must be carefully scrutinized. Here, the evidence for the complainant, Generosa Bancoleta, would indicate that she was forced to submit to the lustful desires of the accused Perfecto Ordonio, now appellant." [24]

- *People v. Sarile* [25] may likewise be cited to state the controlling doctrine as to when the assertion of the inadequacy of the force exerted on the complainant may be given credence. Thus: "In another early decision, *United States v. Villarosa*, promulgated in 1905, this Court, through Justice Torres, held: 'It is a doctrine well established by the courts that in order to consider the existence of the crime of rape it is not necessary that the force employed in accomplishing it be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose which he had in view. (Judgment

May 4, 1878, Supreme Court of Spain.)' There is this similar ruling in *People v. Momo*: 'It need not be irresistible: "it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point."' As restated in the recent decision of *People v. Savellano*, penned by Justice Aquino: 'The force or violence necessary in rape is naturally a relative term, depending on the age, size, and strength of the parties and their relation to each other.' What is essential is that the act was accomplished against the will of the aggrieved person and in spite of her resistance." [26] That precisely was the situation in this case.

- In the lower court decision, the medical findings of Dr. Engracio Parreñas who examined complainant two days after the occurrence of the act, were taken into consideration. In such medical certificate, [27] as previously noted, the vaginal examination revealed massive inflammatory process of the right labia majora as well as the bleeding, although slightly, of the vagina. Then the lower court decision went on to state: "Dr. Parreñas testified that the massive inflammation was caused by the forcible insertion of an object, and the bleeding was due to the tear of the mucous membrane of the vaginal canal and also because of the inflammatory process going on. While Dr. Parreñas admitted that a woman may have sexual intercourse one month after delivery, a normal coitus would not produce the inflammation he found on the labia majora of Maria Luz Tingzon during the medical examination." [28]

- The conduct observed by complainant after the perpetration of the sexual act was equally revealing. Upon the arrival of her husband, later in the day of April 8, 1971, she informed him of what had been done to her against her will. The next day the couple reported the matter to the police authorities. On the advice of the Chief of Police, she went to Tagum, Davao del Norte where she was examined by the aforesaid Dr. Parreñas on April 10, 1971. Then four days after the incident, she filed the complaint with the medical certificate and her sworn statement. As was observed in the lower court decision: "From the foregoing, it is obvious that there was no loss of time in bringing the accused before the bar of justice. This fact proves that she felt aggrieved and militates against the claim of accused that the intercourse on April 8, 1971, was with her consent." [29]

WHEREFORE, the lower court decision of November 21, 1975, finding Solomon Balbino guilty beyond reasonable doubt of the crime of rape and sentencing him to reclusion perpetua is affirmed with the modification that the indemnification should be in the amount of P12,000.00. He is likewise sentenced to suffer all the accessory penalties of the law and to pay the costs.

Makasiar, Concepcion, Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.
Aquino, J., is on leave.

[1] To speak only of the recent decisions, the complainants in the following cases are married women: *People v. Tigulo*, L-34334, Nov. 7, 1979, 94 SCRA 183; *People v. Advincula*, L-44643, March 31, 1980, 96 SCRA 875; *People v. Aquipapas*, L-49910, Nov. 28, 1980, 101 SCRA 412; *People v. Yutila*, L-32791, Jan. 27, 1981, 102 SCRA 264; *People v. de Castro*, L-49778, Jan. 27, 1981, 102 SCRA 483; *People v. Bawit*, L-48116, Feb. 20, 1981, 102 SCRA 797; *People v. Perello*, L-33064, Jan. 27, 1982, 111 SCRA 147; *People v. Estacio*, L-54221, Jan. 30, 1982, 111 SCRA 537; *People v. Apat*, L-28323, June 29, 1982, 114 SCRA 620; *People v. Imbo*, L-36759, Aug. 31, 1982, 116 SCRA 355; *People v. Ganado*, L-37935, Aug. 31, 1982, 116 SCRA 362; *People v. Marquez*, L-32860, Sept. 30, 1982, 117 SCRA 165; *People v. Gabiana*, L-39716, Sept. 30, 1982, 117 SCRA 260; *People v. Sambili*, L-44408, Sept. 30, 1982, 117 SCRA 312; *People v. Mendoza*, L-45679, Sept. 30, 1982, 117 SCRA 340; *People v. Malate*, L-43907, Sept. 30, 1982, 117 SCRA 401.

[2] Brief, 14.

[3] T.s.n. of September 24, 1974, 4-5.

- [4] Ibid, 4.
- [5] Ibid, 5.
- [6] Ibid, 4-5.
- [7] Ibid, 5.
- [8] Ibid, 6, 13.
- [9] Ibid, 6, 14.
- [10] Ibid.
- [11] Ibid, 7, 11.
- [12] Ibid, 10.
- [13] Ibid, 11.
- [14] Ibid, 7.
- [15] Ibid.
- [16] T.s.n., Session of September 14, 1974, 7-8.
- [17] T.s.n., Session of September 24, 1974, 8.
- [18] Ibid, 9.
- [19] Ibid, 8.
- [20] Ibid.
- [21] Exhibit A.
- [22] Brief for Accused-Appellant, 12.
- [23] L-33829, December 19, 1975, 68 SCRA 397.
- [24] Ibid, 399.
- [25] L-37148, June 30, 1976, 71 SCRA 593.
- [26] Ibid, 598. *United States v. Villarosa* is reported in 4 Phil. 434; *People v. Momo* in 56 Phil. 86 (1931); and *People v. Savellano*, L-31227, May 31, 1974, in 57 SCRA 320. Cf. the following cases that speak similarly: *People v. Daniel*, L-40330, Nov. 20, 1978, 86 SCRA 511; *People v. Navarrete*, L-43833, Nov. 28, 1980, 101 SCRA 394; *People v. Tejada*, L-55028, Aug. 31, 1981, 107 SCRA 176.
- [27] Exhibit A.
- [28] Decision of lower court, Annex A to Brief for Accused-Appellant, 3-4.
- [29] Ibid, 5.

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