

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARISTON FRANCISCO, DEFENDANT-APPELLANT.

G.R. No. L-43789. July 15, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an automatic review of the Decision, dated March 22, 1976, of the Court of First Instance of Oriental Mindoro, Branch II, in Criminal Case No. R-274, convicting appellant Ariston Francisco of the crime of Rape and sentencing him to death.

The Information, dated March 15, 1972, filed by the Provincial Fiscal of Oriental Mindoro, charged appellant as follows:

"That on the 28th day of January, 1972, at 12:00 o'clock midnight, more or less, at the barrio of Camantigue, Municipality of Bongabon, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ARISTON FRANCISCO, conspiring and confederating with Ruby Poras, who is still at large, and therefore, no preliminary investigation had, as yet, been taken against him, waylaid one MERCIDITA MANITO, a tender girl of 13 years, who was then with her sister, and already overwhelmed by lewd and unchaste design, wilfully, unlawfully and feloniously, by means of force, threats and intimidations, had succeeded in having sexual intercourse with said helpless girl after mercilessly dragging her to a secluded place.

"That the commission of the offense was aggravated by the circumstances of having been committed during nighttime and with abuse of superior strength.

"CONTRARY to Article 335, Revised Penal Code"[1]

Upon his arraignment on March 27, 1972, appellant, assisted by counsel de officio, pleaded not guilty.[2]

After four prosecution witnesses, including complainant and her father had testified, trial of the case was suspended because appellant escaped from jail after a hearing held on October 11, 1972.

Subsequently, the other accused, Ruby Poras, was arrested. The Provincial Fiscal of Oriental Mindoro then filed an Amended Information, dated September 26, 1973, including Ruby Poras in the charge, to wit:

"That on the 28th day of January, 1972, at 12:00 midnight, more or less, in the barrio of Camantigue, Municipality of Bongabon, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RUBY PORAS and ARISTON FRANCISCO, conspiring and confederating with one another, waylaid one MERCIDITA MANITO, a tender girl of 13 years old, who was then with her sister, and already overwhelmed by lewd and unchaste design, wilfully, unlawfully and feloniously, by means of force, threats and intimidations, had succeeded in having sexual intercourse with said helpless girl one after another after mercilessly dragging her to a secluded place.

"That the commission of the offense was aggravated by the circumstances of having been committed during

nighttime and with abuse of superior strength.

"CONTRARY to Article 335, Revised Penal Code"[3]

Trial, in respect of Ruby Poras, commenced on February 13, 1974, with Dr. Fernando Vilorio, Municipal Health Officer, presented anew as prosecution witness. However, upon motion to dismiss filed by Fiscal Gaudencio S. Sadicon on May 17, 1974 on the ground that the complainant transferred her residence without notifying the Court and the trial Fiscal, which, in effect, was a manifestation of lack of interest on her part, the trial Court ordered the provisional dismissal of the case against Ruby Poras.[4]

Appellant was later on apprehended in the province of Antique, and delivered to the custody of the provincial warden at Roxas, Oriental Mindoro, in July 1975.[5] Trial was resumed in respect of appellant after his apprehension. On January 5, 1976, the defense concluded its evidence with appellant as its only witness, and its case was rested on the same date (t.s.n., pp. 55-72).

Complainant, MERCEDITA MANITO was born on February 3, 1957[6] and was therefore, almost 15 years of age on January 28, 1972. She lived with her widower father and her brothers and sisters at their house in Barrio Camantigue, Bongabon, Oriental Mindoro. Her version of the incident follows:

In the evening of January 28, 1972, at Barrio Camantigue, Bongabon, Oriental Mindoro, she and her younger sister, Roberta Manito, attended a coronation held at a place which was about one kilometer from their house. At about 12:00 o'clock midnight, she and her sister went home. On their way, appellant and Ruby Poras, who were following behind, suddenly ran after them and overtook them. Appellant grabbed complainant's right hand and whirled her around several times and she shouted "Saklolo! Saklolo!". Complainant's younger sister, Roberta, ran away. Appellant then dragged her to a place where talahib grass grew, while Poras was beside them holding a knife. Appellant removed her panty, made her lie on her back, embraced her hard and sexually abused her. During the sexual intercourse, the complainant felt pain. All the while, Poras was beside appellant and was holding a knife. When appellant was through having carnal knowledge of her, Poras also took his own turn with her. Meanwhile, appellant stayed beside accused Poras holding an open knife. After Poras had subjected her to the same carnal treatment, complainant stood up but Poras again embraced her and forced her to lie down. The complainant fainted.[7]

Complainant declared on cross examination that appellant and Poras were able to penetrate her private part with their private organs; that she felt severe pain; and that appellant raped her once while accused Poras raped her twice. When asked whether she offered any resistance, complainant answered that she became very weak because of the force they used on her. When complainant was asked whether her private part bled, or whether she felt her private part bleed during and after she was raped, she answered: "I do not know." However, on further cross-examination complainant was asked whether she felt blood oozing from her vagina and she answered in the affirmative, further saying that the blood spilled on the ground and stained her dress (upper garment).[8]

During the incident, complainant stated that she was wearing a pantsuit with an upper apparel and panty. Her panty and pantsuit were taken by appellant, who refused to return them in spite of her demand.[9]

Complainant could not remember when she regained her consciousness but she was able to go home at around 4:00 o'clock in the morning, without panty and pantsuit out not naked from the waist down because her upper garment reached down to her thighs.[10] When she arrived at their house, everybody was asleep, including her sister Roberta.[11] Complainant went to sleep.[12] At around 6:00 o'clock the next morning, January 29, 1972, complainant washed her stained upper garment because she was afraid the members of her family might discover what had happened to her.[13] Complainant did not reveal a thing to anybody after the incident[14] nor did she

relate the incident to her father because appellant and Ruby Poras had threatened to kill her if she did. Finally, complainant revealed the occurrence to her elder sister, Estrella Manito, who received a report from their Uncle, Maximo Manito, that appellant had told their uncle about what he had done to complainant. When her father confronted complainant, she told him that she had been raped.[15]

On cross-examination, complainant denied that she had a prearranged date with appellant to attend the coronation ball on January 28, 1972. According to her, she had never met appellant prior to January 28, 1972; the latter had never gone to their place; nor had visited her; nor had serenaded her; nor had courted her; and never had made amorous advances to her.[16] She saw appellant watching the dance at the entrance gate of the premises during the coronation ball and he was not formally dressed.[17]

Complainant was investigated by Lt. Sosa, a police officer, at the police headquarters in Bongabon. During said investigation, she was with her father, Luciano Manito.[18] She executed a sworn statement on February 1, 1972 (Exhibit "B") and another one on February 3, 1972 (Exhibit "3"). In her latter statement, complainant admitted that she had had one sexual intercourse the year before with Cirilo Francisco, an uncle of appellant. She also declared that she did not bleed when she was abused by appellant and Ruby Poras.

LUCIANO MANITO's testimony disclosed that, at about 6:00 o'clock in the evening of January 28, 1972, (his daughter, Mercedita, asked for permission to attend the coronation ball at Camantigue. Mercedita went with her sisters Roberta and Estrella. He advised his daughters to return at 12:00 o'clock midnight. Estrella returned with her husband around that hour. Luciano inquired from his daughter Estrella for the whereabouts of Mercedita and Roberta; Estrella told him that the two were still attending the coronation ball. When Roberta arrived alone at around 12:00 o'clock midnight the father inquired about Mercedita. Roberta told him that Mercedita was still witnessing the coronation ball. He did not notice any more the arrival of Mercedita.[19]

At about 8:00 o'clock the next day, January 29, 1972, Luciano left for Lumboy, Roxas, Oriental Mindoro, in order to work, but before leaving, he told Estrella to take care of her sisters and brothers.[20] He learned of the January 28, 1972 incident two days later while he was at Lumboy, Roxas, through his daughter Estrella.[21] When he returned to Camantigue, Bongabon, on January 31, 1972,[22] he confronted Mercedita about the matter and the latter admitted that she was abused by Ariston Francisco at midnight of January 28, 1972.[23] Luciano noticed that Mercedita was weak and she complained that her body was painful.[24]

Luciano, Mercedita, and the husband of Estrella together went to the police headquarters and filed a complaint. Mercedita was investigated by Lt. Sosa. Thereafter, they went to the clinic of Dr. Vilorio where Mercedita was examined.[25]

Luciano personally knew appellant, and also knew that the latter resided at Camantigue, Bongabon, Oriental Mindoro. He identified appellant, during the trial.[26] He denied that appellant frequented their place or occasionally visited his daughters, or serenaded them, or danced with them in social gatherings.[27]

DR. FERNANDO VILORIA, Municipal Health Officer of Bongabon, Oriental Mindoro, testified that: on February 1, 1972, he conducted an internal examination of Mercedita Manito and issued a medical certificate (Exhibit "A") recording his findings of "three (3) old lacerations at the vaginal orifice situated at 3, 5 and 9 o'clock." Aside from the lacerations, he found no injuries on the body of Mercedita. Dr. Vilorio admitted that the lacerations could have been caused probably by sexual intercourse. On cross-examination he declared that the lacerations were very old and that it was possible that the lacerations were sustained by Mercedita prior to January 28, 1972.[28]

Lt. VICENTE SOSA, member of the police force of Bongabon, Oriental Mindoro, officer-in-charge of the

investigation, narrated:

In the morning of February 1, 1972, complainant, accompanied by her father, filed a criminal complaint for Rape in the Office of the Police of Bongabon. He then had complainant examined by Dr. Vilorio, and thereafter interrogated her and reduced her statement into writing (Exhibit "B").[29]

On February 2, 1972, appellant was brought to the Office of the Police by a certain barrio official of Camantigue. In the presence of another investigator, Corporal Garbin, Lt. Sosa interrogated appellant, who admitted the commission of the crime. Lt. Sosa prepared appellant's statement, read to the latter the contents thereof, and asked him whether he acknowledged the contents. When appellant answered in the affirmative, Lt. Sosa caused him to thumbmark and sign the statement (Exhibit "C"). Lt. Sosa brought appellant to Municipal Judge Garcia and left him there "to subscribe his affidavit and later the Judge called (Lt. Sosa) and informed (him) that there was no truth to the contents of the affidavit of Ariston Francisco." [30]

Coming now to the defense. Appellant was born in Barrio Camantigue and had long been a resident thereat before the January 28, 1972 incident. As sole witness for the defense, he set up alibi, claiming that at about 12:00 o'clock midnight of January 28, 1972; he was with his brothers, sisters and parents in their house, which is "far" from barrio Camantigue, that is, "more or less one "kilometer" away. Appellant claimed further that he does not know Mercedita Manito and that the complaint she filed against him is untrue.[31] He admitted, however, that he does not know any reason why Luciano Manito or Mercedita Manito, both of whom he did not know, would entertain a grudge or ill-feeling against him and charge him in Court.[32]

Appellant rejected his statement (Exhibit "C") claiming that he signed it only because he was threatened by Patrolman Camacho of the Bongabon Police. Appellant narrated that before Lt. Sosa took his statement, Patrolman Camacho brought him (appellant) to the second floor of the municipal building of Bongabon, required him to expose his penis, and hammered his penis with half a hollow block. However, because appellant's penis receded before it was hit, it did not sustain any injury except for some bruises (gasgas) at the tip which left no scar. Appellant did not however, complain to Lt. Sosa of the maltreatment he suffered at the hands of Patrolman Camacho. When Lt. Sosa investigated appellant, the former was alone in the room and the hollow block was lying on one side of the room.[33]

Aside from facts regarding his personal circumstances, appellant denied having supplied the contents of Exhibit "C", alleging that said statement was a fabrication of the investigator Lt. Sosa. He further denied having knowledge thereof because he does not know how to read, and he only affixed his signature because he was required to do so.[34]

According to appellant, he escaped from jail because the persons in authority did not understand what had really happened and he wanted to see and talk personally with Ruby Poras because the latter was the one who committed the crime.[35] He immediately proceeded to Panay Island because he learned that Ruby Poras was residing there. Appellant stayed out of jail for almost one year. He and Ruby Poras were not able to see each other. When he came to know that Ruby Poras was already apprehended, appellant decided to surrender to the Mayor of Caluya, Antique, but before he could actually surrender, the Mayor apprehended him at the house where he was staying at barrio Sibolo. Appellant denied that he was armed when apprehended and that he was shot at the back by the policemen because he ran. The truth according to appellant was that the incident happened at night and one person was in front of him focusing a flashlight on both his eyes and another person was on his left side, while he was raising his hands, when suddenly there was a burst of gunfire and he was hit on his left hip. He was then in Caluya waiting for transportation to Roxas.[36] When he was in the hospital at Roxas he came to know that Ruby Poras had settled the case by paying the offended party,[37] but that he refused to settle because he did

not actually participate in the commission of the crime.[38]

In this appeal, counsel de officio charges the trial Court with having erred in convicting appellant of the crime of rape because:

"(A) The evidence adduced by the prosecution against defendant-appellant is unreliable, doubtful and insufficient to warrant his conviction of the crime charged beyond reasonable doubt;

(B) The conviction of defendant-appellant is primarily based on the weakness of the defendant's evidence and not on the strength of the evidence adduced by the prosecution;

(C) It totally disregarded or overlooked or misinterpreted the significance of the circumstances, taken collectively, suggesting the innocence of defendant-appellant;

(D) Its conclusion drawn from undisputed and proven facts is erroneous"[39]

According to the trial Court, it was fully convinced of appellant's guilt after "thoroughly and conscientiously observing the demeanor and conduct of complainant on the witness stand and considering her "straightforward" testimony. There is no question that on matters of credibility of witnesses, the conclusions of the trial Court carry great weight and are entitled to the highest respect by appellate Courts, hence, should not be disturbed in the absence of proof of misappreciation of evidence.[40]

However, there are certain facts of substance and value that militate against an affirmation of the finding of guilt in this case, particularly when the evidentiary rule is recalled that in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion.[41] For rape is an accusation "easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent"[42]

We refer, in particular, to the following facts and circumstances:

1. After internal examination of complainant, Dr. Vilorio's findings were:

"3 (Three) old lacerations at the vaginal orifice situated at 3, 5 & 9 o'clock." (Exhibit "A").

When queried about these findings in his Statement taken on February 3, 1972 (Exhibit "5") Dr. Vilorio replied:

"Q.- Your findings in the medical examination is: three (3) old lacerations at the vaginal orifice situated at 3, 5, and 9:00 o'clock, would you tell us if Mercedita Manito is positive for rape.

A. - Because these findings were old lacerations, it could hardly be determined that there was recent intercourse.

Q.- But, Dr. you can tell however that there was already a consummated sexual intercourse by Mercedita Manito.

A. - Yes, sir.

Q.- And you can also tell us more or less the date when that sexual intercourse took place.

A. - It might be within a few months.

Q.- According to Mercedita Manito she was allegedly raped on January 28, 1972, how would you then account for your findings that the lacerations are already old.

A. - Because these lacerations were already made prior to January 28, 1972.

Q.- Did you find any indications that Mercedita Manito was really and actually raped recently.

A. - None, sir.

Q.- And you can tell us also Dr. that had Mercedita Manito been raped on January 28, 1972, there might be some signs of such fact.

A. - Yes, sir.

Q.- And when you examined Mercedita on February 1, 1972, you did not find any signs or indications that she was actually raped recently.

A. - None, sir.

Q.- Did you notice any signs of bleeding when you examined the vaginal orifice.

A.- None, sir.

Q.- So it is very clear Dr. that when you examined Mercedita Manito on February 1, 1972, there was no sign like bleeding or injury, that she was raped recently, or was raped on January 28, 1972.

A. - Yes, sir.

Q.- Can you tell us Dr. what will be the condition of the patient like Mercedita if really she was actually raped on January 28, 1972.

A. - At least there will be still signs of recent or new laceration."[43]

On the witness stand, Dr. Viloria reiterated his findings as to the age of the lacerations, thus:

"Q. At the time you examined Mercidita Manito, how old were the lacerations?

A. The lacerations were inflicted a long time ago. I would say a few months."[44]

And when asked whether those lacerations could have merely healed between January 28, the alleged date of the commission of the offense, and February 1, 1972, the date of the physical examination, he replied (when he was recalled as a witness against Ruby Poras);

"Q. According to the complaint or information in this case, the alleged offense for rape was committed on January 28, 1972 and your examination, according to Exhibit 'A' was done on February 1, 1972, will you tell this Court whether the lacerations caused on January 28th could have healed on February 1, 1972?

A. No, sir."[45]

Further, he testified that he found no injuries on complainant's body:

"Q. Aside from the lacerations did you find out any injuries on the body of Mercedita Manito?

A. None, sir."[46]

Considering complainant's testimony that:

"Q. What happened to you after Ariston Francisco whirled you around by your right hand?

A. Ariston Francisco dragged me to a place where talahib grass grow while Ruby Poras was beside us holding a knife."[47]

and the Information and Amended Information charging that complainant was "mercilessly dragg(ed) to a secluded place" at the very least, complainant should have sustained abrasions or contusions for having been

dragged amongst "talahib", which is usually sharp-edged, but the physician found "none" whatsoever.

In the face of such categorical findings of the examining physician that the "old" lacerations were caused prior to January 28, 1972, that there were no indications of any recent rape when ordinarily there would have been signs of new lacerations, that there were no external injuries on any part of complainant's body, we can not but entertain serious doubts as to the probability of her claim.

That the internal examination was conducted on the fourth day after the alleged incident does not militate against the foregoing conclusion, for in *People vs. Garcines*,^[48] the physical examination was made five days after and yet the examining physician found slight congestion in the vaginal canal meaning that it was inflamed or reddish "contusion with slight hematoma" on the right side of the cervix, and "even erosion and slight bleeding" could be noted on the left side. And even on the eighth day, "with the use of speculum blood clots were found in the vaginal canal near the cervix."

2. Additional salient considerations subtract from the prosecution case: (a) Complainant narrated that Roberta Manito, her 12-year-old sister, was with her on the way home from the coronation ball.

"Q. While you and your sister Roberta were on your way home, do you remember if there was something which happened to you?

A. Yes, sir. While we were on our way home, Ariston Francisco and Ruby Poras who were then following us, suddenly ran after us. They overtook us and Ariston Francisco grabbed my right hand and made me turn several times around while Ruby Poras was beside us.

Q. How about your younger sister Roberta?

A. She ran away."^[49]

And yet, as narrated by Luciano Manito, the father, when Roberta arrived home, she mentioned nothing of that occurrence notwithstanding his having asked Roberta regarding complainant's whereabouts, Roberta's answer having been merely that complainant was still watching the coronation ball.

"Q. Did Roberta your daughter arrive home from the coronation ball on that night of January 28, 1972?

A. Yes, sir.

Q. She was alone?

A. Yes, sir.

Q. Did you inquire from her the whereabouts of Mercedita Manito?

A. Yes, sir. According to Roberta Mercedita was still witnessing the coronation ball."^[50]

Surely, even a girl of 12 years would have awakened her father to tell him of any unusual or untoward incident that had befallen her sister. If, indeed, complainant's right hand was "grabbed" by appellant, and she was whirled around and had "shouted", and according to Roberta in her Statement (Exhibit "4") a handkerchief was put in complainant's mouth, and that she (Roberta) was "frightened" and "ran away", these could not but have been a traumatic experience for Roberta, who would have certainly related the happenings to her father, who had precisely asked for complainant's whereabouts. But no, she merely wept to sleep. And so did complainant when the latter arrived. A nagging doubt thus arises: was Roberta, in fact, with complainant at the time of the incident, or had complainant sent her home ahead while complainant lingered behind at the ball and walked home either alone or in the company of appellant and Ruby Poras? Roberta was never presented as a witness on the pretext that her testimony would be merely "cumulative in character".^[51]

(b) Complainant testified that she did not disclose the incident to anyone and if she did so finally to her elder sister, Estrella, it was because appellant had revealed it to her uncle. In her own words:

"Q. Finally were you able to tell to anybody what had happened to you?

A. Yes, sir. because Ariston Francisco revealed it to my uncle what he did to me." [52]

And yet, considering human nature and the ordinary conduct of man, it is most unlikely that, if appellant had committed such a heinous crime as rape, he himself would reveal it to a relative of the offended girl, and risk criminal prosecution. A question thus poses itself: was appellant's revelation to complainant's uncle a story of a consented act not amounting to a crime? The uncle, who could have shed more light, was not put on the stand. Neither was Estrella, who could have related the exact narrative, called to testify.

(c) Complainant had stated in her Statement (Exhibit "B") that appellant had poked a knife at her neck and in her Statement (Exhibit "3") that Ruby Poras had also pointed a "hunting knife" at her. Roberta, the sister, however, in her own Statement (Exhibit "4") declared that she did not see them carrying any weapon or knife.

(d) In her second statement (Exhibit "3") complainant declared that she did not bleed when she was abused by appellant and Ruby Poras. When she was first asked in the course of her testimony whether her private part bled or she felt it bleed during and after the rape, she also answered: "I do not know"; but later on she claimed that blood oozed from her vagina, spilled on the ground and even stained her upper garment, which statements are contrary to the findings of Dr. Vitoria that the three lacerations in the vaginal orifice of Mercedita were old lacerations and were inflicted "a long time ago," and that there was no sign of bleeding in the vaginal orifice.

(e) In her second Statement taken on February 3, 1972 (Exhibit "3") complainant declared that it was not the first time that she had had sexual experience.

"Tanong - Yon ba ang kauna-unahang karanasan mo sa sinasabi mong gahasa, ng ikaw ay gahasain nina Ariston Francisco at Ruby Poras o kung noong nagdaang araw ay ikaw ay nakaranas na din.

Sagot - Hindi po, noong isang taon ay nakaranas na din ako, pero isang beses lang.

Tanong - Sino naman ang sinasabi mong unang gumamit sa iyo, sinong lalaki.

Sagot - Si Cirilo Francisco po.

Tanong - Ano naman ang kanyang relasyon kay Ariston Francisco.

Sagot - Tiyuhin po ni Ariston Francisco." [53]

And yet, in her direct testimony, she stated the diametrical opposite:

"Q. And that was the first time you experienced having sexual intercourse?

A. Yes, sir." [54]

(f) While complainant claimed in her second Statement (Exhibit "3") that appellant struck her legs with a piece of bamboo;

"Tanong - Hindi ka ba sinaktan ni Ariston ng ikaw ay inuumpisahan pang gahasain.

Sagot - Sinaktan po, pinalo pa ako ng kawayan sa aking mga binti." [55]

she never mentioned such fact in her testimony in open Court.

The foregoing flaws in complainant's testimony on vital point crucially destroy her credibility. The

improbabilities therein verily defy the "test of reason." Her story lacks the stamp of absolute truth and candor.

3. Appellant's bolting jail during the pendency of the case below can not be strictly interpreted as an indication of guilt. As he explained, his purpose was not to flee from the clutches of the law but to contact Ruby Poras because the authorities did not understand what had fully transpired.[56] It was but natural for appellant to have wanted to contact Ruby Poras, at least, to clarify matters as between them and because, according to appellant, it was Ruby Poras who had perpetrated the crime.

4. It is a fact that in his purported extra-judicial confession (Exhibit "C") taken on February 2, 1972 by Lt. Sosa, appellant admitted his participation in the offense:

"Tanong - Bakit kayo ni RUBY PORAS ay nasa sa Tono, Cawayan ng gabing yoon ng Enero 28, 1972.

Sagot - Noong gabing yoon ng Enero 28, 1972 na pagkatapos ng sayawan sa barriohan at ng papauwi na ako ay nakita ako ni RUBY PORAS at ako ay kanyang kinawayan na aming sundan na itinuro sa akin ang isang lalaki at isang babae na magkasamang naglalakad. Kami ay sunod sa itinuro ni RUBY PORAS na naglalakad sa daan papunta sa gawing Cawayan at doon sa lugar na malapit na sa 'Culvert' na hindi pa sumasapit sa 'Crossing' ng Tono ay tatakbo si RUBY PORAS palapit sa dalawang naglalakad na may hawak na patalim at nagwika na 'Hoy naga ano kayo'. Agad na tumakbo yoong lalaki na ninawakan ni RUBY PORAS yoong babae at ipinagsama doon sa tabi ng sapa na doon pinagsamantalahan, hinindot yoong babae at pagkatapos ay kinuha sa akin ang babae na iniwan ko na sila na tuloy na akong umuwi sa aming bahay sa Camantigue."[57]

However, the foregoing Statement must be rejected because prosecution witness Lt. Zosa himself candidly admitted in open Court:

"Q And what did you do?

A. I brought Ariston Francisco to the municipal Judge and left him there to subscribe his affidavit and later the judge called me and informed me that there was no truth to the contents of the affidavit of Ariston Francisco."[58]

The refusal of the Municipal Judge to subscribe to complainant's affidavit because of the falsity of its contents bolsters appellant's assertion on the witness stand that his answers were untrue.[59] Besides, the prosecution failed to present Corporal Garbin to corroborate Lt. Sosa's testimony that appellant, in his (Garbin's) presence, admitted to Lt. Sosa the commission of the crime. Neither did the prosecution present Patrolman Camacho to rebut appellant's assertions that he was maltreated. These witnesses, who could have strengthened the case for the prosecution, were not presented. As very aptly enunciated by then Justice, now Chief Justice Enrique M. Fernando, in *People vs. Dramayo*,[60] "(i)t is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." Added to this is the fundamental principle that conviction should rest on the strength of the prosecution evidence and not on the weakness of that of the defense.[61]

The foregoing indispensable criteria have not met herein. The prosecution evidence is wanting in proof beyond reasonable doubt. The conclusions of the trial Court are unwarranted and bereft of convincing factual support.

WHEREFORE, the judgment appealed from is hereby set aside, and Ariston Francisco hereby acquitted on reasonable doubt.

Costs de officio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., see concurring opinion.

[1] Original Record, p. 2.

[2] Ibid., pp. 1 and 31.

[3] Original Record, p. 3.

[4] Ibid., pp. 15-16.

[5] Ibid., p. 15.

[6] Baptismal Certificate, Exhibit "D", p. 9 Original Record.

[7] t.s.n., pp. 16-19.

[8] t.s.n., pp. 24-28.

[9] pp. 19, 23.

[10] t.s.n., pp. 19, 25.

[11] Ibid.

[12] Ibid.

[13] t.s.n., p. 28.

[14] t.s.n., p. 20.

[15] t.s.n., pp. 20-26.

[16] t.s.n., p. 22.

[17] t.s.n., pp. 24-25.

[18] t.s.n., pp. 20-21.

[19] t.s.n., pp. 36-38.

[20] t.s.n., pp. 36, 38

[21] t.s.n., p. 33.

[22] t.s.n., p. 38.

[23] t.s.n., p. 34.

[24] t.s.n., p. 39.

[25] t.s.n., p. 34.

[26] t.s.n., p. 34.

[27] t.s.n., p. 40.

[28] t.s.n., pp. 1-4, Hearing of May 30, 1972.

[29] t.s.n., pp. 5-6.

[30] t.s.n., pp. 7-13.

[31] t.s.n., pp. 55-56.

[32] t.s.n., pp. 67-68.

[33] t.s.n., pp. 56-57.

[34] t.s.n., p. 63.

[35] t.s.n., pp. 58-59, 64.

[36] t.s.n., pp. 66-69.

[37] t.s.n., pp. 69-70.

[38] t.s.n. , p. 59.

[39] p. 1, Appellant's brief.

[40] People vs. Ramos, 96 SCRA 903 (1980); People vs. Advincula, 96 SCRA 875 (1980); People vs. Tigulo, 94 SCRA 183 (1979), and a long line of cases.

[41] People vs. Fausto, 51 Phil. 852, 856 (1928); People vs. Bautista, 76 Phil. 184, 196 (1946); People vs. Mendiguarin, 92 SCRA 679, 684 (1979).

[42] 2 Chitty's Blackstone, p. 165, cited in U.S. vs. Flores, 26 Phil. 262, 269 (1913); People vs. Barbo, 56 SCRA 459, 467 (1974); and People vs. Reyes, 60 SCRA 126, 131 (1974).

[43] Original Record, p. 12.

[44] t.s.n., May 30, 1972, p. 3.

[45] t.s.n., February 13, 1974, p. 49.

[46] t.s.n., May 30, 1972, p. 3.

[47] t.s.n., October 10, 1972, p. 18.

[48] 57 SCRA 654 (1974).

[49] t.s.n., October 10, 1972, p. 17.

[50] t.s.n., October 11, 1972, pp. 37-38.

[51] t.s.n., October 11, 1972, p. 42.

[52] t.s.n., October 10, 1972, p. 20.

[53] Exhibit "3", p. 10, Original Record.

[54] t.s.n., October 10, 1972, p. 27.

[55] p. 10, Original Record.

[56] t.s.n., January 5, 1976, p. 58.

[57]Exhibit "C", p. 7, Original Record.

[58] t.s.n., July 18, 1972, p. 10.

[59] t.s.n., January 5, 1976, pp. 57-58; 60-61; 63-64.

[60] 42 SCRA 59 (1971) and restated in *People vs. Ramirez*, 69 SCRA 144 (1976); *People vs. Montero*, 76 SCRA 437 (1977); and *People vs. Quiazon*, 78 SCRA 513 (1977).

[61] *Duran vs. Court of Appeals*, 71 SCRA 68 (1976).

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CONCURRING OPINION

AQUINO, J.:

I concur because the following circumstances cast reasonable doubt as to appellant's guilt:

1. The fact that Mercedita Manito (she finished Grade six), upon her arrival in her house, failed to report to her father and the members of her family that she was ravished by Ariston Francisco and Ruby Poras;
2. Her sister Roberta's omission to report to the family, after she fled from the scene of the alleged rape, that Mercedita was being ravished and should be given assistance;
3. Mercedita's admission that about a year before the incident she had voluntary sexual intercourse with Cirilo Francisco, the uncle of accused Ariston Francisco;
4. The fact that Ariston revealed to Maximo Manito, the uncle of Mercedita, that he had sexual intercourse with her on January 28, 1972 (11 tsn October 10, 1972), which implies that what he committed was not a crime because he would not be so stupid as to reveal to a close relative of the victim that he had wronged her and
5. The fact that the case against Ruby Poras provisionally dismissed for a monetary consideration.

As correctly observed by the late Gerardo M. Alfonso, appellant's learned counsel de oficio, Mercedita, "moved by the irresponsible spirit of restlessness and adventure, which is commonly found in the youth today, ventured into the forbidden ground of unchastity".

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