

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO PARAGSA, ALIAS "BENBEN",
DEFENDANT-APPELLANT.**

G.R. No. L-44060. July 20, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Bienvenido Paragsa, alias "Benben", appealed to the Court of Appeals the decision of the Court of First Instance of Cebu (Judge Agapito Hontanosas, presiding), the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered convicting the accused Bienvenido Paragsa of the crime of Rape as charged in the Information beyond reasonable doubt and applying the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of twelve (12) years of prison mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as the maximum and to indemnify the complaining witness in the amount of P8,000.00 (People vs. Rogato Rivera, 58, O.G. and People vs. Chan et al., CA No. 03545-GR, August 11, 1967) with all legal accessories and to pay the costs. Being a detention prisoner, he is entitled to the full credit of his preventive imprisonment from the time of his confinement up to the date of the promulgation of this judgment.

"x x x x x"

(pp. 10-19, rollo).

Because the penalty of reclusion perpetua was imposed by the Court of Appeals on the accused, this case is now before US for review pursuant to Section 34, Republic Act No. 296, as amended, otherwise known as the Judiciary Act of 1948.

The evidence for the prosecution consists of the testimony of Mirasol Magallanes, the alleged rape victim, her aunt-in-law, Mrs. Lita Parochel, and Dr. Luis L. Gandiongco of the Bantayan Emergency Hospital, Bantayan, Cebu, who examined the offended party and submitted Exhibit A embodying his findings thereon.

Substantially, the records show that in the afternoon of July 13, 1971, Mirasol, who was then a little over twelve and a half (12½) years old (Exhibit B, p. 7, rec.), was alone in her parents' house in Sitio Tabagac of Barrio Bunacan, Municipality of Madridejos, Cebu, cooking hog feed. Her parents were away at the time -- her father was in Cadiz, while her mother was in Sagay, both in Negros Occidental (p. 16, t.s.n., Jan. 5, 1972) -- while the rest of the family were with Mirasol's grandmother in Barrio Codia, also in Madridejos, Cebu. Mirasol was a 6th grade student of the Bunacan Elementary School (p. 6, t.s.n., Dec. 3, 1971). Upon instruction of her mother, she

did not go to school that afternoon so that she could look after the pigs and cook their feed. Thus, she was alone in the ground floor of their house cooking hog feed when the accused, Bienvenido Paragsa, armed with a hunting knife, entered the house and closed the door after him. Approaching from behind, he placed his left arm around Mirasol's neck, encircled her abdomen with his right arm, at the same time pointing the hunting knife with his right hand at her breast, and threatened her not to shout otherwise she would be killed. Thereafter, the accused pushed her to a bamboo bed nearby, rolled up her dress and, with his two hands, removed her panties. The accused then placed his hunting knife on the bed by Mirasol's side, opened the zipper of his pants while kneeling on the bed, opened Mirasol's thighs, picked up the hunting knife again, placed himself on top of Mirasol, inserted his erect penis into her sexual organ and then made four push and pull movements until he ejaculated (pp. 7, 10-11, 12, 13, 14, t.s.n., *ibid.*). In the process, Mirasol's dress and panties were not torn, since, because of fear, she allowed the accused to roll up her dress and pull her panties without any resistance whatsoever. During the intercourse, the accused was not holding the hunting knife. After the accused had discharged, he ran to the storeroom of the house upstairs because he heard Mrs. Lita Parochel, wife of the younger brother of Mirasol's father, calling from outside the gate of the house, asking Mirasol to open the gate. Mirasol did not answer because she was then in the act of putting on her panties (p. 14, t.s.n., *ibid.*; p. 10, t.s.n., Jan. 5, 1972). After she had put on her panties, she opened the gate and saw her aunt Lita, who asked her what the accused did to her, but she did not answer because she was afraid as the accused was still inside the house. She also did not tell her aunt Lita that the accused had sexual intercourse with her under threats and against her will. Her aunt Lita then walked away.

Thereafter, the accused reappeared in the room and told Mirasol that if she would tell her aunt Lita what he did, he would kill her (pp. 13-14, t.s.n., Dec. 3, 1971). After the incident, Mirasol went to Barrio Codia later in the afternoon of the same day and joined her brother and sister and grandmother. She did not reveal to any of them what transpired between her and the accused in Tabagac.

Mirasol's father returned from Cadiz, Negros Occidental that same day; but Mirasol did not also reveal the incident to him because she was afraid her father might punish her. Her mother returned home on July 16, 1971 from Sagay, Negros Occidental; but Mirasol did not also tell her mother about what happened to her on July 13 in Tabagac. It was her aunt Lita who revealed the matter to Mirasol's mother, who thereupon confronted her daughter. Mirasol had to reveal the incident of July 13 to her mother only when her mother asked her about it; because, according to her, she wanted to take revenge on the accused (p. 15, t.s.n., Dec. 3, 1971). Three days after her return from Sagay, Negros Occidental -- on July 19, 1971 -- Mirasol's mother brought her to the Bantayan Emergency Hospital in Bantayan, Cebu, where she was examined by Dr. Luis L. Gandiongco, who submitted his findings as follows:

"Abrasion of inguinal region

"Abrasion, left thigh, medial side

"INTERNAL FINDINGS:

"1. Discharges sticky, milky in color, found at the anterior fornix but negative for spermatozoa" (Exh. A, p. 8, rec.; p. 2, t.s.n., Nov. 16, 1971).

Mrs. Lita Parochel, the aunt-in-law of Mirasol, testified that she is the wife of the younger brother of Mirasol's father. Her house is fifty (50) meters away from the house of her brother-in-law, Ruperto Magallanes. In the

afternoon of July 13, 1971, she went to the house of her brother-in-law in Tabagac. Arriving there, she saw, through the gate which was made of split bamboos, the accused running away when she shouted to Mirasol, who was then in the act of putting on her panties, to open the gate (p. 10, t.s.n., Jan. 15, 1972). Mirasol opened the gate after she had put on her panties. Entering the house, Mrs. Parochel asked Mirasol what the accused did to her, but Mirasol did not answer. So, she hid and from her hiding place she saw the accused emerge from his hiding place and run away, passing through the gate of the fence. Thereupon, she told Mirasol to go home to barrio Codia because she was also going there (p. 15, t.s.n., *ibid.*).

Mrs. Parochel met Mirasol's father at about 4:00 o'clock the same afternoon but she did not talk to him about what she saw earlier in Tabagac. However, she revealed the incident to her husband (p. 17, t.s.n., *ibid.*).

When Mirasol's mother returned from Sagay, Negros Occidental, Mrs. Parochel had a conversation with her regarding the person of the accused and thereafter Mirasol's mother filed the corresponding complaint against the accused (p. 18, t.s.n., *ibid.*).

Incidentally, in support of the complaint of Bernandina Magallanes, mother of Mirasol, Mrs. Parochel executed an affidavit which she subscribed and swore to before the municipal judge of Madridejos, Cebu, on July 30, 1971, wherein she stated, among other things:

"1. That at about 3:00 o'clock in the afternoon of July 13, 1971, I went to the house of Ruperto Magallanes, my neighbor;

"2. That when I entered their fence, I found out that one Benben Paragsa ran from the bed where Mirasol Magallanes was sitting on while putting on her panties;

"3. That she, Mirasol Magallanes, upon my arrival, did not say anything to me about the happening; and that I was only thinking that something had happened" (Exh. 1, p. 5, rec.).

In his typewritten brief, the appellant enumerated and discussed five errors as having been committed by the trial court. These errors may, however, be boiled down to the issue of credibility.

Appellant admits having sexual intercourse with Mirasol, the complaining witness, but he stoutly denied that he did so by employing force or intimidation against Mirasol. He claims he and Mirasol were sweethearts; that on the day of the incident, it was Mirasol who invited him to the latter's house where they had sexual intercourse after kissing each other; and that the intercourse they had that afternoon was, as a matter of fact, their third sexual intercourse (pp. 2, 3, 5, 6, 8-9, t.s.n., March 21, 1972).

The foregoing testimony of the accused was substantially corroborated by two witnesses for the defense, Mercedo Batosbatosan and Eduardo Ducay (pp. 5, 6-7, 12, 15-16, 17, 18-19, 20, 25, t.s.n., Feb. 1, 1972).

A careful scrutiny of the record reveals that the prosecution's evidence is weak, unsatisfactory and inconclusive to justify a conviction.

Certain circumstances negate the commission by the appellant of the crime charged and point to the conclusion that the sexual intercourse between the appellant and the complaining witness was voluntary. Force and intimidation were not proven. Mirasol did not offer any resistance or vocal protestation against the alleged sexual assault. She could have easily made an outcry or resisted the appellant's advances without endangering her life.

But she did not. She was allegedly raped in her own home, not far from her neighbors and during the daytime. If, indeed, she was raped under the circumstances narrated by her, she could have revealed the same the very moment she was confronted by her aunt Lita who asked her what the accused did to her upon entering the house immediately after the intercourse took place and when the accused ran from the bed to a storeroom of the house to hide upon seeing and/or hearing the voice of her aunt Lita. Or, she could have grabbed the hunting knife by her side when the copulation was going on, and with it she could have possibly prevented the accused from consummating the sexual act. But she did not.

Another circumstance is that Mirasol did not reveal immediately to her parents that she was raped. It was only after her mother arrived from Sagay, Negros Occidental, three (3) days after the incident, and confronted her about the rape incident that her mother learned through her aunt Lita that she eventually revealed to her mother what the accused did to her in the afternoon of July 13, 1971.

Still another circumstance is the fact that Mirasol did not bother at all to rebut the testimony of the appellant and his witnesses to the effect that the accused and Mirasol were actually sweethearts; and that they had had two previous sexual communications before July 13, 1971, one of which happened on June 29, 1971 in the house of the accused, where Mirasol and the accused slept together in the evening of the same day after the mother of the accused and Mirasol had returned from the town fiesta of Bantayan, Cebu (p. 10, t.s.n., March 21, 1972).

The rule allowing silence of a person to be taken as an implied admission of the truth of the statements uttered in his presence is applicable in criminal cases. But before the silence of a party can be taken as an admission of what is said, it must appear: (1) that he heard and understood the statement; (2) that he was at liberty to interpose a denial; (3) that the statement was in respect to some matter affecting his rights or in which he was then interested, and calling, naturally, for an answer; (4) that the facts were within his knowledge; and (5) that the fact admitted or the inference to be drawn from his silence would be material to the issue (IV Francisco, *The Revised Rules of Court in the Philippines*, 1973 ed., p. 316). These requisites of admission by silence all obtain in the present case. Hence, the silence of Mirasol on the facts asserted by the accused and his witnesses may be safely construed as an admission of the truth of such assertion.

One more circumstance which engenders serious doubt on the truthfulness of Mirasol is the testimony of Dr. Gandiongco that he did not notice any laceration in the walls of Mirasol's vagina, thus -

"Q - Doctor, you testified that according to your findings a foreign body might have inserted the internal organ of the offended party?

"A - Yes, sir

"Q - And as a matter of fact, in your examination there was no laceration?

"A - There was no laceration" (p. 5, t.s.n., November 16, 1971; emphasis supplied).

Considering Mirasol's tender age, if she had no previous sexual experience, she must have been a virgin when she was allegedly raped by the accused. Yet she did not state that she felt some pain as the accused tried to insert his organ into her private part. Neither did she state that she was bleeding during and after the alleged forced coition.

Instead, she matter-of-factly narrated that the accused made four push and pull movements after which the latter ejaculated - indicating that he had an easy time doing it.

If WE are to believe her story, certainly the doctor who examined her could have noticed the lacerations even after the lapse of three (3) days from the coition, if the intercourse on July 13, 1971 was in fact her first experience. WE believe the absence of lacerations in the walls of Mirasol's vagina, as testified to by Dr. Gandiongco, supra, eloquently confirms the truth of the accused's assertion that before the incident in question, he and Mirasol had two prior copulations.

And still another circumstance which casts serious doubt on the credibility of the complaining witness and her aunt Lita is the matter of the hunting knife. While it is true that on the witness stand these two witnesses practically corroborated each other on this particular point, the matter of the accused having a hunting knife with him on the day of the incident was not, however, mentioned by Mrs. Parochel in her affidavit, Exhibit 1, which she executed on July 30, 1971 - five months before she testified in court. Besides, at the trial, the prosecution did not bother to present such "hunting knife".

A last circumstance which also engenders serious doubt on the veracity of Mrs. Parochel, whose testimony the trial court summarized, runs thus:

"..... The victim did not answer the call of her aunt nor did she open the barred door."

".... She returned to the opened door and asked Mirasol what had happened. Mirasol was very pale, trembling and in a state of shock, did not answer her inquiries" (p. 3, Decision; p. 64, rec.; emphasis added).

The Solicitor General adopted the above factual summary made by the trial court by stating that -

"Mirasol's aunt, Lita Parochel found her niece in a state of shock" (p. 4, Brief for the Plaintiff-Appellee; p. 49, rec.; emphasis OURS).

A painstaking scrutiny of the record, particularly the transcript of stenographic notes, shows that contrary to the finding of the trial court, Mirasol answered the call of her aunt and opened the gate of the house after she had put on her panties (p. 14, t.s.n., Dec. 3, 1971); and that Mirasol only seemed to be afraid, besides trembling (p. 23, t.s.n., 1972); nowhere in the record is any evidence of Mirasol having been in a state of shock.

If Mirasol was in fact in a state of shock –

1. How come she was able to put on her panties and thereafter open the gate of the house when she heard her aunt Lita calling from the outside?
2. Her aunt Lita would feel so alarmed and so concerned that she would not lose any time to bring her to a doctor or to a hospital for medical treatment or assistance;
3. Her aunt Lita would have confronted the accused who was still hiding in the closet in a corner of the ground floor, or she would have gone to the nearest police authority or barrio captain, who could have easily apprehended the accused;
4. Her aunt could have sought the assistance of their barriomates or neighbors; or

5. She could have brought Mirasol to her own house which was only about 50 meters away (pp. 7, 20, t.s.n., Jan. 5, 1972).

But what did she do? She abandoned Mirasol "because she (Mirasol) had to feed her hogs" (p. 24, idem.).

That Mirasol was pale, afraid and trembling can only be attributed to the fact that her aunt discovered her having sexual intercourse at so young an age and that she feared that her aunt would report the same to her parents.

And if Mrs. Parochel really believed that her niece Mirasol was raped by appellant about 3 o'clock that afternoon of July 13, 1971, why did she not report the outrage to Mirasol's father - her husband's brother - whom she met about 4 o'clock that same afternoon, just one hour after the alleged rape?

Mrs. Parochel's close relationship to her niece -- daughter of her brother-in-law vitiates her credibility.

Appellant cannot be legally convicted of simple seduction under Article 338 of the Revised Penal Code, for the same is not warranted by the wording of the information, which does not allege deceit, although appellant testified that he promised to marry Mirasol if "something happened to her body," Much less can simple seduction include rape.

WHEREFORE, APPELLANT BIENVENIDO PARAGSA, ALIAS "BENBEN", IS HEREBY ACQUITTED, WITH COSTS DE OFICIO, AND HIS IMMEDIATE RELEASE IS HEREBY ORDERED UNLESS HE IS BEING DETAINED ON OTHER CHARGES.

SO ORDERED.

Fernando, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Castro, C.J., Barredo, and Antonio, JJ., concur in the dissent of Mr. Justice R.C. Aquino.

Teehankee, J., concurs in a separate opinion.

Muñoz Palma, J., votes for the affirmance of the judgment.

Aquino, J., see dissenting opinion.

CONCURRING OPINION

TEEHANKEE, J.:

I concur in the acquittal of the accused-appellant in the light of the salient facts and circumstances discussed in the decision penned by Mr. Justice Makasiar[1] which justly cast serious doubts on the guilt of the accused and entitle him to a verdict of acquittal founded on the constitutional presumption of innocence.

The ratio decidendi in the analogous case of *People vs. Ramirez*[2] (where the 15-year old daughter of the accused's common-law wife charged him with double rape and his defense was "that there was consent on her part, as indeed there had been previous instances where he had access to her") is fully applicable to the case at bar, thus: "The pronouncement in *People vs. Dramayo*[3] as to the extent of the protection accorded by the Constitution to a person indicted for a criminal offense once again possesses relevance. Thus: 'Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for

the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crimes had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It 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.'[4]

There as in this case, we held that the accused could not be convicted of seduction under the rape charge, citing the case of *People vs. Castro*[5] because "the rape charge did not place [the accused] in jeopardy of being convicted for qualified seduction. He is entitled to be informed of the nature and cause of the accusation against him."

I have written this brief concurrence, principally, because I noted from the decision[6] that this is a case where as against the prevailing view and practice under section 34 of Republic Act 296, as amended (the Judiciary Act of 1948) and incorporated in Rule 124, section 12 of the Rules of Court (whereby in any criminal case submitted to a division of the Court of Appeals whenever said court should be of the opinion that the higher penalty of death or life imprisonment should be imposed than the lesser penalty imposed by the trial court in the decision subject of the appeal before it, said court "shall refrain from entering judgment thereon and shall forthwith certify the case to the Supreme Court for final determination, as if the case had been brought before it on appeal") the Court of Appeals rendered judgment imposing the penalty of reclusion perpetua instead of forthwith certifying by resolution the case to this Court as falling within this Court's exclusive appellate jurisdiction under section 17 of the Judiciary Act.

Some members of the Court have asked for reexamination of the prevailing view and practice and to set down as the proper procedure that followed by the Court of Appeals in the case at bar. But since the Court's verdict is one of acquittal, there was no need to take up the question in this case. I make this of record so that the present decision may not be taken as impliedly sanctioning such procedure, or as an indication of approval thereof on the part of any member of the Court taking part herein. The question will be definitively resolved in several cases pending before the Court where such reexamination has been squarely raised, e.g. in Case L-40330, entitled *People of the Philippines vs. Amado Daniel @ "Amado Ato"*, submitted for decision on August 5, 1975.

[1] At pages 6-10.

[2] 69 SCRA 144 (1976) and cases cited, per Fernando, J.

[3] 42 SCRA 59 (1971).

[4] 69 SCRA at pp. 149-150.

[5] 58 SCRA 473 (1974), per Aquino, J.

[6] At page 2.

DISSENTING OPINION

AQUINO, J.:

The evidence for the prosecution was summarized by the Solicitor General in this wise:

"Mirasol Magallanes, aged twelve-and-a-half, was alone in her parent's house in Sitio Tabagak of Barrio Bunacan, in Madridejos, Cebu in the early afternoon of July 13, 1971, cooking hog feed. Both of her parents were then away, in Negros Occidental, and the rest of the family were with Mirasol's grandmother in Barrio Codia, also in Madridejos, Cebu. Mirasol, although a six-grader in the Bunacan Elementary School, was at home on this date, on instructions of her mother to look after their pigs, and cook hog feed in the afternoon.

"While thus alone on the ground floor of their house in Tabagak, innocently cooking food for the family's pigs, the accused Bienvenido Paragsa, with a hunting knife in hand, stealthily entered the house, barring the door as he entered. And approaching Mirasol from behind, he hooked his left arm around the young girl's neck and simultaneously thrust his knife at Mirasol's tender breast, barking at the same moment for the girl not to shout, under threat of instant death.

"His left arm still hooked around the poor girl's neck, and the knife he held perilously poised upon the girl's vulnerable breast, the accused pushed the girl to the bamboo bed nearby, and there laid her down. He then removed her panties, and opened the fly of his own pants. Forcibly, he opened the girl's thighs, and himself in-between, he then penetrated young Mirasol's private part with his erect private part, and hastily consummated his guilt ridden, forcible, physical intrusion into the young girl's body.

"Mirasol's aunt, Lita Parochel, arriving later, too late to prevent the dastardly abuse of her niece, nevertheless, saw the accused as he surreptitiously fled the scene and found her niece in a state of shock. Subsequently, report of the crime was made to the girl's parents, and a complaint lodged against the accused for the crime of rape. (pp. 6-8, tsn Dec. 3, 1971; pp. 7-18, tsn Jan. 5, 1972; pp 1-3, tsn Nov. 16, 1971; Exh. A)."

The accused admitted that he had sexual intercourse with the complainant girl. His defense is that the copulation was voluntary. The doctor, who examined the complainant, found that she sustained an "abrasion, left thigh, medial side" in addition to an "abrasion of inguinal region" (Exh. A). He testified that there was laceration of the hymen. The pertinent portion of his testimony is quoted below:

"Q. - Can you tell us your external findings?

A. - My external findings is that there was an abrasion of inguinal region and abrasion, left thigh, medial side.

"Q. - How about your internal examination?

A. - I was able to get some of the secretion found at the anterior fornix of the cervic.

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"Q. - From your findings, Doctor, there was something foreign which got inside the vaginal tract of the complainant.

A. - There might be foreign body which got inside the vaginal tract not so deep that caused laceration of the hymen.

"Q. - In your study of medicine, when a foreign object is penetrated but not so deep, will that produce laceration of the vaginal tract or the hymen of a woman, is that possible?

"Q. - When there is a penetration but not deep, will it produce laceration of the vaginal tract of a woman?

A. - Yes, sir."

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"Fiscal: Can you tell us what could have possibly caused the abrasion on your external examination of the woman Mirasol Magallanes?

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"A. - Maybe the assailant used force." (3 tsn).

The trial court and the Court of Appeals (Justice Lorenzo Relova, ponente) both held that rape was committed. That conclusion is supported by the following testimony of the complainant:

"Q. - You said that in the afternoon of July 13, 1971, you saw Bienvenido Paragsa entered under your house where you were cooking the hog feeds, can you tell this Honorable Court what was he doing when he entered your premises?

A. - Yes, sir.

"Q. - What did he do?

A. - When he entered under the house he immediately held my neck and then embraced my abdomen and he

was carrying a hunting knife.

"Q. - When he grabbed your neck and hugged you, did he say anything to you?

A. - Yes, sir, he told me, 'Do not shout, if you will shout, I will kill you.'

"Q. - After hugging you and telling you not to shout, what did Paragsa do next?

A. - He pushed me to bed and he let me lie on the bed and he immediately pulled out my panty.

"Q. - After removing your panty, what next did Paragsa do?

A. - He tried to open my thigh but I insisted closing them because I was ashamed.

"Q. - In effect, was he able to open your thigh?

A. - Yes, sir, because he threatened me with his hunting knife: 'You will not open, if you will not open, I will stab you.'

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"Q. - After he succeeded in inserting his penis into your sexual organ, what did he do next?

"ATTY. FLORES: I want to make of record that witness is spontaneous in answering the question, considering that she is minor and this is her first time.

"WITNESS: He made a push and pull movement.

"ATTY. SALGADO:

Q. - After he finished picking you, what was or where did Paragsa go?

A. - He ran to one of the room of the house to hide.

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"Q. - Did you have a conversation with your Tia Lita after you opened the door?

A. - Tia Lita asked me what Benben did to me but I did not answer because I was afraid.

"Q. - That was the only question that was being asked on you by your Tia Lita?

A. - Yes, sir.

"Q. - You did not make any answer?

A. - I did not.

"Q. - Did you tell anybody of what had happened to you as what you had testified?

A. - I did not.

"Q. - Why?

A. - I did not tell because I was warned by the accused that if I would tell he would be coming back to kill me.

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"Q. - And after that while he was holding your neck and embracing your abdomen you were then sitting near the place where you were cooking your hog's feeds?

A. - When he entered under our house when he was nearing I immediately stood up; I was no longer sitting.

"Q. - So, you recognized him before he took hold of your neck?

A. - Yes, sir.

"Q. - And when he took hold of your neck and embraced your abdomen, what did he do next?

A. - He told me: 'Do not shout, if you will shout I will kill you.'

"Q. - He was uttering those words when he was holding your neck and embracing your abdomen?

A. - Yes, sir.

"Q. - And after that he immediately carried you to the bed inside your house?

A. - He did not carry me but he pushed me to the bed.

"Q. - How far was the bed to the place where you were pushed by accused Paragsa?

A. - One and one-half meters.

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“ATTY. FLORES:

Q. - And how long did your Tia Lita went home after the conversation?

A. - Tia Lita walked away passing thru our 'banguera' and Ka Benben appeared and he told me that if I will tell Tia Lita he will kill me and I was afraid because he was still holding the hunting knife.

xxx xxx xxx

"Q. - You did not tell your father about the incident that evening?

A. - No, I did not tell because I was afraid, he might punish me and he might kill me.

xxx xxx xxx

"Q. - When your mother arrived home, did she inquire from you about the incident?

A. - Yes, she asked me because Tia Lita related to her the incident.

"ATTY. FLORES:

Q. - You want to tell the Court that if your mother had not inquired from you about the incident you have not told your (mother) about the incident?

A. - No, I will not tell.

"Q. - How would you reconcile your testimony when a moment ago you said that you told the incident to your mother because you took revenge of what Ka Benben had done to you?

A. - Because before she asked me of the incident I had in mind not to tell her of the incident but after she asked me I (told her of the incident because I want to take revenge on Ka Benben. (TSN, hearing on December 3, 1971, pp. 6 to 15)."

The trial court's vivid summary of the prosecution's evidence, which reveals how the rape was committed and why the complainant did not disclose the outrage right away to her aunt and parents and which mentions the flight of the accused, and the trial court's reasons for convicting the accused are as follows:

"The prosecution thru the testimonies of the complaining witness and the other State witnesses has established the following facts: That at about 1:30 o'clock in the afternoon of July 13, 1971, the offended party, Mirasol Magallanes, aged 12 years, 6 months and 4 days as shown in Exhibit "B", was in the house of her parents at Sitio Tabagak, Barrio Bunacan, Municipality of Madridejos, Province of Cebu. She was alone and under the house cooking hog feeds. The house, the lower portion of which, is fenced with bamboo strips, while the surrounding lawn is likewise enclosed with fence. Her father at the time was in Cadiz, Negros Occidental, where he was employed in one of the Fishing Outfits. Her mother was in Sagay, Negros Occidental, while all her younger sisters and brother were in they house of her grandmother at Barrio Codia, Madridejos, Cebu, where all of the children were left for care when their mother left for Sagay on July 10, 1971.

"The girl Mirasol Magallanes was a grade six pupil in the Bunacan Elementary School, and she did not attend her classes on that day upon instruction of her mother not to attend her classes during the period of her (mother's) absence. She was instructed to go to Bunacan in order to feed their pig in the morning, cook its foods in the afternoon and after feeding return to the house of her grandmother at Codia.

"While Mirasol was cooking the hog feeds, at about 1:30 in the afternoon of July 13, 1971, the accused Bienvenido Paragsa, armed with a hunting knife, surreptitiously entered the fenced ground floor of the house, then

barred the door after him. The accused approached Mirasol from behind, hook his left forearm around her neck, at the same time thrust the knife which was held by his right hand at the breast of Mirasol Magallanes, and told her not to shout for help under the threat of instant death.

"With his left forearm still around the neck of Mirasol and the knife's point at her breast, the accused pushed the victim to a nearby bamboo bed and laid her. He then placed the knife beside Mirasol, removed her panty, and opened his pants. He forced the victim to open or spread her legs by placing his hands on the inside portion of both thighs according to the testimony of Mirasol and corroborated by Medical Certificate, Exhibit "A", indicating contusion.

"Placing himself between the legs, directly in front of the sexual organ of Mirasol, the accused inserted his erected penis into her vagina and hurriedly proceeded with the act of copulation by up and down movement. After completing the act, the accused was about to leave when, unexpectedly, Lita Parochel, aunt of Mirasol (wife of the younger brother of victim's father), arrived outside the barred door. She called for Mirasol, who was already sitting at the edge of the bamboo bed, putting on her panty, to open the door. On hearing the call, the accused ran away and hid himself in a closet located at the corner of the ground floor.

"The victim did not answer the call of her aunt nor did she open the barred door. Lita Parochel, suspecting that something unusual had happened to her niece, walked away from the door, making it appear that she was going out and hid herself behind an outside projection of the ground floor where she could see and observe the door. No sooner had she hidden herself when she saw the accused came out of the door, holding a hunting knife in his right hand, and ran towards the general direction of the seashore.

"She returned to the opened door and asked Mirasol what had happened. Mirasol was very pale, trembling and in a state of shock, did not answer her inquiries. Without pressing further, the aunt instructed her niece to return immediately to her grandmother's home at Barrio Codia after feeding the pig, then she (Lita) returned to her house which is about 50 fathoms away.

"At about 4:00 o'clock that same afternoon, before Mirasol Magallanes could return to her grandmother's house, her father arrived from Cadiz, Negros Occidental. Lita Parochel, having only her suspicion as she did not actually see the accused abuse her niece, did not report the incident to her brother-in-law. But she reported the incident to her husband at 7:00 o'clock that evening on his return home.

"On July 15, 1971, upon the return of Mirasol's mother from Sagay, Negros Occidental, Lita Parochel personally reported the matter to the mother. Acting upon the report, the mother immediately investigated her daughter who, having been given the assurance that she would not be subjected to physical punishment, and who had already recovered from her fears and shock, readily told her mother that she was raped by Bienvenido Paragsa. She was brought to the Bantayan Emergency Hospital and subjected to an internal examination by Dr. Luis L. Gandionco, M.D. Medico-Legal-Incharge, who found her positive of having sexual intercourse.

"A complaint for rape was filed against Bienvenido Paragsa by the Chief of Police of Madridejos, Cebu, at the instance of Bernardina R. Magallanes, mother of the victim, who at the time she was raped was a little more than 12 years old as stated above (Exhibit "B"). In the meantime the accused had left Madridejos, Cebu, and was finally arrested at Danao City on the strength of a Warrant of Arrest issued by the Municipal Judge of Madridejos, Cebu, before whom the complaint for rape was filed.

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"After a careful consideration of the evidence of the parties in its totality, the Court is of the view that the prosecution has been able to establish beyond reasonable doubt that the accused committed the crime of RAPE as

charged in the Information. It is true that the offended party did not exert strong and effective efforts to thwart the attack of the accused in disgracing or dishonoring her womanhood but considering that the accused was carrying with him a knife which he used in threatening her to death, it is not unusual that the young and innocent girl of over 12 years of age would just meekly submit for fear of her life.

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"In the instant case, the accused admitted having sexual intercourse with the complaining minor of a little over 12 years of age and his testimony regarding their being sweetheart and especially as to the first intercourse he allegedly had with the victim in their house in the first week of July 1971 and the second in the first week of June 1971 is so unnatural, unbelievable and contrary to common sense that this Court is of the opinion and so holds that his story is fabricated and self-serving and untrustworthy for if it were true that the victim was his own sweetheart and he was her boyfriend then there could have been no reason for this young innocent girl of a little above 12 years to tell her mother about the criminal attack by the accused upon her womanhood and virginity. Her story regarding her being threatened to death by the accused who carried with him a hunting knife is being corroborated by witness Lita Parochel who had no motive whatsoever to declare falsely against the accused.

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"The Court had observed that Mirasol Magallanes is an intelligent, honest and reliable witness notwithstanding the fact that she was of a very tender age and the Court cannot accept the theory of the defense that the intercourse that took place on July 13, 1971 was voluntary on her part. It would be very hard to believe that the complainant would easily submit to such an intercourse if her will to resist had not been overpowered or overcome by threat, intimidation and force on the part of the accused who was armed with a knife."

The accused was twenty-one (21) years old while the victim was twelve years and six months old. The act of the accused in taking advantage of the victim's immaturity is a form of unpardonable sexual perversion which is worse than the offense committed by Roman Polanski, the Hollywood director who was convicted of cohabiting with a thirteen-year old girl.

To acquit the accused would be a miscarriage of justice. The lower court's judgment of conviction should be affirmed and the accused should be sentenced to reclusion perpetua.

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