

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS D. NAZARENO, DEFENDANT-APPELLANT.*G.R. No. L-45533. November 29, 1977*

Ponente: FERNANDO, J.

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It is to be expected that a brief for appellant would carry the impress of partisan zeal, at times even carried to excess. Necessarily then, it must be scrutinized with care. Moreover, allowance must be made for its biased character. It may not suffice therefore to discredit the appealed decision. When the plea for reversal is however reinforced by a careful and conscientious appraisal of the evidence of record coming from the then Acting Solicitor General Vicente V. Mendoza,[1] who, instead of filing appellee's brief, submitted a thirty-four page Manifestation recommending acquittal, it assumes a different posture -- one much more favorable to the accused. So it is in this appeal by Jesus D. Nazareno who was prosecuted for rape, thereafter convicted, and sentenced to reclusion perpetua with indemnification to the offended party in the amount of P5,000.00. The principal reliance of the Manifestation coming from the Office of the Solicitor General is on the three recent decisions of *People v. Maisug*,[2] *People v. Reyes*[3] and *People v. Lopez*. [4] Its concluding portion reads thus: "In fine, undersigned counsel for the People respectfully submit that the trial court's assessment of the evidence on record upon which it found appellant guilty of the crime of rape is incorrect. Instead, the testimony and written statement of the complainant, it is respectfully submitted, are wanting of that proof to demonstrate that the crime of rape as charged was committed by the appellant through force and intimidation. Even if there is reasonable doubt as to his innocence, as obtaining in this case, he is entitled to acquittal." [5] Accordingly, the constitutional presumption of innocence [6] not having been overcome, it should prevail. As prayed for by the counsel of the accused and the then Acting Solicitor General, the appealed decision should be reversed and appellant acquitted of the crime of rape with costs de oficio.

The undisputed facts, the inherent lack of credibility on crucial points in the complainant's version, certain damaging admissions made by her on the witness stand, the uncontradicted testimony of appellant and other attendant circumstances, ought to have cautioned the trial judge against a finding of guilt. A dispassionate consideration of the matter should have led to the conclusion that the constitutional presumption of innocence had not been overcome by proof beyond reasonable doubt.

The complainant Rayda Aumada was a maid in the house of the accused Jesus D. Nazareno in Pagongan, Baganga, Davao Oriental, [7] her services dating from November 16, 1969. [8] She continued as such up to January, 1971. [9] She gave birth to a child on April 14, 1971. [10] That child was thrown away by her after its birth, [11] its dead body having been discovered in Pagongan creek on the evening of the same day by the children of a witness, Lucrencio Layupan. [12] There was an investigation by the barrio captain, complainant admitting that it was she who gave birth to the child, the father, according to her, being appellant Jesus D. Nazareno. [13] She likewise gave the information that she was under instruction from him to throw the baby, but no mention was made of force being employed when the sexual act took place. [14] The complaint charging the accused with rape

was not filed until May 5, 1971. It was alleged in the complaint that the alleged rape took place in the middle part of January, 1970.[15] On the witness stand, it was her testimony that she was compelled against her will to submit to his desire twice, the first time on the first week of January and then on the last week of that month.[16] Her sister, who was another maid in the same house, was not told about the matter.[17] She was free to visit her parents but she likewise made no complaint to them about her being abused by appellant.[18] She stayed in the same house-hold for one more year, but the wife of the accused was kept equally ignorant of the alleged rape and did not even notice her pregnant condition all the while, although the delivery occurred barely three months after she left.[19]

The lack of credibility of certain assertions made by her on the witness stand that cast grave doubts on her accusation was noted in the manifestation of the Acting Solicitor General. The most notable instance of the improbable character of her version of what transpired was the long delayed birth of the child arising from the alleged act of rape long after the nine-month usual period of pregnancy. As set forth therein: "From the month of February, 1970, the starting period of her conception of a child, after her alleged sexual intercourse with the appellant during the last week of January, 1970, there is a supervening period of fifteen (15) months, more or less: This Honorable Court made the correct observation that 'the average duration of human pregnancy, counting from the first day of menstrual period, is about two hundred eighty days or forty weeks' (People v. Castro, 58 SCRA 473, quoting William's Obstetrics, 14th Ed., p. 236), which is about nine complete months. Even the complainant herself, already 22 years old when she testified in the court below * * * declared that she knows that it takes nine (9) months for a fetus to stay in the womb of a mother * * *. There may be pre-mature births of seven-month old or eight-month old babies, but it is biologically improbable for a baby to overstay in the womb of its mother, even if already dead, for more than six (6) months. In her effort to explain this biological improbability, complainant made additional declarations which only produced further improbable situations. [Here reference was made to her admission that she gave birth in October, 1970 and then on April 14, 1971.] Granting that she gave birth to a baby in October, 1970, which is well within the nine-month period of pregnancy, counting from her last menstrual period in February, 1970, it is biologically improbable for her to give another birth on the fifth month, or on April 14, 1971, counting from her alleged last birth of a baby in October, 1970. If her declaration that she gave birth to a baby in October, 1970, allegedly fathered by the appellant, at a time when she was still staying in the house of the appellant as the family's housemaid, were true, there would have been a big family scandal." [20]

In addition to certain admissions already noted, there were others, equally damaging to the prosecution, elicited during a rather searching cross-examination. When asked whether or not her failure to reveal the alleged rape to her parents was "because Jesus Nazareno never forced you to have intercourse with him," [21] her answer was categorical: "Yes, sir." [22] On the occasion of the alleged first time she was subjected to sexual abuse and upon receiving the answer from her that there was penetration, the matter was sought to be clarified further with the query of whether it was due to the fact that she "did not put up any resistance." [23] Again, the reply was: "Yes, sir." [24] A subsequent question was whether she "readily submitted to him." [25] Again, she replied: "Yes, sir." [26] It was a rather severe cross-examination to which she was subjected and unfortunately for her cause she was quite candid. Thus she did admit likewise that she did not move at all in order to avoid penetration. [27] She even went to the extent of replying affirmatively to the question of "whether she enjoyed the whole sexual act." [28] As regard her testimony that there was another rape on the last week of January, 1970, again, the searching cross-examination under which she was subjected elicited such answers as her having really wanted it.

The lower court failed to take into consideration the uncontradicted testimony of the appellant favorable to him. It believed that it was his threat as "a possessor of a .22 caliber revolver Magnum with six live bullets" [29] that enabled him to perpetrate the act without resistance on her part, when according to evidence not refuted under questioning by the trial judge himself, the license for such a firearm was acquired for the first time in 1971. [30]

Moreover, it was the trial judge who, likewise, in the course of his questioning the appellant, ascertained the fact that his wife was a classroom teacher, her school located one kilometer away from the house but returning every noontime to take her lunch, her afternoon class being only from the hours two to three.[31] It was at noontime on both occasions, the first week and the last week of January, 1970, that allegedly complainant was subjected to sexual abuse by appellant.[32]

Lastly, the lower court failed to take into account other attendant circumstances which, if properly appraised, could have reinforced the conclusion that the judgment should be one of acquittal. It suffices to mention one. There are intimations in the record that complainant was far from desirous of having appellant charged with this offense. Her reluctance was duly noted by his counsel, who made the observation that "in the first two hearings conducted by the trial court [complainant] did not appear to testify on her own behalf. In view of her absence during the trial, she was ordered arrested and lodged in the municipal jail; it was only then, after this apparent compulsion, that she hesitantly testified against the accused." [33] Such an assertion finds confirmation in the records of the criminal case sent to us by the lower court. It included an order of arrest worded thus: "[To any officer of the law]: You are hereby commanded to arrest [Rayda Aumada] who is said to be found at [Calinaban, Baganga, Davao Oriental] and who has been charged before me with the offense (her failure to appear during the trial on the aforesaid case) and bring her forthwith before me to be dealt with according to law." [34]

It does clearly appear therefore that the Office of the Solicitor General was left with no choice except to recommend reversal of the appealed decision. It is to the credit of the then Acting Solicitor General Vicente V. Mendoza and his associates that they took pains to set forth in detail the weakness of the case for the prosecution which unfortunately the lower court glossed over, thus ignoring the constitutional presumption of innocence.

1. It is quite apropos therefore that the Manifestation submitted by the then Acting Solicitor General Vicente V. Mendoza to quote this relevant excerpt from the opinion of Justice Barredo in *People v. Maisug*: [35] "By and large, the evidence on record does not engender enough faith that appellant is guilty of the charge. If somehow it is discernible that it is more the inadequacy of details in the state's evidence that makes it difficult for Us to arrive at definite conclusions rather than, perhaps, the actual facts themselves, still We cannot pin responsibility on appellant. That moral conviction that may serve as basis of a finding of guilt in criminal cases is only that which is the logical and inevitable result of the evidence on record, exclusive of any other consideration. Short of this, it is not only the right of the accused to be freed, it is, even more, our constitutional duty to acquit him." [36] Only thus may there be fealty to the constitutional presumption of innocence. A recent restatement of its mandatory character may be found in *People v. Dramayo*: [37] "Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime 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." [38]

2. Two recent cases, as previously noted, where precisely the acquittal in a prosecution for rape was based by this Court on the constitutional presumption of innocence not having been overcome, was referred to in the Manifestation: *People v. Reyes* and *People v. Lopez*. The opening paragraph of the opinion in the former was as follows: "The state policy on the heinous offense of rape is clear and unmistakable. Life is made forfeit under certain circumstances. At first blush, the harshness of the penalty may give cause for concern, considering that by the very nature of its commission, it is both sordid and joyless, the pleasure derived, if any, being minimal. To be thereafter sentenced to a long period of confinement, perhaps for the rest of one's life, even to suffer death may appear excessive. Nonetheless, there is sound reason for such severity. It is an intrusion into the right of privacy, an assault on human dignity. No legal system worthy of the name can afford to ignore the traumatic consequences for unfortunate victim and grievous injury to the peace and good order of

the community. * * * Nonetheless, the seriousness with which the state rightfully views the matter with the corresponding imposition of the punishment that fits the crime calls for extreme care on the part of the judiciary to avoid an injustice done to an accused. For it is equally true that this is an offense to which, as is often the case, only two people can testify, thus requiring the most conscientious effort on the part of the arbiter to weigh and appraise the conflicting testimony. If a reasonable doubt exists, the verdict must be one of acquittal." [39] In *People v. Lopez*, the opinion stressed: "In the light of the credible and competent facts of record, this Court cannot view the matter in the same way the lower court did. The state of moral certainty as to the guilt of the accused was not reached. * * * It bears repeating likewise that in reversing the appealed decision and acquitting the accused, this Court is not insensible to the misfortune that befell the hapless complainant. As it was in the lower court, so here, there is all the sympathy for her. She is more to be pitied than censured." [40] The last sentence is particularly appropriate. The reality, the cold hard fact, was that she was the mother of an unwanted child, in all probability conceived under circumstances where undoubtedly her freedom of will could not have full play. All that the reversal of the judgment signifies then, to stress the matter anew, is that, as far as this particular complaint for rape was concerned, there was failure of proof to satisfy the rigorous standard the law exacts, compelled by the Constitution no less, to justify conviction.

WHEREFORE, the decision of the lower court dated October 22, 1976 is reversed and appellant acquitted of the offense of rape charged, with costs de oficio.

Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

Aquino, J., did not take part.

[1] He was assisted by Assistant Solicitor General Ruben E. Agpalo and Solicitor Deusdedit V. Quijano.

[2] L-22187, March 28, 1969, 27 SCRA 742.

[3] L-36874-76, September 30, 1974, 60 SCRA 126.

[4] L-41974, November 29, 1976, 74 SCRA 205.

[5] Manifestation, 33.

[6] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[7] T.s.n., Session of January 12, 1973, 9, 11.

[8] Ibid, 104.

[9] Ibid, 113.

[10] Ibid, 114.

[11] Ibid, 131.

[12] Session of February 22, 1973, 237-239.

[13] Ibid, 245-246.

[14] Ibid, 247-248.

[15] Appellant's Brief, Appendix A, Decision, 102.

[16] T.s.n., Session of January 12, 1973, 11-12; 33.

- [17] Ibid, 79.
- [18] Ibid, 80-81.
- [19] Ibid, 117-120.
- [20] Manifestation, 15-16.
- [21] T.s.n., Session of January 12, 1973, 137.
- [22] Ibid.
- [23] Ibid, 88.
- [24] Ibid.
- [25] Ibid, 90.
- [26] Ibid.
- [27] Ibid, 90.
- [28] Ibid, 90-91.
- [29] Appellant's Brief, Appendix A, Decision, 107.
- [30] T.s.n., Session of October 5, 1976, 68-69.
- [31] Ibid, 70-73.
- [32] Ibid, Session of January 12, 1973, 63; 98.
- [33] Appellee's Brief, 45.
- [34] Criminal Case Record Wrapper, Order of Arrest, 68.

[35] 27 SCRA 742.

- [36] Ibid, 753.

[37] 42 SCRA 59.

- [38] Ibid, 64.

[39] 60 SCRA 126, 127-128.

- [40] 74 SCRA 205, 211. Cf. *People v. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81; *People v. Barbo*, L-30988, March 29, 1974, 56 SCRA 459; *People v. Castro*, L-33175, Aug. 19, 1974, 58 SCRA 473; *People v. Reyes*, L-36874, Sept. 30, 1974, 60 SCRA 126; *People v. Ilagan*, L-36560, May 28, 1975, 64 SCRA 170; *People v. Ramirez*, L-30635, Jan. 29, 1976, 69 SCRA 144; *People v. Godoy*, L-31177, July 15, 1976, 72 SCRA 69; *People v. Poblador*, L-44129, April 29, 1977, 76 SCRA 634; *People v. Quiazon*, L-44299, Aug. 31, 1977.

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