

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO T. GABILAN, ALIAS “PEPE”;
DEFENDANT-APPELLANT.**

G.R. No. L-45245. July 02, 1982

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

Rape, an offense often traumatic in effect, not only as far as the offended party is concerned, but equally so as to members of her family, is understandably penalized with the severity that it deserves. An accused duly found guilty could, under certain circumstances, be even sentenced to death.[1] It is equally understandable, however, that with such a crime being perpetrated usually in privacy, the version of each of the parties has to be weighed with the utmost care and circumspection lest an innocent man suffer an injustice. It is in case of this character, therefore, that the invocation of the constitutional presumption of innocence[2] calls for an acquittal in the absence of proof of such character as would enable a judge to reach the point of moral certainty. That stage was reached by the lower court judge.[3] There is, however, on the part of this Court, doubt engendered by the long period of time unaccountably left unexplained by the complainant but credibly attributed by the appellant to the time spent together at a movie house. That time was agreeably spent in a theatre, affording them the opportunity to engage in acts of mutual affection, allowing them to do so at will.[4] All the other relevant circumstances weighed, including the medical report,[5] led this Court to conclude that the constitutional presumption of innocence calls for a reversal of the conviction, guilt not having been proved beyond reasonable doubt.

First, as to the facts as related by complainant. At a wedding reception on the morning of August 3, 1975, held in Bonuan, Dagupan City, complainant Gloria Barolo was a cord sponsor.[6] Appellant, suitor of Gloria, was likewise among those present.[7] Afterwards, at about eleven, he invited her to go with him to the house of his aunt, Felicidad Tamondong, at Galvan St., Dagupan City.[8] With the aunt being absent, appellant then asked her to go with him to the house of his second cousin, Felicidad Fernandez.[9] That they did, arriving there at about four-thirty in the afternoon.[10] The cousin, after about thirty minutes, left to go to a store to buy soft drinks, leaving appellant Gloria, and one of the children in her house.[11] Her suspicions were aroused when appellant closed the windows on the pretext that the light was too bright.[12] She started to leave, but appellant pushed her on a chair, causing her to stumble to the floor, and to hurt her legs, whereupon he lifted her and carried her bodily into one of the rooms.[13] She struggled to be free but to no avail; she was then forced to lie down on her back, and, with appellant threatening to kill her, he was able to consummate the sexual act.[14] He then hurriedly left the house.[15] She informed the cousin, Felicidad Fernandez, as well as her family, of such occurrence.[16] Thereafter, she submitted to a medical examination and was issued a medico-legal certificate by Dr. Ellen Aldana of the Pangasinan Provincial Hospital.[17] As therein stated: "[To whom it may concern]: This is to certify that Gloria Barolo, 17 years of age, female, single, Filipino, a resident of Tablibaw, Calasiao, Pangasinan, has been attended to in this hospital on August 3, 1975 at 9:10 P.M. for: LMP - July 20-27, 1975. Menses are regular. Patient is conscious, coherent, ambulatory. No evidence of external physical injury. Breast no evidence of

external physical injury. Abdomen no evidence of external physical injury. IE - fourchet slightly congested; hymen not intact, presence of fresh lacerations at 4, 6, 11 o'clock. Uterus - not enlarged; adnexae - free. Vagina - no bleeding; admits 2 fingers snugly. Vaginal smear for spermatozoa - Negative."[18]

As to the crucial period between 11:00 o'clock in the morning and 5:00 in the afternoon, appellant testified that by pre-arrangement they met at a certain place called Slumberland.[19] From there they proceeded to Imelda's Dry Cleaning where he thought he would meet his aunt Felicing Tamondong Fernandez, for whom he had repaired an artesian well and for which he charged the amount of P220.00.[20] He was not able to collect, as his aunt was not there. When asked by the Court whether they took their lunch thereafter, this was his answer: "We did not take our lunch because we were in a hurry, sir." [21] To the next question as to where they went afterwards, he replied: "We went to the poblacion and we entered a show, sir." [22] The lower court Judge did not leave it at that and inquired as to why they did not have any lunch. The explanation offered was that inside the moviehouse they had "peanuts and bread" as a substitute for lunch.[23] He recalled, without being sure that it could have been Vida Theatre they entered, that there was a double program, and that it was on a Sunday.[24] They were there in the theatre until 4:00 o'clock in the afternoon.[25] When asked directly by the lower court Judge what they did inside the moviehouse aside from watching the show from noontime to 4:00 o'clock, he answered: "We were caressing, we were not watching the movie, sir." [26] The Judge asked exactly what "caressing" implied. He responded: "We were kissing, sir." [27] Nor did the Judge stop there, asking whether the kissing was on the lips or on the cheeks. He left no doubt as to what they did: "Lips to lips, sir." [28] Pursuing the same line of questioning, the lower court Judge wanted to ascertain whether they were engaged in such activity continuously from 12:00 noon to 4:00 o'clock in the afternoon. He admitted: "Yes, sir, and we embraced each other." [29] He had occasion to repeat that they "were kissing on the lips and we embraced each other, sir?" [30] He added a realistic note when the Judge called his attention to the fact that with the activity they were engaged in, perhaps they did not notice at all what was being shown on the screen: "We did not view the film, sir." [31] The Judge pursued the matter further and asked where in the theatre they stayed, and received this reply: "Up, sir in the balcony. At the highest portion." [32] When his counsel asked as to how the complainant comported herself, he answered: "She responded to my caresses and she kissed me on my lips, sir." [33]

Appellant and complainant were in agreement as to their going to the house of Felicidad Fernandez at about 4:00 o'clock in the afternoon, the latter being introduced as his wife as there was a plan to elope.[34] They differed as to how long they conversed with Fernandez, appellant's version being that soon, after they reached the house, Felicidad Fernandez said she would get something for their merienda.[35] Again, they were agreed that thereafter no one was inside the house except themselves and a child of Fernandez.[36] He testified that at the outset, he had no thought of engaging in sexual intercourse,[37] but with the complainant laying her head on his breast and allowing herself to be kissed on the lips and him embracing her, he had a change of mind.[38] Then they both laid down on the floor; they were able to consummate the sexual act,[39] the event not taking more than five minutes.[40] He denied, in answer to a question from the lower court Judge, that force was used on her to compel her to submit to him, stating specifically that "he did not force her, but she volunteered, voluntarily gave in." [41] He also denied the truth of her testimony that during the sexual intercourse, "she kicked and kicked" him.[42] Asked as to whether there was a threat to kill her in case she would resist his advances, he replied: "That is not true, sir. She is my, sweetheart." [43] He admitted there were no love letters to show to the Court that she accepted "his love." [44] He asserted, however, that one Ikong Reyes knew about her being his sweetheart as he introduced her to him as such when they were together and that question was asked.[45] Moreover, according to him, complainant likewise answered Reyes in the affirmative.[46] He had a picture of complainant which was presented in Court, his counsel calling attention to the dedication which reads: "For you Pepe, this photo is ugly but willingly given. It's me, Merle Barolo." [47] It was in her handwriting, he being a witness when she wrote

those words.[48] It was given to him voluntarily on June 30, 1975.[49] Before the incident on August 3, 1975, the last time he visited her at her house was on July 30, 1975, on which occasion her father arrived and found them "kissing lips to lips," whereupon the father boxed him.[50] Appellant likewise had on the witness stand Felicidad Fernandez, whose testimony as to the time the couple arrived and their behavior towards each other after she came back corroborated his version,[51] there being an affirmation that there was no complaint as to her being raped.[52] Moreover, this witness provided a reasonable explanation as to why complainant made this serious accusation. Apparently, she was distressed at appellant failing to come back for sometime, his leaving her temporarily being due to his effort to raise the money for their marriage.[53] He was not able to do so as early as he had hoped, and when he returned at 8:00 in the evening, complainant had left the house of Fernandez, one hour earlier at 7:00, under the impression that appellant would not comply with his vow to marry her.[54]

As mentioned at the outset, the constitutional presumption of innocence is fully applicable, the guilt of appellant not having been proved beyond reasonable doubt. The appealed decision must be reversed and appellant acquitted.

1. We start, as pointed out in *People v. Dramayo*,^[55] with "the presumption of innocence."^[56] The opinion continues: "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 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.'"^[57] Such a doctrine traces its lineage, as stated in the above opinion, to the 1903 decision of *United States v. Reyes*;^[58] Reference was likewise made in *Dramayo* to the holding of this Court in *United States v. Lasada*:^[59] "'By reasonable doubt is not meant that which of possibility may arise, but it is that doubt engendered by an investigation of the whole proof of an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense.'"^[60] There is likewise from the same opinion a citation coming from the pen of Justice Tuason in *People v. Esquivel*:^[61] "'In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the Court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may no suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state.'"^[62]

2. The judgment for conviction cannot stand. The presumption of innocence calls for a reversal. There was an admission on the part of complainant that for about six hours they were together. They had every reason to be. He was a successful suitor. Her father had seen them at her residence, "kissing lips to lips," and was so indignant that he even laid hands on him. Nor is it far-fetched to believe, as maintained by appellant, that they had plans to elope. Even according to her story, from the hours between eleven and five, she willingly went with him to the places where his relatives resided. His version, easily more believable, was that they spent their time together in

the movies, continually engaged in amorous acts. Her emotional state then was such that she was ripe for any suggestion leading to the consummation of the sexual act. Such opportunity came to pass when they were left alone, except for a two-year old child, in the privacy of the residence of his cousin, Felicidad Fernandez. His testimony as to how they availed themselves of such opportunity could have contained an element of exaggeration. What cannot be denied is that with their passions inflamed, what happened could not be entirely unexpected. There was absolutely no need for force to be employed. Nor did the medical certificate, Exhibit A, substantiate her testimony. Rather the contrary.[63] A cursory reading thereof suffices to show that what transpired was not the result of coercion. There were no signs of the act having been performed against her will. It is equally noteworthy that another witness, Felicidad Fernandez, came to testify on behalf of appellant. It is true she is a relative, but what she did state had all the earmarks of truth. Complainant did not even have her father called to the witness stand to deny that appellant courted her and that they were caught kissing each other at her residence. As earlier indicated, the explanation for this serious accusation of rape could have been the result of her mistaken belief, arising from his delay in returning to the Fernandez residence, that he would not go through with the marriage. It is understandable, therefore, in view of her emotional states of a woman scorned after she had allowed him to have his way and by way of covering the shame and embarrassment she must have felt because of her engaging in pre-marital sex that she would put a different aspect on the matter by informing her parents that force was employed and for them to convince her to file the corresponding charges with the authorities. Certainly, that could have mitigated to a great extent conduct, which under our traditional mores, was deserving of parental condemnation. What appears in *People v. Mendiguarin*,[64] the ponente being Justice Aquino, comes to mind: "The circumstances that Virginia admitted that she and Genaro embraced and kissed each other in a hotel room long before the alleged rape, that she did not tenaciously resist the alleged ravishment, that there were no external injuries on her body to show that actual physical violence was used against her, that she did not shout, that she did not run or escape, that she continued to have sexual intercourse with Genaro in the house where his wife was staying and that she did not want to leave that house when her father fetched her, point to the conclusion that their sexual intercourse was inducted by the chemistry and electricity of mutual attraction and desire." [65] The evidence in appellant's favor did not go that far, but it went far enough to give rise to a reasonable, not a fanciful, doubt of his guilt. The constitutional presumption of innocence, to repeat, calls for a reversal of the judgment.

WHEREFORE, the judgment of conviction is reversed and appellant is hereby acquitted. His immediate release is ordered unless there is a valid and just cause for his continuing to be deprived of his liberty other than this prosecution and thereafter conviction for rape.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Barredo, J., took no part.

[1] Under Article 335 of the Revised Penal Code, death is the imposable penalty whenever "the crime of rape is committed with the use of a deadly weapon or by two or more persons" or "by reason or on the occasion of the rape, the victim has become insane" or "a homicide is committed by reason or on the occasion thereof," or even if the conviction be for attempted or frustrated rape.

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

[3] District Judge Willelmo C. Fortun of the Court of First Instance of Pangasinan, Branch II.

[4] T.s.n., Session of September 7, 1976, 39-40.

[5] Exhibit A.

[6] T.s.n., Session of June 22, 1976, 38-40.

[7] Ibid, 38.

[8] Ibid, 41. It turned out that this Felicidad Tamondong was the same Felicidad Fernandez, Tamondong being her maiden name.

[9] Ibid, 44-45.

[10] Ibid, 51.

[11] Ibid, 53-54.

[12] Ibid, 58-59.

[13] Ibid, 60-61.

[14] Ibid, 60-63.

[15] Ibid, 64.

[16] Ibid, Session of June 28, 1976, 3-7.

[17] Ibid, Session of February 17, 1976, 5-8, and Exhibit A.

[18] Exhibit A.

[19] T.s.n., Session of September 7, 1976, 17.

[20] Ibid, 33-34.

[21] Ibid, 39.

[22] Ibid.

[23] Ibid.

[24] Ibid, 40. The lower court Judge made the observation that August 3, 1975 was a Tuesday and not a Sunday, and concluded that the witness was telling a lie. Upon his attention being called by the defense counsel that August 3, 1975 fell on a Sunday, the Judge stated the following: "Let the records show that August 3, 1975 was a Sunday, a leap year as testified to by the accused was a Sunday." (sic) T.s.n., Session of September 9, 1976, 3.

[25] Ibid.

[26] Ibid, 41.

[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] Ibid, 42.

[31] Ibid.

[32] Ibid.

- [33] Ibid, 43.
- [34] T.s.n., Session of September 9, 1976, 4-8.
- [35] Ibid, 9.
- [36] Ibid, 11.
- [37] Ibid, 8.
- [38] Ibid, 12-15.
- [39] Ibid, 15-16.
- [40] Ibid, 19.
- [41] Ibid, 20-21.
- [42] Ibid, 21.
- [43] Ibid.
- [44] Ibid.
- [45] Ibid, 22-23.
- [46] Ibid, 23.
- [47] Ibid, 25.
- [48] Ibid, 26. "Merle" was the nickname given by appellant to complainant.
- [49] Ibid, 27.
- [50] T.s.n., Session of September 7, 1975, 25.
- [51] T.s.n., Session of September 29, 1976, 31, 36, 40, 43, 44.
- [52] Ibid, 42.
- [53] Ibid, 47.
- [54] Ibid, 41-49.
- [55] L-21325, October 29, 1971, 42 SCRA 59.
- [56] Ibid, 63.
- [57] Ibid, 64.
- [58] Ibid. Reyes is reported in 3 Phil. 3 (1903).
- [59] Ibid. Lasada is reported in 18 Phil. 90 (1910).
- [60] Ibid.
- [61] Ibid, 64-65. Esquivel is reported in 92 Phil. 453 (1948).
- [62] Ibid, 65. It was noted in *People v. Montero*, L-33155, April 22, 1977, 76 SCRA 437, *Dramayo* was cited with approval in eleven cases, starting from *People v. Palacpac*, L-27822, February 28, 1973, 49 SCRA 440 to *People*

v. Berame, L-27606, July 30, 1976, 72 SCRA 184. Subsequently, Dramayo was again relied upon in *People v. Quiazon*, L-44299, August 31, 1977, 78 SCRA 513.

[63] Cf. *People v. Relacion*, L-46521, January 22, 1980, 95 SCRA 369. The judgment was one of acquittal. So it was in *People v. Arciaga*, L-38179, June 16, 1980, 98 SCRA 1.

[64] L-49616, August 20, 1979, 92 SCRA 679.

[65] *Ibid*, 683. In the following cases, the accused was acquitted of rape before Mendiguarin precisely because of the absence of proof to overcome the constitutional presumption of innocence: *People v. Paragsa*, L-44060, July 20, 1978, 84 SCRA 105; *People v. Cueto*, L-44697, August 25, 1978, 84 SCRA 774; *People v. Lacuna*, L-38463, December 29, 1978, 87 SCRA 364; *Lopez v. People*, L-47469, December 29, 1978, 87 SCRA 462.

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