

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUSTAQUIO MODELO, ALIAS “TAKIO”;
DEFENDANT-APPELLANT.**

G.R. No. L-29144. October 30, 1970

Ponente: DIZON, J.

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DIZON, J.:

In the Court of First Instance of Zambales appellant Eustaquio Modelo was charged with having raped, on April 10, 1967, Tarcela Morados, a minor a little over 13 years of age, daughter, by a former marriage, of his common-law wife, Josefa Malay. After trial upon a plea of not guilty he was convicted as charged and sentenced to suffer the penalty of Reclusion Perpetua, with the accessory penalties of the law, to indemnify the offended party in the amount of P5,000.00, to acknowledge and support her offspring, and to pay the costs. Not satisfied with the decision Modelo appealed to this court claiming that the trial court erred firstly, "in not finding that the presumption of innocence had not been overcome by the uncorroborated and self-contradictory testimony of the complaining witness; "secondly, "in not finding from the testimony of the complaining witness that the latter offered no resistance to the alleged intercourse," and lastly, "in ignoring and in giving no weight whatsoever to the uncontradicted exculpatory evidence for the defense."

Former Justice Roman Ozaeta, appellant's attorney de oficio, has submitted a forceful and vigorous brief in his behalf, contending, on the basis of the careful and detailed summation of the evidence presented by both parties made therein, that appellant should be acquitted.

We shall first take up appellant's contention that complainant's testimony is insufficient to overcome the presumption of innocence in his favor.

Lauro Morados and Josefa Malay were husband and wife. Upon Laura's death several years prior to the commission of the crime subject of prosecution, he was survived by Josefa and five minor children, one of whom was Tarcela, born on September 19, 1953. Sometime after the death of Lauro, Josefa became the common-law wife of appellant, also a widower with two sons named Florendo and Orlando, at the time 13 and 12 years old, respectively. They all lived in a house located in barrio San Fernando, Sta. Cruz, Zambales.

According to the testimony of the offended party, at about six o'clock in the morning of April 10, 1967 she was boiling coffee and cooking rice in the kitchen of their house. Her mother had already left the house to look for someone who would hire her to plant rice; her two half sisters, Virginia and Carmen, were sent by appellant to buy bread, while her half brother Orlando was still fast asleep. While thus alone doing her chores, appellant came and suddenly held her by the shoulders. Thereupon she screamed, but this notwithstanding appellant forcibly laid her down, and in spite "of the struggle" she put up, he was able to remove her panty, then parted her legs and inserted his penis into her vagina. After satisfying his lust, appellant warned her not to tell her mother anything about the incident for otherwise he would kill her. Because she was afraid of him she answered: "Yes, Father." Then in the afternoon of the same day while Tarcela was rocking to sleep her 1-1/2 year old half sister Dominga,

appellant approached her and again forced her to lie down, and once more succeeded in having sexual intercourse with her. In the month of June of the same year - the exact date of which she could not remember - appellant again succeeded in abusing her for the third time.

Appellant bolsters his contention by claiming that the testimony of the offended party is not only uncorroborated but also suffers from serious and substantial inconsistencies.

It is conceded that the offended party refrained from telling her mother about what appellant had done to her until about the end of July 1967 when her mother noticed her pregnancy; that it was only after her mother had repeatedly asked her who had caused her pregnancy that she revealed that it was the herein appellant. This, however, was due to the fact that appellant had threatened her with death if she told her mother about what had been done to her. Considering her tender age at the time and the obvious moral influence that appellant exercised over her, this could be easily believed. As a matter of fact, her own mother, Josefa Malay, must have been afraid of her common-law husband, because instead of confronting him and telling him about Tarcela's revelation, she decided to file, as in fact she filed on August 18, 1967, the corresponding complaint for rape against him with the Municipal Court of Sta. Cruz, Zambales. On the same day, Dr. Salvador V. Fuñe, municipal health officer, subjected Tarcela to a physical examination and later set forth his findings in a medical certificate as follows:

"Abdominal palpation:

The fundus uteri is one finger below the umbilicus, compatible with 5-6 months pregnancy. Small fetal parts are palpable on the left flanks. A small rounded mass is appreciable on the hypogastrium. On auscultation, fetal heart beats were heard on the right lower abdomen. Uterine souffle were also heard on both right iliac regions.

"Internal examination:

The vagina readily admits two fingers. The hymen is no longer appreciable. The cervix uteri is closed, hard and non-painful. "These findings are compatible with 5-6 months pregnancy."

For his part, appellant denied having committed the crime imputed to him claiming that on April 10, 1967, Tarcela was not living in his house but in that of Maxima Marcillana located in barrio San Fernando, Sta. Cruz, whom she had been serving as a maid since March 19, 1967, and remained there until the month of May of the same year. He further testified that on April 10, 1967, he left his house at 4:30 a.m. together with his barrio-mate, Jose Merin, with whom he walked to barrio Tubotubo, of the same municipality, located approximately three kilometers far from his house, to work on the construction of the house of one Leopoldo Montalla which had begun in March of that year; that they arrived in barrio Tubotubo at about six o'clock in the morning and, after resting for a while, started working until they stopped at five o'clock that afternoon, after which he and Merin walked back home.

As stated heretofore, appellant claims that the testimony of the offended party not only stands uncorroborated but is plagued with inconsistencies. After examining the record, we are left with the conviction that the alleged inconsistencies or contradictions in the testimony of the offended party do not materially impair her credibility, bearing as they do on mere details. In other words, we are of the opinion that the inconsistencies pointed out in appellant's brief are not sufficient to render unbelievable the offended party's clear and positive testimony to the effect that appellant, the common-law husband of her mother, early in the morning of April 10, 1967, held her by the shoulders, then forced her to lie down, parted her legs, took off her panty and proceeded to rape her.

That the offended party's testimony is uncorroborated is of little moment. The crime of rape is, as a rule, committed without anybody else being present with the exception of the rapist and the victim. To say that because no witness corroborated the testimony of the latter, the same should be deemed insufficient to prove the

crime would make it impossible to convict any person charged with such offense.

Moreover, it is clear from the evidence that Josefa Malay, mother of the offended party and appellant's common-law wife, loved him enough to live with him as wife even without the benefit of marriage, and to bear him three daughters; that she, her children with appellant and her own children with her deceased husband, depended upon him for their support. She would not have consented that he be brought to court charged with the serious offense of rape if she was not convinced of his guilt. Appellant, of course, claimed that Josefa did so because he had a quarrel with her about a small amount of money he had entrusted to her care and which she spent, without his knowledge and consent. This is too flimsy to convince anyone.

Appellant makes a final attempt to assail the credibility of the offended party by trying to prove that on April 10, 1967 she was not living in his house but in that of Maxima Marcillana whom she had been serving as maid (house help). We firmly believe, however, that his testimony to this effect, corroborated by that of Rafael Ecaldre, cannot prevail over that of the offended party and that of Maxima Marcillana, the relevant portions of whose testimony we reproduce here:

"Q Do you know the accused Eustaquio Modelo in this case?

A Yes, sir.

Q If he is in the courtroom, point to him?

A (Witness pointing to the accused.)

Q How about the complaining witness Tarcela Morados, do you know her?

A Yes, sir. x x x."

"FISCAL

Q Where is the residence of this Tarcela Morados, do you know?

A Yes, sir.

Q How far is the residence of Tarcela Morados from your house at San Fernando, Sta. Cruz, Zambales?

A Around one-half kilometer, sir. x x x."

"FISCAL

Q Now, Eustaquio Modelo testified that since March up to May, 1967, Tarcela Morados was your house-maid and was staying and sleeping at your house during that period, what can you say to that?

A That is not true, sir.

Q What is the truth? Has Tarcela Morados ever been your maid at any time?

A I never took her as my maid. x x x."

"CROSS-EXAMINATION:

Q Now, is it not a fact that the complaining witness Tarcela Morados used to come to your house?

A No, sir.

Q She has never been - she has never gone to your house, not even once?

A No, sir.

Q You have never employed a maid during all the time that you have a child?

A No, sir.

Q You are related to Tarcela Morados, is it not?

A No, sir.

Q But she is very close, her mother and Tarcela Morados are very close to you?

A Yes, sir.

Q Because you are a friend of her mother?

A Yes, sir.

Q And what is the name of her mother?

A Maria Miel.

Q The mother of Tarcela Morados?

A Josefa Malay.

Q And she requested you to testify in this case, Josefa Malay?

A Yes, sir.

Q And because she is your close friend, you agreed to testify?

A I am stating here in court that Tarcela never stayed in my house and that is the truth.

Q You have not answered my question, Mrs. Witness. My question is, because you are a close friend of Josefa Malay, you agreed to testify in this case?

A Yes, sir.

Q And she requested you to testify that Tarcela Morados has never been your maid?

A She did not tell me that. x x x."

Upon the other hand, we find it hard to believe that appellant left his house on April 10, 1967 at 4:30 a.m. and started working in the house of Montalla at 6:00. This is simply not done. Carpenters engaged in house building do not start working that early. Their usual starting hour is 8:00 a.m. Bearing this in mind it appears clear that appellant, after committing the rape around 6:00 a.m. was able to go to the job site thereafter and started working thereat at 8:00 a.m. His alibi, therefore, is far from being convincing.

Lastly, we have the circumstance that His Honor, the trial judge who had the peculiar advantage of having heard the testimony of the offended party chose to believe and accept it as true and as sufficient for purposes of conviction. Our attention has not been called to any recorded fact or circumstance of sufficient importance to justify our reversing the following findings and conclusions of His Honor:

"Tarcela Morados was orphaned of her father at an early age. Born on September 19, 1953, she was only seven years old when her mother be-came the common-law wife of the accused. Although she was pregnant when she testified on November 22, 1967, she appeared to the Court to be a fair skinned, pretty and pertly formed girl of fourteen years. Her harrowing experience made her tearful at times in the course of her long testimony but throughout she maintained her child-like innocence in answering questions propounded to her both on direct and on cross-examination. The Court noted that a shadow of anxiety often crept to her face whenever the

accused gave her dagger looks. Yet she did not waver or fumble in her detailed accusation. And in that battle of glances between her and Modelo, the latter invariably lowered his eyes. Significantly, that fierce look of the accused melted into one of enervation after Tarcela and her mother were through in their respective declarations. Thenceforth, the countenance of the accused became a picture of cautious dejection. When he testified, it was in a languid voice and he appeared to be unsure of what he was to say. These observations of the Court led it to conclude: First, that the accused dominated by terror not only the life of Tarcela but also that of her mother, because Josefa Malay likewise displayed in Court that same reaction of fear for the accused as she testified. Indeed, the evidence, shows that Josefa Malay, after being informed by Tarcela that the accused was responsible for her pregnancy, could not even confront Modelo because she was worried he might kill her and her daughter. If the accused could strike fear in the heart of Josefa Malay, he could easily subdue with terror a young girl like Tarcela Morados. This explains the inexorable fact that although Tarcela fought for her honor everytime the accused de-flowered her, she kept to herself her disgrace until her pregnancy gave her away. Second, as between the testimony of Tarcela Morados and Eustaquio Modelo, that of the former is more unfeigned, straight-forward, frank and sincere; while that of the latter is deceptive, evasive, hallow and deep in half-truths. It is not beyond the realm of reality that the accused would rape Tarcela Morados. His moral fiber is strained as shown by the fact that he took Tarcela's mother as his bedmate without bothering to marry her although both were without impediment. He had mother and daughter completely under subjection. Josefa Malay could not and would not dare extricate herself from that sinful union because of her three little children with him. Tarcela could not also leave the house of the accused, even had she wanted to, because she had nowhere to go. The central figure in the lives of Josefa Malay and her three little children, and of Tarcela, inevitably was the accused, being the sole provider. In this irreversible circumstance, it is inconceivable if Tarcela would trump up charges against Modelo or her mother would permit it, unless the same were true. Modelo was the barrier against hunger and want for this family. And because of this fact, he had a towering moral influence over them. Tarcela Morados was not related to him, but he saw her bloom into a desirable girl to whom he could empty himself. With his dominance over the girl and the mother, as could be gleaned from their respective testimonies that they feared him, it was easy and safe for the accused to rape Tarcela as it was difficult for the girl to frustrate him. That opportunity came to Modelo that early morning of April 10, 1967 when he found himself almost alone with Tarcela, for his son, Orlando was fast asleep in the room and baby Dominga was of no consequence. Even if Orlando would wake up while the accused was doing the revolting act, he would not report on his own father. So Modelo raped Tarcela in the manner testified to by the girl in open court (pp. 9, 10, 11, Decision)."

Appellant's other contention that the offended party offered no resistance when appellant had sexual intercourse with her is without merit.

It is argued that the testimony of the offended party does not show that there was intimidation before or during the intercourse, and that her admission that while appellant was on top of her, her hands were on her sides show that she had offered no resistance to the commission of the act.

We disagree. In the first place, it is clear from the testimony of the offended party that appellant, a full grown man of more than 40 years of age, employed force upon her. She held her by the shoulders; then forced her to lie down, and then took off her panty. In the second place, we don't know what kind of "resistance" was expected to be offered by a young innocent 13-year old girl against the common-law husband of her mother, of whom she must have been so much awed that when he told her not to tell her mother about what he had done to her, she meekly answered: "Yes, father."

The fact, however, is that she really and actually "struggled" and offered resistance, as shown by the following pertinent portions of her testimony:

"FISCAL

q On April 10, 1967 at about six o'clock in the morning, do you remember where you were?

a Yes, sir.

q Where were you?

a I was in the barrio of San Fernando, Sta. Cruz, Zambales, sir.

q Where in that barrio?

a I was in the kitchen, sir.

q Kitchen of your house?

a Yes, sir.

q What were you doing then?

a I was boiling coffee, sir.

q And while boiling coffee, who was with you?

a Eustaquio Modelo, sir, my step-father.

q How about your half-sisters and brother that you mentioned? Where were they at the time?

a They sent them to buy bread, sir.

q Who sent them?

a Eustaquio Modelo, sir.

q What about your mother Josefa Malay? Where was she at the time?

a She went to look for somebody to hire her plant palay.

q And as you were boiling coffee, were you carrying anybody with you?

MONTA

Objection, your Honor, leading.

COURT

Reform.

FISCAL

q Aside from boiling coffee, what were you doing at the time?

a I was cooking rice, sir.

q Now, while you were boiling coffee and cooking rice, do you know of anything that happened to you?

a There was, sir.

q What was it?

a While I was boiling coffee and cooking rice, Eustaquio Modelo, held my by my shoulders.

q What did you do when Eustaquio Modelo, the accused, held you by the shoulders?

a I tried to extract myself from his hold.

MONTA

We object... We disagree with the interpretation because by the word "im-magsaw", it means "I shouted".

INTERPRETER

I stand corrected. "I shouted."

COURT

So, how is the record now?

STENOGRAPHER:

What did you do when Eustaquio Modelo, the accused, held you by the shoulders?

a I shouted".

COURT

Proceed.

FISCAL

q What was your shout?

a That he held me.

q No, my question is, what was your shout?

a That Eustaquio Modelo was holding me.

q After you have shouted, what happened?

a He laid me down, opened my legs apart, placed his penis inside my vagina after removing my panty.

q What did you do when Eustaquio Modelo laid you down?

a I was struggling, sir.

q And after Modelo had placed his private part on your vagina, what happened?

a I felt pains, sir.

q On what part of your body did you feel the pains?

a On my vagina.

q What did you do when you felt pains in your vagina?

a I was struggling, sir.

q Why were you struggling?

a Because it is painful, sir.

q After that, what happened?

a He told me that if I will tell my mother about it, he will kill me.

q And what did you tell Eustaquio Modelo when he made that threatening remarks?

a I said, "Yes, Father".

q Why did you say "Yes, Father" when he made that threaten-ing remarks?

a Because if he will come to know that I had told my mother about the incident he will kill me.

q Thereafter, do you recall any other occasion when Eustaquio Modelo again abused you?

a Yes, sir.

q When was that?

a That was in the afternoon of April 10, sir.

COURT

q What year?

a 1967, sir.

FISCAL

q How was he able to abuse you on that afternoon again?

a Eustaquio Modelo held me again.

q On what part of the house did he hold you?

a Near the craddle in the kitchen, sir.

q Why, what were you doing at this time when you were near the craddle in that afternoon?

a None, sir.

q And when Eustaquio Modelo was holding you again that afternoon, what did you do?

a I fought back, sir.

q Were you able to fight back?

a No, sir, because he is stronger than I am.

q What happened when you were not able to fight back that afternoon?

a He placed his penis in my vagina, sir.

q And after having placed his private part in your vagina, what did you do, if you did anything?

a I did not do anything, sir.

q I mean he, what did he do after that?

a He got a piece of cloth, and wiped my vagina. x x x."

WHEREFORE, finding no reversible error in the appealed decision, the same is hereby affirmed, with costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., and Villamor, J., took no part.

Makasiar, J., on leave.

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