

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFREDO GABIANA Y DIAZ, ACCUSED-APPELLANT.***G.R. No. L-39716. September 30, 1982*

Ponente: FERNANDO, C.J.

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It is easily understandable why appellant Alfredo Gabiana relies on the constitutional presumption of innocence<sup>[1]</sup> in seeking the reversal of the judgment of conviction for rape. In a rather comprehensive brief filed by counsel de oficio Gonzalo Gonzalez, it was stressed that the guilt of appellant was not proved beyond reasonable doubt, complainant failing to disclose immediately that she was raped to two prosecution witnesses, and even more damaging to her case, identifying appellant only on May 7, even though her husband had returned on May 5, nine days after the alleged sexual assault. From a careful evaluation of the evidence of record, it does appear, as hereinafter will be shown, that reliance on the constitutional presumption of innocence is not misplaced. Reversal is warranted.

The decision now on appeal, after setting forth the information for the crime of rape filed against appellant, went on to state: "To prove her accusation, the complainant Carmelita Pante testified that at about 8:00 o'clock in the evening of April 29, 1973, she was in her house at Barrio Ulag, Prieto-Diaz, Sorsogon. She was practically alone that night because her husband Eduardo Bobiles had left for Manila on April 21, 1973 to take care of a sick brother-in-law in the Philippine General Hospital, and her three small children had already fallen asleep. Busy with stringing kaligay shells in the sala as she seated herself on a chair in front of a sewing machine where there was a lighted kerosene lamp, she heard footsteps to show a person right behind her. As she turned to find out who it was, the man muffled her mouth and held her hands at her back, telling her at the same time not to shout, otherwise he would kill her. The man dragged her towards the kitchen about ten meters away. Carmelita tried her best to resist, finally extricating herself from the man's hold when they reached the kitchen. She was able to escape, however, because at this juncture she was struck with something hard on her left temple, as a result of which she lost consciousness. When she came to, she found her dress raised to the level of her waist and her [panties] already gone. She was then lying on her back and felt something wet on her buttocks. She slowly sat up and realized only then that she was abused by a man because she also felt wet and sticky in her sexual organ and discovered the whitish substance that was ejaculated by the man during sexual intercourse. Feeling intense pain on her legs, she crawled through the kitchen door towards the waiting shed in the barrio of Ulag, stopping along the way to rest for a while as she was feeling dizzy. She saw a lighted house and continued crawling towards it. This turned out to be the house of barrio councilman Silvestre Domdom, situated about seventy meters from her own. There she requested for Silvestre's help 'because a bad person entered (her) house.' Before leaving for complainant's house, Domdom and his wife attended to the bleeding wound on her left forehead. Silvestre then complied with the request and when he came back he brought along Carmelita's three children, her half-slip, her panties (Exhibit 'D') and a piece of stone (Exhibit 'C'), the last three objects having been found by Silvestre in different parts of the kitchen of Carmelita's house. The offended party and her children passed the night in the Domdom house as well as her own brothers who learned of what befell her and went to see Carmelita at

Domdom's house that night; the complainant refused to reveal the identity of the man who assaulted her, insisting on doing so only after her husband's arrival, fearing that a premature disclosure might prompt her husband and her brother to take the law in their own hands."<sup>[2]</sup>

The conviction of appellant would be justified if the facts as found by the trial court were to be considered as sufficiently persuasive. Certainly, this Court is not precluded, however, from carefully scrutinizing the evidence to ascertain whether a fact or circumstance has been overlooked or its significance misinterpreted by the lower court judge. That is the essence of appellate review. Otherwise the presumption of innocence might go for naught. The searching analysis to which the evidence of the prosecution was subjected in the able brief of counsel de officio Gonzalo Gonzalez leads to no other conclusion except that guilt has not been shown beyond reasonable doubt.

The conviction cannot stand.

1. The fundamental right to the presumption of innocence calls for the utmost respect. So it has been the consistent ruling of this Court. It follows, to paraphrase *People v. Dramayo*,<sup>[3]</sup> that accusation may not be equated with guilt. The prosecution must successfully discharge the burden of proof that the offense had been committed and the person responsible for that commission is the accused. The standard has always been proof beyond reasonable doubt. That goes back to the 1903 decision of *United States v. Reyes*.<sup>[4]</sup> While absolute certainty is not demanded by law for the conviction to be sustained, "moral certainty," in the language of *United States v. Lasada*,<sup>[5]</sup> "is required, and this certainty is required as to every proposition of proof requisite to constitute the offense."<sup>[6]</sup>

2. As pointed out in the brief for appellant, complainant did not offer as part of her testimony the fact of sexual intercourse. She might have been unable to do so because she was rendered unconscious, according to her, after the assailant struck her on the head.<sup>[7]</sup> She testified though that she felt something wet on the place where she sat down.<sup>[8]</sup> The lower court made a finding that she "felt wet and sticky in her sexual organ."<sup>[9]</sup> Her testimony, to be more accurate, was to the effect that upon regaining consciousness and noticing that her dress was raised up to the level of her abdomen and her panties already gone, she concluded that "[she] was abused by a man."<sup>[10]</sup> She added that because as "a married woman," she knows "that thing which comes from a man."<sup>[11]</sup> But she also pointed out that upon regaining consciousness, her position being "lying flat on [her] back," she felt "it was already wet where [she] sat down."<sup>[12]</sup> All that the medical certificate attested to was the presence of a lacerated wound on the left forehead, no doubt caused by the blow, but that her private parts did not show any signs of any lacerations, although found positive for spermatozoa. The evidence, therefore, of rape having been committed is at the most circumstantial, and, at that, not of the most persuasive character. It does not rule out a contrary hypothesis.

3. In prosecutions for rape, the chances are that only two parties can testify as to the occurrence. The testimony of each, in all likelihood being diametrically opposite as to what really happened, has to be subjected to the most rigid scrutiny. In this case, with complainant admittedly having been inflicted a severe blow on her forehead, rendering her unconscious, there could be no direct testimony as to the alleged sexual abuse. Necessarily the evidence had to be circumstantial. As indicated in the preceding para-graph one could hardly be dogmatic as to the fact of sexual intercourse having taken place. Even if it were so, there are at least two other circumstances which, if carefully appraised, lead to the conclusion that the guilt of the accused has not been proved beyond reasonable doubt. The first was the absence of any positive statement that she was raped right after the alleged incident when her state of natural indignation would have prompted her to do so. The second, even more telling, circumstance was that while the alleged incident took place on April 29, 1973, she failed to identify appellant as the rapist until May 7, fully nine days after the event.

4. According to her direct testimony, she was able to crawl to the house of a neighbor, Silvestre Domdom. Parenthetically, it may be observed that there was nothing in the medical certificate<sup>[13]</sup> that would indicate that she suffered injuries in her legs. She testified that upon reaching the house, she asked Domdom to help

her.[14] When asked by her counsel what she told him, this was her answer: "I asked him to help me because a bad person entered my house." [15] She had the opportunity then to say that she was raped, but she did not. In Domdom's testimony for the prosecution, he stated that he and his wife helped complainant by bringing her inside their house and that her hair was disheveled with her dress crumpled and with a wound on her forehead.[16] The next query was if he asked what happened to her.[17] Answering that something did, the next question was what did she say.[18] Her answer was that he should help her because her head was hit.[19] Just before Domdom was excused from the witness stand, a few questions on redirect being asked by the fiscal, the Court asked this question: "So all that she told you when you inquired her was that somebody struck her and that she did not know the person who did it?" [20] This was the answer: "Because she said she will reveal that when her husband arrives." [21] The Court then repeated the same question: "So, all that Carmelita told you was that somebody struck her on the forehead but that she would not reveal the name of that person until her husband arrives?" [22] He replied categorically: "Yes, sir." [23] It undoubted, therefore, that until the filing of the complaint, there was no direct testimony as to rape having been perpetrated.

5. Now as to the delay in identifying appellant as the party responsible for the alleged rape. To repeat, Silvestre Domdom, the person to whom she turned for help after the incident, was not told that she was raped. Nor was he told who inflicted the blow on her.[24] Neither did she inform her brother as well as her sister-in-law as to who such person was. The question was asked her directly: "Now, did your brother ask you who that man was who did to you that thing?" [25] She answered: "Yes, he asked me." [26] Then came this leading question: "So you did not tell your brother the name of the man who entered your house?" [27] Her response: "I did not tell him because he was also aggrieved." [28] When reminded of her direct testimony that she told Domdom "that a man entered" and "did some evil thing" to her, "you did not tell him the name of the man who did it?" [29] She answered "I did not tell him yet." [30] Moreover, as she testified on direct testimony, her husband was notified only on "the second day after the incident." [31] Her husband arrived on May 5.[32] He was told about the occurrence but did not specify the date. It took her two days, as shown in her answer on a question on cross-examination, before she named appellant.[33] She admitted that she could not count how many times she was asked to identify the person who raped her. But still she did not reveal who he was.[34] This was her reason: "He had been asking me who the person was who abused me but I preferred not to tell him but to do it in front of a person in authority." [35] It is to be pointed out likewise, to quote from the brief for appellant, that because of her "refusal to identify her assailant, the municipal police of Prieto-Diaz, Sorsogon conducted its own investigation of her case. The police investigated among other persons, Alfredo Escario (Exhibit '1'), Andres Escario (Exhibit '2'), Samuel Solano (Exhibit '3') and Job Don (Exhibit '4')." [36] It is the clearly inconclusive nature of her testimony that casts serious doubt about the guilt of appellant, who has in his favor the constitutional presumption of innocence. To repeat, it has not been overcome.

6. Reversal, as noted at the outset, is thus indicated. There is thus no need to inquire into his defense of alibi. His testimony was that "on the night of the incident, or on April 29, 1973, he was in the house of a friend, one Bobby Desabayla at about 8:00 to 8:30 p.m. and from there, directly went home. He stayed in his house until the next morning of the following day." [37] Also: "On April 30, 1973, defendant-appellant voluntarily reported to the municipal building, particularly to the chief of police, in compliance with the warrant of arrest that he received the day before in connection with a case for trespass to dwelling. The warrant of arrest shows that it was returned on April 30, 1973 \* \* \*. Defendant-appellant was detained in the municipal building until May 8, 1973 under the custody of the municipal police." [38] Alibi, of course, is a defense that is not looked at with favor. It cannot be said though that it automatically calls for rejection, especially in this case where there is no identification. Under the circumstances, it would be most in keeping with the fundamental postulate underlying our system of criminal procedure requiring that proof to justify conviction must reach the stage of moral certainty, that the accused is entitled to acquittal.

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.

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

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

[2] Appendix to Brief for Defendant-Appellant, 26-28.

[3] L-21325, October 29, 1971, 42 SCRA 59.

[4] 3 Phil. 3.

[5] 18 Phil. 90 (1910).

[6] Ibid, 96-97. According to People v. Imbo, G. R. No. L-36759, August 31, 1982, at least twenty-one cases cited with approval Dramayo. That did not include People v. Gabilan, L-45245, July 3, 1982.

[7] T.s.n., Session of September 18, 1973, 19.

[8] Ibid, 6-7.

[9] Decision, 12.

[10] T.s.n., Session of September 17, 1973, 7.

[11] Ibid.

[12] Ibid.

[13] Exhibit A.

[14] Cf., T.s.n., Session of September 17, 1973, 9.

[15] Ibid.

[16] Ibid, Session of September 19, 1973, 3.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Ibid, 31.

[21] Ibid.

[22] Ibid, 31-32.

[23] Ibid, 32.

[24] Ibid, Session of September 17, 1973, 10.

[25] Ibid, Session of September 18, 1973, 5.

[26] Ibid.

[27] Ibid, 6.

[28] Ibid.

[29] Ibid, 9.

[30] Ibid.

[31] Ibid, Session of September 17, 1973, 11.

[32] Ibid, 12.

[33] Ibid, Session of September 18, 1973, 26.

[34] Ibid, 28.

[35] Ibid.

[36] Brief for Appellant, 4.

[37] Ibid, 4-5.

[38] Ibid, 5.

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