

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERFECTO ORDONIO Y ABAD, DEFENDANT-APPELLANT.***G.R. No. L-33829. December 19, 1975*

Ponente: FERNANDO, J.

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This prosecution for rape is another instance where the opportunity for an alleged offender to abuse a married woman arose from the fact that the husband's occupation required that he be away from home at nighttime. In fairness to one charged with such a crime however, it cannot be denied that a wife none too scrupulous about fidelity to marital ties could likewise, because of such circumstance, be in a position to satisfy adulterous inclinations. If such indeed were the case, then the verdict would be one of acquittal. The question then, when as is not unusual in proceedings of this character, there is a diametrical conflict in the testimony offered, is to ascertain which version is deserving of credence. The course of conduct followed by the party aggrieved from the time of the alleged perpetration of the deed must be carefully scrutinized. Here, the evidence for the complainant, Generosa Bancoleta, would indicate that she was forced to submit to the lustful desires of the accused Perfecto Ordonio, now appellant. She narrated to her husband what transpired as soon as she could do so; she informed a cousin of his who was with the CIS of the sordid incident; and thereafter she filed the complaint. She testified in detail in court and remained steadfast notwithstanding a gruelling cross-examination. The trial judge believed her testimony, rejecting the defense that there was consent on her part. Appellant was found guilty. He would have us reverse, insisting that no force was employed. The record does not bear out his contention. We have to affirm.

According to the evidence for the complainant, at about ten o'clock in the evening of March 19, 1970, there was a knock at her door. It came from the appellant. As her husband was out, his employment in the San Miguel Brewery as machine operator requiring his presence the whole night until ten the next morning she refused to let him in. He did try to get in through another entrance, but was unsuccessful.[1] She then went to sleep, her five children being with her. Then after midnight, at around two in the early morning, while she was in the kitchen, appellant, holding a bolo, accosted her.[2] He threatened to kill her and her children as well if she refused to have intercourse with him.[3] She pleaded but to no avail. She made efforts to escape, but appellant, through the use of threats and force, was able to make her lie down on the kitchen floor and satisfy his desire. This he was able to accomplish, for once in that position he divested her of her intimate garments, placed himself on top of her, and had sexual intercourse. Thereafter, he made it clear to her that if she would inform on him, he would carry out his threat to kill her and her family.[4] Undaunted, she reported the abuse committed on her person to her husband and to one Gamaliel Agcaoile, a member of the Criminal Investigation Service of the Philippine Constabulary, who is a cousin of her husband.[5]

The foregoing brief summary of the testimony of complainant was the basis for the judgment of conviction. On the stand, she was much more detailed. What is more, as noted, she remained firm inspite of a thorough cross-examination. It was her version that prevailed, not that of appellant, who admitted that the sexual act did take place, but insisted that there was consent on her part. The plea for acquittal was thus premised on the absence

of force. It was not heeded by the lower court. That is the same theory advanced in this appeal. It is not any more persuasive. To repeat, no reversal is called for.

1. The appealed decision carefully took into account the defense of appellant; he, as pointed out, "denied raping the victim, although he admitted having intimate relations with her; he claimed she was practically his paramour. He said he met her and her family for the first time in February 17, 1970, when they rented a room in the same house where he lived; that being province-mates, they soon became close, so much so that complainant oftentimes borrowed small sums from him; that he lived alone in one of the rooms because his wife preferred to stay in the province; that last March 16th, 1970, Mrs. Bancoleta borrowed P50.00 from him promising to repay it on the 18th; that on March 17th, she also borrowed his flatiron promising to return it before midnight but when she failed to comply with her promise, he went to her room because he also needed the flatiron and complainant upon opening the door kissed him and thereafter they went to bed; that when on March 18th, he demanded payment of the P50.00, Mrs. Bancoleta became angry and concocted the instant complaint. He likewise testified that before May 17th, he and Mrs. Bancoleta had sexual intercourse thrice in his room." [6] It then referred to the rebuttal of complainant who "vehemently denied the accused's allegations regarding their alleged intimate relations, [and who] likewise branded as a falsehood the claim that she borrowed money from the accused, saying that her husband earns more than P400.00 a month which is more than sufficient for the daily needs." [7] The conclusion was that the guilt of the accused, now appellant, was "established beyond reasonable doubt." [8] The lower court took into consideration "the convincing and categorical testimony of Mrs.

Bancoleta in contrast to the accused's mere denials and inherent improbability of his testimony." [9] More specifically, there was a rejection of the imputation that complainant "is a woman of loose morals, . . ." [10] It is easily understandable why. Appellant did stress in the same testimony that he lived in the same house as complainant, only in a different room. [11] He admitted that he met her once in the month of February, 1970, when he knew her for the first time. [12] While he said that he met her in March of 1970 more than three times, he could not deny that he had occasion to talk to her alone only once. [13] There were moreover, other persons in the vicinity when they did talk to each other. [14] Nor did he deny that at the time she allegedly agreed to have sexual intercourse, all her five children were sleeping in the same room about two meters away. [15] It is not easy to accept the view, considering the casual nature of the relationship, that a married woman under the circumstances would readily yield her person.

2. The brief for appellant would make much of the bolo not being produced in court. Thus: "It is therefore submitted that the non-presentation of the bolo negates the contention of the prosecution that there was intimidation employed by the accused upon complainant." [16] Considering that the bolo was in the hands of appellant, and presumably belonged to him, it should not be a cause for wonder why complainant could not present it in evidence. It was not likely that appellant would just leave it at the scene of the crime. Again, appellant would seize on the additional circumstance that complainant failed to submit to a medical examination and that there were no signs of the male sperm from the accused in the duster and panties then on her person. The comprehensive and well-researched brief of the then Solicitor General, now Associate Justice, Felix Q. Antonio, [17] had a ready answer: "Lastly, appellant contends that the failure of the prosecution to produce a medical certificate to prove that she had indeed been raped is another fatal defect in the prosecution's case. It cannot be gain said that complainant is a married woman with five children, and thus, at the time of the commission of the rape, was no longer a virgin. No amount of physical examination will therefore prove one way or the other whether she had had sexual intercourse against her will. It would have been different had she been a virgin before the rape. Moreover, when the complainant was investigated at Camp Crame, she was told by the CIS in charge thereof that because appellant had owned and admitted the crime, there was no longer any need for her to submit to a physical examination, ... And contrary to appellant's contention, the absence of spermatozoa does

not disprove consummation of rape, the important consideration being not the emission of semen, but penetration." [18]

3. What clearly appears then is that once again, reliance on the time-tested doctrine of this Court according deference to what has been ascertained by the trial judge as to which party is more deserving of credence would not be inappropriate. Only last month in *People v. Payao*, [9] it was reiterated thus: "There is competent and credible proof of the culpability of appellant His guilt was shown beyond reasonable doubt. This then is a case where the well, settled principle as to the acceptance of the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies, finds application. This Court had even gone so far as to hold in *People v. Tila-on*: 'Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from.'" [20] More in point, there is this excerpt from the leading case of *People v. Modelo*, [21] a prosecution for rape, found in the opinion of Justice Dizon: "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 [his findings]." [22]

4. One other point. The vigorous plea for acquittal by counsel de oficio, Attorney Abundio J. Macaranas, was sought to be sustained by assigning as the first error the finding of the lower court that the confession of appellant was given voluntarily. There is something to be said for the stress on a cautious, hesitant approach by a trial judge in his appraisal of a confession offered in evidence. Even if such an objection were sustained however, it is far from decisive. As is quite apparent from the foregoing, there is enough evidence to justify a verdict of conviction. Nonetheless, it is never untimely to remind lower courts that the circumstances under which a confession is made are to be carefully looked into, for unless given freely, it should be rejected. So it has been made clear by our recent decisions. [23] In the language of *People v. Bagasala*, [24] when there is a showing of "coercion, either physical, mental or emotional" it cannot be admissible. [25]

WHEREFORE, the lower court decision of June 15, 1971 finding the accused Perfecto Ordonio FAbad guilty of the crime of rape and sentencing him to reclusion perpetua with the accessories provided for by law and to a civil liability in the amount of P2,000.00 as well as to pay the costs of the proceeding is hereby affirmed.

Barrredo, Aquino, Concepcion Jr., and Martin, JJ., concur.

Antonio, J., did not take part.

[1] T.s.n.. Session of May 28, 1970, 2-6.

[2] *Ibid.*, 7-8; Session of June 11, 1970, 4.

[3] *Ibid.*, 6.

[4] *Ibid.*, Session of July 13, 1970, 6.

[5] *Ibid.*, Session of May 28, 1970, 13-15.

[6] Decision, Appendix to Brief for Defendant-Appellant, 4-5.

[7] *Ibid.*, 5.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] T.s.n. , Session of September 18, 1970, 7-8.

[12] Ibid., 23.

[13] Ibid.

[14] Ibid.

[15] Ibid., 34.

[16] Brief for Defendant-Appellant, 12.

[17] He was assisted by Assistant Solicitor General, now Judge, Conrado T. Limcaoco and Solicitor Jose A.R. Melo.

[18] Brief for the Appellee, 11. The brief cited on the latter point *People v. Jose*, L-28232. Feb. 6, 1971, 37 SCRA 450 and *People v. Obtinalia*, L-30190, April 30, 1971, 38 SCRA 651. In addition, the following cases may be referred to: *People v. Canastre*, 82 Phil. 480 (1948); *People v. Selfaison*, 110 Phil. 839 (1961); *People v. Carandang*, L-3 1012, Aug. 15, 1973, 52 SCRA 259; *People v. Amores*, L-32996, Aug. 21, 1974, 58 SCRA 505. As to there being no need for a medical examination: Cf. *People v. Luneta*, 79 Phil. 815 (1948); *People v. Selfaison*, 110 Phil. 839 (1961); *People v. Ortega*, L-16033, Sept. 29, 1962, 6 SCRA 109. Further on this point, these words of Justice J.B.L. Reyes are relevant: "It is enough that there is proof of entrance of the male organ within the labia of the pudendum." *People v. Pastores*, L-29800. Aug. 31, 1971, 40 SCRA 498, 509. Also: "Mere entry of the male organ into the female organ consummates the rape." *People v. Royeras*, L-3 1886. April 29, 1974, 56 SCRA 666, 671. citing *People v. Canastre*, 82 Phil. 480 (1948) and *People v. Oscar*, 48 SCRA 527 (1925).

[19] L-29364, November 21, 1975.

[20] Ibid. In support of such a view, the following cases were cited: *People v. Gumahin*, L-22357, Oct. 31, 1967, 21 SCRA 729; *People v. Panganiban*, L-22476. Feb. 27, 1968, 22 SCRA 817; *People v. Pelago*, L-24884, Aug. 31, 1968, 24 SCRA 1027; *People v. Manos*, L-27791. Dec. 24, 1970, 36 SCRA 457; *People v. Beraces*, L-25016, March 27, 1971, 38 SCRA 127; *People v. Sabandal*, L-31129. Sept. 30, 1971, 41 SCRA 179; *People v. Dramayo*, L-21325. Oct. 29, 1971, 42 SCRA 59; *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012. Aug. 15, 1973, 52 SCRA 259; *People v. Macaraeg*, L-32906. Oct. 23, 1973, 53 SCRA 285; *People v. de la Victoria*, L-30037, June 27, 1975, 64 SCRA 400, *People v. Tila-on*, L-12406. June 30, 1961, is reported in 2 SCRA 653.

21 L-29144, October 30, 1970, 35 SCRA 639.

[22] Ibid., 646.

[23] Cf. *People v. Manobo*, L-19798, Sept. 20, 1966, 18 SCRA 30; *People v. Chaw*, L-19590, April 25, 1968, 23 SCRA 127; *Chavez v. Court of Appeals*, L-29169, Aug. 19, 1968, 24 SCRA 663; *People v. Alto*, L-18661, Nov. 29, 1968, 26 SCRA 342; *Pascual v. Board of Medical Examiners*, L-35018, May 26, 1969, 28 SCRA 344; *People v. Gande*, L-28163, Jan. 30, 1970, 31 SCRA 347.

[24] L-26182, May 31, 1971, 39 SCRA 236.

[25] Ibid., 242.

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