

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PROCESO ABALLE Y QUINDALA ALIAS “SISOY”;
DEFENDANT-APPELLANT.**

G.R. No. L-45087. October 23, 1984

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

It is all the more imperative for this Court in appeals from convictions for rape, when complainant, as in this case, is a young girl below the statutory age of twelve -- in this particular case even more deserving of sympathy as she is mentally retarded -- to take extreme care in the scrutiny of the records of the case. This is so because the penalty imposable on the perpetrator of such a foul deed is one of the most severe - and rightly so. The State, in its role as *parens patriae*, can do no less in the discharge of its responsibility to assure the well-being of the young.[1] Moreover, the constitutional presumption of innocence[2] stands as a barrier against any judgment of guilt in the absence of its being proved beyond reasonable doubt. That is the premise on which a reversal of the judgment is sought. The most meticulous reading of the records of the case does not, however, call for the judgment being overturned. The nineteen-page decision of the trial judge, now Associate Justice of the Sandiganbayan, Romeo Escareal, exhaustive and comprehensive, renders evident why the eleven-page brief of appellant could not make a dent on its persuasive quality. His finding that the constitutional pre-sumption of innocence had been overcome, guilt having been shown beyond reasonable doubt, must be sustained. The conviction of appellant Proceso Aballe is affirmed.

Now as to the facts. Complainant Josephine Angel, nicknamed "Joy", is a mentally retarded eleven-year old girl, "easily cajoled by her friends." [3] When she testified, it was made of record by trial Judge Escareal "that the Court went down from the rostrum to sit at the counsel's table in view of the reluctance of the witness to take the witness stand [and] that the said witness is crying and whispering and the Court Interpreter has difficulty in extracting even her name and other personal circumstances." [4] In her direct testimony, when questioned by the private prosecutor, she testified that he was a neighbor. [5] She merely nodded when asked whether he did something to her. [6] When asked to specify, her answer was, "he undressed me." [7] To the question, what else was done to her, all she could reply was "penis." [8] The Court asked, what about it; the reply was, "it was inserted," [9] pointing to her genital organ. Then she was asked how she felt, did she cry, did she tell her mother about the incident, as well as the police; all she could do was to nod. [10] Even on cross-examination, she merely nodded when asked her name; whether her mother would whip her and how often. [11] That was her response when the question was asked whether her mother told her that she would be whipped if she would not tell that appellant did something to her. [12] But when asked directly whether "the truth is that Sisoy [appellant] did not do anything to you," she shook her head. [13] Judge Escareal then took over the questioning. She did not know when and where she was born. [14] She answered that the incident where she was undressed took place in the "reclamation." [15] It is quite far from her house. [16] She was brought there by him. [17] He said they will go to the reclamation without telling her for what purpose. [18] He merely stated, "let us go there." [19] When asked why

she went with him, she answered that she did so because "he held me and brought me there." [20] She demonstrated "by holding her left wrist with her right hand." [21] The reclamation was dark. [22] She merely nodded when asked whether there were houses in that area. [23] She mentioned two. [24] When asked whether she was brought to any of the houses, she replied in the affirmative. [25] She was asked which one, and her answer was "small." [26] The house was dark. [27] The place was not far. [28] Upon reaching it, she "was laid down." [29] After which, she was undressed. [30] The Judge then asked her who laid her down and undressed her. [31] Her answer was: "He." [32] When questioned whom she meant, [33] her answer was: "Sisoy." [34] The judge told her to look around identify the person referred to as Sisoy. [35] According to the stenographic notes: "Witness raised her eyes and look (sic) towards the accused Proceso Aballe who was then seated at the prisoner's colum inside the courtroom." [36] The next question was how she was undressed? [37] Her answer: "He destroyed the safety pin" of her shorts. [38] When asked what else happened after-wards, her reply was: "He inserted to me. (sic)" [39] The next question was whether aside from the shorts, she was wearing anything else. [40] The reply was: "Panty." [41] Then to the query as to what happened to it, she replied: "It was bloody." [42] The trial judge asked whether on her being undressed what happened to the panties, adding if it was left in her person. [43] The witness shook her head. [44] When questioned directly if she meant that it was removed from her body, again she nodded. [45] Now, as to who did it, she answered: "He." [46] As to what happened next, she answered: "He bit me." [47] She pointed to her lips with her right hand. [48] To the question, was she hurt, she nodded. [49] As to what else happened, her answer was: "He ran away." [50] The reason, according to her, was that "he was arrested by the police." [51] She went home with her neighbors, called Willy and Pedot. [52] She was again wearing her panties and her shorts, although the safety pin of the latter was broken. [53] She knew the difference between a man and a woman. [54] She answered correctly that she is a girl, but her reason was because of her dress. [55] She nodded to the question whether she knew the difference in the body between a boy and a girl, but to the next question as to what it is, her answer was, "I do not know." [56] She testified that Sisoy is a man. [57] She gave no answer as to how she did know that something was inserted on her, but she replied that she had fever at home after such insertion. [58]

Thus could be seen the mental condition of the complainant. A doubt could have been created because of some of the answers if viewed out of context. The case for the prosecution, however, did not consist solely of her testimony. Her mother, Rosita Angel; a cousin of complainant, Zenaida Tablo; a sister of her mother, Gala Pestaño, also testified. There were in addition a psychiatrist, Dr. Perla Garot; a forensic chemist, Luz A. Enecilla; and Dra. Caridad Mancao of the Cebu City Hospital, who conducted the physical examination.

There was a physical examination. The medical certificate issued by Dr. Caridad Mancao reads as follows: "Physical examination - no findings on the extent of physical injury at the time of the examination. Internal examination - Fresh lace-rations of the hymen at 5:00 and 7:00 o'clock is noted. Introitus admits index finger causing severe pain. Slight brownish dis-charge is noted. Smear for spermatozoa negative." [59]

In the appealed decision, there is a recital of the facts of the case as testified to by the prosecution witnesses: "The complainant Josephine Angel, nicknamed "Joy", was born on December 16, 1964 (Exhibit "A"). From birth, she showed signs of mental retardation, was easily cajoled by friends, often goes into tantrums and took two years each to pass Grades One and Two. At the time of the incident, she was in Grade III but stopped schooling thereafter. She lived with her parents at Villa Gonzalo Street, Cebu City. On January 25, 1976, a coronation dance was held at Villa Gonzalo I, and Mrs. Rosita Angel, mother of Joy, went there to watch. Together with her were her younger sister, Gala Pestaño her niece Zenaida Tablo, and other neighbors. Around 10:00 p.m., Gala went home to sleep, and Rosita stayed to watch the coronation, after which she also went home. On her way, she was asked by some friends if she was not missing a child. She replied that she had one with her and another at home. When she reached home, and failing to find Josephine, her 11-year old daughter, she woke up gala and told her about it. Gala searched for a telephone to call the police, while Rosita went outside again to search for her

daughter, Joy. She kept on calling her name up to near the dance place, where same friends told her that Joy had been brought to the reclamation area by Proceso Aballe, alias Sisoy, a close neighbor of the Angel family. Rosita went to Sisoy's house but he was not there. Some policemen arrived from Ramos police headquarters and upon learning of what had happened, they brought her to the reclamation area but did not find Joy there. She went with the policemen to Ramos headquarters to report Joy as missing and then went home where she was told that Joy was at the hospital. She returned to Ramos headquarters and waited there. At around 11:00 P.M., Joy arrived, together with Gala, Zenaida Tablo and Jennie, a neighbor. Inquiry revealed that Zenaida, Jennie and two others searched for Joy at the reclamation area, around one kilometer from the dance place. They shouted her name and after a while, they saw Joy was then pulling up her shorts and saw also the accused Proceso Aballe some 6 meters from her and who ran away upon seeing them. Joy was brought home where her aunt Gala questioned and examined her inside a room. When asked what happened, Joy told Gala that Sisoy brought her to the reclamation, bit her mouth and took off her panty. (sic) Gala removed her yellow panty (sic) and found it bloodstained. Gala brought Joy to the water-front police precinct where they told her to bring Joy to the Cebu City Hospital together with a blank medical form. * * * Joy was examined for some 10-15 minutes at the hospital that same night, after which Joy and Gala went to Ramos headquarters and after an investigation by Sgt. Labra, they went home. At the precinct they found Rosita who interrogated Joy as to what happened. Joy narrated [what happened]. The next morning, Joy was brought back to the Cebu City Hospital and examined by Dr. Caridad Mancao, who issued a medico legal certificate (Exhibit "E"). Thereafter, they returned to Ramos, where Joy's mother, Rosita, was there, having been summoned because Sisoy had been arrested already after a curfew violation. Sisoy and his aunt asked forgiveness from Rosita who cried and was prevented from hitting him with her handbag. Sisoy said that he had no intentions of doing it as he was drunk. Zenaida's statement (Exhibit "B") was taken by the police that same morning of January 26th, but Joy's statement could not be taken as she was crying emotionally and refused to answer questions by the police, who had difficulty in questioning her. Hence, they told her to come back later, which she did on January 28th and the police finally secured a very simple statement from her (Exhibit "C")."[60]

The appealed decision then summarized the testimony for appellant: "On his part, the accused took the witness stand and denied, firstly, that he brought Joy Angel to the reclamation area, and secondly, that he ever touched or raped her. Substantially, he declared that he worked as a laborer at the Federal Laborer where he earns P240.00 a month; that he lives with his aunt at Villa Gonzalo I Street, near the Angel residence; that in the evening of January 25, 1976, he drank liquor with Patrolman Ramon Villamor, his cousin Arcadio Betinol, and three others; that they consumed two long-necked bottles of Añejo rum; that at around 11:00 o'clock, he and Arcadia parted from the others and went to watch the coronation ball where his niece was the queen; that he stayed there for some 10 minutes; that as he had won some money at the cockpit earlier that day, he gave some loose change to some children around him and then left to get some fresh air at the reclamation area as he was then tipsy; that upon reaching the reclamation area, he noticed that several children were still following and begging for more coins; that he ignored them and continued walking up to Mabolo district some 2-1/2 kilometers away; that he went home afterwards to his aunt's house where he was arrested at 6:30 a.m. by policemen and detained in jail; that he did not know why he was jailed during the three days of his detention and only came to know that he was accused of having raped Joy Angel at the reclamation area which he denied; that he also came to know later on that Joy's mother and aunt had agreed with Lt. Bongo and Sgt. Colina of the Homicide Section that they will accept P5,000.00 from him to drop the case; that his lawyer came and it was only then that he was formally charged." [61] Appellant, moreover, denied that he "offered to compromise the case or begged forgiveness from the complainant's mother the following day after the alleged incident when he was arrested and detained in jail." [62] As to the motive of the filing of the instant charge, his version was that the family of complainant and the investigators believed that his aunt who owns two public utility taxis would settle the case for him. [63]

The lower court, on the basis of the conflicting evidence, promulgated the decision now on appeal. It found the accused, now appellant, *Proceso Aballe y Quindala*, alias *Sisoy*, guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, or life imprisonment, to indemnify the offended party in the amount of P20,000 as moral and exemplary damages, and to pay the costs.

As noted at the outset, the decision must be affirmed.

1. In the eleven-page brief of appellant, there was no reference whatsoever to his defense of alibi. What was stressed was that there could have been no rape. At the most, if the incident did occur, what was committed amounted merely to acts of lasciviousness. Appellant, of course, could rightly rely on the constitutional presumption of innocence. Such presumption, however, had been overcome by the carefully-crafted and well reasoned decision of the trial judge. He scrutinized the evidence minutely. What is more, the appealed decision set forth cogent reasons why the prosecution must prevail, the guilt of the accused, having been "proven clearly, positively and satisfactorily."^[64] He pointed to the weakness of the defense of alibi, there being the categorical testimony of *Zenaida Tablo* that she saw the accused run away from the scene of the crime, not to say that there was such admission by the accused himself that he was in that area, although claiming that he was alone.^[65] Moreover, there was proof of sexual intercourse, as shown by the findings of *Dra. Caridad Mancao*, not to mention the blood-stained yellow panties. The latter circumstance, as rightly pointed out, has no logical or reasonable explanation other than the sexual act being performed, in the absence of evidence that complainant was already menstruating. Neither was it convinced that the "victim's low mentality and difficulty of communication" was a bar to accepting her testimony "that she was indeed lured and induced by the accused to go with him to the reclamation area; that he bit her on the mouth; that he took off her panty; that he fingered her and then inserted his penis into vagina."^[66] The appealed decision likewise stressed the lack of credibility to the denial of appellant that he even touched the victim, for if such were indeed the case, there would have not been any laceration of her genital organ. Lastly, the Court referred to the failure of appellant "to explain convincingly why he had to walk that far [2-1/2 kilometers away from place of occurrence] and why he had to keep walking even after curfew hours, unless he was really fleeing away from the scene of his dastardly crime after having been caught and seen by prosecution witness *Zenaida Tablo* and her companions."^[67]

2. The constitutional presumption of innocence had thus been overcome, the guilt of appellant having been proved beyond reasonable doubt. There is no need to stress anew that to overturn a finding of fact by a trial court, there must be a showing that there is a fact or circumstance of sufficient weight and gravity that has been overlooked or the significance of which has been misinterpreted. That is a doctrine that can be traced to the opinion of Justice *Moreland* in *US v. Pico*,^[68] decided in 1910.

3. Mention had already been made that no effort was made in the brief for appellant to even make mention of its defense of alibi. It is easily understandable in the light of what had been stated above. Its lack of persuasiveness is quite apparent. For such a defense, in the language of the recent case of *People v. Imbo*,^[69] "to warrant acceptance, the standard of full, clear, and satisfactory evidence must be met."^[70] Such a standard had not been satisfied.

4. The defense was likewise put up that at the most acts of lasciviousness were committed as there was no penetration. It was even alleged that it would have been physically impossible to do so. To show that such a contention is not tenable it suffices to cite the following excerpt from *People v. Soriano*:^[71] "As far back as *People v. Oscar*, a 1925 decision, it was held that a showing of full penetration is not necessary to convict an accused. That same year, in *People v. Hernandez*, the basis for conviction was 'partial penetration.' In *People v. Erinia*, promulgated the next year, the same approach was followed, as shown by this relevant excerpt: 'It has been suggested that the child was of such tender age that penetration was impossible; that the crime of rape

consequently was impossible of consummation; and that, therefore, the offense committed should be treated only as abusos deshonestos. We do not think so. It is probably true that a complete penetration was impossible, but such penetration is not essential to the commission of the crime; it is sufficient if there is a penetration of the labia."^[72]

5. In the light of the above facts, the requisites of the law having been satisfied, conviction was inevitable. Complainant was below twelve years of age at the time of the commission of the crime.^[73] This is, therefore, a case of statutory rape. The law is quite explicit on the matter. It calls for strict obedience.

WHEREFORE, the decision of the lower court dated July 12, 1976 is affirmed with the modification that the words life sentence should be omitted. Reclusion perpetua is the appropriate and correct terminology.

Makasiar (Chairman), Concepcion, Jr., Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

Aquino, J., no part.

[1] On the role of the state as parens patriae in rape cases, cf. *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114; *People v. Cawili*, L-30543, July 15, 1975; 65 SCRA 24; *People v. Astrera*, L-39367-69, February 28, 1979, 88 SCRA 683.

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

[3] T.s.n., Session of March 22, 1976, 3-4.

[4] *Ibid*, Session of April 30, 1976, 5.

[5] *Ibid*, 7.

[6] *Ibid*.

[7] *Ibid*.

[8] *Ibid*, 8.

[9] *Ibid*.

[10] *Ibid*, 8-9. According to the stenographic notes, after each question, the following is typed (witnessed nodding).

[11] *Ibid*, 9-10.

[12] *Ibid*, 10.

[13] *Ibid*, 11. The phraseology used in the transcript of the stenographic notes is "witness waving (sic) her head."

[14] *Ibid*, 12.

[15] *Ibid*, 13.

[16] *Ibid*, 14.

[17] *Ibid*.

[18] *Ibid*.

[19] Ibid.

[20] Ibid, 15.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Ibid, 16.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Ibid, 18.

[29] Ibid.

[30] Ibid.

[31] Ibid, 19.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid, 20.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] Ibid.

[46] Ibid, 21.

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] Ibid.

[51] Ibid, 22.

[52] Ibid, 22-23.

[53] Ibid, 24.

[54] Ibid, 25.

[55] Ibid.

[56] Ibid.

[57] Ibid, 26.

[58] Ibid.

[59] Exhibit E.

[60] Decision, 4-7.

[61] Ibid, 8-9.

[62] Ibid, 9.

[63] Ibid, 9-10.

[64] Ibid, 12.

[65] Ibid, 13.

[66] Ibid, 14.

[67] Ibid, 18.

[68] 15 Phil. 549. Cf. *People v. Soriano*, L-46297, June 19, 1980, 98 SCRA 69. A recent case where such an approach was followed is *People v. Crisola*, L-32422, March 4, 1984, 128 SCRA 1.

[69] L-36759, August 31, 1982, 116 SCRA 355.

[70] Ibid, 360-361.

[71] L-46297, June 19, 1980, 98 SCRA 69.

[72] Ibid, 77. The Oscar decision is reported in 48 Phil. 527 (1925); the Hernandez decision in 49 Phil. 980 (1925) and the Erinia decision, pro-mulgated two years later, in 50 Phil. 998 (1927).

[73] Cf. *People v. De la Cruz*, L-28810, March 27, 1974, 56 SCRA 84; *People v. Gonzales*, L-33926 July 31, 1974, 58 SCRA 265; *People v. Sarmiento*, L-46833, December 28, 1979, 94 SCRA 944; *People v. Laguisma*, L-46297, June 19, 1980, 98 SCRA 69; *People v. Egot*, L-42962, April 30, 1984, 129 SCRA 96.

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