

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO CO Y MAGBANUA, ACCUSED-APPELLANT.***G.R. No. L-38052. July 14, 1988*

Ponente: NARVASA, J.

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The appellant, Antonio Co, asks for his acquittal of the felony of rape under Article 335 of the Revised Penal Code of which he was found guilty beyond reasonable doubt by the Trial Court[1] and for which, absent any modifying circumstance, he was correspondingly sentenced "to suffer the penalty of reclusion perpetua (life imprisonment) with the accessories provided for by law and to pay the costs." [2]

The information, to which on arraignment he had pleaded not guilty and under which he was after trial convicted, charged him with having, "by means of force and intimidation, [***] wilfully, unlawfully and feloniously [***] (had) carnal knowledge with one Gaudencia Machate without her consent and against the latter's will." [3]

The People's evidence is summarized by the Trial Court in the following manner, viz:

"Gaudencia Machate, the complainant, testified that she is the housemaid of a certain Zeny, sister of the accused; that about 12:00 o'clock noon on April 3, 1973, she brought fish to her employer, Zeny at Looban, near the church of Navotas, Rizal, and after arriving at Zeny's place, the accused lay down on her lap and asked for one kiss but she refused, then the accused got his knife from his jacket and pointed at her. At that time, Zeny, her employer was there and also a certain Roberto, and later, the accused told her 'ayaw mo, sasaksakin kita', so she could not do anything as she was afraid, she allowed him to kiss her and that, he brought her upstairs in his room with the knife pointed to her and that when already upstairs, he undressed her, tore her panties, marked Exhibit C, then undressed himself, placed himself on top of her and inserted his penis into her private part and she just lay down, but after he was through with the intercourse, he told her that if she would file a case against him, he would kill her, then she stood up and went home and at 5:00 o'clock that afternoon, she went to the police department, that when she went down from upstairs where they had the intercourse, she did not see any person; that she was investigated by the police and she gave her statement which was reduced to writing, marked Exhibit A; that it was Roberto Impestan who got the knife from the house of the accused and delivered it to the police investigator and that the knife, Exhibit B, was the knife used in threatening her; that she gave her panties to the police, later, the policeman of Navotas brought her to the NBI in order that she could be examined by the NBI Medico-Legal Officer.

"On cross-examination, she declared that she already knew the accused even before the incident and she came to know him when she started working in the house of Zeny, sister of the accused; that in that house, Zeny and children were there and there are neighboring houses with people; that when the knife was pointed at her, Zeny was present but did not do anything; that when she went up the house, she was being pulled by the accused holding his knife with his left hand; that she was wearing panties and T-shirt, she did not resist, neither did she move when he was undressing her and as soon as she was undressed she lay down on orders of the accused and then he placed himself on top of her with his two hands pressed on the floor, then, she spread her legs so he could insert his private part into hers.

"Rafael Provideo, Jr., testified that he is a patrolman of the Navotas Police Department, and that on April 3, 1973, he was assigned in the investigation division and at about 5:00 in the afternoon of that day, he investigated the complainant and she related to the desk officer what happened to her and the case was assigned to him and she gave a statement, marked Exhibit A, and also Roberto Impestan gave his statement, marked Exhibit D; that after the investigation, they proceeded to the house of the accused who was then eating his supper and he invited him to go to the police headquarters and asked him if he would give a statement but he refused. Then he got the knife, Exhibit B, in the house of the sister of the accused while the panties, Exhibit C, was turned over to him by the complainant, already torn.

"Dr. Mariano Cuevas testified on direct examination that he is the medico-legal officer of the NBI and that it was he who personally conducted the examination of the victim, Gaudencia Machate, and he found no evidence of external injury in his examination of the private part but he noted that there has been a previous intercourse with a man and he came to know that the complainant had a child delivered previously and that he made his report marked Exhibit E.

"On cross-examination, he declared that he did not find any bruises on the person of the complainant."

Appellant Co now argues that, contrary to the Trial Court's opinion, this evidence does not suffice to sustain an adjudgment of his guilt beyond reasonable doubt of the offense charged. We agree.

The rule is well established that where, as here, and as is usual in crimes of this nature, the accusation is founded solely on the word of the offended party herself, it behooves the Court to exercise the greatest degree of care and caution in the consideration and analysis of her testimony, and no conviction should be handed down except only if it appears that the offended party's sincerity and candor are free from suspicion.[4] Conviction can only be made to rest on strong, clear and compelling evidence.[5]

"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 perpetuate the act but that it amounted to a crime. What is required is moral certainty."[6]

These standards are not met by the People's proofs. Consequently, the factual findings of the Trial Court, although as a rule entitled to great respect, will have to be set aside since it appears that certain facts of substance and value have been overlooked.[7] The appellant merits an acquittal, even if his own evidence is not as persuasive as would otherwise be desired.[8] For equally axiomatic is that the prosecution must rely on the strength of its evidence and not on the weakness of the defence.[9]

Accord of credit to the complainant's story is precluded by the extreme implausibility that plagues it as regards the setting of the supposed sexual assault and the manner of its commission, no less than by the self-contradictions that it exhibits.

The complainant, then 39 years of age and a maidservant in the home of the appellant's sister, Zeny, claims the rape was decided on and sexual advances made by the appellant, then 19, at said Zeny's dwelling, at noontime. Present in the house at the time were Zeny herself, her children, and a certain Roberto Impestan.[10] There were also other people in the neighboring houses. A more unpropitious time and place can hardly be imagined.

The complainant also claims that on her arrival at the house, after completing an errand to buy fish, and on seating herself on the floor at appellant's behest, the latter had forthwith lain his head on her lap and asked her for a kiss, and when she refused, had taken out a knife from his jacket and pointed it at her, saying, "Ayaw mo, sasaksakin

kita;" that scared by the knife which the appellant kept menacingly directed at her, she had suffered herself to be kissed and to be led or pulled upstairs to his room -- all this, in the known presence of Zeny, Roberto, and Zeny's children. According to the complainant, Zeny and the others "were watching only." [11] Her narration taxes credulity. It is incredible that the appellant made so open a manifestation of his lewd intentions, and that his sister not only simply ignored his lascivious and improper conduct but also, by her passivity, even appeared to encourage and abet the same, or that the complainant, if unwilling, so tamely submitted to the appellant without protesting or addressing any plea for succor to Zeny and the other persons in the house. The facts related are so unnatural as hardly to merit acceptance. [12] Evidence to be believed must not only proceed from a credible witness but must be credible in itself. [13]

The complainant also deposed that once in the room of the appellant, the latter undressed her, using one hand only since the other was holding the knife. The appellant removed the T-shirt and pants she was then wearing, as well as her panties -- which were torn in the process. He told her to lie down. She did, docilely. It is at this point even more difficult to attribute her docility under the circumstances simply to her overmastering fear of the appellant's knife. Indeed, it is not at all unreasonable to deduce that that docility signified consent and anticipation rather than dread and revulsion, a deduction that is strengthened by a consideration of the subsequent events. After stripping the complainant, the appellant also divested himself of his own clothing and thereafter, in the words of the Court a quo, "placed himself on top of her with his two hands pressed on the floor, then, she spread her legs so he could insert his private part into hers." [14] While the appellant was removing his clothes, she made no move to leave the room, or cry out for help. She remained where she was, lying down, naked. And when the appellant laid himself on her, she parted her legs. This was no longer mere passivity. This, surely, was cooperation and participation.

Nor is this all. While initially professing in Court that she did not like the intercourse because she did not love the appellant, she later admitted on cross-examination that she had in fact had an orgasm and had found the act delightful -- "sweet," is the Trial Court's description, accepted by the complainant. [15] Here, again, another cogent indication of cooperation and participation in the act of copulation.

Still another indication of the complainant's consent is the absence of any sign of physical violence on her body. [16] The medico-legal officer of the NBI, who examined the complainant, quite emphatically declared: "As I have already previously stated, I failed to discover or notice any trace or evidence of physical injuries or trauma on her body as a whole, in general, and the private part, in particular; this was probably because the subject has been used to sexual intercourse with a man long before the examination and could be due to the fact that she has delivered a child." [17]

The foregoing discussion renders unnecessary treatment of the claimed contradictions in the complainant's testimony specified by the appellant's counsel, on the matter of how long she had known the appellant, whether or not he had "offered or proposed his love," whether she was completely laid bare or left with her T-shirt on, or stripped while standing or lying down. They do however in measure deepen the doubts already expressed concerning the veracity of complainant's tale.

Evidence of this sort can scarcely be deemed to be of so strong, convincing and compelling a character as to generate moral certitude of the appellant's guilt. Indeed, it is at odds with normal, natural human conduct and common experience. It raises very strong doubts as to the guilt of the accused-appellant. It cannot and will not sustain a judgment of conviction of so grave an offense as that imputed to him.

WHEREFORE, the judgment of the Trial Court convicting the appellant is REVERSED AND SET ASIDE and another entered ACQUITTING him on reasonable doubt. Costs de oficio.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The Court of First Instance at Kalookan City, Hon. Santiago O. Tañada, presiding the case being docketed as Criminal Case No. C-3959

[2] Rollo, p. 16 - the dispositive paragraph further provided that he "shall be credited with the full term of the preventive imprisonment he has undergone if he shall agree in writing to abide by the same disciplinary measures imposed upon convicted prisoners, otherwise only 4/5 of the preventive imprisonment shall be credited in his favor"

[3] Id., p.11 - the offense having allegedly been committed in Navotas, Rizal on or about April 3, 1973

[4] Peo. v. Lacuna, 87 SCRA 372 [1978]; Peo. v. Estacio, 111 SCRA 532 [1982]; Peo. v. Romero, Jr., 117 SCRA 897 [1982]; Peo. v. Reglos, 118 SCRA 344 [1982]; Peo. v. Jerroso, 124 SCRA 765 [1983]

[5] Peo. v. Tulagan, 143 SCRA 107 [1986]

[6] Peo v. Nazareno, 80 SCRA 484 [1977], cited in Peo. v. Royeras, 130 SCRA 259, 273 [1984]

[7] Peo. v. Royeras, 130 SCRA 259, 265, supra

[8] He denies having touched Gaudencia and asserts that, as the Trial Court puts it, "the motive for filing this case is that she has a crush on him and he noted that because he used to eat at his sister's house where she stays and she always gives him food, money, and this has been going on for a long time already, for almost 4 months, but he never reciprocated."

[9] Peo. v. Ramirez, 116 SCRA 48 [1982]

[10] The appellant's testimony is that there were 7 persons all in all in the house.

[11] TSN, Aug. 2, 1973, pp. 9-10

[12] SEE Peo. v. Leones, 117 SCRA 382, where, upon substantially the same facts, the Court acquitted the accused of rape; and Peo. v. Apat, 114 SCRA 620, where the offended party also made no outcry during the supposed robbery with rape although the house of her neighbor, the barrio chief of police, was just a few meters away.

[13] See Peo. v. Peruelo, 105 SCRA 226

[14] Contained in the transcript is the following exchange between the Court and the complainant: "COURT: Q. And because he was already on top of you, you spread your legs? A. Yes, after Tony went on top of me, I also spread my legs. Q. And that is why he was able to put his penis on your private part? A. Yes, sir. (TSN, Aug. 2, 1973, p. 14)

[15] Again, the transcript yields the following revealing exchange between the appellant's counsel, the Court, and the complainant: "(Counsel) Q. So you testified again falsely when you stated in your previous answer that you did not ejaculate? A. Because I already forget what I have stated in that statement (Exh. A, her statement to the police). Q. Since there was only a difference of two penetrations before you ejaculated in reference to the ejaculations made by the accused, there is only a split second when the ejaculation was made by the accused and yourself? A. Maybe it was only a while that he ejaculated and I ejaculated also because at that time I could not remember anymore because at that time I was already afraid of the knife. Q. So when you ejaculated, you were satisfied? A. Yes, I was already satisfied. COURT: Q. Because you enjoyed the work also? You enjoyed it because you found it to be sweet also having had an experience in doing the work? A. Yes, I felt sweet already

because he had already inserted his penis. Q. That is why you enjoyed it because you have had experience in sexual intercourse being a widow? A. Yes, sir." (TSN, PP. 14-15)

[16] SEE *Peo. v. Andino*, 113 SCRA 531, where the charge of rape was held as not proven due to absence of physical violence on victim's body, and it being contrary to human experience and conduct that rape would be committed amidst a multitude.

[17] TSN, Nov. 22, 1973, p. 3

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