

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO BARACA Y ALAMAR, DEFENDANT-APPELLANT.***G.R. No. L-48360. June 24, 1985*

Ponente: FERNANDO, C.J.

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In all rape prosecutions, it is difficult for any court not to feel sympathy for complainant. The offense elicits the utmost condemnation — and rightly so. It is offensive to the high respect that under our mores is accorded a female. The repugnance becomes even greater when the alleged victim, as in this case, is not only a young girl of tender years — thirteen, to be precise — but also the victim of the dreaded disease, polio. Precisely though because of such a state of feeling likely to be aroused, it is much more incumbent on the judiciary to be on the alert lest the scale of justice be tilted against an accused. That would be an infringement of and contrary to the constitutional presumption of innocence.[1] Even with such an approach being strictly adhered to and after a most careful scrutiny of the records, appellant, who was found guilty and sentenced to reclusion perpetua, had not made out a case for reversal.

The evidence that called for conviction was supplied primarily by complainant, Editha Jabat, a polio victim, thirteen years of age at the time the alleged offense was committed.[2] She was no longer studying when called to the witness stand on July 26, 1976, having reached only the second grade.[3] She could write her name but she could not read.[4] She knew it is a sin to lie, and she was aware that an oath meant she had to tell the truth.[5] She identified appellant Ernesto Baraca.[6] After which, she narrated how the offense was committed, stating that on April 25, 1976, she was residing at Biga, Pola, living with her mother and brothers and sister.[7] Appellant, who was the common-law husband of her mother, was living with them.[8] She was not aware of the cause for her father, Edelino Jabat, not living with them.[9] According to her, at around eleven o'clock on the evening of April 25, 1976, while she was in her house asleep, she was awakened when on the arrival of appellant, she was asked to open the door.[10] Upon entering, he immediately embraced her and took her inside the room, carrying her in his arms.[11] He then released her, picked up a buri leaf, and tied her hands behind her back.[12] He then removed her panties. He tried to have sexual intercourse with her in a standing position.[13] When he failed to consummate the act, he made her lie down.[14] She bit him.[15] He then slapped her.[16] He told her to keep quiet, otherwise, he would kill her.[17] After that threat, he placed himself on top of her.[18] Thus he was able to insert his organ into her "private parts." [19] She "felt pain." [20] There was profuse bleeding.[21] Appellant then went to bed and slept.[22] She was not able to sleep at all.[23] On the morning of April 26, 1976, she went to her Ninang Elisa Tardeo.[24] She was living in a house separated from that of appellant by two rows of coconut trees.[25] After her Ninang Elisa was informed of what was done to her, she was accompanied to the barangay captain.[26] Complainant then narrated to him what appellant did to her.[27] After which, with her Ninang Elisa, she proceeded to the municipal building to file the complaint for rape.[28] She was questioned by a policeman in the municipal building of Naujan.[29] She told him that she was raped.[30] Then she went to a certain Dr. Reyes and submitted herself to a medical examination.[31]

There were other witnesses for the prosecution, principally a neighbor, Elisa Tardeo, to whom complainant went to seek help on the morning of April 26, 1976.[32] She observed that the young girl was crying and that there was blood coming from her private parts.[33] After being informed of what happened to her, Tardeo accompanied complainant to the barangay captain, Jose Moreno, who in turn brought them to the Naujan Police Station and reported the matter to the police investigator, Patrolman Clodualdo Dilay by name.[34] Moreno and Dilay likewise testified. Dr. Pedro Reyes, who conducted the physical examination on complainant, declared on the witness stand that his examination disclosed that there was laceration of her hymen possibly due to sexual intercourse.[35] He admitted on cross-examination though that such condition could be induced by jumping or running, riding a bicycle, or insertion of foreign bodies or masturbation and that he found no spermatozoa nor seminal fluid in the vaginal canal.[36]

Now for the version of appellant. According to his brief: "Ernesto Baraca testified that on April 25, 1976, he was attending a birthday celebration in the house of Barrio Councilor Pomio; that he went home at about eleven o'clock and upon arrival he was met by his wife Remedios Villegas and found out that his children including the complaining witness were soundly sleeping; that thereafter he, together with his wife, ate their supper after which they went to bed together and slept beside their four children (pp. 6-7, t.s.n., Jan. 4, 1978); that the following morning at about six o'clock Editha Jabat was already awake and he, together with his wife, went out to gather 'paros'; that when they passed the house of the Barrio Captain Jose Moreno, he noted that there were two policemen, namely, Patrolman Mañibo and Patrolman Velasquez; that the policemen informed the accused that they were fetching him upon instruction of the Chief of Police of Naujan Police Station; that he went with the policemen to the Police Station at the Poblacion; that upon arrival, he was forced to admit the charge of rape on Editha Jabat; that the police officers, namely: Mañibo, Velasquez and Dilay inflicted bodily harm on his person upon his refusal to admit said charge; that he was informed that if he would not admit, he would be subjected to more maltreatment until he could no longer endure the torture; that due to the third degree treatment, he was forced to admit the charge of rape (p. 8, *ibid*); that the following morning he was told by the police officer to affix his thumbmark on the document that would be presented before the Municipal judge, with the intimidation failure on his part would be the end of his life, that the next morning, he, was accompanied by Patrolman Mañibo, to the Office of Municipal Judge Raquepo; that when he was asked by Judge Raquepo if the contents of the affidavit were true, he answered in the affirmative due to the warning threatening his life by the police officers; that he affixed his thumbmark, and went downstairs, and Patrolman Mañibo brought him back to his prison cell. (pp. 9-10, *ibid*).[37] The other witnesses whose testimony was relied upon by appellant is Remedios Villegas, his common-law wife and mother of complainant who "testified that Editha Jabat is her daughter with his lawful spouse Edelino Jabat and was born on December 19, 1962 as shown by her birth certificate (Exhibit 1); that the name Eden Jabat in the birth certificate and Editha Jabat is one and the same person; (pp. 5, 6, 7, t.s.n., December 21, 1976); that on April 25, 1976, her common-law husband arrived at their house and her children including the complaining witness were already sleeping; that she went to sleep with the accused and she was not awakened by anything unusual during those moments; that she was not awakened by the alleged shouts of Editha Jabat between 11:00 o'clock in the evening and 6:00 o'clock in the morning of April 26, 1976; that their house is only about 3x3 meters; that she woke up the following morning at 6:00 o'clock; that in the afternoon two police officers arrested the accused without any warrant of arrest after voluntarily surrendering to the policemen. (pp. 19-20, t.s.n., *ibid*)."[38]

The lower court, as noted, found the appellant guilty of rape. In a well-written brief by the Citizens Legal Assistance Office,[39] it was contended that based on "the testimony on record, it cannot be plausibly maintained that the constitutional presumption of innocence in favor of the accused has been overcome by proof beyond reasonable doubt. In arriving at its verdict of guilty the trial court overlooked several material points which, if

given a zealous, meticulous and judicious consideration would certainly, bring forth grave doubts as to the veracity of the prosecution's case." [40] A fair, objective, and meticulous study of the records of the case make manifest that the proof offered by the prosecution did not reach the stage of moral certainty thus negating the assertion as to the constitutional presumption of innocence not having been overcome. [41]

1. To support the allegation about the requisite absence of proof beyond reasonable doubt, it was argued in appellant's brief: "1. The accused was not armed with any weapon on the date of the incident in question. Neither was there evidence that Editha was harmed or boxed by the accused which explains the fact that no visible extra genital injuries was noted by the examining physician (p. 31, t.s.n., November 25, 1976). Minor details of threat to kill without the use of any weapon is not intimidation especially when no resistance is offered by the victim." [42] It would be to misread and what is worse, misinterpret the tenor of complainant's testimony if this defense is upheld. What she said on the witness stand is quite credible and persuasive. There is nothing improbable in the way the sexual act was consummated in this case against her will. Her being barely thirteen years of age, and a polio victim at that, would not require the exertion of a great deal of force. She was cross-examined intensively. She withstood its rigor. This is, therefore, another instance where in accordance with a constant line of decisions, this Court has shown receptivity and acceptance to the testimony of a girl of tender years as to the requisite degree of force necessary to compel her to submit against her will. [43]

2. To refute the finding of guilt on the plea that the constitutional presumption of innocence has not been overcome, it was contended in appellant's brief that his prosecution was instigated by "Elisa Tardeo, who harbored ill-feeling and standing grudge against the accused as reported to the Barangay Captain. (pp. 3, 4, t.s.n., January 4, 1978)." [44] It suffices to refer to the decision now on appeal to show the lack of persuasive force of the above submission: "Accused's allegations that Elisa Tardeo, one of the witnesses for the prosecution, had an ax to grind against him and was therefore instrumental in the filing of this case against him, has no basis in fact, and therefore unworthy of belief." [45] Why it was thus was made apparent earlier in the decision: "Baraca, while on the witness stand, testified that Elisa Tardeo was instrumental in having him charged for rape because of a personal and long standing grudge which she had against him, occasioned by the fact that Tardeo's sister allowed Baraca to live on the coconut plantation belonging to said sister; that Tardeo even had him charged before Barangay Captain Jose Moreno that he stole coconuts from her (Tardeo's) plantation and threw stones at her house while he was drunk." [46]

3. To impart some degree of plausibility to the claim that the constitutional presumption of innocence had not been overcome, there is this allegation in appellant's brief: "The medical examination report of Dr. Pedro Reyes who conducted the physical examination of Editha and thru his testimony showed that he found no spermatozoa and seminal fluid in the vaginal canal of the victim indicating that no rape was committed. (pp. 22, 23, t.s.n., November 25, 1976)." [47] There is no support in law for this argument. There is no such requirement for a prosecution for rape to prosper. The two latest cases in point are *People v. Felix* [48] and *People v. Ludovice*. [49]

4. One last point. When the need for a mother's love and care was greatest, complainant had to go for succor not to her but to Elisa Tardeo. Why was it so? The same question must have occurred to the lower court judge. While being cross-examined, Tardeo was asked by him: "Now, when Editha Jabat went to your place crying and reported the matter to you, did you ask her if she reported the matter to her own mother?" [50] Her answer: "Yes, your Honor." [51] The matter was pursued further: "And what was the answer of her mother when she reported that matter to her?" [52] This was the reply: "Editha informed me that her mother told her that if the accused would repeat the same act, that would be the time that she would file a charge." [53] Moreover, when the mother testified for appellant, her common-law husband, it becomes even more understandable why complainant acted the way she did.

WHEREFORE, the appealed decision finding appellant Ernesto Baraca y Alamar guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua as well as the accessories provided for by law, is affirmed with the modification that complainant Editha Jabat will be indemnified in the sum of P30,000.00. Costs against appellant.

Makasiar, Aquino, Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

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

[2] T.s.n., Session of July 26, 1976, 26.

[3] Ibid, 25.

[4] Ibid.

[5] Ibid, 26.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid, 27.

[10] Ibid, 28.

[11] Ibid, 29.

[12] Ibid, 29-30.

[13] Ibid, 30.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid, 31.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Ibid., 32.

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] Ibid, 33.

[27] Ibid.

[28] Ibid, 34.

[29] Ibid.

[30] Ibid.

[31] Ibid, 35.

[32] Cf. Brief for Accused-Appellant, 4.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Ibid, 4-5.

[37] Ibid, 5-6.

[38] Ibid, 6-7.

[39] Senior Citizens' Attorney Rosario B. Rapanut and Citizens' Attorney Renato B. Pagapong prepared the brief.

[40] Brief for the Accused-Appellant, 12.

[41] Cf. *People v. Dramayo*, L-21325, Oct. 29, 1971, 42 SCRA 59; *People v. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81; *People v. Joven*, L-36022, May 22, 1975, 64 SCRA 126; *People v. Ramirez*, L-30635-6, Jan. 29, 1976, 69 SCRA 144; *People v. Godoy*, L-31177, July 15, 1976, 72 SCRA 69; *People v. Lopez*, L-41974, Nov. 29, 1976, 74 SCRA 205; *People v. Poblador*, L-44129, April 29, 1977, 76 SCRA 634; *People v. Quiazon*, L-44299, Aug. 31, 1977, 78 SCRA 513; *People v. Nazareno*, L-45533, Nov. 29, 1977, 80 SCRA 484; *People v. Gabilan*, L-45245, July 2, 1982, 115 SCRA 1; *People v. Gabiana*, L-39716, Sept. 30, 1982, 117 SCRA 260; *People v. Ibanga*, L-39502, Sept. 28, 1983, 124 SCRA 697; *People v. Bania*, L-46524, Jan. 31, 1985.

[[42]] Brief for the Accused-Appellant, 12-13.

[43] Cf. *People v. Vidal*, L-48876-78, Jan. 30, 1984, 127 SCRA 168; *People v. Alamo*, L-38401, June 25, 1984, 130 SCRA 46; *People v. Egot*, L-35776, June 29, 1984, 130 SCRA 134; *People v. Lor*, L-47440-42, Sept. 12, 1984, 132 SCRA 41; *People v. Alcin*, G.R. Nos. 66387-88, Feb. 28, 1985; *People v. Gozun*, G.R. No. 66970, Feb. 28, 1985; *People v. Ramirez*, G.R. No. 70744, May 31, 1985; *People v. Deus*, G.R. No. 63729, May 31, 1985.

[44] Brief for the Accused-Appellant, 13.

[45] Decision of the lower court, 6.

[46] Ibid, 5.

[47] Brief for the Accused-Appellant, 13.

[48] L-62281-82, July 16, 1984, 130 SCRA 456.

[49] L-34986, March 23, 1984, 128 SCRA 361.

[50] T.s.n., Session of July 26, 1976, 76.

[51] Ibid.

[52] Ibid, 76.

[53] Ibid, 77.

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