THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO ANDAL AND ISIDRO ANDAL, ACCUSED-APPELLANTS.

G.R. No. L-39763. March 08, 1976

Ponente: FERNANDO, J.

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FERNANDO, J.:

A rather unusual aspect of this prosecution for and conviction of the crime of rape is that while it was the son, appellant Mario Andal, who committed the sexual act, he was aided and abetted in the process by his father, appellant Isidro Andal, who kept the complainant, a thirteen-year old girl, pinned down by holding her hands. It is not surprising then that such a circumstance is made much of in the brief for appellant, with its stress on the failure of the prosecution to overcome the constitutional presumption of innocence.[1] Such, however, is not the case. A careful study, of the evidence of record, taking due note of the first error assigned characterizing the testimony that came from complainant as "seriously and materially inconsistent," the reference being to the alleged contradiction between her testimony on the witness stand and her affidavit when the offense was investigated, fails to sustain such a defense. The guilt of father and son had been shown beyond reasonable doubt. We cannot reverse.

The evidence for complainant, Lucila Buenafe, discloses that with her brother, one year younger than herself being then twelve years of age, she lived in Gapas, Guinayangan in September of 1972. Appellants, father and son, the former then sixty-three years old and the latter then in his twenty-fifth year, had their residence immediately adjoining.[2] On September 5, 1972 at noontime, appellants went to complainant's house. They wanted to get hold of a pig and a sprayer owned by the Buenafe family. They were told that the pig had been taken to Calauag, Quezon, and the sprayer was borrowed by another person. The answer must have displeased them. The son, Mario Andal, went upstairs and ordered Lucila and her brother to open a trunk. He did not take anything.[3] What followed immediately gave cause for this prosecution. Complainant was forcibly dragged by father and son to a hill nearby. She was pushed to the ground. The son, at first, and then the father, held her by the hands. In that position, she was disrobed by the son, who because of her resistance, hit her on the chest. Making use of his knees to keep her legs apart and thereafter inflicting a blow on her abdomen causing her to lose consciousness, he was able to consummate his evil designs. The father did his part by keeping his hold on her hands.[4] When she regained consciousness, both appellants were gone. Feeling rather faint and still afflicted with pain in the region of her private organ, she went to Calauag, Quezon, where her father was working.[5] She found him around two o'clock that afternoon in the warehouse of one Bening at Zamora Street of that municipality.[6] She informed him of what was done her by father and son. Immediately her father took her to the Municipal Building of Calauag, where they were instructed by a policeman to report the crime in Guinayangan, Quezon, where the occurrence took place. Given the same instruction by a constabulary detachment in that town, they proceeded to Guinayangan and arrived there three in the afternoon. Its Chief of Police advised a medical examination. One Dr. Gaspar E. Villafañe of the Magsaysay Memorial Hospital of Lopez did so and thereafter issued a medical certificate. It was therein set forth that complainant had a contusion at the upper left chest, which could have been inflicted by a fist blow; scratches at the left thigh and buttocks, which could have been caused by

a pointed object, like a zipper on trousers with sharp corners on edges; fresh lacerations of the hymen at 5, 6, 9 o'clock positions caused by the introduction of a hard object into her private part, which could have been caused by a man in the act of abusing a woman.[7] Because of the extent of the injuries inflicted on her, she had to be confined at the Magsaysay Memorial Hospital for one week.[8]

On the basis of the above evidence, the trial court, as set forth at the outset, convicted father and son, now appellants. There is in the brief submitted by them an insistence of the constitutional presumption of innocence which in their submission had not been sufficiently overcome. Such an approach lacks persuasiveness. The lower court did not disregard any constitutional right. The decision then, again as noted, must be affirmed, with the modification that Isidro Andal should be sentenced as an accomplice.

1. It could very well be that the basic defense raised, the alleged failure to satisfy the constitutional requirement, the accused being presumed innocent unless guilt be demonstrated beyond reasonable doubt, was motivated not so much by the high respect to be accorded each and every provision of the fundamental law but by the fact that the attempt of appellants to exculpate themselves was far from convincing. There is the succinct and accurate appraisal of such an effort: "The two accused both deny the acts imputed upon them and the defense has tried to attribute this prosecution to a motive of revenge by Antonino Buenafe, the father of the offended girl, against the two accused because of a report having been made by Mario Andal to the barrio captain of Gapas, Guinayangan, Quezon to the, effect that he had seen Antonio Buenafe towing two (2) stolen carabaos. This suggestion of the defense is hardly probable, firstly, because it is highly inconceivable that a father would be willing to place the chastity, honor and very life and future of his minor daughter on the carpet for such a flimsy cause, and secondly, because it fails to supply the identity of the author of the sexual abuse upon the offended girl (this sexual abuse is a hard brutal fact which as supported by medical evidence cannot be denied) if the accused deny having done it themselves."[9]

2. There was all the more reason, therefore, to concentrate on the alleged weakness of the testimony of the offended party. It is understandable why counsel de oficio Attorney Antonio S. Gutierrez, who labored mightily on their behalf, true to the tradition of the craft, would try to destroy its probative worth. He was doing his duty. A more meticulous scrutiny of the evidence of record, however, by a disinterested party, would induce a different persuasion. There is no need to repeat what was testified to by her and summarized earlier in this opinion. Attention may be called, however, to the eloquent fact that early at the start of her testimony, when she was asked to identify the appellants, the lower court itself made this observation: "Make of record that the witness is crying. She started to cry when she pointed to the accused, identifying them by the names."[10] Parenthetically, it may be observed that when she was being examined by Dr. Villafañe, he noticed that [she] was apprehensive, crying and indicating pain."[11] The same reaction occurred, at least as to her being reduced to tears, when the sordid incident was told to a policeman, one by the name of Dopong.[12] That could be expected from an offended party referred to by the lower court as "a child of tender age."[13] She was then only thirteen years old. Signs were lacking that she had reached the age of puberty. Her breasts, according to the doctor, were not developed yet.[14] In the language of the Doctor, "undeveloped breast means sexual prematurity."[15] There was also, again as made mention of by him, "no pubic hair."[16] The sexual act perpetrated against the will of this victim, barely in her teens, resulted in the laceration of her genital organ.[17] When examined that very same evening of September 25, 1972, there were still in that region, again as testified to by the physician, "the presence of bleeding."[18] It was his conclusion that barely six to twelve hours had elapsed from the time she was subjected to the abuse.[19] What then could be the value of the testimony of two witnesses for the defense that on the very day in question, she was somewhere else? They could be mistaken as to the date, of course. If, on the other hand, they would cast doubt on the truth of her having been subjected to sexual abuse, they ought to have known better. That would be the height of naivete.

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3. There would appear to be more than sufficient basis to warrant the conclusion that the constitutional presumption of innocence cannot be availed of by the appellants. The medical findings constitute mute but eloquent proof of the ordeal to which she was subjected. She survived the grilling attendant to an intensive cross-examination; at the most, only minor inconsistencies were revealed. The one undeniable fact was that she was the unfortunate victim of a brutal act. At so early an age, she was deflowered against her will and contrary to her wishes. Time and time again, she was in tears, even long after the perpetration of the deed. Even now, she has to live with the memory of such a shocking event. The feeling of shame and humiliation remains. She was innocent, but to her young, immature mind, there was something degrading in what occurred. That it was so inexplicable made it all the more unendurable. She is, therefore, at the very least, entitled to the justice which the law accords one in her unfortunate situation, if there be a showing of the guilt beyond reasonable doubt of the party or parties accused. The constitutional presumption of innocence must yield to what had been so amply and persuasively demonstrated.

4. Now as to the criminal liability incurred by appellants. As far as the son Mario Andal is concerned, he should be made to feel the full weight of the law. The facts certainly cannot be interpreted in any other light. The case of the father, appellant Isidro Andal, calls for further scrutiny. It is unquestioned that he accompanied his son in dragging the victim and pinning her down by holding her hands. Thus he did perform acts which contributed to the commission of the offense. It is true that in People v. Tamayo,[20] as Justice Street pointed out, "in case of doubt, the courts naturally lean to the milder form of responsibility."[21] That doctrine has been followed in subsequent cases, one of the latest of which is People v. Tatlonghari.[22] It is likewise undoubted that in previous cases for rape or robbery with rape, all of the accused who did participate in the commission of the act were held responsible as co-principals. There is in this case the condemnable actuation of a father helping the son in the perpetration of a foul deed. Even in these days of sexual permissiveness and laxity of morals, that appears to call for the same severity of response.

WHEREFORE, the decision of the lower court of September 24, 1974 is affirmed, both appellants being found guilty of rape and sentenced to reclusion perpetua with all the other penalties set forth in such decision.

Barredo, Antonio, Aquino, and Concepcion Jr., JJ., concur.

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[1] Article IV, Section 19, of the Bill of Rights of the Constitution, insofar as pertinent, reads: "In all criminal 'prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[2] T.s.n., Session of April 25, 1973, 11; Session of February 19, 1974, 8.

[3] Ibid. 7-13.

[4] Ibid, 14-20.

[5] Ibid, 20-24.

[6] Ibid, Session of March 7, 1973, 8, 38.

[7] Exhibit A.

[8] T.s.n., Session of March 7, 1973, 26.

[9] Decision of lower court, Appendix to Appellant's Brief, 4.

[10] T.s.n., Session of April 25, 1973, 10.

[11] Ibid, Session of March 6, 1973, 52.

[12] Ibid, Session of March 27, 1973, 9.

[13] Ibid, Session of April 25, 1973, 66-67.

[14] Ibid, Session of March 6, 1973, 17.

[15] Ibid, 19.

[16] Ibid, 29.

[17] Ibid, 32.

[18] Ibid, 37.

[19] Ibid, 37-38.

[20] 44 Phil. 38 (1922).

[21] Ibid, 54.

[22] L-22094, March 28, 1969, 27 SCRA 726. Other cases that may be cited follow:

> People v. Bantagan, 54 Phil. 834 (1930); People v. Tumayao, 56 Phil. 587 (1932); People v. Azcona, 59 Phil. 580 (1934); People v. Ibañez, 77 Phil. 664 (1946); People v. Ubiña, 97 Phil. 515 (1955). In one case, People v. Arranchado, 109 Phil. 410 (1960), the participation of one of the accused was such that he was not even found guilty as an accomplice.

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