

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO LOPEZ, DEFENDANT-APPELLANT.***G.R. No. L-41974. November 29, 1976*

Ponente: FERNANDO, J.

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Even with the laxity associated with the sexual permissive-ness of the times, if not precisely because of it, the law continues to view with extreme distaste, to put it at its mildest, the crime of rape. The penalty imposed is characterized by severity; under certain circumstances, it could be death.[1] That is merely to reflect the societal feeling of revulsion for the degradation imposed on an unwilling victim or one presumed unable to give consent.[2] As noted, with the changing mores, there should be less occasion for a resort to violence or intimidation. Aptly has it been said that further refinement in the techniques of persuasion could possibly lead to the same result and at that, to the mutual satisfaction of both parties. On a clear showing, therefore, that the requisites of the law exist, it is imperative, if it is to serve its deterrent purpose, that the offender be subjected to the repressive measure his deplorable conduct has elicited. Contrariwise, if there is not enough proof sufficient in law to rebut the constitutional presumption of innocence,[3] the accused is entitled to acquittal. The present appeal by Ernesto Lopez from a crime of rape falls in the latter category. So it was urged with vigor by his counsel, Severo M. Lorenzo. The persuasiveness of the brief submitted is reinforced by the manifestation in lieu of brief of Acting Solicitor General Hugo E. Gutierrez, Jr.,[4] where after a careful scrutiny of the evidence the same conclusion is reached. To quote from such manifestation: "[For all the foregoing considerations], we respectfully submit that appellant's guilt has not been established beyond reasonable doubt, since with the premises unraveled above, one cannot set his mind at rest to his culpability." [5] The recommendation is, therefore, one of acquittal. A careful study of the record renders evident its merit. The conviction of appellant Ernesto Lopez is, therefore, reversed.

According to complainant, Salvacion Pablo, on the morning of January 14, 1972, while seated on a bed alone in a bedroom of her house, busy sewing her shorts, clad only in her panties and a blouse, the accused, who must have noticed through a mirror in the sala that she was alone, approached her. He then sat near her. She did not ask him to leave. She saw nothing unusual in his presence under circumstances where perhaps insistence on respect for one's privacy was indicated. Almost immediately after, so she testified, she was flat on the bed; he pushed her down, touching her breasts in the process. Nor did it take long for him to remove his trousers, at the same time divesting her of her panties. Then he placed himself on top of her, with one of his hands being pressed against her throat, thus rendering ineffectual her resistance to his efforts to have sexual intercourse.[6] The act of coition then took place. From her own account, it was not over and done with in a hurry. It took time.[7] On cross-examination, in what could have been an unguarded moment, there was an admission by her that the urgencies of the flesh on the part of both of them did find release and satisfaction.[8] After it was over, the conduct of both participants was even more revealing. It was as if nothing out of the ordinary occurred. Calmly, he put on his clothes and left. She was, from her own account, equally serene, no tears shed, not even a word of recrimination.[9] That silence she kept and maintained, her father being kept completely in the dark all the while.

It was not until the last week of May, 1972, with the evidence of a prior sexual intercourse quite visible that she had to reveal what happened on that fateful day. Her pregnancy could no longer be hidden.[10] So another of the witnesses of the prosecution, Leoncia A. Carreon, a grandaunt, testified. It was at first thought that a marriage would be the ideal solution.[11] Surprisingly, the opposition came from the mother of the accused.[12] Nor could the marriage have taken place even if there were willingness on both sides, as they were first cousins. In due time, a child was born.[13] Fortunately for complainant, the cross she had to bear was thereafter lifted with her marriage to another man.

On the above facts, there clearly was no basis for a judgment of conviction for the crime of rape. As noted at the outset, the lower court's decision finding him guilty thereof and sentencing him to reclusion perpetua must be reversed.

1. Regard for the implications of the constitutional presumption of innocence cannot justify a finding of guilt. The explanation for the lower court decision could very well be that it was moved by the sad plight of complainant, a young girl of fifteen, who in a moment of weakness lost her innocence and yielded what even in these times is still looked upon as a young maiden's most precious possession, especially so in rural areas. She is thus entitled to all the sympathy there is. What was done by the accused was morally reprehensible. It could not, however, be adjudged as rape. Moreover, the lower court must have been influenced likewise by what clearly appeared to be the fabricated defense of alibi interposed by the accused. The verdict was one of guilt. Hence this appeal. As could be expected, the brief filed on his behalf concentrated on the weakness of the case for the prosecution.

The Solicitor General's Office, as noted at the outset, with a more objective scrutiny of the evidence of record, was in agreement that appellant's guilt was not established beyond reasonable doubt. It cannot, according to the manifestation submitted by it, "endorse Salvacion's protestation that appellant's coition with her was affected through force and violence, not only because her version thereof lacks spontaneity and candor and is bereft of corroboration, physical or testimonial evidence, but also because, and more significantly, it runs counter to the usual behavior of a rapist and that of the victim." [14] In support of such a conclusion, the manifestation stated the following: "Notwithstanding that the alleged outrage to her virtue took place on January 14, 1972, she had not breathed it to a soul, much less to her father and the police, in order to vindicate her honor and the culprit penalized for it, until the lapse of about four (4) months, that is, sometime in May, 1972, and only then, when her grandaunt Leoncia Carreon detected she was pregnant." [15] There is this consideration to reinforce such a doubt as to the guilt of the accused: "It should also be stated that Salvacion's lone account of the alleged forcible coition, which is necessarily biased to save her embarrassment, as already pointed out above, is not legally, much less morally, sufficient to sustain a verdict of conviction and to send appellant to spend the rest of his life in the penitentiary. While it is to be admitted that conviction may rest on the testimony of a single witness, especially in a case of rape which is seldom committed in the presence of third parties, still the testimony of a victim of rape must be corroborated by the physical facts, such as finger grips or contusions on her throat, face, body, arms and thighs, as well as torn and stained garments, particularly the panties worn by the victim, to prove force and violence. In the present case, none of such physical facts was introduced as evidence, * * * There is an insinuation that her panties were not torn, as appellant removed them 'freely, * * * but this is worse, because it patently shows that she did not resist their removal.'" [16] Lastly and in the language of such manifestation: "More [significant] was the strange behavior of the protagonists of the carnal act, which is opposed to the normal conduct of a rapist and his victim. Although Salvacion pretended that she did not like appellant, her first cousin, to come to her house, without however, giving any reason therefor, and although she was alone at the time of the incident and was wearing scanty apparel, merely a blouse and panties, she did not object when she saw him in her room. On the contrary, when he asked her what she was doing, she replied casually that she was sewing her shorts, without any sign of apprehension and without covering the lower portion of her body. She did not even question him why

he entered the room or send him out at least, considering that she was not decent* * *. He allegedly pushed her on the chest with his two hands and threw her down on the bed * * *, as he first sat on the bed * * *. She did not make any outcry for succor. * * * Then, before actually performing the carnal act, appellant first removed his pants, instead of just unbuttoning his pants and putting out his penis, thus signifying that he was not in a hurry, as if he had all the time to have sexual intercourse with her. Thereafter he removed 'freely' her panties. The carnal intercourse over, appellant put on his trousers, sat on the edge of the bed and then took French leave. For her part, Salvacion stood up, put on her panties and shorts and went out. For four (4) months she kept to herself the ordeal she had allegedly undergone. The foregoing facts clearly engender serious doubts as to the commission of the crime of rape." [17] The persuasive weight of such a summation, coming as it does from the counsel for appellee, is self-evident.

2. This excerpt from the recent case of *People v. Joven*, [18] finds relevance: "The accused has in his favor the presumption of innocence. That is a mandate of the fundamental law. It may be noted that even when the previous Organic Act did not so provide, a defendant, according to the early case of *United States v. Asiao*, decided in 1902, with Justice Torres as ponente, 'must be presumed to be innocent until [his] guilt is proven by satisfactory testimony and even in case there is a reasonable doubt as to [his] innocence [he is] entitled to acquittal.' The burden of proof is thus on the prosecution to demonstrate guilt. Every vestige of doubt having a rational basis must be removed. More specifically, where the offense charged is rape through force, there must be a showing of compulsion being resorted to and coercion being employed. The element of voluntariness must be lacking. If there be an indication of willingness, even if half-hearted, the complaint must be dismissed. 'It is well-settled,' according to Chief Justice Moran in *People v. De Castro*, 'that when some "hesitation was shown by the woman, or that she had contributed in some way to the realization of the act," there is no rape.' That is a doctrine that goes back to *United States v. De Dios*, a 1907 decision. Justice Torres, who penned the opinion, made use of the above formulation of Viada as to the presence of some hesitation on the part of the complainant or her contributing in some way to the realization of the act. In addition, he cited Pacheco, whom he referred to as a 'learned commentator.' Thus: 'The crime of rape is not to be presumed; consent and not physical force is the common origin of acts between man and woman. Strong evidence and indications of great weight will alone support such a presumption.' The most careful scrutiny of the records of this case, to repeat, fails to reveal the existence of that kind of evidence that would suffice to overcome the presumption of innocence." [19] To speak only of decisions the past two years where the constitutional presumption of innocence sufficed to call for acquittal in rape prosecutions, mention may be made of *People v. Alvarez*; [20] *People v. Barbo*; [21] *People v. Castro*; [22] *People v. Reyes*; [23] *People v. Ilagan*; [24] *People v. Ramirez* [25] and *People v. Godoy*. [26]

2. In the light of the credible and competent facts of record, this Court cannot view the matter in the same way the lower court did. The state of moral certainty as to the guilt of the accused was not reached. It does not signify, to repeat, that no reproach could be hurled at the manner he conducted himself. It is only that the quantum of proof required in cases of rape was not satisfied. It bears repeating likewise that in reversing the appealed decision and acquitting the accused, this Court is not insensible to the misfortune that befell the hapless complainant. As in the lower court, so here, there is all the sympathy for her. She is more to be pitied than censured. As a young girl of fifteen, subject to the biological changes that adolescence brings, she was unable to resist what has been referred to, in Faulkner's phraseology, as the glandular promptings of the moment. Moreover, what must have contributed to such an occurrence was the fact that she was not put on her guard, the accused being a first cousin. To be realistic about the matter with the cult of the machismo still prevalent, it should cause no surprise when he exploited to the hilt the potentialities of the occasion and injected the element of sex in what otherwise could be a humdrum situation. Certainly though, that was not enough to warrant a conviction.

WHEREFORE, the decision of the lower court of October 9, 1975, convicting the accused Ernesto Lopez of the

crime of rape is reversed, without prejudice to the appropriate action for support of the child that was the result of the sexual act committed on January 14, 1972. No costs.

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

[1] According to Article 335 of the Revised Penal Code: "When and how rape committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

[2] Cf. Brownmiller, *Against Our Will* (1975).

[3] According to Article IV, Section 19 of the present Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * * " So it was provided likewise in Article III, Section 1, par. 17 of the 1935 Constitution.

[4] He is assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Ramon A. Barcelona.

[5] Manifestation, 15.

[6] T.s.n., Session of January 25, 1975, 2 -10.

[7] To the question, "How long was the push and pull motion done by Ernesto Lopez when he was on top of you?", her answer was, "It was quite for sometime, sir." Ibid, 8.

[8] She admitted on cross-examination that she "felt something hot inside her private part" coming not only from the accused but from her. Ibid, 26.

[9] Ibid, 9-10.

[10] T.s.n., Session of April 16, 1975, 5.

[11] Ibid, 8.

[12] Ibid, 10.

[13] T.s.n., Session of January 25, 1975, 10.

[14] Manifestation, 7-8.

[15] Ibid, 8.

[16] Ibid, 10-11.

[17] Ibid, 12-14

[18] L-36022, May 22, 1975, 64 SCRA 126.

[19] Ibid, 128-129. The Asiao decision is in 1 Phil. 304; De Castro in 84 Phil. 118 (1949); and De Dios in 8 Phil. 279.

[20] L-34644, January 17, 1974, 55 SCRA 81.

[21] L-30988, March 29, 1974, 56 SCRA 459.

[22] L-33175, August 19, 1974, 58 SCRA 473.

[23] L-36874, September 30, 1974, 60 SCRA 126.

[24] L-36560, May 28, 1975, 64 SCRA 170.

[25] L-30635, January 29, 1976, 69 SCRA 144.

[26] L-31177, July 15, 1976.

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