

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO MORRE Y BANEQUIT, @ “REY”; @
“JIMMY BOY”; @ “NALDO”;
ACCUSED-APPELLANT.**

G.R. No. 102978. January 18, 1993

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the July 11, 1991 decision of the Regional Trial Court, Branch 13, Cebu City, in Criminal Case No. CBU--1381, convicting accused-appellant Reynaldo Morre y Banequit, alias Rey, Alias Jimmy Boy, alias Naldo, of the crime of rape. The dispositive portion of the assailed judgment reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Rape and hereby sentences him to a penalty of Reclusion Perpetua. He is likewise directed to indemnify the private complainant the sum of P20,000.00 and to pay the costs." (Rollo, p. 18)

The sworn complaint filed on August 15, 1983 by the complainant Maria Sadani Nabua, assisted by her mother, Gloria Nabua, reads:

"That on or about the 8th day of August, 1983, at about 1:00 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with the use of a deadly weapon (knife), with deliberate intent, did then and there have sexual intercourse with the undersigned against her will." (Rollo, p. 1)

Upon arraignment on October 13, 1983, the accused-appellant pleaded not guilty. He was subsequently convicted of the crime charged. Hence, this appeal.

The accused-appellant raises the following assignment of error and issues:

"ASSIGNMENT OF ERRORS

1. THE TRIAL COURT ERRED IN NOT FINDING THE ACCUSED AS VICTIM OF A FRAME UP BY OFFENDED PARTY WITH POSSIBLE PARTICIPATION OF THE LATTER'S BOYFRIEND AND HER PARENTS.

ISSUES

1. WHETHER COMPLAINANT'S TESTIMONY ON THE CIRCUMSTANCES SURROUNDING HER ALLEGED RAPE BY THE ACCUSED DESERVES CREDENCE.

2. WHETHER ACCUSED'S TESTIMONY TENDING TO PROVE HIS BEING FRAMED UP ON THE CHARGE DESERVES CREDENCE."

(Brief for Accused-Appellant, pp. 10-11; Brief for Plaintiff-Appellee, p. 5)

Significant in the instant case is the circumstance that, as in the cases of *People v. Capilitan* (182 SCRA 313

[1990]) and *People v. Villapaña* (161 SCRA 72 [1988]), the trial was conducted by a judge other than the one who rendered the decision. (See *People v. De Paz*, G. R. No. 86436, August 4, 1992; *People V. Abaya*, 185 SCRA 419 [1990]) Here, it was Judge Lauro V. Francisco who heard the testimonies of the complainant and the accused-appellant between May 16, 1984 to March 13, 1985 and it was Judge Meinardo P. Paredes who wrote the decision dated July 11, 1991 convicting the accused-appellant on the basis of the records of the case. Judge Paredes did not have the opportunity to directly observe the demeanor of the witnesses on the stand so as to gauge their credibility.

In the *Villapaña* case, the Court said:

X X X X X X X X

"Additionally, we have to take note that in this case, the judge who heard the evidence for the prosecution is not the same judge who decided the case. It was Judge Serafin Salvador who heard the testimonies of complainant and her witness before his retirement. Whereas, it was Judge Romulo Quimbo who decided the case relying solely on the transcript of stenographic notes in appreciating Macaranas' and her witness' testimonies. Even as this Court has consistently been guided by the precept that findings of trial courts on credibility of witnesses are accorded great weight and must not be disturbed as it was the trial judge who had the opportunity to observe the demeanor of the witnesses while they were testifying, this case should be an exception in view of the fact that the judge who decided the case is NOT the same judge who heard the evidence. (See *People v. Escalante, et al.*, G.R. No. L-37147, August 22, 1984, 131 SCRA 237.) Thus, the Court should all the more exercise utmost care in evaluating the evidence presented in the instant case so as to render justice not only to the accused, but also to the complainant and the State as well."

X X X X X X X X

Thus, in the instant case, it is necessary for the Court to make its own evaluation of the testimony of the witnesses, in order to morally satisfy itself that the conviction of accused-appellant was not erroneous.

At this juncture, it is pertinent to note three settled principles used by this Court to guide it in its review of evidence in rape cases: (a) an accusation for rape can be made with facility, and while it is difficult to prove it is even more difficult for the accused, though innocent to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense. (*People v. Casinillo*, G.R. No. 97441, September 11, 1992, *People v. Pizarro*, G.R. No. L-49282, July 6, 1992)

In rape cases where the testimony of the complainant does not inspire credence, this Court has reversed the trial court's judgment of conviction and acquitted the accused-appellant. (*People v. Pizarro*, *supra*; *People v. Dela Cruz*, G. R. No. 92442-43, March 23, 1992; *People v. Teodisio*, 198 SCRA 121 [1991]) Our review of the records leads to such an inevitable conclusion in the instant case.

The trial court gave full credence to the testimony of the complainant. Her testimony was summarized in the decision as follows:

"On direct examination she testified, among other things, as follows: That in the early evening of August 7, 1983, she was in Tisa, Cebu City; because she was invited by her aunt to attend a dance; that in going home she passed by A. Lopez St. toward V. Rama Avenue; that on her way home she was met by her sweetheart Dado Repolo; that she and her sweetheart went to the house of the latter; that while walking, her sweetheart called three (3) persons, namely, accused Reynaldo Morre, a certain Jojo Castillo and a certain Cesar alias Jojo; that accused Reynaldo Morre was introduced to her; that while they were already walking a little farther, accused Morre covered her mouth and pointed a hunting knife to her neck; that her sweetheart was accosted by

the two (2) companions of the accused; that the accused brought her to a fence at about 12:30 o'clock dawn of August 8, 1983; that it was already very dark and she did not know where her boyfriend was brought by the two persons who accosted him; that the accused kissed the whole parts of her body while they were in the fence; that she protested but the accused threatened to kill her with the hunting knife (Exh. "A"); that the accused laid her on the ground; that thereafter they proceeded a little bit farther and she was made to lie down on a bamboo table or bed; that the house where the bamboo table or bed was located was unoccupied at that time; that the accused had sexual intercourse with her in the bamboo bed; that she was undressed by the accused; that the accused placed her panty inside his pocket; that before the accused consummated his sexual desire she kept on wiggling to protest the acts of the accused but the latter pointed the hunting knife to her neck; that before they have sexual intercourse the accused also kissed all the parts of her body; that thereafter the accused brought her to a garden and was made to lie down on the ground but since there was a dung or manure the accused let her sit on his lap; that while in that position they also had sexual intercourse; that again she was not able to protest because the accused threatened to kill her; that from the garden she was brought to a chapel where she was again made to lie down; that the accused kept on kissing and biting some parts of her body; that when the accused fell asleep she put on her clothes and ran away; that the accused had sexual intercourse with her two (2) times; that there were also times when she pushed the accused but the latter pointed the hunting knife to her neck; that there was also a time when the accused let her masturbate his penis; that if she will not give in to his desires he will kill her; that she was not able to get her panty before she ran away because the accused placed it in his pocket; that she went to her cousin at V. Rama Avenue and told the latter that she was raped by the accused; that she was investigated by the police and physically examined by a doctor.

On cross-examination she testified, inter alia as follows: That she went to Tisa to attend a dance on August 7, 1983, at about 8:00 o'clock in the evening; that before she was raped she was a dancer in an Alaska bar; that she attended the dance in Tisa up to 12:00 o'clock midnight and thereafter she proceeded to A. Lopez St.; that it was her intention to go to the house of her sweetheart; that she wanted to see the sister of her sweetheart; that after she learned that the sister of her boyfriend was not there, she started going home; that the entire A. Lopez St. at that time was lighted; that the accused kissed all the parts of her body when she was brought to the fence; that she was kissed in her nipple and belly but she did not enjoy; that she resisted but the accused threatened her with a knife so she did not resist anymore and allowed the accused to do anything to her; that the accused did not cover her mouth; that from the fence the nearest house was located at about 20 meters away; that she did not shout for help; that the accused kissed all the parts of her body for half an hour; that from the fence they proceeded to a bamboo bench under an uninhabited house; that from the bamboo bench they went to the garden and she was already naked; that she was not able to lie down in the garden because there was a dung or manure; that the accused let her sit on his lap; that when the accused ordered her to undress she did not resist because he threatened her with a knife; that while she was sitting on the lap of the accused he penetrated her; that she allowed him to do that because he threatened her; that the accused was always holding the knife in his right hand; that while they were already in the chapel the accused continued kissing her; that the accused was very tired and fell asleep; that it was at this juncture that she was able to escape; that the accused had sexual intercourse with her twice; that she kept on warding off the accused when the latter kissed her; that she wanted to shout but the accused covered her mouth with his hand; that she was wounded; that there were times also when her mouth was not covered; and that she wanted to shout but the accused threatened to kill her." (Rollo, pp. 11-13)

On the other hand, the trial court disbelieved the accused-appellant's testimony, which was summarized in the decision as follows:

"Accused REYNALDO MORRE, 26 years old, single, Grade I, lamp shade maker and a resident of Bulakao, Talisay, Cebu, testified, among other things, on direct examination as follows: That the accusation against him is false because he never molested Maria Sadani Nabua; that he does not personally know the latter although she was introduced to him by her boyfriend at A. Lopez St., Cebu City, August 7, 1983; that on said date he

played basketball; that thereafter he intended to go home but his friends invited him to a drinking session at the corner of A. Lopez St.; that they were drinking from 10:00 o'clock in the evening up to midnight; that his companions were Turo, Jojo, Rene and Loloy; that while they were playing guitar and singing, the private complainant passed by at around 12:30 on August 8, 1983; that the private complainant stopped for a short while because she saw her boyfriend Rene; that Rene introduced his girlfriend to them and they walked away; that the two were going towards A. Lopez St.; that he and his companions laughed and shouted to the girlfriend of Rene; that the girlfriend of Rene answered that they were going to heaven; that they left the place at about 1:30 in the morning of August 8, 1983; that instead of going home he slept in the chapel; that while there he saw the private complainant and Rene quarelling; that the private complainant wanted Rene to go to the house of the latter but Rene did not want because his aunt knew that the private complainant was not a good girl; that Rene pulled the private complainant and slapped her; that the private complainant requested Rene to bring her home because her parents might scold her; that Rene returned later on; that at 5:00 o'clock in the morning of August 8 he found himself naked and mauled by the barangay police who used clubs; that his maulers told him that he raped their cousin Maria Nabua; that he was brought to the office of the barangay captain where he was again mauled; that afterwards he was brought to the Taboan Police Station where he was investigated; that while there he was again mauled; that the parents of Miss Nabua told him to produce P5,000.00 so that they will not file a case against him; that he refused to give the amount because he and his uncle are poor and he did not commit any offense against their daughter; that the parents of Miss Nabua told him that if he will not come across a certain amount they will let somebody maul him again; that in the evening of that day he was mauled; that he did not know the names of his tormentors; that in the following morning his lawyer, elder brother and uncle saw his injuries; that he is willing that his spermatozoa will be examined to find out if it will match the spermatozoa taken from the private parts of Miss Nabua; that after August 8, 1983, he met Miss Nabua at the BBRC many times; that the live-in partner of Miss Nabua was also detained thereat; that Miss Nabua said she was not filing a case against him; that the case was filed at the instance of her mother in the hope that he could produce some amount; that the barangay captain was also interested in filing the case against him because he (barangay captain) has an ax to grind against him believing that he (accused) is a drug pusher and a snatcher; and that the hunting knife presented by the prosecution was not his.

On cross-examination he testified, among other things, as follows: That he has three (3) aliases, namely, Rey, Jimmy Boy and Naldo; that he was in the vicinity of A. Lopez St. on August 7, 1983, at about 11:00 to 12:00 o'clock in the evening together with Jojo, Rene and Loloy; that he had a drinking spree with the aforementioned persons; that he was already there in the morning because he was working on a lamp shade; that although he was drinking at that time his senses or mental faculties were not affected; that Leonardo Repolo introduced the private complainant to him; that after the private complainant was introduced, he did nothing; that they kept singing; that he did not go home in the early morning of August 8, 1983 because he slept in the chapel of A. Lopez St.; that he did not sleep in the house of his friends; that he did not sleep with the private complainant; that he has not seen the knife and the scabbard presented by the prosecution; that the barangay captain of A. Lopez did not investigate but mauled him; that the knife and the scabbard were not also shown to him in the police station; that at 6:00 o'clock of August 8, 1983, he was arrested by barangay policemen; that he did not know the persons who mauled him; that he did not tell the police investigator of the San Nicolas Police Station that he was mauled by the barangay captain and the barangay policemen; that he did not file charges against them; that he did not also know the names of the policemen who mauled him; that he was afraid to go out of his cell because he was accused of being a thief and was threatened that he will be salvaged; that he was not examined by a doctor; that when he was already in the Office of the City Fiscal he did not tell the investigating fiscal that he was mauled; that he did not request the fiscal to help him so that he will be examined by a doctor; that the policemen who allegedly mauled him were not present in the Office of the City Fiscal; that he did not ask the jail warden to allow him to go out so that he will be examined by a doctor; that before he was brought to the city jail he met the mother of the private complainant who asked P6,000.00 for the settlement of the case; that before August 7, 1983 he did not yet know the private complainant and the latter had not offended him; that he believes that the case was filed against him because he caused the pregnancy of a woman who is

the niece of the chief of the barangay police of A. Lopez; that he has no knowledge if the private complainant is in any way related to the barangay police; that it is possible that the private complainant filed the instant case because she cannot pinpoint the person who perpetrated the crime against her; that the chapel where he was sleeping was surrounded with several houses; that he has slept in that chapel many times before; that said chapel is well-lighted; that their drinking session lasted up to 12:00 o'clock; that he did not go home because it was already late; that he did not tell the private complainant that he is going to sleep in the chapel; and that he was surprised when the private complainant together with the barangay tanods arrived and pointed him out as the rapist." (Rollo, pp. 14-16)

The backgrounds of both the complainant and the accused-appellant make it quite difficult to determine who is telling the truth. Any doubts, however have to be resolved in favor of the accused-appellant.

Maria Sadani Nabua is a seventeen year old young lady who works as a dancer in a bar. On the date of the incident, she was wandering alone at A. Lopez Street towards V. Rama Avenue at midnight intending, as she claimed, to visit the house of a boyfriend after midnight.

Reynaldo B. Morre, on the other hand, is a suspected drug pusher and snatcher, a man sporting three aliases, and a frequent participant in drinking sprees who would sleep in a chapel, many times according to him, after these drinking sessions. One of his defenses is that the barangay police ganged up on him because he had impregnated the niece of the chief of the barangay police chief.

At any rate, no matter what the character of the accused, evidence beyond reasonable doubt has to be present before the judgment of conviction may be affirmed.

The trial court failed to consider contradictions in the complainant's testimony which do not refer to mere minor details and cannot be considered as inconsequential. The inconsistencies refer to the substance of the offense itself - the alleged sexual intercourse with force and intimidation.

In her direct examination, the victim testified as follows:

x x x x x x x x

"Q.

Could you tell the Honorable Court how many times did the accused, if at all, had sexual intercourse with you, as you testified there was once while you were in the garden?

x x x x x x x x

A.

Twice.

x x x x x x x x

COURT

You ask where was the first and where was the second? (To witness) where was the first time?

WITNESS

A.

In the house where there is a stair.

COURT

Q.

And where was the second?

A.

In the garden." (TSN, May 16, 1984, p. 29-30; Emphasis supplied)

Still during the same direct examination, the victim testified as follows:

x x x x x x x x

"COURT

Q.

When you were on top of that bamboo bed with the accused Morre on top of you and both of you were naked, all he did to you was to kiss you all over, is that correct?

A.

At that moment, Your Honor, when both of us were naked and Reynaldo Morre was on top of me, he placed his finger inside my vagina.

COURT

Q.

Is that all he did to you?

A.

He still brought me to the garden. Your Honor?

COURT

Proceed, Fiscal.

FISCAL PAZ

(continuing direct)

Q.

Is that all what the accused do to you?

ATTY. MAHINAY

Already answered, Your Honor.

COURT

Sustained.

FISCAL PAZ

Q.

Earlier you stated that the accused had a sexual intercourse with you. Where did that sexual intercourse happen?

A.

In the house where there is a bench near the stairs, Reynaldo Morre had a sexual intercourse with me.

Q.

That house where there is a stair and there was a bench, is that a different place from the place where there was the bamboo bed or 'lantay'?

WITNESS

A.

Yes." (TSN, May 16, 1984, pp. 23-25; Emphasis supplied)

And yet, the complainant had testified in the same direct examination as follows:

"Q.

Now, while you were near or at that bamboo table, 'lantay' in the dialect, what happened?

A.

He had an intercourse with me," (TSN, May 16, 1984, p. 15; Emphasis supplied)

And on cross-examination, she testified as to sexual intercourse in a chapel, as follows:

COURT

Q.

While at the chapel, did the accused have sexual intercourse with you again?

A.

Yes, sir.

Q.

How many times?

A.

Twice." (TSN, June 18, 1984, p. 14; Emphasis supplied)

This Court has often said that minor inconsistencies of a witness do not necessarily detract from his credibility. (People v. Bacalso, G. R. Nos. 94531-32, June 22, 1992; People v. Mancilla, 173 SCRA 373 [1989]) The inconsistencies involved in the instant case, however, are not insignificant. On direct examination, the complainant testified that there was sexual intercourse twice: first, in the house with the stair, and second, in the garden. And yet, in the same direct examination, she testified that there was intercourse on the bamboo bed or lantay, which she also said was an altogether different place from the house with the stair. And on cross-examination, the complainant testified that there was also sexual intercourse twice at the chapel.

Moreover, several aspects of the complainant's testimony tax belief. We are mindful of the fact that in crimes against chastity, conviction or acquittal depends almost entirely on the credibility of the complaining witness. This Court has repeatedly held that evidence to be believed must not only proceed from the mouth of a credible witness, but must in itself be credible. The test to measure the value of the testimony of a witness is whether or not such is in conformity to knowledge and consistent with experience of mankind. (People v. Alvarez, G. R. No.

73031, September 11, 1992) The following circumstances, when viewed in the light of this test, further erode the complainant's credibility:

1. The entire crime spanned more or less three hours, from around 12:30 a.m. (TSN, May 16, 1984, p. 10) until early morning.

Throughout these three hours, the complainant was kissed and bit by the accused-appellant for long periods of time, e.g., half an hour, at the fence (TSN, June 18, 1984, p. 10), and in various parts of her body - from her lips, to below her nipple, and her belly (TSN, May 16 1984, p. 13-14, p. 22, p. 28; June 18, 1984, p. 8), and was made to masturbate the accused's penis. (TSN, May 16, 1984, p. 34) Through most of the crime, the accused-appellant was wielding a hunting knife, and yet he was able to do all the above acts alleged by the complainant without putting it down.

2. The crime was allegedly consummated in several places. First, the complainant was brought to a fence along A. Lopez St. (TSN, May 16, 1984, p. 9) Then she was led to a bamboo table under an unoccupied house. (TSN, May 16, 1984, p. 15) From there, the complainant and the accused-appellant walked toward a garden (TSN, May 16, 1984, p. 23), which was 20 meters away. (TSN, June 18, 1984, p. 10) From the garden, the complainant was carried by accused-appellant to a chapel some 20 meters distant. (TSN, May 16, 1984, p. 27-28) It must be noted that the entire A. Lopez St. is well-lighted, with several houses. (TSN, June 18, 1984, p. 7)

3. The complainant was undressed by the accused-appellant, and her panty placed by the latter in his pocket. (TSN, May 16, 1984, pp. 17 and 21) At the time the complainant and the accused-appellant were on the bamboo table, both were already naked. (TSN, May 16, 1984, p. 23) Before going to the garden, the accused let the complainant put on her clothes. (TSN, June 18, 1984, p. 10) In the garden, both were again naked. (TSN, June 18, 1984, p. 11) At the chapel, the complainant was again allowed to put on her clothes. (TSN, June 18, 1984, p. 14) As to this point and her subsequent escape, the complainant testified as follows:

"FISCAL PAZ

(Continuing direct)

Q-

Now, did you say you were able to escape?

WITNESS

A-

Yes.

Q-

Why were you able to escape from the accused?

A-

Because he has already fallen asleep because he was tired.

Q-

Before you escaped from the accused, where were then your dress and your underwear?

x x x x x x x x

WITNESS

A-

My panty was inside his pocket.

FISCAL PAZ

Q-

How about your blouse and skirt?

A-

I wore it.

Q-

Why did you not get your panty from the accused?

A-

He would not give back to me my panty because it is easy for him to have a sexual intercourse

Q-

But you said when you escaped the accused was fast asleep. Why did you not get your panty while the accused was fast asleep?

ATTY. MAHINAY

Already answered, Your Honor.

COURT

She may still answer, she is the offended party.

WITNESS

A-

He would not give it to me.

FISCAL PAZ

Q-

Why? Did you attempt before to ask the panty from him before that very moment?

ATTY. MAHINAY

Your Honor, please, the witness testified that when she attempted to get the panty the accused was already fast asleep." (TSN, May 16, 1984, pp. 36-37)

x x x x x x x x

"Q.

At that instance where you were at the chapel, where were your clothes?

A.

We already put them on.

Q.

You were allowed to put on your clothes after the second intercourse at the chapel?

A.

Yes, sir.

Q.

So you could have run away immediately after putting on your dress if you wanted to?

A.

Yes, sir." (TSN, June 18, 1984, p. 14)

4. More incredible is the alleged sexual intercourse which occurred in the garden. On this, the complainant testified as follows:

"FISCAL PAZ

Q.

And then when you arrived at the garden, what happened?

WITNESS

A.

He tried to make me lie down on the ground but since there is a dung or manure, what he did, he only let me lie on his lap.

Q.

And then while you were lying on the lap of Reynaldo, what happened?

A.

While he let me lie on his lap, he tried to insert his penis on my private part.

Q.

And actually, did the penis of Reynaldo enter your private part?

x x x x x x x x

WITNESS

A.

Yes.

FISCAL PAZ

(continuing direct)

Q.

While Reynaldo was doing this act on you, did you not object or protest?

A.

How can I protest when he threatened to kill me?

Q.

While the penis of Reynaldo Morre was inside your vagina, what did he do?

A.

He brought me to the chapel and make me lie down.

Q.

By the way, from that place you said there was a garden then the chapel now you testified you proceeded to, could you tell the Honorable Court how far is that chapel to the garden?

A.

Yes.

Q.

Point out to the Honorable Court look outside the courtroom and point to any place outside that will indicate the distance between the garden and the chapel?

WITNESS

A.

From here to the coconut tree.

ATTY. MAHINAY

There are plenty of coconut trees, Your Honor.

COURT INTERPRETER

From here to that coconut tree is around 20 meters, more or less.

FISCAL PAZ

Yes.

ATTY. MAHINAY

I agree, Your Honor." (TSN, May 16, 1984, pp. 26-28)

Considering the fact that the accused was allegedly wielding a knife in his right hand throughout the episode (TSN, June 18, 1984, pp. 11-13), and the very unusual position assumed by the parties, not to mention the fact that the victim was carried by the accused some 20 meters while in that position, the Court finds complainant's story highly improbable. (See *People v. Cabading*, 174 SCRA 48 [1989]; *People v. Apat*, 114 SCRA 620 [1982])

It is also significant to note the testimony of Dra. Corazon Huyao, the physician presented by the prosecution who examined the complainant on August 8, 1984 at 11:30 a.m. (Medico-legal Report, Exh. "A"). Dra. Huyao testified that the hymenal lacerations found in complainant could have been inflicted 2 or 3 days before the date of the examination. (TSN, August 2, 1984, p. 21) As to the complainant being found positive for spermatozoa, Dra. Huyao testified that because the life span of a sperm is at most seventy two (72) hours, intercourse could have happened any time within such time span. It must be noted that the examination was conducted not more than twelve (12) hours from the time of the occurrence of the alleged rape. And yet Dra. Huyao testified on the

possibility that the hymenal lacerations could have been inflicted up to 2 or 3 days prior to the date and time of the examination. Such a possibility should not be discounted nor ignored, for it casts reasonable doubt upon the culpability of the accused, which reasonable doubt must be resolved in his favor. Indeed, every circumstance favoring the innocence of the accused must be duly taken into account, in view of the equivocal evidence. (People v. Tiwaken, G.R. No. 92988, September 9, 1992)

As to the linear abrasions stated in her report, Dra. Huyoa on direct examination testified as follows:

"FISCAL PAZ

(continuing direct)

Q.

Going back, Dr., to the linear abrasions you stated on your findings. What could have caused those linear abrasions on the body of the patient, Dr.?

A.

This may be caused by blunt objects or even a sharp instrument or by the hand. By a hand blow.

x x x x x x x x

FISCAL PAZ

(continuing direct)

Q.

You made mention likewise, Dr., of contusion. Could you likewise tell the Honorable Court what must have caused that contusion on the body of the patient?

WITNESS

A.

It may be caused by the hand, just when you are boxing, you can have contusion.

Q.

How about if a person is choked by the neck, what could the possible cause of contusion. . . ?

x x x x x x x x

A.

There was only one (1) contusion. There are several contusions there if hands are used.

The foregoing appear to corroborate the un rebutted testimony of the accused-appellant on direct examination as follows:

x x x x x x x x

"Q.

While you were on your way to the chapel in order to rest, was there anything unusual you noticed that happened?

A.

I saw something.

Q.

What did you see?

A.

I saw Maria Sadani Nabua and Rene quarrelling.

A.

Can you tell this court, if you know, what was that they were quarrelling all about?

A.

What I knew is that Maria Nabua wanted to go with Rene to the house of the latter but Rene did not want her to go because his aunt knew that Maria Nabua was not a good girl.

Q.

Aside from the arguments or altercation between Rene and the girlfriend at that time, was there any unusual thing that happened between the two at that time?

A.

Yes, there was.

Q.

What was that?

A.

Since Maria Nabua forced Rene to bring her to his house, Rene pulled, and I even saw that she was slapped by Rene. (Underscoring supplied; TSN, January 17, 1985, p. 8)

The physical injuries sustained by the victim as testified to by Dra. Huyoa corroborate the testimony of the accused-appellant relative to the slapping incident between the victim and her boyfriend.

It is true that the accused-appellant's defense is weak, being a mere denial. There are also allegations of improper motive on the part of the complainant, that of an attempt to extort P5,000 from the accused-appellant, and on the part of the arresting barangay officials, to retaliate against the accused-appellant for having impregnated a niece of the barangay police chief. But again, we emphasize that conviction must conclude from the prosecution proving the accused-appellant's guilt beyond reasonable doubt, and never from the weakness of the defense.

The circumstance of accused-appellant's escape cannot be said to conclusively indicate guilt. Flight must not always be attributed to one's consciousness of guilt. (People v. Mancao, G.R. No. 97495, October 30, 1992) In the instant case, the accused-appellant at the time of his escape, had already been in detention for almost two years. His un rebutted testimony shows that he had been mauled repeatedly when arrested and while in jail. (TSN, January 17, 1985, pp. 13, 15, and 17) Moreover, during his detention, the accused-appellant underwent surgery (TSN, March 13, 1984, p. 6), and had been undergoing medical treatment at the Cebu City Medical Center.

On the basis of the totality of the records before us, we hold that the evidence for conviction is not clear and convincing to overcome the constitutional presumption of innocence. We quote from People v. Capilitan, supra:

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"It is possible that the accused-appellant really raped the complaining witness, but the Court is not persuaded to the point of moral certainty, which is the high standard of proof required for conviction. The defense may be weak, but the prosecution is even weaker; and the rule is that conviction must rest not on the weakness of the defense but on the strength of the prosecution. So often has it been said that it is better for one hundred criminals to go free than for one innocent man to be convicted. That is the reason why we require the constitutional presumption of innocence to be offset only by the most persuasive of proofs that will establish the guilt of the accused beyond the whisper of a doubt."

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WHEREFORE, IN VIEW OF THE FOREGOING, the appealed decision is REVERSED and the accused-appellant is ACQUITTED on reasonable doubt.
SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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