PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR CRUZ, ACCUSED-APPELLANT.

G.R. No. 103633. October 13, 1993

Ponente: NOCON, J.

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NOCON, J.:

A pentel pen was used to intimidate her into having sexual intercourse with the accused, as testified to by Rosalie Beltran, the alleged rape victim. Not true as she and I are sweethearts, cries the accused-appellant, Melchor Cruz. He points to Rosalie's mother's affirmation that the handwriting in the romantic notes Rosalie sent to him was really her daughter's and that she was no longer interested in pursuing the case. Meticulous examination of the evidence reveals merit in accused's allegations. His acquittal is therefore in order.

The evidence for the People as summarized by the Solicitor General is as follows:

> "At about 8:30 o'clock in the morning of December 2, 1978, Rosalie Beltran, then fourteen (14) years of age, was inside her room located at the second floor of their house at 84 B. Mariano St., Sta. Ana, San Mateo, Rizal. She was lying on her bed as she was suffering from a headache. At this time, the members of her family were out. Also at the house at the time was appellant Melchor Cruz, the latter being employed by Rosalie's mother (Leonida Beltran) as shoemaker (tsn, April 15, 1980, pages 6-10). Taking advantage of the situation, appellant (Melchor) entered the unlocked room of Rosalie holding a pentel pen with a pointed end. When Rosalie inquired what was he doing there, appellant embraced her. Rosalie tried to shout but appellant covered her mouth with his left hand while he embraced her at the waist with his right hand, which he also used to remove her shorts (tsn, April 15, 1980, pages 11 to 14). Appellant succeeded in removing Rosalie's shorts (tsn, April 15, pages 17 to 18).
>
> “Rosalie continued to resist appellant but he gave her a fistblow on the stomach which weakened her. Thereafter, appellant succeeded in forcing Rosalie to lie down on her bed facing upward, with only a portion of the body above her knees actually on the bed (tsn, April 15, 1980, page 26), after which appellant left her with the threat that he would kill her should she tell anyone about the incident (tsn, April 15, 1980, pages 29 to 30).
>
> "Intimidated by the threat, Rosalie did not immediately tell anyone about the rape committed by appellant upon her. A week later, however, she related the incident to her grandmother, Isabel Beltran, and on December 10, 1978, Isabel Beltran informed Leonida Beltran (Rosalie's mother) of the incident. Leonida confronted Rosalie who admitted that indeed she was abused by appellant on December 2, 1978 (tsn, May 7, 1980, pages 21 to 23).
>
> "On December 15, 1978, Leonida Beltran took Rosalie to the National Bureau of Investigation (NBI) for medical examination. Rosalie was attended to by Dr. Prospero A. Cabayanan who issued Living Case Report No. NBI-78- 913 (Exhibits "A" and “A-1"). Dr. Cabayanan stated that Rosalie's case is one of false physical virginity, wherein there is no evidence of any hymenal laceration because the hymen is elastic. However, the orifice or the opening of her vaginal canal was big enough as it measured 2.8 cm., enough to admit a male organ in a state of erection without producing any laceration. He was presented as witness for the prosecution and he confirmed that the hymen of Rosalie is elastic and wide enough to admit a male organ in a state of

> erection without producing any genital injury, to show that there had been penetration prior to the examination (tsn March 3, 1980 pages 4 to 18).[1]

Accused-appellant's version is, however, as follows:

> "Accused testified that he and the private complainant were sweethearts, she answered him on February 10, 1977, the date of birthday of the private complainant. They conversed with each other and after the lapse of three months, she agreed to go out with accused to picnics and movies (tsn, dtd. 11-3-81, p. 4). Sexual intercourse happened one morning when accused was making shoes in their house, she approached him and they started to converse and when he asked for one thing, she consented (tsn, p. 4, Ibid.) It happened at the ground floor of the house (Ibid., p. 5). When accused testified on February 9, 1988, he testified that the sexual relation with the complainant was with the consent of the complainant (tsn, p. 2) and when asked for proof as to his relationship with the complainant he had produced letters dated January 10, 1977, which were marked as Exhibits "1" and "2", respectively, (tsn, dtd. 2-9-88, p. 2). Those letters were sent to him by the complainant (tsn, p. 3)."[2]

The trial court disbelieved the accused's story and forthwith sentenced him to suffer the penalty of reclusion perpetua, with the accessories provided by law, and to indemnify the private complainant, Rosalie Beltran, in the amount of P30,000.00 as moral and exemplary damages.[3]

Hence, this appeal where accused-appellant faults the trial court in -

> 1. "X X X CONVICTING THE ACCUSED WHEN PRIVATE COMPLAINANT AND THE ACCUSED WERE SWEETHEARTS AND THERE WAS NO RAPE COMMITTED.
>
> 2. "X X X GIVING CREDIT TO PROSECUTION EVIDENCE AS THE ALLEGED RAPE WAS IMPOSSIBLE TO HAPPEN."[4]

The accused presented in court two (2) letters dated January 20, 1977 and February 10, 1977, respectively, which were sent to him by Rosalie. The letters read as follows:

> "Mel,
>
> Alam mo n(an)g matanggap ko ang sulat mo ay hindi ako mapalagay dahil ba sabi ko sa iyo noong tayo ay magkausap ay sa birthday ko na lang kita sasagutin kaya kung pupuwede ay maghintay ka na lang tutal mga ilang araw na lang mula ngayon. Siya nga pala salamat sa gift mo hindi ko(,) hindi ko(,) malaman kung paano kita magagantihan. Tungkol naman sa sinasabi mo sa akin na manonood tayo ng sine ay papayag naman ako kapag sinagot na kita.
>
> Hanggang dito na lamang at maraming salamat
>
> Just me
>
> "Rosalie Beltran (Sgd.) Nene"[5]

and,

> "Mel,
>
> Siguro kapag natanggap mo ang liham kong ito at iyong mabasa ang nilalaman nito ay baka sabihin mo na sa iyong sarili na ikaw na ang pinakamasayang nilalang sa ibabaw ng mundo dahil ang sulat na ito ay magsasabi sa iyo na sinasagot na kita ng OO kaya simula ngayon ikaw ay akin at ako naman ay sa iyo, pero kung puwede gusto ko ay tayong dalawa lamang ang makaalam nito dahil baka malaman sa amin ay pagagalitan ako at baka paalisin ka pa sa trabaho kaya ililihim natin ang mga bagay na ito.
>
> Love,

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(Sgd.) Nene

“Rosalie Beltran"[6]

Private complainant's mother, Leonida Beltran, was presented as a defense witness by the accused and she affirmed, on the witness stand, that the love letters were indeed written by her daughter.[7] This is perhaps why, upon seeing for herself said love notes, Leonida testified as follows:

"Q So that in this case, of your daughter Rosalie Beltran, you are no longer interested to prosecute the same?

“A Yes, sir.

"ATTY. CRUZ:

We have no further questions, Your Honor.

“COURT:

Cross examination?

“PROS. QUILATAN:

No cross, Your Honor.

“COURT:

"Q By what other name is your daughter known?

"A Nene, Your Honor.

"ATTY. CRUZ:

"Q So that this Nene appearing in these two letters, Exhibits '1' and '2', is actually your daughter?

“A Yes, sir.”[8]

At this juncture, mention is made of the fact that aside from the complainant, who was then 15 years old, her mother Leonida also signed the complaint charging the accused with rape,[9] although it was no longer necessary to do so.[10] The fact that she did file the complaint, indicates that she was more after the vindication of her honor rather than to right an alleged wrong committed on her daughter, as the records will later show.

In the light of Rosalie's love notes, together with Leonida Beltran's statement that she is no longer interested in pursuing the case, the seemingly immaterial inconsistencies in the complainant's testimony as to how the actual rape was committed, had assumed momentous significance, as follows:

Having testified that the room where she was allegedly raped was right beside a store where many people "buy foodstuffs" and where "you can overhear but cannot understand" their conversation,[11] complainant in one part of her testimony stated that:

“Q: Will you tell how this happened?

"A The incident happened like this. While I was resting inside my bedroom, the accused suddenly went inside. When I inquired what was he doing he just embraced and forced me to lie down, ma'am.

“Q Will you describe how the accused embraced you and forced you to lie down, will you describe?

"A He placed his left hand to cover my mouth and he used his right hand in embracing me, ma'am.

"Q Will you step down and assuming that this lady is the accused, will you describe?

"A (Witness demonstrated by placing the right hand of the accused on her mouth and the right hand on the waist and took off her shorts and opened it.)

"Q While he was holding you, by what means did he force you to lie down?

"A He succeeded in forcing me to lie down because he gave me fistblow on the stomach, ma'am."[12]

(Emphasis supplied)

while in another part of her testimony, she not only contradicted herself but also revealed her seemingly puissant response to the accused's assault upon her as to cast doubt to her alleged resistance to the accused's advances:

"Q What happened after Melchor Cruz threatened you with the pentel pen?

"A I stand (sic) up and that was the time when he met me with embraces, sir.

"Q What did you do? You did not resist?

"A I resisted, sir.

"Q How?

"A I kicked him, sir.

"Q When he embraced you, you were standing up?

"A Yes, sir.

"Q And how did you kick him?

"A I kicked him with my feet on his knees, sir.

"Q And in spite of that resistance, you were overtaken by his power?

"A Yes, sir.

"Q And what happened after he embraced you?

"A He forced me to lie down, sir.

"Q And during that time, you remember what his hand was doing to your body?

"A He embraced me, sir.

"Q Actually, both his hands are mashing your body?

"A No, sir, he embraced me and he forced me to lie down, sir.

"Q Did he mash your body?

"A Yes, sir.

"Q With both hands?

"A Yes, sir.

"Q You said you were mashed by both hands, do you know where did he place his pentel pen?

"A I did not see where he placed the pentel pen, sir.

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"Q But you know very well that he was no longer holding the pentel pen?

"A Yes, sir.

"Q How long do you think did he take (Melchor Cruz) to force you to lie down?

“A It took some time, about one minute, sir.

"Q What are the fixtures inside your room?

"A Since the room is only small, it has only the bed, sir.

“Q It does not have chair, table?

“A None, sir.

“Q No cabinet?

"A There was one cabinet, sir.

“Q While you are (sic) struggling with Melchor Cruz, you are (sic) using all your might?

“A Yes, sir.

"Q And of course you were able to offer at least some resistance and you were able to push him backward?

“A Hindi ko siya kaya, sir.

“Q What did Melchor Cruz do to you once he was able to lie you to bed?

"A He was holding my hand while we are (sic) already on bed, sir.

"Q Both his hands?

“A Yes, sir.

“Q What happened afterwards?

“A I struggled and I was able to wrestle 'naibalya ko siya', sir.

"Q You are (sic) wearing shorts?

“A Yes, sir.

“Q And did you have your panty on?

“A Yes, sir.

“Q And did you have your bra?

“A None, sir.

“Q When Melchor Cruz started removing your panty, what were you doing then?

"A I was struggling, sir.

“Q You were continuously struggling but you were not shouting?

“A I cannot shout, sir.

“Q And what was the position of Melchor Cruz when he was trying to remove your shortpants?

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> “A When I was able to wrest him, I was able to push him, he was standing up, he placed his legs near the door in order to prevent me in going out of the room, sir.
>
> ”Q It was on that spot when Melchor Cruz was able to remove your short pants?
>
> "A I stood up AND THEN HE COVERED MY MOUTH and removed my shorts, sir.[13]
>
> (Emphasis supplied)

In the first testimony, accused allegedly covered her mouth immediately to prevent her from shouting while in the second testimony, it took some time for accused to cover her mouth -- in fact, he embraced her, she kicked him, he forced her to lie down, he mashed her body with both hands, she was able to wrestle ("naibalya ko siya") with him, he attempted to remove her pair of short pants, she pushed him, he stood up, he stayed near the door to prevent her from going out, and THEN AND ONLY THEN, did he cover her mouth. And all the while that the struggle was going on, she did not even make any attempt to shout.

This testimony alone taxes the Court's imagination as to what really transpired in that small room.

The above-quoted testimonies of complainant were further muddled by her succeeding testimony, as follows:

> "ATTY. MORETA:
>
> “Q Did Melchor Cruz touch your private part when he was spreading your legs?
>
> "A Yes, sir.
>
> "Q And still you were not shouting?
>
> "A I cannot shout, sir.
>
> "Q After that what happened?
>
> “A He succeeded in raping me, sir.
>
> “Q How?
>
> "A He inserted his private part inside my organ, sir.
>
> “Q How did you know that he was able to insert his private part to your organ?
>
> “A I felt it, sir.
>
> ”Q Did you have any sexual intercourse before that incident?
>
> “A None, sir.
>
> “Q That was your first time?
>
> “A Yes, sir.
>
> “Q Of course it was very painful?
>
> “A Yes, sir.
>
> “Q And you cried?
>
> “A Yes, sir.
>
> “Q And that you cried loud?

“A Yes, sir.

“Q How long was Melchor Cruz on top of you?

“A About two to three seconds, sir.

“COURT:

"Q Are you sure it was two seconds or two minutes?

“A Three minutes, sir.

‘ATTY. MORETA:

"Q What were you doing all that time when Melchor Cruz was on top of you?

"A Because he gave me fist blows, I felt weak, sir.

"Q And you just lay on bed doing nothing?

“A I forced myself to fight back, sir.

“Q You were trying to fight back but you never shouted on that occasion?

“A I was crying, sir.

“Q But you never shouted for help?

"A I was not able to shout because he covered my mouth, sir.

“Q When did he cover your mouth?

“A WHEN HE PLACED HIMSELF ON TOP OF ME, SIR.[14]

(Emphasis and italics supplied)

Actually, this last testimony is more of an indication of what really transpired. Unwittingly, private complainant revealed the true nature of her sexual intercourse during cross examination. In this particular sexual intercourse, Rosalie must have cried out in pain that is why accused covered her mouth TO PREVENT the people in the store from knowing that the two of them were having sex inside the room which was just beside the store.

According to Leonida Beltran, she learned about her daughter's affair with the accused indirectly as follows:

“ATTY. CRUZ:

“Q Madam Witness, do you know a person by the name of Rosalie Beltran?

"A Yes, sir.

“Q How are you related to this Rosalie Beltran, Madam Witness?

“A She is my daughter.

“Q And this Rosalie Beltran is the private complainant in this case?

“A Yes, sir.

“Q Do you know the accused Melchor Cruz?

“A Yes, sir.

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"Q Do you know what is the relation of this Rosalie Beltran to the accused Melchor Cruz?

"A Formerly, I do not know what was their relationship, but later on I heard that they were sweethearts.

"COURT:

"Q Formerly you were not aware of the relationship between your daughter Rosalie Beltran and the accused in this case, Melchor Cruz?

"A Yes, Your Honor.

"Q But later on you came to know that they were sweethearts?

"A Yes, Your Honor."[15]

which she allegedly discovered from Rosalie's grandmother, as follows:

"Q When for the first time did you come to know about this case against the accused?

"A Around December 10, Ma'am, when I ...

"ATTY. CRUZ:

May I request Your Honor that the witness just answer the question.

"FISCAL:

"Q And who informed you about this?

"A My mother-in-law was the one who related to me about this case, Ma'am.

"Q What was the name of your mother-in-law?

"A Isabel Beltran, Ma'am.

"Q And what did she tell you?

"A I was informed by my mother-in-law that Rosalie intimated to her that she was raped, Ma'am, by Melchor Cruz.

"Q Did she mention the date when it happened?

"A Yes, Ma'am, it was December 2.

"Q And what did you do upon hearing this report from your mother-in-law?

"A I confronted my daughter about the incident and she admitted to me that something did happen to her.

"Q When do (sic) you confront her?

"A In December 11, Ma'am, after I found out from my mother-in-law, about the incident."[16]

Complainant's immediate failure to notify the authorities or, at the very least, her mother about her alleged experience also seriously affects the truthfulness of her narration.[17] But would Rosalie have volunteered that information to her grandmother?

In the light of the love letters she sent to accused, where she herself wanted the whole affair kept secret, it is more credible that someone else also "spilled the beans," as testified to by accused, as follows:

"Q x x x Rosalie Beltran, being your sweetheart, why did she file a complaint against you to the effect that

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sometime on December 2, 1977 in the municipality of San Mateo, Rizal, with lewd designs, and by means of force, violence and intimidation, you have carnal knowledge with her?

"FISCAL:

Objection, Your Honor, he is incompetent to answer the question.

"COURT:

Let us see.

"A It happened this way, sir. During the first year of our relationship, our relationship was not known to the family, but because of the teasing around, her uncle happened to know of our relationship but he did not divulge it to anyone, and one evening he was drunk, and maybe he was not able to help himself and he told the mother of Rosalie Beltran of our relationship.

"Q What is that name of that uncle of Rosalie Beltran?

"A Benjamin Beltran, sir.

"Q Now, at the time when Benjamin Beltran was drunk and he informed the mother of Rosalie Beltran about your relationship with her, what happened?

"A The uncle of Rosalie Beltran informed the mother and the mother confronted me about our relationship.

"Q And what was your answer?

"A I told her that our relationship is true, sir.

"Q When you confessed to the mother, by the way, what is the name of the mother of Rosalie Beltran?

"A Leonida Beltran, sir.

"Q When you confessed to the mother about your relationship to the daughter, what happened?

"A When I confirmed to the mother of Rosalie Beltran our relationship, she requested me to go home to our place because according to her, the uncle of Rosalie Beltran is angry with me.

"Q Now, when Rosalie Beltran told you or rather the mother of Rosalie Beltran told you that the uncle is angry with you, what did you do if any?

"A I went home to our place, sir."[18]

Indeed, we find it hard to swallow the rape story of complainant hook, line and sinker. Moreover, we are bothered by the following facts which make it difficult for us to accept complainant's version of what happened to her in the morning of December 2, 1978:

1. The weapon of intimidation was alleged to be a pentel pen "with pointed object" as follows:

"Q How did you first learn that Melchor Cruz entered your room?

"A I saw him entering the room, sir.

"Q Did he knock?

"A No, sir.

"Q Did he say anything when he entered the room?

"A None, sir.

"Q He was unarmed?

"A There is, sir.

"Q He was armed with what?

"A Pentel pen with pointed object, inside which he made, sir."[19]

There was no clarification as to what that "pointed object" in the pentel pen was. It could have been the short sharp tip of the pentel pen itself. Definitely, it was not a knife nor a gun nor a club nor a similar weapon.

The presence of said pentel pen is important because it was what allegedly instilled fear in her and which intimidated her from shouting even before the accused covered her mouth right after he embraced her, assuming that her first version of when the accused exactly covered her mouth was what indeed happened.

However, in her statement given to TSGT Jose C. Quiocho of the Western Sector, PC Metrocom, San Miguel, Manila, on December 18, 1978, no such pentel pen with a pointed object was mentioned, as follows:

x x x

"T Maaari mo bang, isalaysay sa pagtatanong na ito ang buong naganap tungkol sa iyong reklamo?

"S Ganito po yon, sa nabanggit na oras, at petsa habang akoy nakahiga sa loob ng aking kuarto ay pumasok si Melchor Cruz. Noon tanungin ko kung bakit siyay pumasok sa loob ay bigla na lamang akong niyakap at tinakpan ng aking bibig at ihiniga Akoy nanlaban at nagpapalag ngunit pinagbantaan akong papatayin kung akoy sisigaw. Akoy patuloy na nanlaban sa kanya ngunit akoy nanghina at siyay umibabaw sa akin at akoy kanyang hinubaran ng aking short pant. Pagkatapos ay sinuntok niya ako sa aking tiyan at tuloy akong nanghina doon niya naisagawa na maipasok ang kanyang ari sa aking pag-aari. Noon matapos siya ay umalis na at nag-iwan pa ng salita na huwag daw akong magsusumbong kanino man. At kung magsusumbong ako ay papatayin daw niya ako."[20] (SIC omitted in order not to clutter up the quotation)

Granting that this unusual pentel pen had indeed intimidated Rosalie at the start, the records do not show that throughout the alleged rape the accused had consistently threatened or forced complainant at pentel pen point to have sex with him. What Rosalie's testimony shows is that the accused had forgotten all about his pentel pen weapon[21] while consummating the act.

2. While the Medico Legal Officer had testified that there was no hymenal laceration in Rosalie's hymen, he made an observation that the opening of her vaginal canal was big enough (2.8 cms. or 1.123 inches, more or less, in diameter) to admit an erected male organ.[22]

Dr. Prospero A. Cabanayan testified as follows:

"Q Will you please tell the Honorable Court how you happened to examine this Rosalie Beltran, Doctor?

"A Well, the subject, Rosalie Beltran was examined upon the request of the mother, Mrs. Leonida Mariano Beltran.

"Q And when did your examination of the subject Rosalie Beltran take place?

"A It was on December 15, 1978, Ma'am, at around 10:50 A.M.

"Q And for what reason was she examined, for what reason was the request made?

"A The reason was that, there was a complaint allegedly for rape, and that the subject was accompanied by her

mother as to the determination whether or not, there was a defloration or not.

“Q And did you proceed with your examination?

“A Yes, Ma'am.

“Q And what were your findings?

“A Well, in this particular case, this is one of the cases wherein the hymen was elastic and there was no evidence of any hymenal laceration. However, on further examination of the witness subject, the orifice or the opening of the vaginal canal was big enough and it measures 2.8 cms. and enough to admit a male organ or erection without producing any laceration.

xxx xxx xxx

“Q Based on your examination Doctor of the complainant Rosalie Beltran, you measured the orifice as being 2.8 cms. in diameter. Do we understand from you that based on this size penetration by an average size would be had?

ATTY. CRUZ

Objection Your Honor.

“COURT:

Wide enough to admit a human penis erection.

“FISCAL

"Q Now, would you know whether this width of 2.8 cms. is natural?

"COURT

What do you mean by natural. You mean if it really admits tubes measuring 2.8 cms.?

“A There is really an admission, Your Honor.

“Q Without such resistance?[23]

"A Yes, Your Honor.[24]

Apparently, this is not the first time Rosalie has had sexual intercourse. In the light of the accused's testimony that they have had at least thirty (30) sexual intercourses since February 10, 1977,[25] the 2.8 cm. diameter orifice of Rosalie's private part could be easily explained.

3. The Court notes that while the alleged rape occurred on December 2, 1978, the complaint was filed only on June 25, 1979.[26] This delay of two hundred and five (205) days is disturbing, to say the least, and is an indication that the complaint for rape was not made in a desire to bring the culprit to justice but, probably, to save the honor of Rosalie's mother, Leonida (the accused was, after all, only her sapatero). It also casts serious doubts as to the charge of rape.[27] It should be noted, as above stated, that Leonida testified in court that she was no longer interested in pursuing the case.

4. While it may have been that Rosalie and the accused were lovers, and had engaged in regular sex, still, not being married to each other, Rosalie had the right to refuse accused's passionate advances when she wanted to.[28]

If indeed the December 2, 1980 sexual intercourse was without the consent of Rosalie, and, that she was indeed

raped, then a very vital and material piece of evidence that would show the violence employed on the person of complainant, her pair of short pants, which was allegedly torn when the accused embraced complainant, should have been presented by the prosecution.[29]

A truly aggrieved rape victim and, likewise, a truly aggrieved mother, would have made sure that that torn pair of short pants would have been kept intact for presentation to the police authorities to substantiate their cries of rape. The torn pair of short pants would have strongly corroborated the testimony of the offended party that she was raped.[30]

As the alleged torn pair of short pants was not presented by the prosecution, the Court cannot, in the light of the love letters Rosalie sent to the accused, the lack of interest of her mother to further prosecute the case and the three different versions of how the accused allegedly covered her mouth to prevent her from shouting while raping her, state with certainty that she was raped in the morning of December 2, 1978. If at all, what happened is a consented sexual act with the accused.

WHEREFORE, the judgment of the trial court is hereby REVERSED and SET ASIDE and appellant Melchor Cruz is hereby ACQUITTED of the crime charged.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

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[1] Rollo, pp. 68-71.

[2] Id., pp. 42-43.

[3] Decision, People of the Philippines vs. Melchor Cruz, Criminal Case No. 31109, penned July 1, 1991 by Hon. Eugenio S. Labitoria, Presiding Judge, Pasig RTC, Br. 165.

[4] Appellant's Brief, p. 8; Rollo, p. 42.

[5] Exh. "1", Record, p. 367.

[6] Exh. "2", Record, p. 368.

[7] "ATTY. CRUZ:

"Q Madam Witness, you recall that you have already testified in this case, is it not?

"A Yes, sir.

"Q By the way, Madam Witness, are you familiar with the handwriting of your daughter, Rosalie Beltran?

"A Yes, sir.

"Q And if you will be shown samples of the handwriting of your daughter Rosalie Beltran, would you be able to recognize the same?

"A Yes, sir.

"Q Now, I am showing to you a letter, which has been previously marked as Exhibit '1', written by one Rosalie Beltran, and signed 'Nene', addressed to Mel, or Melchor Cruz, and please go over the same and tell us if you recognize this as the handwriting of your daughter, Rosalie Beltran?

"A Yes, sir. This is the handwriting of my daughter Rosalie Beltran.

“Q By the way, what is the nickname of your daughter, Rosalie Beltran?

"A Nene, sir.

“Q Now, showing to you another letter, already marked previously as Exhibit '2', written by one 'Nene' or Rosalie Beltran, addressed to Mel, or Melchor Cruz, and please go over the same and tell us if this is also the handwriting of your daughter Nene or Rosalie Beltran?

"A Yes, sir." (TSN, Feb. 22, 1989, pp. 7-9.)

[8] T.S.N., February 22, 1989, pp. 9-10.

[9] Rollo, p. 4.

[10] People vs. Alib, G.R. No. 100232, May 24, 1993.

[11] T.S.N., April 15, 1980, pp. 54-57.

[12] Ibid, pp. 11, 13-16.

[13] Ibid, pp. 65-73.

[14] Ibid, pp. 75-79.

[15] T.S.N., February 22, 1989, p. 5.

[16] T.S.N., May 7, 1980, pp. 21-23.

[17] People vs. Castillon, G.R. No. 100586, January 15, 1993.

[18] T.S.N., November 3, 1981, pp. 6-7.

[19] T.S.N., April 15, 1980, pp. 57-58.

[20] Exhibit "B", Record, p. 200.

[21] T.S.N., April 15, 1980, pp. 65-68.

[22] LIVING CASE NO. MGI-78-913; Subject: BELTRAN, ROSALIE V. MARIANO; x x x

"xxx xxx xxx

"CONCLUSION:

"xxx

“2. Hymenal orifice, wide, (2.8 cm.), elastic, distensible, as to allow penetration by an average-sized adult, male organ in full erection without producing any genital injury.” (Exhibit “A”; Records, p. 199)

[23] "In true physical virginity, “the hymen is intact with the edges distinct and regular and the opening small to barely admit the tip of the smallest finger of the examiner even if the thighs are separated.” SOLIS, LEGAL MEDICINE, 486 (1987).

[24] T.S.N., March 3, 1980, pp. 5-17.

[25] T.S.N., November 3, 1981, p. 5.

[26] Rollo, p. 4.

[27] People v. Geneveza, 169 SCRA 153, 165.

[28] People v. Mercado, 161 SCRA 601, 607.

[29] T.S.N., 15 April 1980, p. 15.

[30] Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses. And the physical evidence in this case strongly corroborates the testimony of the offended party that she was raped. They consist of the green color dress and the panty that Erlinda was wearing at the time she was raped and which show a torn portion of the left side of the dress and a torn portion of the panty. According to Erlinda, they were torn when appellant forcibly pulled her dress up and removed her panty shortly before she was raped. x x x." People v. Sacabin, 57 SCRA707, 713.

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