

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO MAHINAY, ACCUSED-APPELLANT.

G.R. No. 109613. July 17, 1995

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-109613/>

KAPUNAN, J.:

In most cases of rape, the Court is often confronted with the task of making a choice between two conflicting versions, many times without the benefit of corroborating witnesses. As "[r]ape is the most difficult (crime) to prove and prosecute,"[1] the seriousness of the offense and the punishment meted demands that every available means of establishing the guilt of the accused beyond reasonable doubt be utilized by the court before it reaches a guilty verdict.

The case at bench presents us with the unusual task of looking at only one version of an alleged rape following the trial court's denial of the defendant's motion to present evidence after his Motion for Demurrer to Evidence failed. The facts culled by the trial court in reaching its verdict were based solely on the evidence presented by the State which it summarized in its Decision of December 1, 1992 as follows[2]:

Accused stands charged of the crime of Rape in an Information quoted as follows:

That on or about the 20th day of October, 1989 at around 11:00 o'clock in the morning, more or less, at Barangay Tubigagmanok, Municipality of Asturias, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Milagrosa Bermil, a married woman, and against her will.

CONTRARY TO LAW.

The state presented the following witnesses: Witness, Milagrosa Bermil substantially testified as follows: That she is married. She knows the accused because he is the husband of her sister Basilisa Mahinay, witness identified the accused. That she is engaged in farming. Her farm is located near the house of her sister Basilisa Mahinay. On October 20, 1989 at around 11:00 o'clock in the morning, she came from her farm. While walking towards her house passing on a foot path where there are plenty of bushes, she heard a sound, when she looked back she saw the accused, Pedro Mahinay. He was running towards her and immediately embraced her and at the same time pointed a plamingko, a sharp bladed instrument on her neck. She cried and struggled however, she fell on the ground. When she already fell down the accused knelt on her thighs and told her to keep quiet and if she will make noise she will be killed. He laid on top of her and lowered her short pants and made the motion of push and pull movement. Thereafter, he removed her panty and inserted his penis on her private part. Witness identifying her panty marked as Exh. "E", the accused was able to penetrate his organ on her vagina and was able to ejaculate, because she could feel it. She continuously cried. Accused told her not to tell her husband and his wife who is her sister. He further told her that if she will report the incident to the authorities he will kill all of them. Thereafter, she went home immediately and the accused also went home. She identifies her dress she was wearing at that time

and a skirt marked as Exhibit 'H.' In the place of the incident, it is surrounded by bushes and no houses nearby. The blouse marked as Exh. 'A-1'; sando marked as Exh. 'A-2' (torn). When she arrived home she requested her husband to accompany her to the house of Nating Migallen, a councilwoman of Barangay Tubigagmanok. In the house of Nating Migallen she informed her (Nating) and in the presence of her husband of what happened to her. Migallen informed them that she will accompany her to the police. They proceeded the following day to the Station Commander and the latter was not around, they were told to go back on Monday. The police told her to go to the doctor and she was told to go to Balamban because they have no medical facilities and further advised to go to Cebu City. The recommendation of the doctor marked as Exh. 'C'; a recommendation of the doctor from Balamban marked as Exh. 'D'. On October 22, 1989 at the Southern Islands Hospital she was examined, medical certificate signed by Dr. Albano marked as Exh. 'E'. On Monday she came back to the police station and was investigated and signed a complaint marked as Exh. 'F'. After that she did not see the accused, because he escaped and only came back after several months and sent his wife who is her sister to ask for forgiveness which she rejected. The accused was arrested on May 8, 1990.

Witness, Natividad Migallen testified as follows: That she is a councilwoman of Barangay Tubigagmanok, Asturias, Cebu. On October 20, 1989 at around 12:00 o'clock noon she was at home. Milagrosa Bermil and her husband arrived in her house and reported that she was raped by one Pedro Mahinay. She informed her that while she was going home from her farm upon reaching a place full of bushes, she was chased by Pedro Mahinay. At the time when she reported the incident her dress (sic) were torn. She did not observe any injury on her person. She accompanied her to the Municipal Building of Asturias on the following day.

Witness, Enrique Pasco testified as follows: That he knows accused Pedro Mahinay because he is his uncle. On October 20, 1989 at around 11:00 o'clock in the morning, he was getting his goat at Barangay Tubigagmanok, he saw accused Pedro Mahinay at that time walking and overtaking Milagrosa Bermil. He was at a distance of 15-20 meters from him. Upon overtaking Milagrosa Bermil accused hugged the complainant and pointed a knife at her. Accused pinned her thighs and knelt on it. He was already about five (5) meters away from them. He could not do anything because he was afraid as accused was bringing a plamingko about 6 inches in length. Accused undressed himself and laid on top of the complainant Milagrosa Bermil and the latter struggled to free herself. He was present from the start of the incident up to the time the rape was committed but never bothered to help the complainant. He did not report the incident to the barangay captain nor to her husband. An affidavit was taken of May 12, 1990 several months after the incident.

Dra. Lucille Albano testified as follows: That she is the former resident physician of the Southern Islands Hospital, Cebu City. That on October 21, 1986 she conducted an examination of one Milagrosa Bermil, 29 hours after the alleged incident. The report of examination marked as Exh. 'E'. Her findings noted that she had already delivered two (2) children and there was no fresh laceration, however she had inflamed fourchette meaning that the subject person had a recent sexual intercourse. No findings of sperm cells and no physical injuries also had been observed by her.[3]

After the prosecution had rested its case, defendant-appellant Pedro Mahinay filed a Demurrer to Evidence pursuant to Section 15 of Rule 119 of the Rules of Court.[4] However, insisting that said motion was filed without leave of court, the lower court, after denying defendant's Motion to Dismiss thereupon proceeded to render judgment on the basis of the evidence presented by the prosecution and over the defendant's protestations that he be allowed to present his own evidence.

On December 1, 1992, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing considerations, the Demurrer to Evidence filed by the counsel for the

accused is hereby ordered Denied, and the accused is found guilty beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code and sentence is hereby imposed upon him to suffer a penalty of Reclusion Perpetua, and to indemnify the offended party the sum of P20,000.00 and to pay the costs.[5]

An Urgent Motion To Set Aside The Decision and To Allow The Accused To Present Evidence was filed by the defendant on January 23, 1993[6] on the ground that, contrary to the lower court's assertions, the Demurrer was filed with express leave of court. In its Order dated February 1, 1993, the trial court denied said motion for lack of merit asserting that:[7]

In the Order of this court cited by movants in support thereof, it is very clear and apparent that counsel merely manifested its intention to file Demurrer to Evidence. Nowhere in the Order shows (sic) that Leave of Court was sought. As a matter of fact in the Demurrer itself was filed pursuant to Sec. 15 Rule 119 of the Rules of Court and no express Leave of Court was stated (sic).

The trial court and the defendant are at variance as to whether or not leave of court was granted. A thorough review of the record compels us to find for the defendant.

The orderly procedure prescribed by the Rules of Court is for both the prosecution and the accused to present their own evidence after which the trial court, evaluating the evidence submitted by both parties renders its judgement of either acquittal or conviction. Under Section 15, Rule 119 of the Rules of Court, however, the Court may on its own initiative, after finding the evidence presented by the prosecution insufficient to sustain a conviction dismiss the case. Under the 1985 Rules on Criminal Procedure a defendant who files a motion to dismiss on the ground of insufficiency of evidence "waives the right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution." [8] The current rule allows the accused in a criminal case to present evidence even after a motion to dismiss provided the demurrer was made with the express consent of the court. The purpose for obtaining leave of court is to determine whether or not the defendant in a criminal case has filed the demurrer merely to stall the proceedings. Once such leave of court has been obtained, the court is left with no choice but to allow the accused to present evidence in his own behalf if the court denies the motion to dismiss. The new rule partially reverts to the rule existing under prior to the 1985 Rules of Criminal Procedure, where the defendant was allowed to present his own evidence upon denial of a motion to dismiss with or without leave of court.[9] A fair resolution of the case at bench therefore turns on the question of the presence or absence of the court's permission for the defendant to file his demurrer.

The records support the defendant's contention that a motion for demurrer to evidence was filed on April 24, 1992 after the prosecution had completed its presentation of the evidence.[10] In fact, the trial court acknowledged the defendant's intention to file his demurrer to evidence in an order dated March 23, 1992, a month prior to the defendant's formal motion to file the same. Said order states:

When this case was called the counsel for the accused was present and ready while the Assistant Provincial Prosecutor failed to appear. It appears from the records that the prosecution had been intending to present the Doctor as their last witness. For failure of the Assistant Provincial prosecutor as well as the prosecution witness to appear the case is deemed submitted as rested and thereupon the counsel for the accused manifested that he is asking for thirty (30) days within which to file his demurrer to evidence.

SO ORDERED.[11]

Acting on the provincial prosecutor's motion for reconsideration of an order giving the defendant 30 days to file demurrer to evidence, the trial court clearly indicated in an order dated June 4, 1992 that it had granted permission to the defendant to file the demurrer but held the same in abeyance after giving the prosecution a chance to

present its last witness. We quote said order:

Filed by the Asst. Provincial Prosecutor is a Motion for Reconsideration of the Order of this Court dated March 23, 1992 giving the accused 30 days to file a demurrer to evidence as well as the opposition to the prosecution motion for reconsideration.

Finding the grounds stated therein in the motion for reconsideration to be meritorious, the Order dated March 23, 1992 is modified giving the chance to the prosecution to present their last witness Dr. Albano on July 31, 1992 at 8:30 o'clock in the morning.

Issue subpoena to Dr. Albano and the Demurrer to Evidence is in the meantime held in abeyance after which if the counsel for the accused would manifest the same to be submitted the Court will proceed to resolve the same.

SO ORDERED.[12]

On September 2, 1992, the trial court gave the following order:

After the presentation of the prosecution witness, Dr. Lucille Albano, the prosecution formally offered their exhibits and rest its case. The defense counsel will file his demurrer to evidence in this case.[13]

Taken together with the court's earlier pronouncements regarding the defendant's request to file a demurrer in this case, we are of the opinion that the trial court clearly and unequivocally— though it did not as much mention the word "leave" in its challenged orders — gave its permission for the defendant to file a demurrer to evidence. Between the defendant's constitutional right to have his day in court and a rigid and inflexible adherence to the wording of the Rules of Court, our conclusion in the case at bench is in greater accord with the constitutional intent to give the accused in a criminal case all possible venues to prove his innocence as expressed in the latest revision of the Rules of Criminal Procedure. The current rule liberally deviates from the rigid strictures of Rule 119 of the 1985 Rules of Criminal Procedure denying the accused the chance to present evidence by considering a defendant's motion to dismiss a waiver of his right to present evidence.

IN VIEW OF THE FOREGOING, the decision of the trial court dated December 1, 1992, finding the defendant guilty of the crime of Rape is hereby SET ASIDE and the case remanded to the court below for reception of the evidence of the accused.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Rollo, p. 15

[2] Rollo, pp. 12-15.

[3] Id.

[4] Rule 119 sec. 15 states:

Demurrer to evidence.- After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits

the case for judgment on the basis of the evidence for the prosecution.

[5] Rollo, p. 17.

[6] Rollo, p. 77.

[7] Rollo, p. 81.

[8] Rule 119, sec. 15, 1985 Rules of Criminal Procedure.

[9] See 1964 Rules of Criminal Procedure

[10] Rollo, p. 60, Annex "D."

[11] Rollo, p. 57, Annex "A."

[12] Rollo, p. 58, Annex "B."

[13] Rollo, p. 59, Annex "C."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.