

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO GALERA Y ROBLES, ACCUSED-APPELLANT.*G.R. No. 115938. October 10, 1997*

Ponente: VITUG, J.

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Article III, Section 19, of the 1987 Constitution, ratified by the people on 02 February 1987, has authorized Congress to impose the death penalty. Conformably therewith, Republic Act ("R.A.") No. 7659 has been enacted to revive the capital punishment in our statute books. A death penalty handed down by a trial court sets into motion a mechanism for an automatic review[1] by this Court. In the discharge of this weighty responsibility, the Court exercises the greatest circumspection for there can be no stake higher and no penalty more severe, even in an equivalent atonement of a grave crime, than the termination of a human life.

Fernando Galera y Robles was prosecuted for the special complex crime of robbery with rape in Criminal Case No. Q-94-52916 of the Regional Trial Court, Branch 104, of Quezon City, upon an indictment[2] that alleged:

"That on or about the 6th day of January, 1994, in Quezon City, Philippines, the said accused, by means of violence and intimidation willfully, unlawfully and feloniously rob MRS. JULIET A. VERGONIA by entering the house of Mrs. Juliet A. Vergonia located at No. 129 Jasmin St., Ilang-Ilang, Payatas, Quezon City, and thereafter proceeded to her room and once inside, pulled a knife and poked at Mrs. Juliet Vergonia, and then and there took and carried away the following, to wit:

Cash money P500.00

Watch (Giordano) 500.00

all with a total value of P1,000.00, Philippine Currency, belonging to Mrs. Juliet Vergonia and that on the occasion of the said robbery, the said accused, by means of force and intimidation, while at knife point have sexual intercourse with said Mrs. Juliet Vergonia against her will and consent, to the damage and prejudice of the said offended party.

"CONTRARY TO LAW."[3]

The evidence for the prosecution -

Juliet Vergonia is a 29-year old housewife.[4] Her husband works in Saudi Arabia.[5] The spouses have three children, ages 6, 4 and 3 years.

At around two o'clock in the morning of 06 January 1994, while spending the night in the same room with her children in their house at Ilang-Ilang Street, Payatas, Quezon City,[6] Juliet was suddenly roused from sleep when she felt a hand over her private part.[7] She uttered a cry but the man, who must have surreptitiously entered their dwelling in the kitchen area through an opening between the roof and the top of the hollow blocks supporting the roof, instantly poked at her a one-foot long "balisong." [8] She was able to see and recognize the face of the intruder, the accused Fernando Galera, because of an illumination from a 100-watt bulb[9] located in the middle

of the sala coming through the slightly open bedroom door.[10] Galera proceeded to undress her, while she was in a lying position, first by removing her pants and then her panty. He raised her blouse. Galera then sat at the headboard of the bed while Juliet was made to rest her back at the headboard.[11] Galera who already had his undershirt removed, took off his pants and brief. He then placed himself on top of Juliet. The latter tried to struggle free but could not partly because he was too strong for her and partly due to fear since Galera's knife was menacingly pointed at her.[12] Juliet's 4-year old daughter woke up.[13] Unmindful of the child's presence and watchful eyes, Galera kissed Juliet's lips, breasts and other parts of her body; finally, he forced himself into her. She continued to offer resistance but she was no match to his boldness and persistence. She also feared for the safety of her children.[14] The carnal knowledge only lasted "for a while." [15]

His lust satisfied, Galera dressed up while Juliet leaned over at a corner of the room. Before departing, Galera raised the bed's cushions and pillows and there found and took cash amounting to about P1,000.00 and a Giordano wrist watch valued at approximately the same amount.[16] Galera warned: "Huwag kayong gagalaw diyan, papatayin ko kayo" ("Do not move from there or I will kill you"). He left the room, closed the door and departed.[17]

Juliet, stayed momentarily, then went out of the house and screamed, "Anong klase kayong kapitbahay, pinasok na ako't lahat wala pa kayong malay." Evelyn Vergonia, victim's sister-in-law, promptly responded to her plea for help. Juliet and Evelyn attempted to pursue Galera but he was nowhere in sight.[18]

On 07 January 1994, the day after the incident, Juliet, accompanied by Evelyn, went to the National Bureau of Investigation ("NBI") in Manila[19] where she had herself physically examined. She signed her Sinumpaang Salaysay, dated 07 January 1994, and affixed her thumbmark thereon.[20]

About three or four days after the incident, Juliet saw Galera, a fish peddler frequenting the area, pass by in front of the family compound.[21] Accompanied by Evelyn, she rushed to Police Station 6 to seek police assistance in apprehending Galera. The group caught up with Galera somewhere in Payatas, Quezon City. He was brought to Police Station 6.[22]

On cross-examination, Juliet stated that in that morning of 06 January 1994, Galera stayed "a while" in the house, and that before entering the room where she and her children were sleeping, he had, by then, ransacked the other room of the house. She knew that Galera was in the other room because she was awake at the time.[23] On further questioning, she reverted to her statements on direct, i.e., that the accused was already inside her room when she was awakened.[24] The apparent inconsistency prompted the trial court to ask the complainant to once again state the real sequence of her story. She said that the accused was "able to enter the other room before he entered (her) room and (she) did not even know that (Galera) was able to ransack the other room" until the following day.[25]

On the subject of Galera's apprehension by the authorities, Juliet said that three days after the incident, she saw Galera pass by their compound peddling fish but she did not do anything to effect his arrest because she feared that her brothers-in-law, who were then in the premises, would take the law into their own hands.[26] After a few more questions, however, she said that she had informed her brothers-in-law when she saw Galera, whose face she could remember as being "payat ang panga,"[27] that he was the culprit. Apparently, it was not the only time she had chanced upon Galera after the incident on 06 January 1994. Her testimony:

"COURT:

"Q. But before that, you do not know him?

"A. Yes, sir.

"Q. You did not see him yet?

"A. Yes, sir.

I saw him after the incident, your honor.

"Q. The first time was on the night in question?

"A. Yes, sir.

"Q. Second time was when?

"A. Second time when I saw him selling fish.

"Q. The third time?

"A. Still selling fish.

"Q. The fourth time?

"A. That was the time where he was brought to the NBI when he was apprehended.

"Q. You said you saw him after, how many days was that after that incident?

"A. Three days.

"Q. You saw him again for the third time, when was that?

"Q. The first time that you saw him, did you recognize him as the person?

"A. Yes, your honor.

"Q. Why did you not request for his apprehension?

"A. The reason why I did not do it because my brother in laws (sic) are there, I don't want them to put the law into their hands or something might happen, that is why I went to the police.

"Q. The third time, where did you see him? Also selling fish?

"A. Yes, your honor.

"Q. When was that?

"A. I[n] that week, I saw him almost everyday.

"Q. On the second day that you saw him selling fish, did you have him arrested?

"A. Not yet, your honor.

"Q. On the third time that he was selling fish, did you have him arrested?

"A. Yes, your honor.

"Q. Why did you not have him arrested on the second day you saw him selling fish?

"A. Because my brother in laws (sic) were there at that time I don't want to put the law in to their hands.

"Q. Did you tell your brother in law that this guy whom you saw selling fish was the one who raped you?

"A. I told them about it and told them that he was the one who entered our house and I told them that I should first go to the precinct and then to the NBI.

"Q. When he was arrested and brought to the police station, did he say anything?

"A. He said something, your honor.

"Q. What did he say?

"A. 'Siguro nasarapan yun kaya hindi niya ako nakilala.'

"Q. What do you mean by that?

"A. That's what he said, but I told him, 'kilalang kila[la] kita.' Sabi niya nagkandaduling ka pa sa sarap, kaya hindi mo ako nakilala.

"ATTY. ESCUETA:

"Q. Let me see to refresh your memory. At the time you claimed you were sexually abused allegedly by herein accused, what is so particular in his appearance that you recognize him as the one who raped?

"A. Because that is the face I saw on that night.

"Q. Are there any 'palatandaan' that you recognize this guy?

"A. 'Payat ang panga.'

"COURT:

What is the defense of the accused in this case.

"ATTY. ESCUETA:

There is no rape because as the medico legal findings there is no evidence, sign of extragenital physical injuries at the time of the examination.

"COURT:

Alright go ahead.

"ATTY. ESCUETA:

I think that will be all, your honor.

"xxx xxx xxx.

"A. I just saw him selling fish.

"Q. Where exactly did you see the accused selling fish?

"A. He was selling fish because there was a person who ordered fish to him.

"Q. Who is that person who ordered fish to him?

"A. Mario Vergonia, sir.

"Q. How far is the house of Mario Vergonia to your house?

"A. Just near about five meters only.

"Q. Five meters from where you are sitting here?

"A. Yes, sir.

"Q. Where is that the second time when you said he was selling, to your neighborhood, when is that. The incident occurred January 6, 1994, when is the second time around when you said he was selling fish?

"A. Three or four days after.

"Q. And you said that after that, you again saw him selling fish, where was that the third time that he was selling fish?

"A. Also at the same place.

"Q. When was that the second time you saw him?

"A. Maybe 9 or 10, sir.

"Q. The second time that you see him selling fish, you did not report that immediately to the police station?

"A. The second time that I saw him selling fish, I reported him to the police and the fourth time that I saw him, he was brought to the NBI.

"COURT:

For the first time, why did you not have him arrested?

"WITNESS:

Because there were many children in our place and I don't want them to be involved.

"ATTY. MOYA:

That is all for the witness, your honor."[28]

Dr. Louella Nario, who conducted the physical examination on Juliet, declared that the seminology test had produced negative results. Dr. Nario did not, however, discount the possibility of sexual intercourse and the complete penetration of a male adult organ in full erection without producing new genital injury considering the size of the vaginal orifice and the reduction of the hymen[29] usually resulting from vaginal delivery. The doctor explained that from her examination of the inner part of the vagina there was no sign of injury on the victim. Dr. Nario explained that since the victim came for examination 24 hours after the alleged sexual intercourse, no conclusive finding could be made on the presence of spermatozoa.

SPO1 Armado Junio testified that at around nine o'clock in the morning of 13 January 1994, Juliet, accompanied by Evelyn, went to the police station to seek assistance in the arrest of Galera. Upon being dispatched by the desk officer, SPO1 Junio proceeded at Ilang-Ilang Street, Payatas, Quezon City. There, in front of the house of a certain Angelina Vergonia, Juliet pointed to Galera. When the latter noticed the presence of SPO1 Junio, Galera started to flee. SPO1 Junio gave chase but he was unable to overtake the suspect until he lost sight of him. Having failed to apprehend Galera, SPO1 Junio decided to repair to their headquarters. There, he was met by a colleague, Jun Dawis, who informed him that a man tried to seek refuge in his (Jun's) house from some people who were chasing him. To SPO1 Junio's surprise, the person turned out to be Galera himself.

In his defense, Galera presented the conjoint plea of denial and of alibi.

Galera claimed that on 06 January 1994, at about two o'clock in the morning, he was at the Malabon fishport with Celso Tullao and Jobert Benemili to buy fish which they would later peddle that morning.[30] In going to Malabon from Quezon City, Galera, with his two companions, took a passenger jeep bound for Quiapo and from there, boarded a passenger bus for "Monumento" in Kalookan City. From "Monumento," they took a jeep towards Malabon. The group stayed in Malabon for about two hours.[31] It was about six o'clock in the morning when they made it home.[32]

Galera denied having attempted to flee from the police on 13 January 1994. In fact, after having been accosted for being a member of "Akyat Bahay" Gang,[33] he was taken and detained at Litex precinct.[34] Galera professed innocence of the accusation made by Juliet.[35] He said that he was completely dumbfounded when he learned of the charge against him, and that it was only when arrested and taken to the Litex Police Station that he saw Juliet.[36]

On cross-examination, Galera said that he had been a fish vendor since a few years back, and one of the places he would frequently traverse was Ilang-Ilang Street in Quezon City.[37]

Jobert Benemili testified that he had known Galera, the two being both fish vendors and residents of Extension Lower House, Litex, Quezon City. On 06 January 1994, at around one o'clock in the morning, he fetched Galera in their house and from there the two went to Celso Tullao before proceeding to Malabon.[38] It was around two o'clock in the morning when they finally reached the fishport of Malabon. Benemili bought "galunggong" and "tamban," Galera picked up "espada" and "tahong," while Celso bought "espada." Having finished with their purchases, the three fish peddlers repaired to their respective homes where they prepared for the day's work.[39]

Annabelle Galera, the wife of accused Galera, testified that on 06 January 1994, at about one o'clock in the

morning, Galera was in their house when Benemili dropped by to wake him up in order to proceed to Malabon.[40] Galera returned home from Malabon at around six o'clock in the morning of 06 January 1994.[41] He then went about his job peddling until noon of that day.[42] On cross-examination, Annabelle testified that their residence is just over a kilometer away from Jasmin Street and Ilang-Ilang Street in Payatas, Quezon City, or a distance of less than 20 minutes of walk.[43]

On 19 April 1994, after assessing the evidence, the trial court promulgated its decision finding Galera guilty of robbery with rape and imposing on him the penalty of death. The court adjudged:

"WHEREFORE, judgment is hereby rendered finding accused FERNANDO GALERA Y ROBLES guilty beyond reasonable doubt of the crime of Robbery with Rape, and considering that the rape was committed in full view of one of the children of the complainant, the accused is hereby sentenced to suffer the penalty of DEATH; to pay the complainant the sum of P100,000.00, as moral damages, without subsidiary imprisonment in case of insolvency; and, to pay the cost."[44]

Fernando Galera, in asking for the reversal of the judgment of the trial court, submitted a lone assignment of error but which covered all; viz:

"THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE PROSECUTION'S FAILURE TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT."[45]

Galera implores the Court to take a close look at the case and, particularly, the testimony of the complainant.

A significant, if not perhaps the primordial, concern in the criminal prosecution of an accused is the correct identification of the author of the crime and the other, of course, would be the actuality of the commission of the offense in which he is shown to be responsible or has participated. The guilt of the accused must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. Thus, even if certain inculpatory facts appear imputable to the offender, the same are inconsequential if, in the first place, the prosecution fails to discharge the onus on his identity and culpability. The constitutional presumption of innocence dictates that it is for the prosecution to demonstrate guilt and not for the indictee to establish innocence.

The prosecution of Galera for the special complex crime of robbery with rape was commenced, and the judgment of conviction rested, solely upon the word of complainant Juliet Vergonia. To be sure, an accused may be convicted even on the basis of the testimony of one witness; the rule, however, is subject to the *conditio precedens* that such testimony is credible, natural and convincing, and otherwise consistent with human nature and the course of things.[46] In order to suffice for conviction, her testimony must be free of serious contradiction, and ring true throughout.[47] In the assessment of the testimonial credit of the wronged woman, evidence of her conduct immediately after the alleged assault is of critical value.[48]

There is, first of all, a nagging impression that, almost invariably, the offender in rape cases crows the victim with a knife. This kind of testimony now too common in the evidence for the prosecution in seeking to prove the crime of rape begins to tell on the Court, for it could well be, as the Court has intimated in one case,[49] as an expedient subterfuge. It is precisely what we now hear from the testimony of the complainant, thus:

"PROS. SOTERO:

"Q. Were you wearing blouse at that time?

"A. Yes, I had a blouse at that time but he raised [m]y blouse upward.

"Q. What happened next after he was able to remove your pants and your panty?

"A. After that, he also removed his pants and his brief.

"Q. What were you doing while he was undressing himself?

"A. I was very frightened and I was trying to resist.

"Q. Was he able to undress himself?

"A. Beforehand, his upper shirt was already removed and afterwards, he removed his pants.

"Q. What happened after he removed his pants?

"A. He placed himself on top of me.

"Q. What did he do when he went on top of you?

"A. I was trying to struggle, but I could not do anything because his knife was pointed at me.

"Q. What portion of your body did he poked the knife at you?

"A. On my side and on the neck."[50]

On cross-examination, it would seem that the extent of the "struggle" was only to move the hips left and right to prevent penetration.

"CROSS-EXAMINATION BY ATTY. MOYA:

"Q. You mentioned that you struggled all along when the alleged rape was committed, is that correct?

"A. Yes, sir.

"Q. Everytime he tries to insert his penis you said that you always prevent the penetration, what did you do to prevent the penetration?

"A. I was trying to make movements in order to prevent the entry of the penis.

"Q. You move your hips left and right to prevent the penetration?

"A. Yes, sir."[51]

While the victim is not expected to show resistance to an extent that would invite disaster, it should, nonetheless, be tenacious enough, to dissuade the rapist from accomplishing his each and every libidinous desire. From Vergonia's testimony, it would seem that it was only during the anal intercourse, when she got hurt, that really made her start kicking away the alleged rapist.

"PROS. SOTERO:

"Q. Aside from kissing your lips and other parts of your body, what else did he do?

"A. He held his penis and he tried to insert it in my rectum.

"Q. Was he able to insert his penis in your rectum?

"A. Yes, sir.

"Q. What happened after that?

"A. I got hurt of what he did, I kicked him and after kicking him, he stopped.

"Q. After kicking him, what happened?

"A. After that, I kicked several times and I tried to struggle. After kicking him, he put up my bed as well as the pillow then he took the money."[52]

But nothing really has created greater doubt in the mind of the Court than the identity of the perpetrator of the crime.

The Court begins with the number and place of the lighted bulbs inside the house during the night without which the identity of the offender would not have been really possible. Vergonia testified on direct examination that she was able to see the face of Galera because of the illumination coming from a 100-watt bulb located in their sala

penetrating her room through its slightly open door, viz:

"Q: Will you please tell us if you have any occasion to see his face ?

"A: Yes, I saw his face.

"Q: Were you able to recognize his face ?

"A: Yes, sir.

"Q: How did you recognize his face when it was 2:00 o'clock in the early morning?

"A: There was a light, sir.

"Q: Where is that light located in relation to your room?

"A: At the sala because the door of the room was slightly open, so I could see his face."[53]

In order to emphasize the location of the bulb in relation to her room, Vergonia sketched in her own handwriting where the light bulb was located.[54] In her illustration, it appeared clear enough that there was just one lighted bulb located in the ceiling of their sala. On cross, Vergonia stated that the aforesaid lighted bulb located in the middle portion of the ceiling of their sala was outside her room.

"Q: Let's go back to the lightning(sic) situation in your house. At 2:00 o'clock in the morning in your direct examination you said that you were able to recognize the accused because of the light in that house, is that correct ?

"A: Yes, sir.

"Q: From your bed, where is the nearest light ?

"A: At that time, the light inside the room was switch off, but there is a light in the sala which I did not switch off.

"Q: How far is the light in the sala where (sic) you did not put off ?

"A: It was just outside the bedroom, about a meter.

"Q: Where is this light located ?

"A: In the middle of the ceiling.

"Q: And how many watts, what kind of light are you using ?

"A: 100 watts bulb, sir.

"Q: You are telling the truth that it was 100 watts ?

"A: Yes, sir.

"COURT:

That light is still there ?

"WITNESS:

Yes, your honor.

"ATTY. ESCUETA:

"Q: It is your practice to have that 100 watts light open every night ?

"A: Yes, sir."[55]

When further queried by the trial court, Vergonia, unexplainably, mentioned not one but two lighted 100-watt bulbs.[56]

"Q: Now, where are the lights located ?

"A: These two (2) lights are opened, your Honor.

"INTERPRETER:

The witness is pointing to a light on(sic) the room.

"COURT:

"Q: What is the watts of those two (2) bulbs ?

"A: They are both 100 watts, your Honor.

"xxx xxx xxx

"Q. When you were questioned about this drawing you positively draw up the light on in the sala, Why are you now correcting it?

"A. Di kasi dito ang

"ATTY. ESCUETA:

Ang tanong sa iyo, bakit mo binabago ngayon ang testigo mo. Noon tumitestigo ka, nakaupo ka na tinatanong ka ng abogado ng akusado, sinabi mo na ang ilaw na bukas ay nasa sala. As a matter of fact, the defense counsel also made you draw the door so that one way we can more or less view the light coming from the sala going through or passing through the door you said of your room, bedroom?

"A. This is the light that was opened because that time I was so confused, sir."[57]

The Court ordinarily does not take unusual interest on contradictions and inconsistencies on details since absolute coherence of facts and circumstances of the crime would be most unlikely. Where, however, the uncertainty lies on some matters of consequence, no effort is too much nor to be spared in order to ascertain the credulity of testimony.

It cannot be overemphasized that the conduct of the victim immediately following the alleged sexual assault can create lingering doubt on whether Vergonia could have been that definite about Galera being the culprit. It is odd that she did not revile, show rage, revulsion and disgust upon seeing the person who had allegedly robbed and raped her which would have been the natural reaction of an outraged woman against an invader of her honor.[58] The Court is further thrown in a quandary why Vergonia, already an adult and a mature woman, has had to wait for several days before making a move to have Galera arrested despite earlier available opportunities given to her. It would seem strange that instead of initiating a move to cause the apprehension of Galera on several occasions, she would let them slip by. Observe her testimony:

"Q. I am referring to you Question No. 5

Q- Ilang beses mo na bang nakita itong taong iyong pinaghihinalaan, Sagot - Bale apat na beses lang po hanggang ngayon.

In other words the truth is that it is not only the first time that you know the accused.

"A. No, sir.

"Q: When for the first time did you see him?

"A: After three (3) days, sir.

"COURT:

"Q: But before that, you do not know him?

"A: Yes, sir.

"Q: You did not see him yet?

"A: Yes, sir.

A: I saw him after the incident, your honor.

"Q: The first time was on the night in question?

"A: Yes, sir.

"Q: Second time was when?

"A: Second time when I saw him selling fish.

"Q: The third time?

"A: Still selling fish.

"Q: The fourth time?

"A: That was the time where he was brought to the NBI when he was apprehended.

"Q: You said you saw him after, how many days was that after that incident?

"A: Three days.

"Q: You saw him again for the third time, when was that?

"Q: The first time that you saw him, did you recognize him as the person?

"A: Yes, your honor.

"Q: Why did you not request for his apprehension?

"A: The reason why I did not do it because my brother in laws(sic) are there, I don't want them to put the law into their hands or something might happen, that is why I went to the police.

"Q: The third time, where did you see him? Also selling fish?

"A: Yes, your honor.

"Q: When was that?

"A: I(n) that week, I saw him almost everyday.

"Q: On the second day that you saw him selling fish, did you have him arrested?

"A: Not yet, your honor.

Q: On the third time that he was selling fish, did you have him arrested?

"A: Yes, your honor.

"Q: Why did you not have him arrested on the second day you saw him selling fish?

"A: Because my brother in laws (sic) were there at that time I don't want to put the law into their hands.

"Q: Did you tell your brother in law that this guy whom you saw selling fish was the one who raped you?

"A: I told them about it and told them that he was the one who entered our house and I told them that should first go to the precinct and then to the NBI."[59]

Unusual still is Vergonia's claim that another reason she did not have Galera immediately arrested, despite all the opportunities she had, was that there were many children in their place and she did not want them to get involved.

"Q: You said that at the second time that you saw the accused, was at the market, is that correct, allegedly the second time, he was selling fish?

"A: He was selling fish in our compound.

"Q: You mean to tell me that the accused himself after January 6 1994, went inside your compound and try to

sell fish to you?

"A: I just saw him selling fish.

"Q: Where exactly did you see the accused selling fish?

"A: He was selling fish because there was a person who ordered fish to him.

"Q: Who is that person who ordered fish to him?

"A: Mario Vergonia, sir.

"Q: How far is the house of Mario Vergonia to your house?

"A: Just near about five meters only.

"Q: Five meters from where you are sitting here?

"A: Yes, sir.

"Q: Where is that the second time when you said he was selling, to your neighborhood, when is that. The incident occurred January 6, 1994, when is the second time around when you said he was selling fish?

"A: Three or four days after.

"Q: And you said that after that, you again saw him selling fish, where was that the third time that he was selling fish?

"A: Also at the same place.

"Q: When was that the second time you saw him?

"A: Maybe 9 or 10, sir.

"Q: The second time that you see him selling fish, you did not report that immediately to the police station?

"A: The second time that I saw him selling fish, I reported him to the police and the fourth time that I saw him, he was brought to the NBI.

"COURT:

"For the first time, why did you not have him arrested.

"WITNESS:

"Because there were many children in our place and I don't want them to be involved."[60]

Alibi has consistently been held to be a weak defense but where the evidence of the prosecution is itself feeble, particularly as to the identity of the accused as author of the crime, alibi, assumes importance and acquires commensurate strength. The reverse is not true, of course, since the weakness of the defense does not add up to the case for the prosecution.

The Court, certainly, is not unmindful of the rule that the factual finding of the trial judge who had all the chance to observe the demeanor of the witnesses and assess their credibility is entitled to the highest degree of respect and should not be disturbed.[61] When, however, as we have so often said, certain facts or circumstances of import appear to have been overlooked or misinterpreted[62] by the trial court judge, the appellate court has not only the prerogative but also the duty to pass upon those facts and circumstances. This process is itself an essence of appellate review.

Nothing less than a meticulous perusal of the records is required in the imposition of the death penalty. This close examination has been done in this case, and the Court must now yield to the persuasion that the evidence, unfortunately, neither can establish with moral certainty the guilt of Galera nor can completely settle his innocence. Heretofore already mentioned are certain inconsistencies and uncertainties, hardly minute and

insignificant, in the testimony of Vergonia. Taken up singly and independently, the shortcomings might not suffice to overturn the trial court's judgment of conviction but assessed and weighed conjointly, as logic and fairness so dictate, persistent doubt exists in the mind of the Court on the full veracity of the prosecution's account of the incident, not to mention the rather frail demonstration by the prosecution on the identity of the malefactor.

All told, the Court just cannot see its way clear to sustaining the conviction of the accused and decreeing the forfeiture of his life.

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE, and accused-appellant Fernando Galera y Robles is ACQUITTED of the special complex crime of robbery with rape charged in Criminal Case No. Q-94-52916 of the Regional Trial Court, Branch 104, of Quezon City. It is hereby ORDERED that he be released forthwith, unless he is also detained for any other lawful cause. Costs de oficio. SO ORDERED.

Naravasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Francisco, Hermosisima, Jr., Panganiban, and Toress, JJ., concur.

Mendoza, - No part being on official business abroad when deliberated.

[1] Article 47, Revised Penal Code, as amended by Section 22, R.A. No. 7659.

[2] Filed on 17 January 1997, by Assistant City Prosecutor Edgar D. Santos; Rollo, p. 3.

[3] Rollo, p. 3.

[4] TSN, 07 February 1994, p. 3.

[5] Ibid., p. 27.

[6] Ibid., p. 4.

[7] Ibid., p. 5.

[8] Ibid.

[9] Ibid., p. 45.

[10] Ibid., p. 15.

[11] Ibid., p. 6.

[12] Ibid., p. 8.

[13] Ibid., p. 9.

[14] Ibid, p. 12.

[15] Ibid, p. 12.

[16] Ibid., pp. 13-14.

[17] Ibid., p. 14.

[18] Ibid., pp. 16-17.

[19] Ibid., p. 17.

- [20] See Exhibit A, Folder of Exhibits.
- [21] TSN, 07 February 1994, p. 21.
- [22] Ibid., pp. 21-22.
- [23] Ibid., p. 29.
- [24] Ibid., p. 31.
- [25] Ibid., p. 33.
- [26] Ibid., pp. 49-50.
- [27] Ibid., p. 52.
- [28] Ibid., pp. 49-64.
- [29] TSN, 08 February 1994, pp. 4-7.
- [30] TSN, 15 February 1994, Fernando Galera, pp. 7-8.
- [31] Ibid., p. 12.
- [32] Ibid., p. 16.
- [33] Ibid., p. 21.
- [34] Ibid., pp. 18-20.
- [35] Ibid., pp. 22-23.
- [36] Ibid., pp. 26-28.
- [37] Ibid., pp. 35-37.
- [38] TSN, 14 February 1994, pp. 2-5.
- [39] Ibid., p. 6.
- [40] TSN, 07 March 1994, pp. 5-7.
- [41] Ibid., p. 8.
- [42] Ibid., p. 9.
- [43] Ibid., pp. 13-14.
- [44] Rollo, p. 25.
- [45] Rollo, p. 45.
- [46] People vs. Tabago, 167 SCRA 65.
- [47] People vs. Ramos, 167 SCRA 476.
- [48] See People vs. del Pilar, 164 SCRA 280.
- [49] See People vs. Godoy, 250 SCRA 676.
- [50] TSN, 07 February 1994, pp. 7-8.

- [51] Ibid., p. 53.
- [52] Ibid., pp. 9-10.
- [53] Ibid., p. 15.
- [54] Exh. "1," Folder of Exhibits.
- [55] TSN, 07 February 1994, pp. 44-45.
- [56] TSN, 08 March 1994, p. 6.
- [57] Ibid., pp. 6-7, 29-30.
- [58] People vs. Castillon, 217 SCRA 87.
- [59] TSN, 07 February 1994, pp. 48-51
- [60] Ibid., pp. 62-64.
- [61] People vs. Gabris, 11 July 1996; People vs. Ola, 152 SCRA 1.
- [62] Amarante, et al. vs. Court of Appeals, 155 SCRA 46.

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