

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SGT. MORENO BAYANI, ACCUSED-APPELLANT.

G.R. No. 120894. October 03, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Sgt. Moreno Bayani, a member of the Philippine National Police (PNP), seeks the reversal of the 28 April 1995 decision[1] of the Regional Trial Court (RTC) of Laoag City, Branch 11, in Criminal Case No. 6433, finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law; to indemnify complainant Maria Elena Nieto in the amount of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency; and to pay the costs.

In her sworn complaint dated 22 February 1993 and filed on 24 February 1993 with the court below, the complainant charged the accused with the crime of rape allegedly committed in the following manner:

That on or about the 28th day of June, 1992, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Moreno Bayani, by means of force and intimidation with the point [sic] of a gun, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant Maria Elena Nieto, against her will.

CONTRARY TO LAW.[2]

The complaint was duly certified by OIC-City Prosecutor Marilyn Ro. Campomanes. No bail was recommended for the temporary liberty of the accused, and a warrant for his arrest was issued on 4 March 1993.[3]

On 12 April 1993, the trial court denied[4] the motion of the accused for bail[5] and the motion of Romeo Maganto, PNP Provincial Director of Ilocos Norte, asking that the accused, who allegedly voluntarily surrendered to Maganto on 24 March 1993,[6] be detained at the PNP Detention Center instead of the Provincial Jail. The trial Court further ordered Maganto to Immediately bring the accused to court.

On 14 June 1993, the accused filed another motion for bail contending that "while the charge -- is [for] a capital offense -- the evidence of guilt -- is not strong." [7] Primarily, the accused assaulted the complainant's credibility based on her affidavit submitted during the preliminary investigation,[8] upon which a resolution[9] was issued finding a prima facie case against him and recommending that the information be filed in court.

The prosecution, in opposing the motion for bail, presented Dr. Eden Baraoidan, a Medical Specialist II of the Provincial health Office who conducted the medico-legal examination of the complainant on 6 January 1993, and the complainant herself.

The medico-legal report prepared by Dr. Baraoidan contained the following pertinent findings:

X X X

II. Internal Examination:

- Pubic hair -- scanty
- Labia majora -- coapted at its entire length
- Labia minora -- coapted at its entire length
- Vaginal rugosities -- no prominent
- Vagina -- admits two (2) fingers with ease
- Hymen -- lax, with old lacerations at 3, 5 and 7 corresponding to face of clock.
- Cervix -- enlarged, soft, bluish
- Uterus -- enlarged to about 7-8 months size.
- Adnexae -- negative for masses and tenderness.

III. Laboratory Examination

1. Pregnancy Test -- Positive
2. Sperm Determination -- Negative for Spermatozoa[10]

Dr. Baraoidan declared that she found several healed abrasions below and at the sides of the complainant's navel and that the complainant's enlarged cervix connoted pregnancy; further, the complainant's uterus was enlarged to about 7-8 months size and the fetal heartbeat was located at the right lower quadrant. As regards the non-prominence of the vaginal rugosities, the passage of two fingers into the vagina, and the presence of hymenal lacerations, it was possible these were due to sexual intercourse.[11]

The complainant's testimony was faithfully summarized by the People in the Appelle's Brief, which we adopt and quote below:

In 1992, Maria Elena Nieto was a fourth-year high school student of St. Lawrence Academy, a Catholic School of Bangui, Ilocos Norte. She was then fifteen (15) years old. At that time both her parents were abroad as overseas contract workers (TSN, August 29, 1993, pp. 26, 45 and 51-52).

She was born in San Juan, Ilocos Sur. However, on July 19, 1989, Maria Elena together with her brother and an older sister moved to Barangay Manayon, Bangui, Ilocos Norte, to live with her paternal grandmother Rosalina B. Nieto, her uncle Eugenio Nieto and his family. There, she met appellant.

Appellant was a neighbor. He was close to her paternal uncles, Eugenio and Rudy Nieto. One of her uncles is appellant's "kumpadre." Maria Elena called him "uncle" and the latter's wife "auntie." Appellant often went to her grandmother's house. She was considered a relative. (TSN, August 29, 1993, pp. 25-29, including preceding paragraph).

At about 6:00 in the morning of June 28, 1992, appellant went to their residence. He asked her if she could accompany him to visit a friend in Laoag City. She told appellant to ask permission from her grandmother who consented (TSN, August 29, 1993, pp. 29-30).

At 9:30 of that same morning, appellant fetched her. At about 11:30 a.m., they reached Laoag City. They proceeded to a boarding house near the Northern Christian College (NCC). There appellant visited a woman. While Maria Elena was taking her "merienda" in the kitchen, appellant and the woman were outside the house talking. She noticed by their actions that they were quarreling. After about thirty (30) minutes, appellant called for her and they left. She was made to understand by the appellant that the woman he intended to visit was not around (TSN, August 29, 1993, pp. 30-34).

Appellant brought her to a restaurant, the City Lunch and Snack Bar. At that time, Maria Elena did not know the name of the restaurant. Neither did she know then that the second floor of the restaurant was a hotel. It was her first time to be in such place. Appellant invited her for lunch there. She declined as she was still full and

suggested that they go home. Appellant, however, called for a tricycle and told her "[w]e will first go to a friend of mine before going home" (TSN, August 29, 1993, p. 35).

He brought her to the "third floor of a certain building" (TSN, August 29, 1993, p. 35). While there, Maria Elena was made to wait outside and "he went to talk with somebody" (Ibid, p. 36). Upon returning, appellant told her that "it was in the second floor where the person he wanted to talk with was" (Ibid). They proceeded to the second floor of the building (TSN, August 29, 1993, p. 36).

Upon reaching the door of a room at the second floor of the building, appellant took hold of her wrist. She tried to free herself, but all the more appellant took hold of her wrist and he "opened the door" (ibid) with a key (TSN, August 29, 1993, p. 36).

After opening the door, appellant pushed Maria Elena inside. She wanted to run away but was prevented by appellant, who pulled her hair. Appellant then locked the door. Appellant pushed her hard making her kneel down on the floor beside the bed, her stomach was against the edge of the bed. All that time, appellant was holding her hair, pressing her head against the bed (TSN, August 29, 1993, pp. 37-38).

Maria Elena struggled to free herself. This prompted appellant to tighten his hold on her hair and he poked a gun against her right temple. Appellant then told her "[y]ou remove your pants, otherwise, I will shoot you." (Ibid, p. 39). Maria Elena became so nervous and felt she was becoming unconscious. Out of fear, she complied with appellant's order (TSN, August 29, 1993, pp. 38-39).

While Maria Elena was removing her pants, appellant removed his pants, too. Thereafter, appellant pushed Maria Elena to the bed and forced her to lie down. He ordered her to open her thighs and then he went on top of her. She struggled but felt weak. Appellant successfully had sexual intercourse with her. While doing this, appellant was holding his gun in his right hand (TSN, August 29, 1993, pp. 39-40).

Thereafter, Maria Elena wanted to leave. However, appellant pointed his gun at her and threatened to kill her if she revealed the rape incident to anybody (TSN, August 29, 1993, p. 40). After a while, appellant repeated the sexual intercourse for two more times. All the while, appellant was uttering indecent words at her, among them, "This is something very delicious. You will be longing for this" (TSN, ibid, p. 41). Appellant repeated his threat to kill her as well as members of her family, if she related the rape incident to anybody (ibid).

They left the room at about 3:00 in the afternoon. Appellant brought her to the Five sisters Emporium, where she was made to board a tricycle. She went home alone (TSN, October 20, 1993, pp. 72-74).

In view of the threats of appellant, Maria Elena did not immediately relate the incident to her family. She was forced to divulge the rape committed by appellant against her, when her family noticed her tummy was bloating (TSN, August 29, 1993, p. 42).

At that time, Maria Elena and Ambrosio Malapit, Jr., were sweethearts. They started their relationship on June 12, 1992. On her suspected pregnancy, Ambrosio was confronted by her sister Maria Elizabeth. In turn, her boyfriend confronted her. She related to him the rape incident (TSN, August 29, 1993, pp. 42-43).

The incident was reported by Ambrosio to the principal of St. Lawrence Academy, who went to Maria Elena's house in order to verify. She related to the principal what appellant did to her including his threats to kill her and her family (TSN, August 29, 1993, p. 43).

The school took the initiative of hiding her. She stayed for one (1) week in the house of a teacher of Divine Word College, Laoag City. Thereafter, she was transferred to Madre Nazarena in Laoag City, an institution run by nuns. She stayed there for less than a month (TSN, August 29, 1993, pp. 43-45).

The rape incident was reported to the NBI. Accompanied by NBI agents, she went back to the scene of the crime. It was only at that time that she learned that the building where appellant brought her was a motel, Dragon Inn (TSN, August 29, 1993, p. 41).

On March 21, 1993, Maria Elena gave birth (Exhibit "B"; TSN, August 29, 1993, p. 46).[12]

After the complainant underwent a lengthy cross-examination, the hearings on the motion for bail ended on 20 October 1993.[13] On 18 November 1993, the trial court issued an order denying the motion for bail.[14] The prosecution presented no additional testimonial evidence for trial on the merits,[15] but submitted its documentary exhibits[16] which were admitted by the trial court.[17]

The defense presented the accused and Bernard Javier, the information officer of the Dragon Inn.

The accused not only admitted having sexual intercourse with the complainant on the 28th day of June 1992; he asserted, in the main, that the complainant was his mistress and that the further acts of sexual intercourse after the said date were with her consent. His detailed testimony brought out the following salient facts:

He first came to know the complainant in August 1989 at her grandmother's house which he frequented -- at least thrice a week -- for drinking sprees with her uncles. At that time, his wife was in Singapore and returned only in November 1991. He would pay for the drinks and at times, the complainant would buy them for him. On occasion, she requested that she keep the change, which he always granted knowing she was a student. In December 1991, the complainant asked him for P500.00 for a trip to Ilocos Sur, and then to Manila where her aunt lived. He would see her at home when she was alone and sometimes kiss her. At the end of her classes in March 1991, she asked him for P100.00 as she was going to Manila for vacation.[18]

On 27 June 1992, at around 4:00 p.m., while he was riding on his motorcycle, the complainant who was then carrying a child flagged him down and asked that they go to Laoag City to buy things she needed for her school project and visit her friend. He agreed.[19]

The following day, they left for Laoag City at about 9:30 a.m. They took a minibus and sat beside each other on the second from the last seat. Upon arrival at Laoag City at around 11:30 a.m., the accused suggested that they first eat lunch at City Lunch before buying the things she needed at the nearby "Five Sisters." While eating, the complainant told him that she had a boyfriend, and he remarked that he was not surprised as he would see her boyfriend at her house. She then told him that she did not know how to thank him for all the help he extended to her and her grandmother. From that, he gathered that she was amenable to "checking-in" or going to bed with him, so he replied that she was very dear to him and intimated that if she really cared for him they would go to a room upstairs and "check in." She responded, however, that the place was magulo (noisy); so he suggested that they go to Dragon Inn. She agreed, and they left by tricycle.[20]

At Dragon Inn, the accused approached the man at the information counter (Javier) and told the latter that he would check in with his wife. Javier then took the registry book and asked the accused what name to write down. The accused answered: "Mr. And Mrs. Moreno Bayani," with address at Badoc, Ilocos Norte. Javier then told the accused that firearms had to be left at the information counter. Despite the accused's negative reply, Javier conducted a body search on the accused in compliance with the inn's house rules. Finding nothing, Javier accompanied them to Room 8 on the second floor. After engaging in foreplay for "more than thirty (30) minutes," the accused and the complainant undressed themselves and had sexual intercourse twice.[21]

While resting after the coitus, the complainant cried while divulging details about her dysfunctional family. He told her to stop crying as he was ready to help her, and if she got pregnant he would consider the child as his. He also promised to support her until death and bound himself to give her P100.00 a week. She replied that she would be thankful if he would fulfill his promises.[22]

At past 3:00 p.m., Javier knocked at the door and notified them that their time was up. The complainant announced they would go to Five Sisters to buy the things she needed for her school project and asked for

P400.00. After the accused gave her P500.00, they dressed, left the room, and checked out. They took a tricycle to Five Sisters where she bought school supplies and health and beauty products. At about 3:30 p.m., the accused dropped-off the complainant at the bus terminal as he had to see a classmate of his to get his "AFPLA, Inc. passbook." After she left, the accused got his passbook and reached Manayon, Bangui, at around 6:30 p.m.[23]

In July 1992, the accused and the complainant had sexual intercourse three or four times, and during the second week of August, they had sexual intercourse in the accused's house as his wife was not around. It was at that time that the complainant informed him that she had missed her period, to which, the accused answered: "Since God blessed what we did, as I have said at the Golden Dragon -- I will fulfill it, provided you will behave and avoid meeting with your boyfriend." They had sexual intercourse three to four times during the months of September and October and once about the last week of November 1992, at which time she asked for P5,000.00 as she was going to Manila to visit an aunt.[24]

The complainant's Manila trip did not materialize. Sometime during the first week of December 1992, the accused left the complainant's house at about 8:00 p.m. after a drinking session, but she had not yet arrived. He then hid at the waiting shed near the complainant's house where he could see whether she came home with her boyfriend. Shortly, a bus arrived from Laoag City and he saw her and her boyfriend alight from the bus and then go to her house. Feeling jealous, the accused wanted to confront her boyfriend, but since he did not come out after five minutes, the accused merely went home.[25]

At 11:30 a.m. the next day, the accused waited for the complainant's dismissal from school and confronted her about being with her boyfriend the night before. As she denied the charge, they quarreled. She then asked him to return her ring, and he promised to do so the following day as it was not with him at that time. He went to the complainant's house to return her ring only on the following week,[26] but she threw it back at him. As they continued to quarrel, he told her that he had to go as she could not fulfill her promise not to be with her boyfriend. She then asked, "How about my pregnancy?" to which, he answered: "You bring that to your boyfriend because I am not sure that is my child." That was the last time the accused saw the complainant until the arraignment.[27]

As to the complainant's motive to falsely testify against him, the accused claimed that she harbored hatred against him because he did not stand up for her pregnancy and that she lost a boyfriend; moreover, the accused was not able to give the amount of P5,000.00 in December 1992.[28]

Defense witness Bernard Javier corroborated the accused's testimony as to the couple's checking-in at the Dragon Inn and further declared that upon checking-out he noticed that the complainant "was happy and even laughing." [29]

The prosecution presented as rebuttal witnesses Romeo Nieto and Rosario Nieto, the complainant's uncle and father, respectively. Romeo testified that the accused came to his house where the complainant resided bringing gifts (powder, soap, cotton, and milk) for the complainant and offered to amicably settle the case. In all, the accused came thrice for the purpose: (a) on 15 December 1993, with a certain Maj. Armando Aliño[30] when Romeo told them that he had no authority to settle the case as the complainant's parents were arriving from abroad in January 1994; (b) on 5 January 1994, with the secretary of Congressman Roque Ablan; and (c) on 30 April 1994, with Vice-Governor Mariano Nalupta, Jr.[31]

Rosario, the complainant's father, testified as to his family's earnings (his salary, his wife's salary, rental income). He then denied that their family was dysfunctional, and that he and his wife were separated.[32]

The defense presented as sur-rebuttal witness Col. Armando Aliño, Chief Inspector of the Provincial Command and the Supervisor of the Ilocos Norte Provincial Jail. He admitted that he spoke with Romeo Nieto on 15

December 1993, but denied that the accused was present and that they brought gifts. Col. Aliño further declared that he did not see Romeo to compromise the case, but merely to inquire as to when the complainant's mother would arrive. Finally, Col. Aliño confirmed that on 30 April 1994, he and Vice-Governor Nalupta went to see Romeo and the complainant's mother, but was unable to meet with the latter.[33]

After the parties submitted their memoranda, the trial court promulgated the decision appealed from. It gave full faith and credit to the evidence of the prosecution and found:

The private complainant herein was only about twelve (12) years old when she first met the accused who was about thirty-two (32) years old and a married man. He was a close friend of [her] uncles. One of [her] uncles is the kumpadre of the accused. -- They were neighbors.

The accused frequented the house of the private complainant's grandmother. -- The private complainant called him uncle while she called the accused's wife auntie. He was considered a relative.

Under these circumstances, the Court finds nothing wrong when on June 28, 1992, the grandmother of the private complainant allowed the private complainant to accompany the accused to Laoag City to visit a friend. In the words of the private complainant, she and her grandmother had trust and confidence in the accused. As to the insinuation of the accused that it was incredulous for the private complainant to allow her granddaughter to visit a girlfriend of the accused who is a married man, the private complainant explained that the accused only told her grandmother that he would visit a friend. ...

Moreover, there is nothing incredulous when the private complainant consented to go with the accused to visit the latter's girlfriend after her grandmother gave her permission. To reiterate, she had trust and confidence in the accused. -- A fifteen (15) year old girl is not expected to entertain malice in her mind as to why a man, whom [she] calls uncle and very much well-known within her family circle, although a married man, would ask her to accompany him to his girlfriend. -- The Court finds the testimony of the private complainant on this matter candid and sincere and within the realm of the mind of a fifteen (15) year old girl: ...

x x x

Under this factual backdrop, the private complainant could not have any inkling on what was actually on the mind of the accused. So, she went along with the accused in a building which turned out to be a motel. There were no people inside the building except for a man with whom the accused talked to. Again, the Court rules that at this point in time the fifteen-year old private complainant who considered the accused an uncle was not expected to know the sinister plan of the accused against her.

The court finds the account of the private complainant on what transpired between her and the accused on June 28, 1992 replete with details which could not have been concocted by the private complainant. The tears she shed while narrating on how she was ravished by the accused were real.

True, there were inconsistencies on some details between the private complainant's testimony and her affidavit. But these are minor inconsistencies which do not affect her credibility. Besides, she had satisfactorily explained these discrepancies.[34]

As to the version of the accused, the trial court observed:

The accused's insistence that he and the accused mutually agreed to have sexual intercourse on June 28, 1992 and that there after they maintained a sexual relationship .. does not inspire belief.

The accused pictured the fifteen (15) year old private complainant as one who belongs to a broken family and was in dire need of financial help which he readily gave. ..

x x x

The easy manner which the private complainant consented to the sexual overtures of the accused is

incredulous. She is a very charming girl and does not look destitute so as to succumb immediately to the sexual overtures of the accused. In fact, at the time she was -- well-supported by her family. It is not disputed that both of her parents are overseas contract workers. In this regard, the accused himself admitted that the private complainant told him that her father gave her financial support. ..

Indeed, this Court does not give credence to the accused's stance that the private respondent agreed to have a sexual relationship with the accused who is twice her age in exchange [for] the financial help allegedly extended to her by the accused.

x x x

The Court observed that the testimonies of both the accused and Bernardo Javier jibed in even the smallest details. To the mind of the Court, their testimonies were rehearsed and do not inspire credence. xxx In fact, the Court observed that both the accused and Javier answered immediately to the questions without even a pause or a semblance of recollection on what happened on June 28, 1992 about two (2) years ago before they testified in court.

x x x

The accused's stance that he and the private complainant continued their sexual relationship after June 28, 1992 is highly preposterous...

Contrary to the stand of the accused, there is nothing in the medicolegal examination of the private complainant which can conclusively show that after June 28, 1992, the private complainant had several sexual intercourse.[35]

The trial court also debunked the accused's claim that the delay in reporting the case was further proof against the claim of rape. The trial court cited our rulings in *People vs. Rejano*[36] and *People vs. Yambao*[37] and noted:

In the instant case the private complainant was only fifteen (15) years old at the time she was raped by the accused. She had considered the accused as a close relative and called him uncle. He was very close to her uncles. And yet he raped her. When he forced himself unto her, he threatened her with a gun. Thereafter, he repeatedly threatened her not to relate the incident to anybody, otherwise, he would kill not only her but her family. The accused -- continued to go to the house of the private complainant even after June 28, 1992.

Certainly, the combination of these circumstances put the fifteen-year old private complainant in constant fear, not only for her life but for her whole family as well. In the mind of the fifteen-year old private complainant, the accused would make good of his threat to kill them. His constant presence in their house alone reminded her of the threat. He need not repeat his threat after June 28, 1992.

This was manifested when after the private complainant divulged the rape committed against her by the accused she was immediately taken out from their house.[38]

The trial court likewise disregarded the accused's theory of ulterior motive. Thus:

The Court does not give credence to the alleged motive of the private complainant in filing the rape charge against the accused. The private complainant does not seem to be so sophisticated and callous to falsely charge the accused with rape and expose herself to public trial and possibly public embarrassment. "[39]

As to the accused's claim of lack of resistance on the part of the complainant, the trial court observed:

[I]n the instant case, the accused pointed a gun at the private complainant. The accused's pointing a gun -- and simultaneously threatening to kill her if she did not submit to his lustful desires created in the latter's mind real fear for her life which deprived her of will to resist him.

Finally, it found as sufficiently established the accused's efforts to amicably settle the case. Thus:

Finally, the Court is convinced that the accused tried to amicably settle the case with the private complainant's mother as testified to by Romeo Nieto -- It is inconceivable that Romeo Nieto, an ordinary citizen could have the courage to drop the names of highly-placed and influential officials in the province -- Despite the protestations of the accused and Major Aliño -- the Court has no doubt that the accused was present in all the three (3) occasions related by Romeo Nieto wherein they were looking for the private complainant's mother. The mere denials of the accused and Major Aliño cannot overcome the positive testimony of Romeo Nieto.

At any rate, his non-presence during these occasions cannot erase the fact that the highly-placed and influential provincial officials went there on his behalf -- that was to ask for a compromise deal. It would be absurd to assume that these highly-placed and influential officials went to the residence of Romeo Nieto on their own without the knowledge of the accused.

Verily, the attempt of the accused to amicably settle the case is an admission of guilt of the crime charged against him.[40]

The accused seasonably appealed from the decision. In his Appellant's Brief, he assigns the following errors to the trial court:

- I.
THE TRIAL COURT ERRED IN NOT FINDING AND DECLARING THAT THE COMPLAINANT AND THE APPELLANT WERE LOVERS AND THAT THEY AGREED TO A LOVE TRYST AT THE DRAGON INN.
- II.
THE TRIAL COURT ERRED IN FINDING AND DECLARING THAT THE APPELLANT EMPLOYED FORCE AND INTIMIDATION IN THEIR LOVE TRYST AT THE DRAGON INN.
- III.
THE TRIAL COURT ERRED IN HOLDING AND DECLARING THAT THE DELAY IN REPORTING THE ALLEGED RAPE WAS DUE TO THE REPEATED THREATS OF THE APPELLANT TO THE COMPLAINANT.
- IV.
THE TRIAL COURT ERRED IN NOT FINDING AND DECLARING THAT THE COMPLAINANT AND APPELLANT CONTINUED THEIR LOVE AFFAIR AFTER JUNE 28, 1992.
- V.
THE TRIAL COURT ERRED IN NOT FINDING AND DECLARING THAT COMPLAINANT TESTIFIED FALSELY AGAINST THE APPELLANT DUE TO EVIL MOTIVE.
- VI.
THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANT OFFERED TO COMPROMISE THIS CASE, FOR THE REASON THAT THERE IS NO EVIDENCE ON RECORD TO SUPPORT THE SAME.
- VII.
THE TRIAL COURT ERRED IN RENDERING A JUDGMENT IN THIS CASE ON A SWORN STATEMENT OF THE COMPLAINANT CHARGING THE APPELLANT OF [sic] THE CRIME OF RAPE, FOR THE REASON THAT THE SIGNATURE APPEARING THEREON WAS NOT IDENTIFIED BY COMPLAINANT AND NOT PRESENTED AS EVIDENCE IN COURT BY THE PROSECUTION.

The People, through the Appellee's Brief filed by the Office of the Solicitor General, refuted the accused's arguments, and in closing, recommended that "apart from the FIFTY THOUSAND (P50,000.000) PESOS as indemnity, appellant should be made to support his illegitimate child with Maria Elena, in conformity with Article

345(3) of the Revised Penal Code."

We find no merit in the appeal.

We reiterate the controlling guidelines and principles in rape cases:

- (1) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- (2) 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
- (3) The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[41]

The credibility then of the complainant is of paramount importance. On this score, it is doctrinally settled that appellate courts will generally not disturb the findings of the trial court, or its evaluation of the testimony of a witness is accorded the highest respect because the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial. The recognized exceptions to the doctrine are when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances weight and substance which could have affected the result of the case.[42]

After a careful perusal of the testimony of the witnesses in this case and a review of the findings and conclusions of the trial court, we find no reason to depart from this doctrine nor apply its exceptions. The first five errors assigned are but a mere rehash of the accused's arguments in his memorandum filed with the trial court. The trial court ably and correctly disposed of them in the challenged decision as shown in the portions thereof earlier quoted. We adopt the trial court's resolution on those issues and commend the trial judge for her exacting analysis of the facts. We wish, however, to add some points to show the utter lack of merit of the accused's propositions.

The accused's insinuation that it was incredulous for the complainant's grandmother to allow her granddaughter to visit the accused's girlfriend, knowing all too well that the accused was a married man, is baseless. On cross-examination, the complainant explained that the accused told her grandmother that he would visit a friend. Thus:

q And precisely also, you heard the accused tell your lola that she would permit you to go with him to Laoag in order that you would accompany him to visit his girlfriend in Laoag, is that not correct?

a Yes, sir, because she trusted him.

q Did not your grandmother ask the accused why he was visiting a girlfriend when he was very much married?

a No, sir.

q And did not your grandmother tell him, "It is not good for you to be bringing my granddaughter if you are visiting your girlfriend"?

a No, sir, because he did not directly say that he would visit a girlfriend but a friend only.[43]

As to the use of the word "girlfriend" in her affidavit, the complainant satisfactorily explained that she narrated her story in Ilocano to a certain Atty. Geologo, who then translated it into English. It was only after the complainant read the English translation that she noticed certain things lacking in the affidavit, however, "Atty. Geologo said it will be in court where I will tell everything." [44] At any rate, a sworn statement or affidavit, being

taken ex-parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion or for want of suggestions and inquiries. Its infirmity as a species of evidence is a matter of judicial experience. As such, affidavits taken ex-parte are generally considered to be inferior to the testimony given in open court.[45]

As to the finding of the trial court regarding the use of force and intimidation, it must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear -- fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary.[46]

In the instant case, with the trust reposed by the complainant in the accused who she even called uncle, the disparity in their ages, coupled with the complainant's tender years and the fact that the accused is a policeman, we can pay no heed to the accused's avowal that the complainant should have used stronger force or resistance against his acts.

As regards the presence or absence of a gun, we need only state that the accused being a policeman must have a duly issued firearm. He did not testify otherwise, nor that he left it in the police station or in his house. The testimony of Bernard Javier as to the body search pursuant to the inn's house rules does not persuade, as correctly found by the trial court. There is no evidence of the thoroughness of the search and if indeed the inn had that rule, Javier should have presented a printed copy thereof.

The accused next points to the seven-month lapse before the complainant reported the incident and invokes the ruling in *People vs. Paragsa*[47] where this Court, in acquitting the defendant-appellant therein, took into consideration a three day lapse. In addition, the accused disputes the trial court's finding that the delay was attributable to repeated threats made even after 28 June 1992.

The accused's reliance on *Paragsa* is unavailing. The court therein took pains to point out that there were numerous "[c]ircumstances [which] negate the commission by the appellant of the crime charged,"[48] e.g., the "sweetheart theory" was substantially corroborated by two defense witnesses, the absence of lacerations along the vaginal walls despite the medico-legal examination being conducted a mere three days after the incident, the complainant's narration was done in a matter-of-factly fashion, material inconsistencies in the testimonies of the complainant and the only other prosecution witness. Plainly, these circumstances are absent in this case.

As regards the alleged finding of the trial court that the accused repeatedly threatened the complainant even after 28 June 1992, the accused misreads the decision of the trial court. The court a quo did not so find when it held:

When he forced himself unto her, he threatened her with a gun. Thereafter, he repeatedly threatened her not to relate the incident to anybody, otherwise, he would kill not only her but her family. The accused is a police officer and on [sic] his admission continued to go to the house of the private complainant even after June 28.

Certainly, the combination of these circumstances put the fifteen-year old private complainant in constant fear -- In the mind of the fifteen-year old private complainant would make good his threat to kill them. His constant

presence in their house alone reminded her of the threat. He need not repeat his threat after June 28, 1992.[49]

Clearly, the trial court did not even imply that any threat was made after 28 June 1992, but was merely referring to and consistent with the complainant's testimony on direct examination that the accused threatened to shoot her before the first incident of rape, then after the second and third incidents, he threatened to kill her and her family if she ever told them; with both threats having been made on the same day:

q As the accused tried to tighten his grip on your hair and poked a gun against your right temple, what did he do?
a He said, "You remove your pants, otherwise, I will shoot you."

x x x

q After he was able to do what he wanted to do, did anything else happen after that?

a He repeated for two more times, sir "

q After doing this act for two more times and saying very indecent words, according to you, what else happened?

a He repeated his threats to me, sir.

q What is that threat?

a That he will kill me, including my family, if ever I will tell what happened, sir.[50] (emphasis supplied)

In no manner, therefore, may the accused derive comfort from the complainant's delay in reporting the crime in the instant case, especially in light of the "father figure" the accused presented to the complainant. This Court has observed that a six month delay in reporting a rape committed by a father against his daughter is justified in light of threats.[51]

Turning now to the "sweetheart" or "mistress" theory posed by the accused, again, such must fail. Having admitted to having had carnal knowledge of the complainant on the date and time in question, the accused bears the burden of proving his defense by substantial evidence.[52] However, as the People astutely cite, the defense failed to present any love letters, pictures, or mementos.[53] Moreover, as regards the complainant's ring which she allegedly gave to the accused, if this were true, then in light of the shift in the burden of evidence, it was incumbent upon the accused to provide the circumstances surrounding this gift, if only to provide some semblance of support for his defense.

With respect to the accused's fifth assigned error, he ascribes the following to the complainant to justify her falsely bringing this case against him:

Her boyfriend must have pressed her to explain why she was pregnant and who caused her pregnancy. To mollify and preserve her relationship with her boyfriend, she had to concoct the alibi that she was raped by appellant. And to convince her boyfriend, she had no alternative but file this false complaint against appellant. But this ploy of hers boomeranged because she not only lost her boyfriend but also appellant who promised to sustain her and the fruit of their love ... having lost them both, she was forced to file this complaint, to cover her immorality and to protect her school, a Catholic managed school, from being exposed to public shame.[54]

The accused's argument deserves scant consideration. It is sheer speculation. Bearing in mind the above discussion as regards the credibility of witnesses, it is worth repeating that the trial court lent full credence to the complainant's testimony:

The Court finds the account of the private complainant on what transpired between her and the accused on June 28, 1992 replete with details which could not have been concocted by the private complainant. The tears

she shed while narrating on how she was ravished by the accused were real.[55]

This Court, after a thorough examination of the transcript of stenographic notes, is in full accord with the above observation of the trial court. Moreover, we find that the accused failed to present evidence to prove the presence of any ulterior or improper motive on the part of the complainant. In this light, this Court has ruled:

Considering a Filipina's inbred modesty and antipathy in airing publicly things which affect her honor, it is difficult to believe that she would admit the ignominy she had undergone if it were not true. A complainant would not risk ruining her future and exposing herself to ridicule if her charge were not true. If she does undergo the expense, trouble and inconvenience of a public trial, suffer scandals, embarrassments and humiliation (such action would indubitably invite, as well as allow, an examination of her private parts), it is due to her desire to bring justice to the person who had abused her. -- When there is no evidence and nothing to indicate that the offended party was actuated by any improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit.[56]

Turning now to the accused's sixth assigned error, he argues:

Clearly, forgiveness is different from compromise. All that the appellant and those who intervened for him was to ask for forgiveness. The mother of the complainant did not testify in court or any [sic] close to her that the appellant or any of his intercessors offered to compromise the case.

The finding of the trial court offered to compromise the case is without factual basis.[57]

Oddly, the accused takes inconsistent positions on this matter. On one hand, he claims above that he sought forgiveness, but on the other hand, while testifying as regards a meeting with the complainant's mother during the conduct of the trial, the accused claimed that he "did not ask for forgiveness because what they charged against [him] is not true." [58] At any rate, the accused's attempt to split hairs between forgiveness and compromise is unavailing. While compromise "is an agreement made between two or more parties as a settlement of matters in dispute," [59] the term "forgiveness" necessarily implies a consciousness of wrongdoing or guilt. [60] It has been held, therefore:

[T]he weight both of authority and of reason sustains the rule which admits evidence of offers to compromise, but permits the accused to show that such offers were not made under a consciousness of guilt, but merely to avoid the inconvenience of imprisonment or for some other reason which would justify a claim by the accused that the offer to compromise was not in truth an admission of his guilt and an attempt to avoid the legal consequences which would ordinarily ensue therefrom. [61] (emphasis supplied)

As such, we adopt the pertinent portions of the lower court's ruling on this subject and declare that no reversible error was committed in appreciating the accused's plea for forgiveness as an implied admission of guilt, in accordance with §27(2), Rule 130 of the Rules of Court. [62] This can only be buttressed by the persistence of the accused's intercessors in attempting to see the complainant at least thrice. [63]

The accused finally contends that "[t]he signature appearing at the bottom of the complaint -- was not identified by the complainant and presented as evidence by the prosecution." [64] This likewise deserves not even a passing glance. Prosecutions in the Regional Trial Courts are always commenced by information, except with respect to certain felonies which cannot be prosecuted de officio, such as rape. [65] As regards these felonies, this Court has held:

Article 344 of the Revised Penal Code and Rule 110 section 5 -- of the 1985 Rules on Criminal Procedure require that the offenses of abduction and rape -- shall not be prosecuted except upon complaint filed by the offended party. Compliance with this is a jurisdictional and not merely a formal requirement.

The Rules of Court further provides that evidence which has not been formally offered shall not be considered

by the court ...

Applying these rules to the case at bar, it is admitted that the sworn complaint of [the victim] was not formally offered in evidence by the prosecution. This failure to adhere to the rules however is not fatal and did not oust the court of its jurisdiction to hear and decide the case. Jurisprudence reveals that if the complaint in a case which cannot be prosecuted de oficio is forwarded to the trial court as part of the records of the preliminary investigation of the case, the court can take judicial notice of the same without the necessity of its formal introduction as evidence for the prosecution.[66] (citations omitted)

In the instant case, the complaint was filed with the trial court on 24 February 1993, thus it formed part of the records of the case and the trial court could have validly taken judicial notice of the same, without doing violence to §8, Rule 112 of the Rules of Court.[67]

On a final note, the Court addresses the Solicitor General's recommendation that the accused should be made to support his illegitimate child with the complainant, in conformity with Article 345(3) of the Revised Penal Code. While it has been held that recognition of offspring of rape cannot be ordered in the absence of evidence,[68] in this instance, however, before both the trial court and this Court, the accused expressly admitted paternity of the complainant's child thus giving rise to the obligation to provide support, i.e., "But this ploy of hers boomeranged because she not only lost her boyfriend but also Bayani who promised to sustain her and the fruit of their love, if she would not see anymore her boyfriend." [69] With this judicial admission twice recited, the accused has indisputably admitted his paternity of the complainant's child.

Article 345 of the Revised Penal Code provides that persons guilty of rape, seduction, or abduction, shall be sentenced to: (a) indemnify the offended woman; (b) acknowledge the offspring, unless the law should prevent him from so doing; and (c) in every case, to support the offspring. While under Article 283 of the Civil Code, the father is obliged to recognize the child as his natural child in cases of rape, abduction, and seduction when the period of the offense coincides, more or less, with the period of the conception. It has been held, however, that acknowledgment is disallowed if the offender is a married man, with only support for the offspring as part of the sentence.[70] With the passage of the Family Code, however, the classifications of acknowledged natural children and natural children by legal fiction have been eliminated. At present, children are classified as only either legitimate or illegitimate,[71] with no further positive act required of the parent as the law itself provides the child's status. As such, natural children under the Civil Code fall within the classification of illegitimate children in the Family Code.

Article 176 of the Family Code confers parental authority over illegitimate children on the mother, and likewise provides for their entitlement to support in conformity with the Family Code. As such, there is no further need for the prohibition against acknowledgment of the offspring by an offender who is married which would vest parental authority in him. Therefore, under article 345 of the Revised Penal Code, the offender in a rape case who is married can only be sentenced to indemnify the victim and support the offspring, if there be any. In the instant case then, the accused should also be ordered to support his illegitimate offspring, Tracy Jhuen Nieto,[72] with Marie Elena Nieto, but in light of Article 201[73] of the Family Code, the amount and terms thereof to be determined by the trial court only after due notice and hearing.

WHEREFORE, the instant appeal is **DISMISSED**, and the challenged decision of 28 April 1995 of Branch 11 of the Regional Trial Court of Laoag City in Criminal Case No. 6433 is **AFFIRMED** in toto. Furthermore, accused-appellant MORENO BAYANI is ordered to support his illegitimate child Tracy Jhuen Nieto in an amount to be determined by the trial court after due notice and hearing, called only to determine the amount and terms of support, with support in arrears to be reckoned from 28 April 1995.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. 6433, 305-339; Rollo, 19-52. Per Judge Perla B. Querubin.

[2] Id., 1-2; Id., 6-7.

[3] OR, 10.

[4] Id., 20.

[5] Id., 15-18.

[6] Id., 19.

[7] Id., 44-46.

[8] Id., 6-7.

[9] Id., 3-5.

[10] Id., 117.

[11] TSN, 28 July 1993, 8-15.

[12] Appellee's Brief, 3-11.

[13] OR, 102.

[14] Id., 103-106.

[15] Section 8, Rule 114, Rules of Court, as amended by Administrative Circular No. 12-94 effective on 1 October 1994, provides, inter alia, that the evidence presented during the bail hearings shall be considered automatically reproduced at the trial.

[16] Exhibit "A" (the Medico-Legal certificate), OR, 8 and 117; Exhibit "B" (the certification of the Local Civil Registrar), showing the complainant's child born on 21 April 1993, Id., 64; and Exhibit "C" (complainant's affidavit), Id., 6.

[17] Id., 122.

[18] TSN, 11 November 1994, 54-62.

[19] Id., 62

[20] TSN, 8 December 1994, 67-73.

[21] Id., 74-81; TSN, 9 December 1994, 82.

[22] TSN, 9 December 1994, 83-85.

[23] TSN, 9 December 1994, 85-89.

[24] Id., 89-90.

[25] Id., 90-91.

[26] Marked in evidence as Exhibit "2."

[27] TSN, 9 December 1994, 82-96.

[28] TSN, 4 January 1995, 97.

[29] TSN, 5 January 1995, 144.

[30] But as testified to by Aliño, his rank was that of Colonel (TSN, 16 February 1995, 1).

[31] TSN, 6 January 1995, 163-167.

[32] Id., 178-183.

[33] TSN, 16 February 1995, 188-198.

[34] OR, 326-329; Rollo, 39-42.

[35] OR, 331.

[36] 237 SCRA 627 [1994].

[37] 193 SCRA 571 [1991].

[38] OR, 335-336; Rollo, 48-49.

[39] OR, 336; Rollo, 49.

[40] Id., 337-338; Id., 50-51.

[41] People vs. Lucas, 232 SCRA 537, 546 [1994], citations omitted.

[42] People vs. Delovino, 247 SCRA 637, 646-648 [1995].

[43] TSN, 20 October 1993, 35.

[44] Id., 36.

[45] People vs. Enciso, 223 SCRA 675, 685-686 [1993], citations omitted.

[46] People vs. Grefiel, 215 SCRA 596, 608-609 [1992].

[47] 84 SCRA 105 [1978].

[48] Supra note 47, at 112.

[49] OR, 335-336; Rollo, 48-49.

[50] TSN, 29 August 1993, 16-18.

[51] See People vs. Matrimonio, 215 SCRA 613, 633 [1992]. See also People vs. Alib, 222 SCRA 517, 529-530 [1993]; People vs. Lagrosa, Jr., 230 SCRA 298, 306-307 [1994].

[52] See People vs. Tismo, 204 SCRA 535, 554 [1991].

[53] OR, 280.

[54] Appellant's Brief, 33-34; Rollo, 80 et. seq.

[55] OR, 329; Rollo, 42.

[56] People vs. Corpuz, 222 SCRA 842, 858 [1993].

[57] Appellant's Brief, 38-39; Rollo, 80 et. seq.

[58] TSN, 4 January 1995, 120-121.

[59] RICARDO J. FRANCISCO, EVIDENCE -- RULES 128-134, 184 [1993 ed.].

[60] See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY -- UNABRIDGED, 891-892 [1996], regarding the definitions of the words "forgive" and "forgiveness."

[61] U.S. vs. Maqui, 27 Phil. 97, 99 [1914]; U.S. vs. Torres and Padilla, 34 Phil. 994, 999 [1915].

[62] The provision reads:

Sec. 27. Offer of compromise not admissible. --

x x x

In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

[63] See People vs. Sope and Cruz, 75 Phil. 810, 814 [1946].

[64] Appellant's Brief, 39-40; Rollo, 80 et. seq.

[65] See FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, vol. 2 [1989], 193.

[66] People vs. Sunpongco, 163 SCRA 222, 230 [1988]; People vs. Goles, 192 SCRA 663, 670 [1990].

[67] The Provision reads:

Sec. 8. Record of preliminary investigation. -- The record of the preliminary investigation, whether conducted by a judge or a fiscal, shall not form part of the record of the case in the Regional Trial Court. However, the said court, on its own initiative or that of any party, may order the production of the record or any part thereof whenever the same shall be necessary in the resolution of the case or any incident therein, or shall be introduced as evidence by the party requesting for its production.

[68] People vs. Amiscua, 37 SCRA 813, 822 [1971].

[69] Memorandum for the Defense, 25; OR, 247; Appellant's Brief, 34; Rollo, 80 et. seq. (emphasis supplied)

[70] People vs. Belandres, 85 Phil. 874, 882 [1950].

[71] Articles 164-165, Family Code.

[72] As per Certification of the Local Civil Registrar, Exhibit "B," supra note 16.

[73] The article provides: "The amount of support, in cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient."

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