

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO BAUTISTA Y ADOCA, ACCUSED-APPELLANT.

G.R. No. 123557. February 04, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is an automatic review of the decision of the Regional Trial Court of Valenzuela, Metro Manila, Branch 75 in Criminal Case No. 3889-V-94 finding accused-appellant guilty of the crime of statutory rape and sentencing him to death.

In an Information dated February 7, 1994, accused-appellant Leonardo Bautista y Adoca was charged with the crime of statutory rape committed as follows:

“That on or about the 4[th] day of February 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one MA. THERESA BAUTISTA y EBESA, ten years old.

Contrary to law.

Valenzuela, Metro Manila, February 7, 1994.”[1]

On August 31, 1994, accused-appellant was arraigned and he pleaded not guilty to the crime charged. At the trial, the prosecution presented the testimonies of three (3) witnesses, namely: (1) Evelyn Bautista, the victim’s mother; (2) Ma. Theresa, the victim herself; and (3) Dr. Anabelle Soliman, a medico-legal officer of the National Bureau of Investigation. The prosecution established the following facts: Ma. Theresa Bautista[2] is the eldest of four (4) children of accused-appellant and Evelyn Bautista.[3] She has two sisters and a brother and they all reside in Pinalagad, Malinta, Valenzuela, Metro Manila. In February 1993, Evelyn left for Saudi Arabia where she worked as a domestic helper. While she was away, her children were left in the care of appellant and Evelyn’s sister in Pinalagad, Malinta. Evelyn’s stay in Saudi Arabia, however, was short-lived as she returned home in November 1993.[4]

On January 19, 1994, Evelyn went on a vacation to her hometown in Ozamiz City in Mindanao. She took her youngest daughter with her, leaving her three children with appellant.

On the night of February 4, 1994, appellant and his three children were sleeping in the living room of their house in Pinalagad. The house was a one-room affair. They slept in a lined position with Theresa on one edge, appellant on the other edge with the two children sandwiched between them. They were all sleeping soundly when Theresa was suddenly awakened, sensing someone was lifting her body from the floor. Theresa saw that the person who lifted her was her father, herein appellant, and he was naked. Appellant laid Theresa down and removed her t-shirt and short pants. Theresa pushed him away and begged him “Huwag po, ayoko po!” “Huwag kang magulo!” he replied. Appellant reached out to the shelf beside the mirror and took the big bottle of baby oil nearby, poured oil on his hands, and rubbed it on his penis and on Theresa’s sex organ. Theresa was surprised but kept quiet.

Appellant placed himself on top of the girl and inserted his penis into her vagina and made a push and pull movement. Theresa felt pain in her vagina. She pushed him away but could not move him because he was big. Appellant told her: “Huwag kang malikot!” Theresa kept still, scared that he might whip her as he had done in the past. Five to ten minutes later, appellant got up and put on his short pants. He also put Theresa’s clothes on her and went back to sleep.[5]

The following day, February 5, 1994, Theresa’s mother, Evelyn, returned home from Mindanao. In the evening of the same day, appellant and his friends had a drinking session in his house. When he became drunk, appellant informed Evelyn that Theresa was always crying at night and he was worried that their neighbors might think he had wronged her. Evelyn was “kinutuban” because her husband had molested Theresa before.[6] Theresa, then seven years of age, had told her mother that her father did something bad to her, but Evelyn refused to believe her.[7] This time, Evelyn confronted Theresa who just bowed her head and cried. At Evelyn’s insistent questioning, Theresa looked up and pointed to the bottle of baby oil by the mirror. In between sobs, Theresa told her mother about her father’s dastardly act the night before. Forthwith, Evelyn called her sister and the following morning, they took Theresa to the police station to report the incident. Evelyn and Theresa gave their sworn statements to the police[8] and appellant was arrested. The day after, Theresa was examined by Dr. Anabelle Soliman, the medico-legal officer of the National Bureau of Investigation.[9]

Accused-appellant presented two (2) witnesses: himself and one Erlinda Caga. Appellant denied the charge. He counters that the charge was fabricated by his wife after he discovered her illicit relations with another man. His wife was allegedly using their own daughter as an instrument to prevent him from digging further into her affair so she and her lover could continue their adulterous relations.[10]

On January 31, 1994, he was at their house in Pinalagad when one Erlinda Caga came looking for his wife. Finding appellant instead, Erlinda informed him that Evelyn was having an affair with Erlinda’s husband, Leoncio; that the relationship started in Saudi Arabia where they worked under the same employer, and that Leoncio impregnated Evelyn, hence, the latter returned to the Philippines earlier than expected.[11] To prove her claim, Erlinda showed appellant a love letter written by Evelyn addressed to Leoncio in Saudi Arabia which was forwarded to Erlinda in the Philippines.[12] Erlinda also showed appellant two letters addressed to her, written and sent anonymously from Saudi Arabia informing her of her husband’s illicit relations with Evelyn.[13] One of the letters notified her that Evelyn was returning home in October or November 1993 and gave the latter’s address in Valenzuela.

Appellant photocopied the letters. When Evelyn arrived from Mindanao, he confronted her with the information and showed her the letters. Evelyn denied the accusation of infidelity and, angrily, tore the letters. On February 5, 1994, he was arrested by the Valenzuela police and the case of rape was filed against him.

On January 31, 1996, the trial court found accused-appellant guilty of the crime of statutory rape and sentenced him to death, viz:

“WHEREFORE, PREMISES CONSIDERED, the prosecution having established by proof beyond reasonable doubt of the crime of STATUTORY RAPE punishable by Article 335 (1) of the Revised Penal Code, accused LEONARDO BAUTISTA y ADOCA is hereby found GUILTY as charged and is hereby sentenced to a penalty of death by electrocution and to indemnify the victim the amount of Fifty Thousand Pesos (P50,000.00) as damages.

Let the whole records of the case be forwarded to the Supreme Court for immediate review pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of R.A. 7659.

SO ORDERED.”[14]

Before us, accused-appellant raises the following issues:

- “1. WHETHER OR NOT THE COURT A QUO ERRED IN CREDITING THE TESTIMONIES OF THE ALLEGED VICTIM AND THAT OF HER MOTHER;
2. WHETHER OR NOT THE COURT A QUO ERRED IN SETTING ASIDE AS IMMATERIAL THE DEFENSE OF ILL-MOTIVE PUT UP BY ACCUSED-APPELLANT;
3. WHETHER OR NOT THE COURT A QUO ERRED IN RELYING UNCONDITIONALLY UPON THE DOCTRINE CITED IN THE DECISION UNDER REVIEW;
4. WHETHER OR NOT THE COURT A QUO ERRED IN DECLARING THE CRIME OF STATUTORY RAPE TO BE ‘PUNISHABLE BY ARTICLE 335 (1) OF THE REVISED PENAL CODE;’ AND
5. WHETHER OR NOT THE COURT A QUO ERRED IN IMPOSING UPON ACCUSED-APPELLANT THE “PENALTY OF DEATH BY ELECTROCUTION.”[15]

In reviewing rape cases, the court is guided by three settled principles: (1) an accusation for rape can be made with facility; it is difficult to prove the charge and more difficult for the person accused, though innocent, to disprove it; (2) only two persons are usually involved in this crime for which reason the testimony of the complainant must be scrutinized with strictness; and (3) the prosecution evidence must stand or fall on its own merits; it cannot be allowed to draw strength from the weakness of the evidence for the defense.[16]

In the instant case, appellant’s claims are mainly anchored on the insufficiency of the prosecution evidence. Appellant alleges that the trial court erred in upholding the prosecution evidence because the complainant’s testimony is incredible and full of inconsistencies and discrepancies.

Theresa’s testimony on the direct is as follows:

“ x x x x x x x x x

[FISCAL NOCHE]

Q:

Now, where did you sleep that night?

[THERESA]

A:

Beside my brother and sisters, sir.

Q:

And in what particular part of your house did you sleep?

A:

In the sala or living room.

Q:

Would you kindly describe to us the arrangement of your brother and sisters relative to the spot where you were sleeping?

A:

My father was sleeping in front of us.

Q:

Who was sleeping beside your father?

A:

My sister, Liza Bautista.

Q:

And next to Liza Bautista, who was sleeping?

A:

My brother Bernardo Bautista.

Q:

And after Bernardo Bautista, who was sleeping beside him?

A:

Me, sir.

Q:

And after you, who was sleeping beside you?

A:

None, sir.

Q:

Now, do you know of any unusual incident that occurred in the night of February 4, 1994, that happened inside your house?

A:

There was, sir.

Q:

Will you please tell this Honorable Court what that unusual incident was that you are referring to?

A:

Ginalaw ako ng Papa ko.

Q:

You said you were sleeping, how were you.... By the way, what do you mean by “ginalaw ako ni Papa?”

A:

He raped me, sir.

Q:

You said you were sleeping at that time, you mean you were awakened that night?

A:

Yes, sir.

Q:

Now, what prompted you to awaken that night?

A:

Because my father lifted me.

Q:

Where were you when you were lifted by your father?

A:

I was lying next to my brother.

Q:

And the lifting of you by your father was the cause why you were awakened?

A:

Yes, sir.

Q:

Was there a light inside the house when you were lifted by your father?

A:

None, sir.

Q:

But how were you able to know that it was your father who lifted you that time?

A:

When he turned on the light, sir.

Q:

By the way, what was the light being used inside your house?

A:

It is a light bulb, sir.

Q:

And so, since the light bulb was turned on by your father, you were able to see the whole surrounding?

A:

Yes, sir.

Q:

And so, you also saw your father?

A:

Yes, sir.

Q:

And will you please tell us the physical condition of your father when he turned on the light?

A:

He was naked, sir.

Q:

When you said he was naked, will you please tell us specifically what you mean by that?

A:

He had no clothes on.

Q:

What about you, what were you wearing at that time?

A:

I was wearing a T-shirt and shorts, sir.

Q:

Earlier, you said that you were lifted by your father that prompted you to be awakened. Now, how was he able to turn on the light when you said earlier that he lifted you bodily?

A:

He laid me down (inilapag niya ako).

Q:

How far was that switch of the light from the place where you were lifted by your father?

A:

It is near where we were sleeping.

Q:

So, what was your reaction when you saw your father naked?

A:

I was surprised, sir.

Q:

Now, what did he tell you after turning on the light, if any?

A:

None, sir.

Q:

And what did you tell him upon seeing your father [sic] naked?

A:

None, sir.

Q:

And so, what happened after that? After the lights were switched on?

A:

Tapos na po niya akong galawin.

Q:

Now, you said earlier that you were raped. Before going to the word “raped,” you said you were raped by your father and you said “Tapos na po niya akong galawin,” you mean that you had already been “ginalaw” by your father before he turned on or switched on the light?

A:

Yes, sir.

Q:

And how did you know that you were “ginalaw” by your father and because you said that you were raped?

A:

I felt that he placed himself on top of me.

Q:

In other words, you were not awakened when you were lifted by..... Now, what is correct, you were awakened when you were bodily lifted by your father or you were awakened when he placed his body on top of you?

A:

When he placed himself on top of me.

Q:

And at that time, the light was not switched off [sic]?

A:

Not yet, sir.

Q:

So, it must be dark inside your house?

A:

Yes, sir.

Q:

Then during that darkness, how did you know that it was your father who was “gumalaw sa iyo” or the person on top of you?

A:

I felt, sir, that someone who [sic] was fat and has a beard.

Q:

And so, what did you notice from your body when you were awakened when your father was lying on top of you?

A:

I was naked also.

Q:

You said earlier that you were wearing T-shirt and short pants when you went to bed, right?

A:

Yes, sir.

Q:

And you were awakened, you saw yourself naked already?

A:

Yes, sir.

Q:

Now, do you know who removed your clothes and short pants?

A:

Yes, sir.

Q:

Who?

A:

My father, sir.

Q:

And how were you able to know that it was your father who removed your t-shirt and short pants after he switched on the light? What I mean, is, at that time he was still removing your shirt and short pants, were you already awakened?

A:

Yes, sir.

COURT: (To the witness)

Q:

You did not resist from the act of your father removing your dress?

A:

I was trying to resist, your Honor.

Q:

How were you resisting?

A:

Magulo po ako sa higaan.

Q:

What do you mean by “magulo ako sa higaan?”

A:

I was kicking and pushing him.

Q:

When you said “him,” you are referring to your father?

A:

Yes, sir.

Q:

Did you say anything while you were struggling?

A:

Yes, sir.

Q:

What did you tell your father?

A:

“Ayoko po.”

Q:

And was there any reply from your father?

A:

Yes, sir.

Q:

What was his reply?

A:

He told me “Huwag daw po akong magulo.”

Q:

And did you understand what he meant by “Huwag kang magulo?”

A:

Yes, sir.

Q:

And how do you interpret that?

A:

Huwag daw po akong masyadong malikot.

COURT:

Q:

How about your brother and sisters at that time that you were resisting your father, were they still sleeping?

A:

Liza was awakened, sir.

Q:

What did she do when she was awakened?

A:

None, sir. She was just looking at me.

FISCAL NOCHE:

Q:

So, you said that you felt that your father was on top of you and you likewise noticed that you were already naked, how long did your father stay on top of your body?

A:

Yes, sir, for about five minutes, that he was “ginagalaw ako.”

COURT:

Q:

What do you mean by the word “ginagalaw ako?”

A:

Kinakantot po niya ako (He had sexual intercourse).

x x x x x x x x

Q:

Now, how did you know that your father was having sexual intercourse with you while he was on top of you?

A:

Nasasaktan po ako.

COURT

Q:

What do you mean when you said “kinakantot po niya ako” or was he having sexual intercourse? What did he do with his sexual organ in relation to your sexual organ?

A:

Pinagdidikit po niyang pilit.

Q:

So, it was only “pinagdidikit,” it was never placed inside your organ?

A:

No, your Honor.

FISCAL NOCHE:

Q:

Now, how did you know that his sexual organ touched your sexual organ when you said at that time the light was off?

A:

I was hurt, sir.

Q:

Why were you hurt when you said it was only “pinagdidikit po niyang pilit?”

A:

He was forcing to penetrate or insert his sexual organ into my vagina, sir.

Q:

So let us make this clear. So his organ was never placed inside your organ?

A:

Napasok po, konti lang.

FISCAL NOCHE:

Q:

And how were you able to say that when it was dark, according to you?

A:

He was forcing to penetrate his sexual organ into my vagina, sir.

COURT:

Let us continue, Fiscal, for lack of material time.”[17]

At the continuation of the direct examination on November 7, 1994, Teresa’s testimony is as follows:

“Q:

Ma. Teresa, during the last hearing you testified that you were awakened on the night of February 4, 1994 when your body was lifted by your father, and you also testified that your father, you said quote unquote: 'ginalaw ka niya,' will you kindly elaborate or explain before this Court what you mean by the word 'ginalaw ka niya?'

A:

He undressed me and he undressed himself and he took the baby oil, sir.

Q:

By the way, what were you wearing on the night of February 4, 1994 when you were lifted by your father?

A:

Short [sic] and t-shirt, sir.

Q:

And what was the color of your short [sic]?

A:

Brown and white, sir.

Q:

And how about your short [sic]?

A:

Brown, sir.

Q:

Now, you said that your father took a baby oil, now, where did he get the baby oil?

A:

Beside the mirror, sir.

Q:

And how far was that mirror from the baby oil, from the place where you were then at that time?

A:

About two (2) to three (3) meters, sir.

Q:

By the way, where was that baby oil hidden?

A:

In a plastic container, sir.

Q:

And does the baby oil have any brand name?

A:

Yes, sir.

Q:

What is the brand name?

A:

Johnson's baby oil, sir.

Q:

And how big was that baby oil container?

A:

'Malaki po,' almost one foot, sir.

Q:

And if you are given opportunity to see that plastic container of baby oil, will you be able to recognize or identify the same?

A:

Yes, sir.

Q:

And do you know who bought that plastic container of baby oil?

A:

Yes, sir.

Q:

Who?

A:

My mother, sir.

Q:

And where did your mother buy that baby oil?

A:

Saudi, sir.

Q:

You mean to say, your mother worked in the Middle East before?

A:

Yes, sir.

Q:

Now you said that your father took the plastic container of baby oil, now do you know what he did with that plastic container of baby oil?

A:

Yes, sir.

Q:

What?

FISCAL: (to the Court)

May I move your honor that the answer of the witness be recorded in Tagalog, quote unquote, Your honor.

COURT:

All right, let the answer of the witness be recorded in tagalog.

WITNESS:

‘Ipinahid po sa kanyang titi.’

FISCAL: (to the witness)

Q:

And what was your father’s position when he was applying that baby oil around his sex organ?

A:

Standing, sir.

Q:

And how far was he from you at the time he was applying the baby oil on his sex organ?

A:

In front of me, sir. When I was lying down he was standing, sir.

Q:

And after he applied the baby oil to his sex organ what did he do to the baby oil?

A:

He likewise applied the baby oil on my sex organ, sir.

Q:

Now. . . (pause) being a daughter, and he being your father what reaction came from you?

A:

I was surprised, sir.

Q:

Did you say anything to your father?

A:

None, sir.

Q:

And why did you not say anything?

A:

Because I was surprised then, sir.

Q:

And what do you mean by you were surprised?

A:

I was surprised because I saw him standing in front of me, naked, sir.

Q:

And so what happened after your father applied that baby oil on your sex organ?

A:

‘Sumakay na po siya sa akin,’ sir.

Q:

Will you please tell us what do you mean by ‘sumakay na po siya sa akin?’

A:

He placed himself on top of my body, sir.

Q:

And was your father still naked at that time?

A:

Yes, sir.

Q:

And so what did you do when your father was lying on top of you?

A:

I was pushing him, sir.

Q:

Would you kindly demonstrate before this Honorable Court how you pushed your father when he laid on top of your body?

A:

FOR THE RECORD:

(witness demonstrating by her two (2) hands how she pushed her father by stretching her two (2) arms with open palm with strong force).

Q:

How many times did you push your father away from your body?

A:

Once sir, because he did not want to get away from me, sir.

Q:

Were you successful in pushing your father away from your body?

A:

No, sir.

Q:

Why?

A:

I cannot push him away because my father is big, sir.

Q:

And so, since you were not able to push your father away from your body what happened next?

A:

‘Ginalaw na niya po ako,’ sir.

Q:

Now, would you kindly explain again to this Honorable Court what did you mean by ‘ginalaw na po niya ako?’

A:

He inserted his penis to my sex organ and forced his penis to my vagina, he penetrated his sex organ but there was only a slight penetration, sir.

Q:

How did you come to know that your father was forcing his penis in your vagina?

A:

I am getting hurt, sir.

Q:

Which part of your body was hurting while your father was forcing his penis to your vagina?

A:

My vagina, sir.

Q:

And so since you were hurting at that time, what did you do as having felt something in your vagina?

A:

I was struggling, sir.

Q:

Would you kindly demonstrate before this Honorable Court the way you struggled when your father was forcing his penis to your vagina?

A:

FOR THE RECORD

(Witness swaying her body with her two (2) hands left and right and vice versa and at the same time saying 'masakit po').

Q:

And what did your father tell you when you informed him that what he was doing was hurting you?

A:

My father told me not to be 'magulo,' sir.

Q:

And did you understand what did he mean by 'huwag kang magulo?'

A:

Yes, sir.

Q:

How did you interpret his statement?

A:

He told me 'huwag po akong masyadong malikot,' sir.

Q:

And what did you do as a daughter after being told by your father not to be 'malikot?'

A:

I kept silent, sir.

Q:

Did you offer any resistance again?

A:

Not anymore, sir.

Q:

Why?

A:

Because he told me that he will whip me, sir.

Q:

And are you afraid of being whipped by your father?

A:

Yes, sir.

Q:

Did you have any previous experience being whipped by your father?

A:

Yes, sir.

Q:

And did you hurt when your father whipped you?

A:

Yes, sir.

Q:

And was that the reason why you did not no longer offer any resistance because he told you that he would whip you?

A:

Yes, sir.

Q:

And what did he do when you stopped struggling?

A:

‘Patuloy pa rin po niya akong ginagalaw.’

Q:

And how did your father ‘patuloy na ginalaw ka?’

A:

‘Pilit pa rin po niya akong kinakadyot,’ sir.

Q:

Would you kindly demonstrate before this Honorable Court what do you mean by ‘kinakadyot?’

FOR THE RECORD:

A:

(Witness demonstrating by moving her body with her hips in a forward and backward manner).

Q:

And so now when he was doing that forward and backward motion what happened to his penis in relation to his sex organ?

A:

‘Kinikiskis niya po sa kiki ko and titi niya, tapos pilit po niyang ipinapasok sa kiki ko ang titi niya.’

COURT:

Was the penis of your father able to penetrate to your vagina?

A:

Yes, sir.

COURT:

Fiscal . . .

FISCAL:

Q:

So from the time your father has lain on top of you . . . (pause) so what happened after that?

A:

He stopped, sir.

Q:

And how did he stop?

A:

He stood up and he wearing [sic] his shorts, sir.

Q:

And from the time he lay on top of your body up to the time he start having sexual intercourse with you, how much time lapsed?

A:

About ten (10) minutes, sir.

Q:

So after he stood up, what did he do?

A:

He put back on my dress.

Q:

And by the way, all the time that this was happening all the things that you have just narrated, where were your brother and sisters?

A:

They were sleeping beside me, sir.

Q:

And so what did you do after your father put back your t-shirt and shorts?

A:

He sleep [sic], sir.”[18]

Theresa’s foregoing testimony on direct examination was given on two separate occasions—the first was on October 28, 1994 and its continuation was on November 7, 1994. An examination of her testimony shows several inconsistencies. First, Theresa gave conflicting versions of how she was awakened from sleep. Initially, she said she awoke because she sensed she was being lifted by someone. In the same testimony that same day, she said she awoke because she felt her father on top of her. In the continuation of her direct examination, however, she said she was already awake before her father went on top of her because she was able to witness what he did with the baby oil.

Secondly, Theresa said that she knew the rapist was her father because she saw his face after he switched on the light. In the same testimony, she later said that she knew that the man on top of her was her father because he was fat and had a beard, just like appellant.

Thirdly, Theresa was not certain whether or not her father switched on the light. At first she said that appellant himself turned on the light after raping her and that she was surprised at seeing him naked. It is not clear whether the reason for her surprise was seeing appellant naked or realizing that her rapist was her own father because the “surprise” came after she was raped. At the continuation of her direct examination, there was no switching on of the light and lifting of the girl’s body. Instead, appellant took the big bottle of Johnson’s Baby Oil and applied some oil on his and his daughter’s private parts and then went on top of her and raped her.

These conflicting testimonies were not explained in the direct examination even when it was continued on another date. Neither were they clarified in the testimony of Evelyn, Theresa’s mother, nor were they discussed in the decision of the trial court. These discrepancies are material. The occurrence or non-occurrence of these facts did not happen separately from the rape itself. They involve sequence of events immediately preceding the victim’s story of defilement. They erode her credibility.

More importantly, the victim’s account of penetration is not supported by the medico-legal report. Theresa was

examined by Dr. Anabelle Soliman, the medico-legal officer of the National Bureau of Investigation. Dr. Soliman's findings are as follows:

“GENERAL PHYSICAL EXAMINATION:

Height: 140 cm Weight: 57 lbs.

Fairly nourished, conscious, coherent, cooperative, ambulatory subject. Breast, developing, conical, firm. Areolae, light brown, measures 2.5 cm in diameter. Nipples, light brown, protruding, measures 0.5 cm in diameter.

No extragenital physical injury noted.

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated.

Fourchette, tense. Vestibular mucosa, pinkish. Hymen, moderately thick, moderately wide, intact. Hymenal orifice, measures 1.5 cm in diameter. Vaginal walls and rugosities, cannot be reached by examining finger.

CONCLUSIONS:

- No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
- Hymen intact and its orifice small (1.5 cm) as to preclude complete penetration of an average-sized adult male organ in full erection without producing hymenal injury.”[19]

Dr. Soliman found no extragenital injuries on the girl's body. She also found that Theresa's hymen was “moderately thick, moderately wide, intact.” The hymenal orifice measured 1.5 centimeters in diameter and was so small that the vaginal walls and rugosities could not even be reached by an examining finger which “preclude[d] complete penetration of an average-sized adult male organ in full erection without producing hymenal injury.” From these findings, it was concluded that there was no complete penetration of the vagina.[20]

Theresa testified that she resisted her father's lustful act but no extragenital injuries were found on her body. The girl also stated that appellant was able to penetrate her vagina because she felt pain in her organ. Theresa's hymen, however, was found to be intact. The medical examination was made barely three days after the rape and yet there is nothing in the report that shows there was a tearing of the hymen or that a slight penetration of the vagina was made. The girl had a small hymenal orifice and appellant allegedly forced his penis into her vagina for some five to ten minutes. Yet there was no redness, contusion, discoloration, or any sign to prove that a forced penetration was at least attempted. Theresa revealed to Dr. Soliman she had been raped by appellant repeatedly since 1986.[21] The doctor, however, did not find any healing or healed laceration in the girl's organ.[22] The examination was conducted for some 30 to 40 minutes;[23] it was therefore more than superficial and cursory.

Dr. Soliman testified that although her findings did not show complete penetration of the vagina, she could not rule out “penetration of the labia.”[24]

In rape cases, penetration of the vaginal orifice or rupture of the hymen is not necessary for rape to be consummated. What is important is that the penetration of the penis must be by entry thereof into the labia majora of the female organ.[25] There must be penetration, no matter how slight, of the labia majora. Absent a showing of this entry, there can be no consummated rape; at most, it can only be attempted rape, or acts of lasciviousness.[26]

In the case at bar, save for Theresa's testimony, there is no other evidence showing that appellant was able to penetrate the girl's labia majora. The testimony of Evelyn, Theresa's mother, merely established the fact of

marriage between her and appellant and that Theresa, the victim, is their eldest child. The rest of her testimony dwelt on events that occurred before and after the alleged rape.

A review of the evidence discloses that Theresa's testimony can not pass the test of moral certainty. It is shot with inconsistencies and discrepancies material enough to cast doubt on its weight and sufficiency for conviction. Neither is her testimony adequate to convict appellant for the lesser degree of attempted rape or for the lesser crime of acts of lasciviousness. The inconsistencies do not involve the simple question of whether or not there was penetration of the labia majora to support a finding of consummated or attempted rape, or acts of lasciviousness. They go deep into the veracity and credibility of the victim's testimony, raising the question of whether or not the act complained of actually occurred.

A conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty.[27] It is possible that accused-appellant may have raped Theresa, but this court is not persuaded to the point of moral certainty. The defense may be weak, but the prosecution is weaker.[28] The prosecution evidence has failed to establish and leave in our minds an abiding belief, based on reason and common sense, to a moral certainty of the truthfulness of the charge.

As a result of this finding, it is unnecessary to discuss the other issues raised by accused-appellant.

IN VIEW WHEREOF, the decision of the Regional Trial Court of Valenzuela, Metro Manila, Branch 75 in Criminal Case No. 3889-V-94 is reversed and set aside, and accused-appellant Leonardo Bautista y Adoca is acquitted of the crime of statutory rape on the ground of reasonable doubt. It is ordered that he should be immediately released unless there be other valid cause for his continued detention. The Director of the Bureau of Corrections is further ordered to report to this Court the implementation of this decision.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Records, p. 1.

[2] Hereinafter referred to as Theresa.

[3] TSN of October 28, 1994, pp. 4-6.

[4] TSN of October 10, 1994, pp. 4, 15.

[5] TSN of October 28, 1994, pp. 6-18; TSN of November 7, 1994, pp. 3-15.

[6] TSN of September 19, 1994, p. 12-15.

[7] TSN of November 7, 1994, pp. 16-17; TSN of November 8, 1994, p. 13.

[8] Exhibits "B" and "D," Folder of Exhibits.

[9] TSN of November 7, 1994, pp. 18-19; TSN of Sept. 19, 1994, p. 15.

[10] TSN of September 8, 1995, pp. 4- 5.

[11] TSN of September 8, 1995, pp. 5-6.

[12] Exhibits "1," "1-A," and "1-B," Folder of Exhibits; TSN of November 29, 1995, pp. 4-5.

- [13] Exhibits “2,” “2-A,” “2-B,” “2-C,” and “2-D,” Folder of Exhibits; TSN of November 29, 1995, pp. 5-6.
- [14] Decision, p. 8; Rollo, p. 31.
- [15] Appellant’s Brief, pp. 12-13; Rollo, pp. 103-104.
- [16] *People v. Obar, Jr.*, 253 SCRA 288, 293 [1996]; *People v. Casinillo*, 213 SCRA 777 [1992].
- [17] TSN of October 28, 1994, pp. 8-18.
- [18] TSN of November 7, 1994, pp. 3-15.
- [19] Exhibit “E,” Folder of Exhibits.
- [20] TSN of January 27, 1995, p. 7.
- [21] *Id.*, pp. 7, 9.
- [22] *Id.*, p. 9.
- [23] *Id.*, p. 4.
- [24] *Id.*, p. 7.
- [25] *People v. Campuhan*, 329 SCRA 270, 281 [2000]; *People v. Calma*, 295 SCRA 629, 659 [1998]; *People v. Cabiles*, 284 SCRA 199, 216 [1998].
- [26] *People v. Campuhan*, *supra* at 282.
- [27] Section 2, Rule 133, Revised Rules on Evidence; *People v. Gil*, 284 SCRA 563 [1998].
- [28] *People v. Bawar*, 262 SCRA 325, 338 [1996]; *People v. Obar, Jr.*, 253 SCRA 288, 293 [1996]; *People v. Capilitan*, 182 SCRA 313, 320-321 [1990].

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