

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAPITO QUIÑANOLA Y ESCUADRO AND EDUARDO ESCUADRO Y FLORO, ACCUSED-APPELLANTS.

G.R. No. 126148. May 05, 1999

Ponente: VITUG, J.

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VITUG, J.:

In *People vs. Orita*,^[1] this Court has declared that the crime of frustrated rape is non-existent. The pronouncement, notwithstanding, on 01 March 1996, more than six years after the promulgation of the decision in *Orita*, the Regional Trial Court ("RTC") of Cebu City, Branch 14, has convicted accused Agapito Quiñanola y Escudro and Eduardo Escudro y Floro, herein appellants, of the crime of frustrated rape, principally on the strength of *People vs. Eriña*^[2] which this Court, in the *Orita* decision, has considered to be a "stray" decision. The 1st March 1996 decision of the RTC of Cebu City imposing upon each of the accused the penalty of reclusion perpetua "of Forty (40) Years," has been brought up by them to this Court. The appeal opens up the whole case for review.

The information, dated 06 April 1994, charging the two accused with the crime of rape reads:

"That on or about the 5th day of March, 1994, at about 11:30 o'clock in the evening, more or less, at Barangay Tangil, Municipality of Dumanjug, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of the offended party Catalina Carciller, fifteen (15) years of age, against her will and consent.

"CONTRARY TO LAW."^[3]

Already in force and effect at the time of the averred commission of the crime are the provisions of Republic Act No. 7659, amending the Revised Penal Code, which define and penalize rape, as follows:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

"2. when the victim is under the custody of the police or military authorities.

"3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. when the victim is a religious or a child below seven (7) years old.

"5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

Duly assisted by counsel, the two accused pleaded not guilty to the crime charged. During the trial that ensued, the prosecution and the defense presented their respective versions of the case.

The story of prosecution was the first to be told.

Catalina Carciller, her cousin 15-year-old Rufo Ginto and another male companion named Richard Diaz, went to attend a dance at around ten o'clock in the evening of 05 March 1994 in Sitio Bangag, Tangil, Dumanjug, Cebu. Catalina, born on 09 November 1978,[4] was just then fifteen (15) years and four (4) months old. She was a student at the Bito-on National Vocational School at Dumanjug, Cebu. About an hour later, they left the party and were soon on their way home. The three unsuspecting youngsters stopped momentarily to rest at a waiting shed beside the Tangil Elementary School. Accused Agapito Quiñanola, a.k.a. "Petoy," and accused Eduardo Escudro, a.k.a. "Botiquil," who were both armed with guns, suddenly turned up. Quiñanola, beaming his flashlight at the trio while Escudro stood by, focused his attention on Catalina. Quiñanola announced that he and Escudro were members of the New People's Army ("NPA"). Quiñanola instructed Escudro to take care of the male companions of Catalina while he (Quiñanola) held the latter at gunpoint.

Escudro brought Diaz and Ginto outside the waiting shed area. He ordered the duo to lie face down on the ground and then urinated at them. While Escudro was fixing the zipper of his pants, Diaz and Ginto were able to escape and ran away. Meanwhile, Quiñanola, with his gun pointed at Catalina, forcibly brought her towards the nearby school. Catalina heard a gunfire but Quiñanola assured her that it was only an exploding firecracker. When Escudro again showed up, Catalina asked about her two friends. Quiñanola replied that he had ordered them to go home. Catalina begged that she herself be allowed to leave. Pretending to agree, they walked the path towards the road behind the school. Then, unsuspectingly, Quiñanola forced Catalina to sit on the ground. She resisted but Quiñanola, pointing his gun at her, warned her that if she would not accede to what he wanted, he would kill her. Catalina started to cry. Quiñanola told Escudro to remove her denim pants. Catalina struggled to free herself

from Escuadro's hold but to no avail. Escuadro ultimately succeeded in undressing her. Quiñanola unzipped his pants and laid on top of her while Escuadro held her legs. Quiñanola "started to pump, to push and pull"[5] even as Catalina still tried desperately to free herself from him. She felt his organ "on the lips of (her) genitalia." [6] When Quiñanola had satisfied his lust, Escuadro took his turn by placing himself on top of Catalina. Catalina could feel the sex organ of Escuadro "on the lips of (her) vulva" [7] while he made a push and pull movement. Quiñanola, who stood by, kept on smoking a cigarette.

Escuadro and Quiñanola scampered immediately after Catalina's ordeal. Failing to find her pair of pants and panty, Catalina was left wearing only her T-shirt and brassieres. Catalina just then sat down, not knowing what to do, until she finally started to run home fearing that she might be followed. Upon reaching home, Catalina went upstairs and, afraid that the culprits would still come after her, hid herself behind the door. Baffled by Catalina's strange behavior, her mother and her elder sister took turns in interrogating her. Catalina finally said that she was raped but she would not reveal the names of the persons who had committed the dastardly act because of their threat.

Guillermo Zozobrado learned from his wife, Catalina's sister, that Catalina had been raped. He promptly repaired to the municipal hall of Dumanjug to report the crime. Policemen were immediately dispatched to the Carcellers' residence. Still in a state of shock, Catalina initially kept mum about it; later, when the police officers returned at daytime, she was able to respond to questions and to disclose that "Petoy," referring to Agapito Quiñanola, and "Botiquil," the other accused Eduardo Escuadro, were the persons who ravished her. The officers later invited her to the police station to identify a suspect whom she positively identified to be "Botiquil" or Eduardo Escuadro.

Living Case Report No. 94-MI-7,[8] prepared by Dr. Tomas P. Refe, medico-legal officer of the National Bureau of Investigation ("NBI") of Region 7, Central Visayas, who conducted the physical examination of Catalina on 07 March 1994, showed that there was "no evidence of extragenital physical injury noted on the body of the Subject." [9] The genital examination yielded the following findings on the victim:

"Pubic hairs, fully grown, moderately dense. Labiae mejora and minora, both coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, moderately thick, wide, intact. Hymenal orifice, annular, admits a tube 1.8 cms. in diameter with moderate resistance. Vaginal walls, tight and rugosities, prominent." [10] (Italics supplied.)

The report concluded that the hymenal orifice, about 1.8 cms. in diameter, was "so small as to preclude complete penetration of an average-size adult penis in erection without producing laceration." [11]

Against the evidence submitted by the prosecution, the accused, in their defense, interposed alibi, ill motive on the part of an "uncle" of the complainant, and insufficient identification.

Accused Agapito Quiñanola, a member of the Philippine National Police stationed at Naga, Cebu, testified that it was his day-off on 05 March 1994. At about 8:30 a.m., he and his wife, Leticia, who had just arrived in Naga from Cebu City, proceeded to the house of his parents in Panla-an, Dumanjug, to attend to the construction of their unfinished house. Quiñanola helped Vidal Lañojan and Nicasio Arnaiz in cementing the kitchen floor of their house. The work was finished at around 11:00 o'clock in the evening. After Vidal and Nicasio had gone home, Quiñanola went to bed with his wife around midnight until the following morning of 06 March 1994. He denied having been in the company of his co-accused, Escuadro a.k.a. "Botiquil," at any time during the whole day and night of 05 March 1994. According to him, Guillermo Zozobrado, Catalina's brother-in-law, concocted the rape charge to get even with him because of an incident in August 1993 at a fiesta dance in upper Tangil, Panla-an, when George Camaso, the husband of his sister Jinga, got into trouble with Samuel Escuadro.

Quiñanola tried to pacify George Camaso who was then drunk but Camaso suddenly hit him. He parried the blow

and slapped Camaso on the face. Zozobrado joined the fray and tried to hit Quiñanola but because Zozobrado was drunk, he stumbled when Quiñanola had pushed him.[12] He admitted that he had no misunderstanding of any kind with the complainant and her parents themselves.

Leticia Quiñanola, the wife of accused Agapito Quiñanola, testified to attest to her husband's "good moral character" and to corroborate his testimony. Leticia said that after the workers had left their house at around midnight, she and appellant talked for a while and then made love. Vidal Lañojan, the carpenter, was presented to state that Quiñanola was at home helping the carpenters until "past 11:00 o'clock" on the night of the incident. Nicasio Arnaiz, a farmer and stone cutter, added that work in the Quiñanola house had started late in the morning of 05 March 1994 since they still waited for Quiñanola and his wife "Pritsy" to arrive. Work in the house, he said, had stopped at "about past 11:00 o'clock that night."

Accused Eduardo Escuadro, a.k.a. "Botiquil," declared that at about seven o'clock in the evening of 05 March 1994, he and Pablito Cuizon, Jr., went fishing in Tangil, Dumanjug, Cebu, until about ten o'clock that evening. After partaking of supper at around 11:30 p.m., they had a drinking spree and went to bed at 12:00 midnight, waking up at 6:30 a.m. the following day. He denied having been in the company of Quiñanola and insisted that the rape charge had been the result of a mere mistaken identity. Pablito Cuizon, Jr., corroborated Escuadro's story about their being together up until they parted company after a drinking spree.

The defense also presented the two police officers, PO2 William Beltran and SPO2 Liberato Mascarinas, Jr., who took part in the investigation of the crime, and Margarito Villaluna, a suspect at the early stages of the police investigation who was in the frequent company of the accused. According to PO2 Beltran, barangay tanods Gilly and George Zozobrado reported the rape incident to him at midnight of 05 March 1994. He entered the report in the "temporary blotter because the suspect was unknown then." [13] Accompanied by the two tanods, he went to the residence of the victim and when he asked Catalina if she was able to recognize the malefactors, she kept silent and continued crying. SPO2 Liberato Mascarinas, Jr., asserted that, in the early morning of 06 March 1994, Gilly and George Zozobrado went to the police station and named "Pitoy Quiñanola, Margarito Villaluna and Batiquil or Escuadro" as being the suspects in the rape incident. While on their way to the latter's respective residences, the team met Catalina Carciller and party who were themselves about to repair to the police headquarters. Mascarinas asked Catalina about the identities of the rapists. She named "Pitoy Quiñanola" but said she did not know the names of "the other persons" although she could recognize them by face. Botiquil was later brought to the police station. Pitoy Quiñanola by that time had already gone to Naga. Margarito Villaluna declared that he had been in Panla-an, Negros Oriental, from 05 March 1994 until 09 March 1994, harvesting corn. His sister, Mercy Villaluna, testified that, in the morning of 06 March 1994, policemen in the company of barangay tanods, including Gilly Zozobrado and his son Marcelo, came to their house looking for her brother Margarito. Shortly after the group had left, another policeman, in the company of one Erwin Quirante also came looking for her brother. The arrival of the policemen prompted her to verify from the Coast Guard whether her brother had indeed left for Negros Oriental. She was told that her brother was in the boat that departed for Negros in early dawn of 02 March 1994. Still unsatisfied with the result of her queries, Mercy went to Guinholngan where she met Margarito.

Following the trial and submission of the case for decision, the court a quo,[14] on 01 March 1996, found the two accused guilty beyond reasonable doubt of the crime of "frustrated rape" and sentenced them accordingly; thus:

"WHEREFORE, premises considered, the Court hereby finds guilty beyond reasonable doubt the two accused Agapito 'Petoy' Quiñanola and Eduardo Escuadro, alias 'Batiquil,' as principals by direct participation and indispensable cooperation of the frustrated rape of the complaining witness Catalina 'Cathy' Carciller, and considering the attendance in the commission of the crime of the six (6) aggravating circumstances

aforementioned, not offset by any mitigating circumstance, hereby sentences these two accused individually to Reclusion Perpetua of Forty (40) Years, plus all the accessory penalties prescribed by law, and to pay the offended party civil indemnity in the amount of P50,000.00 each.

"The Court also hereby recommends that under no circumstance should the two accused be granted parole or conditional or absolute pardon, in view of the extreme moral turpitude and perversity which they exhibited in the commission of the crime - not until they shall have served at least thirty (30) years of the full range of forty (40) years of reclusion perpetua meted out against them in this case. They should be interdicted for that length of time from the usual and normal liaisons (sic) and dealings with their fellowmen and their community so as to protect the latter from their pernicious and insidious examples. This is the most generous and charitable recommendation that the Court can make for these two malefactors, short of imposing upon them the supreme penalty of death, which the Court in other times and conditions might have been compelled, as a matter of inexorable duty, to mete out against them, in obedience to the implacable and peremptory demands and dictates of retributive justice.

"Costs shall also be taxed against the two accused.

"SO ORDERED." [15]

The trial court ruled that the accused were liable for the crime of frustrated rape "with an eye to extending to the two accused the benefit of the principle that in case of doubt criminal justice naturally leans in favor of the milder form of penalty" [16] but that, because of the existence of "at least six (6) aggravating circumstances," [17] not offset by any mitigating circumstance," [18] the accused should each be meted the penalty of reclusion perpetua. It explained:

"Now, the crime of rape had it been consummated and had it been committed with the attendance of the above-mentioned aggravating circumstances, with absolutely no offsetting mitigating circumstances, ought to be punished with the mandatory penalty of death under the pertinent provisions of Section 11 and 23 of Republic Act No. 7659, which amended Article 335 of the Revised Penal Code, and further amplified the aggravating circumstances enumerated in Article 14 of the same code. But because the crime committed here is 'merely' frustrated rape for the reasons heretofore discussed, attended by the aforementioned six aggravating circumstances, not offset by even one mitigating circumstance, the proper penalty to be imposed upon the two principals, the two accused herein, both co-conspirators, by direct participation and indispensable cooperation, of the frustrated rape, should be one degree lower than the indivisible afflictive penalty of death, which is also the indivisible afflictive penalty of reclusion perpetua which, under Section 21 of the amendatory statute, shall range from twenty years and one day to forty years." [19]

In their appeal to this court, the two convicted accused interposed the following assignment of errors:

"I. THE COURT ERRED IN DISREGARDING THE INCONSISTENCIES OF THE PROSECUTION WITNESSES WHICH IF THOROUGHLY CONSIDERED COULD HAVE ALTERED THE DECISION IN FAVOR OF THE ACCUSED.

"II. THE COURT ERRED IN BELIEVING THE TESTIMONY OF COMPLAINING WITNESS CARCILLER EVEN IF THE SAME WERE CLOUDED WITH GRAVE INCONSISTENCIES.

"III. THE COURT ERRED BY DISREGARDING THE TESTIMONIES OF ACCUSED AND BY DISMISSING IT AS WEAK ALIBIS.

"IV. THE COURT ERRED IN REFUSING TO CONSIDER THE REBUTTAL EVIDENCE OF DEFENSE WITNESSES EVEN IF THE SAME WERE NOT CONTROVERTED.

"V. THE COURT ERRED IN FAILING TO GIVE WEIGHT TO THE TESTIMONIES OF THE POLICEMEN WHICH WERE UNCONTROVERTED AND WITH PRESUMPTION OF REGULARITY IN

THE PERFORMANCE OF DUTIES.

"VI. THE COURT ERRED IN FINDING THE ACCUSED GUILTY OF FRUSTRATED RAPE AND OF SENTENCING THEM TO 40 YEARS OF RECLUSION PERPETUA." [20]

In reviewing rape cases, this Court must again say that it has been continually guided by the principles (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that 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 of the defense. [21] Expectedly, courts would scrupulously examine the testimony of the complainant with the thought always in mind that the conviction of the accused would have to depend heavily on the credibility of the offended woman. It is not much different in this instance for, at bottom, appellants assail the credibility of the prosecution witnesses, particularly that of the complainant, in seeking a reversal of the judgment of conviction.

The doctrine, then again, is that the findings of the trial court on credibility are entitled to highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court has "overlooked, misunderstood or misapplied facts or circumstances of weight and substance" that could have consequential effects. The stringency with which appellate tribunals have observed this rule is predicated on the undisputed vantage of the trial court in the evaluation and appreciation of testimonial evidence. [22]

In assailing Catalina's credibility, as against the assessment made by the trial court which has described the victim's testimony to be impressed with "candor, spontaneity and naturalness," appellants theorize that the sexual intercourse, if indeed true, could have only been committed against Catalina in a sitting position, contrary to her declaration of having been made to lie on the ground, because her T-shirt, marked Exhibit E, is "not tainted with mud at all especially the back if she were made to lie down." [23] The Court finds this so-called incongruity committed by the complainant to be a feeble attempt to discredit her testimony. The Court is convinced of the sexual assault made against her. Here follows the testimony of Catalina on this score.

"Q

You said that you were forced by Agapito Quiñanola to sit down, where were you forced to sit down, in what particular place or area?

"A Just behind the back of the school.

"Q You were forced to sit down on the ground?

"A Yes.

"Q In effect did you sit down as ordered by him?

"A I resisted.

"COURT:

"Q How did you resist?

"A I said I will not sit down.

"TRIAL PROS. NAZARENO:

"Q What did Agapito Quiñanola do, if any, when you resisted?

"A He pointed his gun to me.

"Q When he pointed a gun at you, referring to Agapito Quiñanola, what did he say?

"A He said that if I will not accede to what he wanted me to do and if I will shout, he will kill me.

"Q What did you do when you heard those words coming from Agapito Quiñanola?

"A I cried.

"Q When you cried what did Agapito Quiñanola do, if any?

"A He ordered Eduardo Escudro to remove my pants and panty.

"COURT:

"Q Why what were you wearing at that time?

"A Pants.

"Q What kind of pants?

"A Denim.

"TRIAL PROS. NAZARENO:

"Q

Now, after Agapito Quiñanola ordered Eduardo Escudro to remove your pants and panty what did Eduardo Escudro do, if any?

"A He did what Agapito Quiñanola commanded him.

"COURT:

"Q How about you, what what (sic) were you doing at that time?

"A I cried and tried to free myself.

"TRIAL PROS. NAZARENO:

"Q

Now, when Eduardo Escudro removed your pants and panty where was Agapito Quiñanola and what did Agapito Quiñanola do?

"A He unzipped his pants.

"Q After that what happened?

In effect, were your pants and panty removed by Eduardo Escudro?

"A Yes.

"Q

Now, you said Agapito Quiñanola opened his fly or unzipped his pants, when Agapito Quiñanola already unzipped his pants, what did he do?

"A He approached me and lay on top of me.

"Q When Agapito Quiñanola approached you and laid on top of you, what did Eduardo Escudro do?

"A He was holding on to my legs.

"Q Then what happened after that?

"A

Agapito Quiñanola started to pump, to push and pull.

"Q What did you do when Agapito Quiñanola was already on top of you and made a push and pull on you?

"A I struggled to free myself.

"Q After that what happened when Agapito Quiñanola was already on top of you and kept on making a push and pull?

"A Eduardo Escudro took his turn.

"Q

What do you mean by took his turn, please specify what did Escuadro do? He did what Agapito had just done to you?

"COURT:

"Q What did Agapito Quiñanola do to you actually?

"A He lay on top of me and did a push and pull movement.

"TRIAL PROS. NAZARENO:

"Q

When Agapito Quiñanola lay on top of you and made a push and pull movement, do you mean to say that he inserted his penis into your vagina?

"A I felt something hard on the lips of my genitals.

"Q What is this something hard that you felt that touched the lips of your vagina or vulva?

"A His organ or penis.

"Q When Agapito Quiñanola unzipped his pants, did you see his penis?

"A Yes.

"Q

You also said that Eduardo Escuadro took his turn and laid on top of you and made a push and pull on you, specifically what did Eduardo Escuadro do?

"A The same as Agapito did, he was doing the push and pull movement.

"Q What did you feel when Eduardo Escuadro was already on top of you and made a push and pull on you?

"A I held my breath.

"Q Did you see the penis of Eduardo Escuadro?

"A No.

"Q Now, did you feel that the penis of Escudro was inserted into your vagina?

"A I felt it on the lips of my vulva."[24]

The fact that she must have been lying down when violated has even more been made clear by the defense on cross-examination. Thus:

"Q

Did you say any testimony in the direct that you were made to lie on the ground at the time when you were raped by these two accused?

"A They pointed a gun at me and ordered me to lie down.

"Q Lie on the ground?

"A Yes."[25]

And on why her T-shirt was no longer soiled with mud when presented in court, Catalina creditably explained that when it was offered in evidence, she had already dusted and rid it of grass particles. At all events, whether appellants spent their lust on Catalina in a sitting position or lying down would not be of any real moment for what remained clear, established rather convincingly by the prosecution, was that appellants had forced carnal knowledge of the victim.

The reliance being made by appellants on the affidavit of Catalina in order to discredit her is likewise futile. The Court has consistently ruled that discrepancies between the statement of an affiant in an affidavit and those made on the witness stand do not necessarily downgrade testimonial evidence. Ex parte affidavits are usually incomplete and frequently prepared by an administering officer and cast in the latter's language and understanding of what the affiant has said. Quite frequently, the affiant would simply sign the affidavit after it has been read to him or to her.[26]

Not much differently could be said of Catalina's identification of appellants as being her ravishers. On the witness stand, Catalina explained that while she gave appellant Escudro's nickname "Botiquil" to the investigating police officer, the latter did not mention that name in the affidavit because, according to the officer, the affidavit was merely a "shortcut."[27] In her testimony, she was categorical that she had known appellants even before the rape incident. She knew that appellant Quiñanola was a policeman and a "popular maldito" (nasty) in the locality.[28] Catalina knew that appellant Escudro, a resident of Punla-an not far from her own abode, was commonly known as "Batiquil" (Botiquil). She could not have been mistaken in the identification of the culprits since appellants themselves held a flashlight which they used that added to the illumination shed by a fluorescent lamp and two bulbs on the side of a house only some meters away.

As regards the allegation of appellants that the testimony of Catalina contradicted in certain respects that of prosecution witness Rufo Ginto, suffice it to say that the testimony of Rufo Ginto (who was noted by the trial court not to be "an intelligent witness"[29]) was merely corroborative in nature and neither dealt with the actual commission of the crime nor delved on material points.

Catalina's candid and straightforward narration of the two sexual assaults perpetrated on her on the night of the incident unmistakably deserves credence. It is unbelievable that a young barrio lass would concoct a tale of defloration, publicly admit having been ravished and her honor tainted, allow the examination of her private parts, and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not

in fact been raped and truly moved to protect and preserve her honor, as well as to obtain justice, for the wicked acts committed against her.[30] There is no plausible reason why Catalina should testify against appellants, imputing upon them so grave a crime as rape if it did not happen. This Court has consistently held that where there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or implicate him in a serious offense, the testimony deserves faith and credit.[31] So, also, the Court has repeatedly said that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[32]

The positive identification of appellants as being the perpetrators of the crime effectively effaces their alibi.[33] The rule is that affirmative testimony is far weightier than a mere denial, especially when it comes from the mouth of a credible witness.[34] Moreover, alibi might be aptly considered only when an accused has been shown to be in some other place at the crucial time and that it would have been physically impossible for him to be at the locus criminis or its immediate vicinity at the time of the commission of the crime.[35]

In the context it is used in the Revised Penal Code, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.[36] The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ[37] or, as once so said in a case, by the "mere touching of the external genitalia by a penis capable of consummating the sexual act." [38] In *People vs. Escobar*,[39] in convicting a father of having raped twice his 11-year-old daughter, the Court has said:

"While the evidence may not show full penetration on both occasions of rape, the slightest penetration is enough to consummate the offense. In fact, there was vulva penetration in both cases. The fact that the hymen was intact upon examination does not belie rape for a broken hymen is not an essential element of rape; nor does the fact that the victim has remained a virgin negate the crime. What is fundamental is that the entrance, or at least the introduction, of the male organ into the labia of the pudendum is proved. As in the case at bar, it can be said that there was penetration, although incomplete, and it was sufficient to prove carnal knowledge of a child under twelve years of age. A medical examination is not an indispensable element in a prosecution for rape. The accused may be convicted on the sole basis of complainant's testimony, if credible, and the findings of the medico-legal officer do not disprove the commission of rape.

"There are no half measures or even quarter measures nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. The rape is deemed consummated in either case. In a manner of speaking, bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle." [40] (*Italics supplied.*)

In another case, *People vs. Gabayron*,[41] where the accused has been found guilty of raping his daughter, then less than twelve years old, the Court has observed:

"Accused-appellant draws attention to the fact that based on the medico-legal findings, there is no showing that his daughter's hymen was penetrated, nor was there any evidence of injuries inflicted. However, jurisprudence is well-settled to the effect that for rape to be consummated, rupture of the hymen is not necessary, nor is it necessary that the vagina sustained a laceration especially if the complainant is a young girl. The medical examination merely stated that the smallness of the vaginal orifice only precludes COMPLETE penetration. This does not mean that rape has not been committed. The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ. Presence of a laceration in the vagina is not an essential prerequisite to prove that a victim has been raped. Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In fact, many cases of pregnancy have been reported in women with unruptured hymen. Entry of the labia or lips of the female organ merely, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction. What must

be proven in the crime of rape is merely the introduction of the male organ into the labia of the pudendum and not the full penetration of the complainant's private part. As we held in *Baculi*: 'there could still be a finding of rape even if despite the repeated intercourse over a period of four years the complainant still retained an intact hymen without signs of injury.' In the case at bench, Summer's testimony has established without a doubt that accused-appellant's organ managed to come into contact with her vagina, enough to cause her pain."^[42] (*Italics supplied.*)

In its recent holding in *People vs. Echegaray*,^[43] the Court has declared that "a mere knocking at the doors of the pudenda, so to speak, by the accused's penis suffices to constitute the crime of rape as full entry into the victim's vagina is not required to sustain a conviction."

The trial court, in convicting appellants only of frustrated rape, ruled that there was no "conclusive evidence of penetration of the genital organ of the offended party,"^[44] in that: (a) Catalina had admitted that she did not spread her legs and (b) the medico-legal officer's findings showed she did not sustain any extragenital injuries and her hymenal orifice was so small that an erect average-size penis would not have completely penetrated it without causing laceration. It would seem that the trial court failed to consider Catalina's testimony in its entirety; she testified:

"Q

And when he mounted on top of you Escuadro was holding on to your two feet and all the time that he (Quiñanola) was making a push and pull on you, Escuadro was holding on to your two feet?

"A. Yes.

"COURT:

"Q Your two feet?

"A

Yes.

"ATTY. CREER:

"Q

Now, in other words, since your two feet were held and Eduardo Escuadro was waving (*sic* [moving]) slightly to your left, as you demonstrated, your two feet became closer to each other, it could not be spread?

"A I was still struggling at that time to free myself and I do not know whether my legs were spread out or not.

"Q Did you spread your legs?

"A No.

"Q

Since you did not spread your legs and Quiñanola was on top of you, did you not bother to pull your legs, kick

the one holding it and pushed Quiñanola or do any harm to him?

"A

No, because I was already frightened considering that there were two of them and they were armed." [45]

This testimony would indicate that Catalina, considering her struggle to free herself, understandably failed to notice whether her legs were spread apart or close together during her ordeal. What she did distinctly recall, however, was that Escuadro had kept holding both her legs when Quiñanola took her. Thus -

"Q

At that time when he unzipped and your hands were free, did you not attempt to hold his penis forcibly so that he will refrain from raping you?

"A

I was not able to think of that because of my fear, and besides that Eduardo Escuadro was holding on to both my legs.

"Q

Now, if Eduardo Escuadro was holding on both your two legs how was Quiñanola able to place himself on top of you?

"A

It was because Eduardo Escuadro had already released my hands and Quiñanola was the one holding on to it already, afterwards Eduardo Escuadro transferred to hold both my legs." [46]

Let it be said once again that, as the Revised Penal Code presently so stands, there is no such crime as frustrated rape. In *People vs. Orita*, [47] the Court has explicitly pronounced:

"Clearly, in the crime of rape, from the moment the offender has carnal knowledge of his victim, he actually attains his purpose and, from that moment also all the essential elements of the offense have been accomplished. Nothing more is left to be done by the offender, because he has performed the last act necessary to produce the crime. Thus, the felony is consummated. In a long line of cases (*People vs. Oscar*, 48 Phil. 527; *People vs. Hernandez*, 49 Phil. 980; *People vs. Royeras*, G.R. No. L-31886, April 29, 1974, 56 SCRA 666; *People vs. Amores*, G.R. No. L-32996, August 21, 1974, 58 SCRA 505), We have set the uniform rule that for the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina is sufficient to warrant conviction. Necessarily, rape is attempted if there is no penetration of the female organ (*People vs. Tayaba*, 62 Phil. 559; *People vs. Rabadan, et al.*, 53 Phil. 694; *United States vs. Garcia*, 9 Phil. 434) because not all acts of execution was performed. The offender merely commenced the commission of a felony directly by overt acts. Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage in rape can ever be committed.

"Of course, We are aware of our earlier pronouncement in the case of *People vs. Eriña*, 50 Phil. 998 [1927] where We found the offender guilty of frustrated rape there being no conclusive evidence of penetration of the genital organ of the offended party. However, it appears that this is a 'stray' decision inasmuch as it has not been reiterated in Our subsequent decisions. Likewise, We are aware of Article 335 of the Revised Penal Code, as amended by Republic Act No. 2632 (dated September 12, 1960) and Republic Act No. 4111 (dated March

29, 1965) which provides, in its penultimate paragraph, for the penalty of death when the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof. We are of the opinion that this particular provision on frustrated rape is a dead provision. The Eriña case, supra, might have prompted the law-making body to include the crime of frustrated rape in the amendments introduced by said laws."^[48]

The Court is not unaware that Republic Act No. 7659, amending Article 335 of the Revised Penal Code, has retained the provision penalizing with reclusion perpetua to death an accused who commits homicide by reason or on the occasion of an attempted or frustrated rape. Until Congress sees it fit to define the term frustrated rape and thereby penalize it, the Court will see its continued usage in the statute book as being merely a persistent lapse in language.

Each appellant is liable for two counts of consummated rape on account of a clear conspiracy between them shown by their obvious concerted efforts to perpetrate, one after the other, the crime. Each of them, therefore, is responsible not only for the rape committed personally by him but also for the rape committed by the other as well.^[49]

Under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, when rape is committed with the use of a deadly weapon or by two persons, the crime is punishable by reclusion perpetua to death. Even while the information has failed to allege the use of a deadly weapon in the commission of the rape, appellants can, nonetheless, be held accountable under that provision since the information has likewise averred that the "above-named accused," referring to the two appellants, have conspiratorially committed the crime.

Article 14 of the Revised Penal Code,^[50] includes among its enumeration of generic aggravating circumstances the fact that the crime is committed with the aid of armed men or persons who insure or afford impunity. The fact alone, then, that a malefactor has sported a firearm does not, by itself, militate to aggravate the crime. As regards appellant Quiñanola, the aggravating circumstance of his being a member of the Philippine National Police would have exposed him to the penalty of death^[51] under the amendatory provisions of Article 335 by Republic Act No. 7659, had this circumstance been properly alleged in the information. The description by the trial court of appellants as being "powerfully, built, brawny and mean-looking" as against the "short, slender, easily cowed" 15-year-old victim would not here warrant a finding that abuse of superior strength has aggravated the commission of the crime. The law should be deemed to have already considered this circumstance in qualifying the crime to its "heinous" character, rendering, in that context, abuse of superior strength as an inherent element thereof. Neither may nighttime be considered an aggravating circumstance in the absence of proof of its having been deliberately sought out by appellants to facilitate the commission of the offense.^[52] Craft, fraud or disguise^[53] is a species of aggravating circumstance that denotes intellectual trickery or cunning resorted to by an accused to aid in the execution of his criminal design or to lure the victim into a trap and to conceal the identity of the accused. The fact that one of the appellants has pretended to be a member of the New People's Army does not necessarily imply the use of craft, fraud or disguise, in the commission of the crime. Finally, the Court does not subscribe to the view of the trial court that accused-appellants have employed means which added ignominy to the natural effects of the crime, particularly in "stripp(ing) the victim of her denim pants and panties and then sending her home in this humiliating and distressing condition."^[54] There is nothing on record that even remotely suggests that accused-appellants so deliberately sought to leave Catalina with bottoms bare that she might be left alone in shame with only her T-shirt and brassieres on.

The absence of any aggravating circumstance in the commission of a crime punishable by two (2) indivisible penalties, such as reclusion perpetua to death, would justify, even without any mitigating circumstance, the imposition of the lesser penalty of reclusion perpetua.

The trial court has ordered appellants to each pay the offended party civil indemnity in the amount of P50,000.00.

Prevailing jurisprudence^[55] likewise allows the victim to have an award of moral damages for having evidently undergone "mental, physical and psychological sufferings. The civil liability of appellants, being predicated on delict, is solidary.^[56]

WHEREFORE, appellants Agapito Quiñanola y Escuadro and Eduardo Escuadro y Floro are each found guilty beyond reasonable doubt of two (2) counts of consummated rape and, accordingly, sentenced to the penalty of reclusion perpetua in each case. Said appellants are ordered to pay, jointly and severally, Catalina Carciller the sum of P100,000.00 by way of indemnity ex delictu for the two counts of consummated rape plus P60,000.00 moral damages. Costs against appellants.

SO ORDERED.

Romero (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] 184 SCRA 105.

[2] 50 Phil. 998.

[3] Records, p. 1.

[4] Exh. B, Records, p. 39.

[5] TSN, Catalina Carciller, 29 July 1994, p. 10.

[6] Ibid., p. 11.

[7] Ibid.

[8] Exh. A or 1, Records, p. 13.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] TSN, Agapito Quiñanola, November 13, 1995, p. 16.

[13] TSN, PO2 William Beltran, 14 December 1994, p. 3.

[14] Presided by Judge Renato C. Dacudao.

[15] Records, p. 121.

[16] Ibid., p. 120.

[17] (1) Use of deadly weapons to terrorize and intimidate the victim;

(2) Two persons committed the crime;

(3) One of the offenders was a member of the Philippine National Police;

(4) Fraud or disguise because appellant Quiñanola pretended that he was a member of the New People's Army to instill fear in the victim;

(5) Commission of the crime at nighttime, and

(6) Resort to ignominy in the commission of the crime by stripping the victim of her pants and panty and sending her home in that "humiliating and distressing condition."

[18] Ibid.

[19] Records, p. 121.

[20] Rollo, p. 188.

[21] People vs. Balmoria, 287 SCRA 687.

[22] People vs. Sta. Ana, G.R. Nos. 115657-59, June 26, 1998.

[23] Appellants' Brief, pp. 20-24.

[24] TSN, July 29, 1994, pp. 8-11.

[25] TSN, August 1, 1994, p. 5.

[26] People vs. Banguis, G.R. No. 121626, June 26, 1998.

[27] TSN, August 1, 1994, pp. 8-9.

[28] Ibid., pp. 6-7.

[29] TSN, November 15, 1994, pp. 9-10.

[30] People vs. Auxtero, 289 SCRA 75.

[31] People vs. Banguis, supra.

[32] People vs. Fuensalida, 281 SCRA 452.

[33] People vs. Bajar, 281 SCRA 262.

[34] People vs. Ramirez, 334 Phil. 305.

[35] People vs. Timon, 281 SCRA 577.

[36] 6 WORDS AND PHRASES 273 citing Walker vs. State, 273 S.W.2d 707, 711, 197 Tenn. 452.

[37] People vs. Cabebe, G.R. No. 125910, May 21, 1998.

[38] People vs. De la Peña, 233 SCRA 573 cited in People vs. Castromero, 280 SCRA 421.

[39] 281 SCRA 498.

[40] At pp. 506-507.

[41] 278 SCRA 78.

[42] At pp. 92-93.

[43] 327 Phil. 349, 360, citing People vs. Abella, 228 SCRA 662; People vs. Tismo, 204 SCRA 535; People vs. Castillo, 197 SCRA 657.

[44] Records, pp. 119-120.

[45] TSN, August 29, 1994, p. 10.

[46] Ibid., p. 9.

[47] 184 SCRA 105.

[48] At pp. 114-115.

[49] REYES, THE REVISED PENAL CODE, Book II, 12th ed. (1981), citing *People vs. Villa*, 81 Phil. 193 and *People vs. Alfaro*, 91 Phil. 404.

[50] That the crime be committed with the aid of (1) armed men or (2) persons who insure or afford impunity.

[51] Art. 335 (6), Ibid., as amended by Rep. Act No. 7659.

[52] *People vs. Garcia*, 327 Phil. 1056.

[53] Art. 14 (14), Revised Penal Code.

[54] Rollo, p.138.

[55] *People vs. Prades*, G.R. No. 127569, July 30, 1998.

[56] Art. 110, Revised Penal Code.

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