

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIXBERTO ABALLE, ACCUSED-APPELLANT.***G.R. No. 133997. May 17, 2001*

Ponente: BELLOSILLO, J.

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It is the peculiarity of rape cases that conviction or acquittal of the accused depends almost entirely on the credibility of the complaining witness. It may well then be that the testimony of the victim, to bear upon its face the brand of moral certainty demanded by the due process clause, must involve a narrative that is plausible under the circumstances as recounted before the court. The mere fact that there are contradictions and inconsistencies in her testimony will not in itself acquit an accused as long as the story of the complaining witness is not inherently impossible or suspect of prejudice and ill motive. Still and all, credence should only be given to trustworthy testimonies capable of supporting a guilty verdict.

The testimony of complaining witness Era Sinangote, as in all rape cases, would be subjected to such standard, no matter how exacting it may seem. Briefly, the substance of her testimony is that on 2 June 1988, at about 5:00 o'clock in the afternoon, as Era was preparing supper for accused-appellant Felixberto Aballe and his family, accused-appellant whom she fondly called Noy Berting, suddenly embraced her from behind, seized her breasts while professing his love for her and, with evident intent to rape her, carried her in his arms. She attempted to douse his carnal passion by whacking him with a ladle. Clad only in his underwear and a perforated shirt, accused-appellant responded by dropping her "heavily" on the kitchen floor. But her efforts to attract attention were swiftly repressed by accused-appellant who covered her mouth with his hand after which he positioned himself on top of her and thrust his hips against her. Five (5) minutes later, with his sadistic instincts aroused, he ripped off and tore into two (2) her expensive and newly bought Annie Rose panty with just one hand and inserted his now fully erect penis inside her vagina. She felt pain until he "squirted warm liquid" inside her. After satiating his orgasmic desires, he loosened his grip on her, stood up, took his gun and left, but not before threatening her with harm if she revealed to anyone what he did to her.

As soon as her ravisher left, she got up, pulled back her panty and rushed inside the maid's quarters where she stayed until accused-appellant's wife Day Nita, his son Jun-jun, and her cousin Vilma arrived. She opened the door for them and asked if they had taken their supper. Later, in the privacy of their bedroom, Era told Vilma that they should leave as Noy Berting was threatening to kill her. Vilma unquestioningly acquiesced to her plan of escape. Early the next morning, they left the Aballe household.

Determined to put her dreadful experience behind her, she enrolled at the San Remigio Barangay High School. A week later, she quit schooling and was taken by her elder sister Lolita Andrin to Ormoc City where she worked as a salesgirl at Jonie's Store.[1] At about this time, she confided to her sister that her menstruation had been delayed, to which her sister suggested that she take Noriday pills.

In the last week of July, she wrote Lolita informing her that the pills did not work as she felt she was already

child-heavy after Noy Berting raped her. Two (2) weeks later, Lolita together with their sister Lorie left Cebu for Ormoc to confront Era. On that occasion Era revealed to her sisters what she went through that afternoon of 2 June 1988 at the hands of her Noy Berting. To alleviate their situation, Lolita suggested that they ask P2,000.00 from their Noy Berting for Era's delivery. Immediately Lolita sent a telegram to accused-appellant asking P2,000.00 for financial assistance. Instead of heeding their request, accused-appellant instituted a robbery case against Lorie and Lolita's husband, Marte Andrin.[2] The Sinangotes were infuriated, so they decided to file a case for rape against the obstinate accused. Upon advice of their lawyer, Era went home to Cebu and had herself examined. After securing a medical certificate confirming her pregnancy, Era proceeded to file rape charges against accused-appellant.

On 21 February 1989 Era gave birth to a healthy baby girl whom she christened "Erla." [3]

Lolita Andrin corroborated her sister's testimony and acknowledged that it was she who first learned of Era's experience. She admitted receiving a letter from Era dated 29 July 1988 wherein she narrated her ordeal at the hands of accused-appellant which culminated in her pregnancy.[4] She immediately sent a letter to accused-appellant coursed through a jeepney driver asking that they meet.

On 14 August 1988, at about 5:00 o'clock in the afternoon, accused-appellant visited Lolita at Lawis, San Remigio, Cebu. Upon seeing him, she rebuked him for ravishing her younger sister to which he replied that he was unable to resist Era. He offered to shoulder the costs for her abortion, but as she was diffident about the idea, she suggested that they meet the next day after she had consulted her mother and sisters.

On 15 August 1988 accused-appellant visited Lolita at the Cebu Roosevelt Memorial College where she was a second-year education student. He told her to fetch Era from Ormoc as he preferred having the abortion done in Cebu. He gave Lolita P200.00 for the purpose. She left for Ormoc that day and, upon seeing Era, Lolita tearfully reprimanded her for her delay in reporting the assault on her virtue. But Era explained that she was overcome by fear that her family would be harmed if she disclosed the rape incident. When advised of accused-appellant's plan of abortion, Era vehemently objected. She went back to Cebu and suggested to her mother and sisters that they instead ask financial help from accused-appellant. Accordingly, she telegraphed him asking for P2,000.00.

On 22 August 1988, after feeling that accused-appellant had ignored her request, Lolita went to her mother's house in San Remigio, Cebu to confront him. Upon her arrival in San Remigio, she instructed her husband Marte Andrin and her sister Lorie to see accused-appellant. A few hours thereafter, her husband returned with the information that accused-appellant had acrimoniously sent them away. Later that night, accused-appellant arrived aboard his motorcycle with three (3) armed men in civilian clothes and his wife in tow. After disembarking from his motorcycle he ordered one of the armed men to shoot Marte forcing the latter to scamper away.

The following day Lolita was accompanied by her husband to Cebu City and together they secured the services of a lawyer who advised them to file a complaint for rape against accused-appellant. They fetched Era from Ormoc and took her to Cebu City where after having her pregnancy medically confirmed, they lodged a complaint with the prosecutor's office charging accused-appellant with rape.[5]

Testifying in his own behalf, accused-appellant Felixberto Aballe admitted that he had intimate relations with their househelp Era but denied having laid hands on her to snatch her virtue in the afternoon of 2 June 1988. In fact, according to him, she never resisted him during their countless sexual trysts. He intimated that he had an illicit affaire d'amour with Era much to his wife's anger. He said that he met Era sometime in December of 1987 when the latter visited their housekeeper Vilma Sinangote. Era approached him seeking employment and, after conferring with his wife, he agreed to hire her. Thereafter, Era and Vilma took turns in manning their small convenience store, taking care of his grandchild and helping them with the household chores.

Sometime in February 1988 her father died so Era went home. She returned around the second week of March only to leave again for some family business. When she came back in the last week of March they started flirting with each other. Once after taking a bath, he asked for his briefs as he had forgotten them outside. Suddenly, Era came in and saw him in his nakedness. She handed him his briefs, which enraged his wife in the process. Several weeks later, while he was in his bedroom dressing up for school, Era appeared unannounced and at the sight of him clad in his underwear exclaimed, "Ay, nagtubo man!"[6] while pointing to his penis. His wife barged into the room and started throwing things at them. He tried to pacify her by explaining that there was nothing between Era and him. However, his wife was disconsolate. She packed her things and immediately left for their daughter's house in Bogo, Cebu, where she stayed for weeks. With his wife gone, his relationship with Era continued.

One afternoon in April 1988, he took Era to Cebu City to buy her some school supplies as she was going to enroll in high school. The trip to Metro Gaisano in Cebu City aboard his motorcycle took them three (3) hours with Era's arms clasped around his waist. Hours later, as they were about to go home, it rained heavily. Era suddenly suggested that they "go somewhere," intimating her desire for sex. He understood what she meant and together they took a taxicab for the D'Inn Motel where they released passionately their forbidden lust for each other. They stayed at the motel for more than three (3) hours and engaged in sexual congress twice with Era, who appeared to be experienced, as the initiator in their copulation.

After their initial liaison, they became more shameless as they engaged nightly in sexual intercourse right in the comfort of the conjugal bed. One night while he was sleeping beside his grandchild, Era came to his room asking for medicine as she had a terrible headache. He begged her to leave as they might wake his grandchild. But she joined him in bed instead and embraced him so tightly thus igniting again the embers of their passion.

Their constant sexual contact made Era more comfortable with him that she would ask him to help her solve her problems. Prior to her enrollment at San Remigio Barangay High School, she discovered that her report card from Kayam Elementary School had been lost, so accused-appellant procured a certification from the principal of the school attesting to such loss.

On 4 May 1988, Era announced that she would be leaving with Vilma as the neighbors had told them that it was not proper for a young lady to stay with a married man when his wife was away. Their separation notwithstanding, Era would visit accused-appellant on Fridays after her marketing at the public market. During her visits, he tried hard and succeeded in resisting her sexual advances, but her visits were cut short when through the prodding of his daughter his wife returned home in the first week of June 1988.

Around the second week of July 1988 accused-appellant was surprised to receive a letter from Era conveying mixed feelings of happiness, sadness and worry as she recounted her job as a salesgirl, her lonesomeness on her birthday, and her pregnancy. She lovingly addressed him as "Papa" and pleaded that she be advised on what medicine to take to abort the child in her womb. After cautioning him not to tell his wife about her letter she beseeched him to "(P)lease response (sic) immediately," and giving him her address: [c]/o Jony's Store, Freedom Village, Cogon, Ormoc City.[7] But he never replied to her letter and was surprised to receive a telegram from Lolita Andrin dated 16 August 1988 worded as follows: "Please send P2,000.00 immediately, letter explain x x x x"[8]

Soon after, accused-appellant received a letter from Lolita Andrin explaining that the amount she requested would be used for Era's planned abortion. He denied knowing that the child in Era's womb was his and that he only understood the telegram upon receipt of Lolita's letter explaining the pregnancy. He likewise disclaimed paternity of Era's daughter as he had heard rumors of her carrying a relationship with a co-worker in Ormoc. According to him, Era cohabited with the driver of Junie's Store whom she eventually married.

He admitted charging Marte Andrin and Lorie Sinangote with robbery of which they were acquitted for insufficiency of evidence. He clarified that the robbery charge was made even before the complaint for rape was filed against him. He further denied raping Era at about 5:00 o'clock in the afternoon of 2 June 1989 as he was still in school busy preparing for the first day of classes.[9]

On 14 January 1998, after undergoing trial for eight (8) years and a change in presiding judge, the court ruled in favor of the prosecution.[10] The second judge who presided only over accused-appellant's cross-examination chose not to give credence to his "sweetheart theory" and held, "(t)he testimony of the accused of previous sexual relation cannot prevail over the positive and clear evidence of copulation by the use of force and intimidation." [11] Accordingly, accused-appellant Felixberto Aballe was sentenced to reclusion perpetua, to indemnify his former housekeeper Era Sinangote with the amount of P50,000.00, to acknowledge Erla Pilapil Sinangote as his child and support her until "she reaches the age of 21 or gainfully employed and/or fully emancipated." [12]

Hence, this petition. Accused-appellant alleges that the trial court overlooked relevant facts not disputed by the prosecution which, if properly examined, would justify a reversal of judgment and his acquittal. He further avers that private complainant and her family were motivated by ill will in accusing him of rape such that had he relented to their financial demands they would not have filed this case.[13]

In rape cases it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that conviction becomes the only logical and inevitable conclusion. What is required of the prosecution is to justify the conviction of the accused with moral certainty. Upon failure of the prosecution to meet this test, it becomes the constitutional duty of the Court to acquit the accused lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.

We now proceed to review and analyze in detail the testimony of the offended party, being the only evidence presented by the prosecution on how the alleged rape was perpetrated; consequently, the conviction of accused-appellant rests on the credibility of such testimony. In reviewing the testimony of Era, it may be practical to ask: Had she evinced the natural behavior of a victim of rape? Or, had her actuations been such that her claim to having been violated becomes doubtful? Had she shown genuine grief, tried to flee from the scene of her violation, shunned her violator? Or, could it have been out of pique, on her part or on her family, that impelled her to cry rape?[14] Although the findings of trial courts are normally respected and not disturbed on appeal, numerous circumstances revealed through the foregoing questions discredit the testimony of complaining witness, thus prodding this Court to reverse the guilty verdict based on an erroneous appreciation of evidence.

First. The sequence of movements during and after the rape as narrated by Era does not inspire belief for being contrary to human experience. For one, we find it hard to believe that her having been "heavily" dropped to the cement floor from a considerable height[15] did not render her unconscious; or, at the very least, pain her. As a matter of fact, except for the pain in her vagina and the continuous flow of blood in her thighs and in her panty, Era did not complain of any other discomfort and was even able to get up and run to her room after the alleged rape. The scenario is illogical and does not jibe with human experience.

The manner by which she was sexually abused defies the imagination. It can hardly be envisioned how a man can successfully tear and rip a newly bought and expensive panty with elastic garter into two (2) with just one hand considering that his other hand was at the same time covering the mouth of his hapless victim. And while he was tearing off her panty and covering her mouth, he was also embracing her and spreading her legs notwithstanding her heavy resistance.[16] In *People v. Barbo*[17] we held that "(i)t is difficult to rape a normal, healthy woman without the help of confederates or without terrifying her with a weapon. If she resists, the likelihood is that the

lustful desire of her assailant will be foiled x x x x The rape committed by a man without the assistance of other person is possible but a rare case." Verily, viewed from this pronouncement accused-appellant might have been Hercules himself if he indeed ravished private complainant in the manner as recounted by her.

The trial court even entertained doubts on Era's assertion of resistance when it interjected:

COURT: So there was push and pull movement when his penis was outside your genitalia and another five minutes when it was already in?

A: Yes, sir.

Q: Did you not wiggle? [18]

It also strains credulity to the breaking point that Era was able to put back her panty after it had been torn into two. The trial judge who heard Era's testimony seems to be perplexed when he remarked: Despite that you were still wearing your panty?[19] Certainly, her being able to wear a panty "the seams of which had been cut off, such that one leaf was separated from the other leaf,"[20] belongs to the "miraculous and is outside of judicial cognizance." [21]

Then, too, even after the supposed culprit had turned his back and left, thereby eliminating whatever danger or threat there was on Era's life, nothing was heard from her. A most natural reaction of a rape victim would have been an outcry after the alleged danger had passed.[22] The outcry would, as in this case, be more effective where the rape was committed in an almost open area and where neighbors were just eight (8) to twenty-five (25) meters away giving Era every opportunity to call attention to her plight.[23] As such, it could not be said that Era considered screaming a useless exercise due to the unavailability of any possible succor from the neighbors. The proximity of other houses would have caused its occupants to be attracted by the commotion resulting from a supposedly forcible sexual attack being perpetrated on Era by accused-appellant.

Era, however, claimed that she failed to seek help immediately after the rape because accused-appellant threatened her with a gun. Her explanation does not deserve merit because it had not been clearly established by the evidence nor supported by the records. Her having been threatened with a gun was not even mentioned in the Information nor in her affidavit executed before the notary public.[24] Era could not have forgotten such a vital circumstance if it were really true.

More so, it was not only until she discovered her pregnancy and learned of accused-appellant's refusal to acknowledge the consequences of their love affair that she hollered and revealed to her sisters her "harrowing" experience. Truly, her indifference is most disturbing, to say the least.

Second. The admission of private complainant that she wrote accused-appellant sometime in July of 1988 strikes us as completely contrary to human nature and experience. The idea of a rape victim writing to her ravisher (whom she addressed as papa) for moral assistance and asking that he write back at a given address baffles us no end. In this respect, it might be useful to quote the relevant portions of Era's testimony -

COURT: By the way, did you tell Felixberto Aballe that you were in Ormoc?

A: I sent a letter.

COURT: To...?

A: Felixberto Aballe.

COURT: And why did you write a letter to him when, according to you, you were afraid of him?

A: I sent a letter to him, Your Honor, because I have (sic) nobody to lean on and because of the threat that he would kill me, so, since he was responsible for raping me, so, I wrote a letter to him.

COURT: Did you not consider it safer not to tell Felixberto Aballe about your whereabouts?

A: Since I felt, Your Honor, that I kept on vomiting at that time, believing that I was pregnant, so I sent a letter to him to ask for assistance (underscoring supplied).[25]

Thus, the trial court bewildered by Era's strange course of action was prompted to ask: After you were allegedly raped by Felixberto Aballe, did you hate him?[26]

Incidentally, Era at first categorically denied authorship of the letter but after having been told that her penmanship would be examined and scrutinized by an expert and compared with the letter, she changed her declaration and with a weakened resolve admitted the letter as hers.[27] Her negation of an earlier declaration shows her inclination to wilfully falsify the truth thereby casting serious doubt on her credibility.

The prosecution's feeble attempt to prop up Era's tainted credibility after having admitted authorship of the letter ranges from the disdainful and conjectural explanation that "(she) could not recall the contents of the letter that (she) sent to the accused" to the equally incredulous justification that the "difference between her letter and (the letter presented by the accused) is the (mention) of the word 'papa' and the mention about the tablets." [28]

Even if we are to go by Era's story that she never mentioned the words "papa" and "tablets" in her letter, she nevertheless admitted authorship of the following revealing details: her "lonesomeness" on her birthday; her anxiety and fears on her pregnancy; a plea for accused-appellant to keep her letter away from the prying eyes of Day Nita; and a loving reminder that he communicate with her "immediately." [29] And if Era was merely seeking "assistance" as insisted, we wonder why her letter resonates with much tenderness and longing desire instead of supplication and loathing expected from a rape victim asking for financial assistance. Indeed, even the State in its appellee's brief made no mention of the aforementioned details and avoided them like the plague. Manifestly, the appellee was aware that Era's acknowledgment of the ruinous letter suggested a relationship between her and accused-appellant thereby assailing her credibility and engendering the gravest doubts as to whether there had been such a rape at all.

Third. Era's mother, her sister Lolita, as well as Era herself, admitted that had accused-appellant agreed to their financial demands, they would not have charged him with rape.[30] Lolita even explicitly said, "(we) file(d) a case of rape against Mr. Aballe for his failure to give us financial assistance." [31] They tried to justify their initial indifference by saying that they are poor and were afraid of the expenses to be occasioned by the trial. Indeed, their flimsy excuse does not convince the Court for there are certain circumstances in this case which convince us that the rape charge was roused by factors other than the truth as to the commission of the rape, such as accused-appellant's refusal to financially support Era's pregnancy and the possible humiliation which Era's family would suffer on account of her pregnancy. We wonder why it took Era's family more than a month from the time they learned of her pregnancy to institute the complaint for rape against accused-appellant; suspiciously still the complaint was made only after accused-appellant had rebuffed their demand for money. If Era's woeful and agonizing story was true, they would not have lost time in hailing accused-appellant to court despite their indigence.

Fourth. In addition to the foregoing admissions, there were others equally damaging to the prosecution elicited in the course of the trial which may be trivial but when taken altogether accentuate the untruthfulness of Era's story. For one, while Era testified that she divulged her condition to her sister Lolita and not to her mother, her mother swore that she learned of Era's pregnancy through Era herself when she wrote her from Ormoc.[32] Secondly, while Era explicitly narrated that on 12 June 1988 her mother told her that accused-appellant came to visit asking

for her hand in marriage, her mother said that she never told Era of accused-appellant's visit as she was furious with his proposal.[33] Further, Era's claim that she was with Lolita and Lorie in Ormoc when they decided to demand financial support from accused-appellant contradicts Lolita's testimony that her family chose to hold accused-appellant financially liable for Era's condition even without "meet(ing) Era personally." [34] Lastly, Era's claim that she went to school for only a week beginning 12 June 1988 runs counter to the records of the San Remigio Barangay Schools which shows that Era stayed in school for 31 days.[35] The authenticity and validity of the aforementioned document remained un rebutted throughout the trial and was never controverted nor assailed by the prosecution.

Fifth. Furthermore, complainant's demeanor and that of her mother at the witness stand betrayed their insincerity. Era's composure, the tone of her voice and her manner of testifying contradicted and belied the truth of the words that came from her lips. At one point, Era was even reprimanded by the trial court for glancing at her lawyer before answering questions propounded during cross-examination.[36] Her denial as to having seen almost all of the houses in the Aballe neighborhood depicted in pictures presented before the court[37] indicated that she was crafty, cunning, unreliable and lacking in discretion. The note of insincerity in her voice,[38] her refusal to look at some of the pictures referred for examination,[39] her evasiveness on certain questions,[40] and the unusual movement of her legs while testifying[41] all the more weakened the value of her already pallid testimony. Indeed, her testimony as well as her manner of testifying left much to be desired.

Likewise, her mother's conduct while on the witness stand lacked the anguish and distress expected from a mother whose daughter had been ravished by her ruthless employer. Thus, the trial court remarked:

COURT -Make it of record that when the witness answered she also smiled.[42]

In light of the foregoing, accused-appellant's allegation as to his romantic, albeit, forbidden affair with Era gains more weight and credence. It becomes probable then that the charge for rape was instituted by private complainant and her family in reprisal for accused-appellant's haughtiness and obstinacy.

We find that the trial court's appreciation and assessment of evidence are faulty and incorrect. Perhaps this can be explained by the record which shows that the court in the course of an eight (8)-year trial went through two (2) judges, with the last judge who ultimately delivered the guilty verdict having heard only the cross-examination of accused-appellant. Thus, the trial judge in convicting accused-appellant simply chose not to give credence to his testimony and ignored the grave doubts engendered by the inconsistent and conflicting statements of private complainant and her witnesses who did not testify before him.

In sum, the guilt of accused-appellant Felixberto Aballe was not successfully established beyond reasonable doubt. In concluding that Felixberto raped his housekeeper Era, the trial court must have been guided by the precept that no self-respecting woman would concoct a tale of defloration and undergo public trial centered on her virtue had she not indeed been raped. However, this dictum was never intended to presume that all self-indignities are for the sake of truth.[43] More so, this presumption does not in itself overcome the presumption of innocence which is founded upon the basic principle of law - "not a mere form but a substantial part of the law." [44]

In the absence of concrete evidence that Era had indeed been raped and that she bore Erla Pilapil Sinangote as a consequence, the trial court's finding of paternity as against accused-appellant cannot have any factual nor legal basis.

Accused-appellant's admission that he had sexual relations with his housekeeper Era is indeed despicable and odious in itself; however there is no showing beyond reasonable doubt that he ravished her in the afternoon of 2 June 1988. Verily, accusation is not, according to the fundamental law, synonymous with guilt.[45] It is

incumbent on the prosecution to demonstrate that culpability lies. The freedom of the accused is forfeit only if the requisite quantum of proof necessary for conviction be in existence. His guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed.

WHEREFORE, the appealed Decision is REVERSED and accused-appellant FELIXBERTO ABALLE is ACQUITTED on reasonable doubt. Further, in the absence of sufficient proof establishing paternity, the Decision of the trial court ordering accused-appellant to recognize Erla Pilapil Sinangote as his child and to support her is likewise REVERSED. His immediate release from custody is ordered unless there are other valid grounds for his continued incarceration. In this regard, the Director of Prisons is directed to SUBMIT report of his compliance herewith within five (5) days from receipt hereof. Costs de oficio.

SO ORDERED.

Mendoza, Buena and De Leon, Jr., JJ., concur
Quisumbing, J., on leave.

[1] Also spelled "Diones" Store, "Junie's" Store and "Jony's" Store.

[2] Also spelled "Andre."

[3] TSN, 12 March 1991, pp. 15-17.

[4] The letter was never presented in evidence as it had supposedly been lost.

[5] TSN, 8 November 1990, pp. 1-42.

[6] "It was protruding," TSN, 3 February 1995, p. 8.

[7] Original Records, pp. 504-505. There were no alterations and erasures in the letter which could suggest tampering.

[8] *Id.*, p. 478.

[9] TSN, 18 July 1994, pp. 1-13; 3 February 1995, pp. 1-15; 9 January 1997, pp. 1-32; 23 October 1997, pp. 1-32; 12 March 1998, pp. 1-35.

[10] The case was unloaded by Judge Meinrado Paredes to the sala of Judge Ildefonso Mantilla; Original Records, p. 58.

[11] Rollo, p. 53.

[12] Decision penned by Judge Ildefonso G. Mantilla, RTC-Br. 61, Bogo, Cebu; Rollo, pp. 31-58.

[13] *Id.*, pp. 108-171.

[14] *People v. Herrick*, G.R. No. 85137, 12 July 1990, 187 SCRA 365.

[15] Era stood up to indicate the height from where she was dropped by accused-appellant. TSN, 11 April 1991, p. 5.

[16] TSN, 7 August 1991, pp. 4-5.

[17] No. L-30989, 29 March 1974, 56 SCRA 459.

[18] TSN, 7 August 1991, p. 8.

[19] *Ibid.*

[20] Ibid.

[21] *People v. San Juan*, G.R. No. 130069, 29 February 2000; *People v. Marollano*, G.R. No. 105004, 24 July 1997, 276 SCRA 84.

[22] *People v. Estacio*, G.R. No. 54221, 30 January 1982, 11 SCRA 537.

[23] From a review of the photographs submitted by the defense it appears that the kitchen was partly walled and that the nearest neighbor was about eight (8) to twelve (12) meters away; Original Records, pp. 487-500.

[24] The Information dated 21 February 1990 merely alleges that accused "with the use of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge with (private complainant) against her will and consent. " Meanwhile, the relevant portions of her affidavit are as follows: " At about 5:00 o'clock in the afternoon while I was about to prepare our food for supper, suddenly Felixberto Aballe approached me and said that she (sic) loved me and assured me that he would abandon his wife and make me his wife, but I refused his advances and so he embraced me and despite my strong resistance lasting for about an hour he succeeded in pushing me down to the kitchen floor and despite my determined resistance and pleadings he was able to sexually abuse me and being a virgin my vagina bled. Then I rushed to my room and locked the door until about 8:00 o'clock in the evening of said date when his wife and Vilma arrived, but I keep silent, because he warned me that he would kill me if I reveal to anybody what he did;" Original Records, pp. 1 and 11.

[25] TSN, 22 October 1991, pp.13-14.

[26] TSN, 7 August 1991, p. 16.

[27] TSN, 7 August 1991, p. 15 vis-a-vis TSN, 22 October 1991, pp. 13-14.

[28] Ibid.

[29] Original Records, pp. 504-505.

[30] TSN, 9 November 1990, p. 4; 12 March 1991, p. 13, 24 July 1991, p. 9.

[31] TSN, 8 November 1990, p. 28.

[32] Compare Era's testimony which can be found in TSN, 12 March 1991, pp.12-13, with her mother's assertion in TSN, 13 April 1992, p. 7.

[33] "A: My mother told me that Felixberto Aballe came to our house and kept on kneeling and telling my mother that he would marry me x x x;" TSN, 12 March 1991, p. 6 vis-a-vis "Court: Q By the way, according to you, Mr. Aballe proposed your daughter to become his wife, did you tell Ira about it? A: I did not. Q: You did not tell Ira? A: I did not; TSN, 30 April 1991, p. 11 (emphasis supplied).

[34] TSN, 2 March 1991, p. 12; 9 November 1990, p. 4.

[35] Exh. "18;" Original Records, p. 503.

[36] "COURT: Don't ask your lawyer because he was not there," TSN, 22 October 1991, p. 5.

[37] TSN, 29 May 1991, pp. 6-17.

[38] "Q: The question that I asked you is not an insulting question, why did you have to answer it angrily?

x x x x COURT: Wait.

Q: Are you angry at Atty. Seno or anybody?

A: No, Your Honor.

ATTY. SEÑO: If that so, why can't you answer my question in a more polite way?

A: Because he is asking repetitious questions;" TSN, 10 April 1991, pp. 17-18.

[39] TSN, 29 May 1991, p. 21.

[40] She even denied knowing one of her classmates at the San Remegio Barangay High School, a certain Emily Eballena, when the school records clearly show that they belonged to the same section; TSN, 29 May 1991, p. 31.

[41] TSN, 11 March 1991, p. 13.

[42] TSN, 13 April 1992, p. 3.

[43] *People vs. Flores*, 23 Phil. 309 (1968).

[44] *People vs. Salem*, G.R. No. 118946, 16 October 1997, 280 SCRA 841.

[45] *People v. Dramayo*, 149 Phil. 107 (1971).

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