

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO MARIANO ALIAS ATO, ACCUSED-APPELLANT.*G.R. No. 134309. November 17, 2000*

Ponente: BELLOSILLO, J.

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ROBERTO MARIANO alias Ato was accused of raping five-year old Khristine Dandan Custan before the Regional Trial Court of Pasig City. On 7 May 1998 the court a quo found him guilty as charged and sentenced him to death;^[1] hence, this automatic review of his conviction.

The family of Khristine Custan rented a room in a small bungalow owned by accused Roberto Mariano where his family lived in an adjoining room. Only lawanit and flattened carton boxes divided the two quarters. Mariano's wife worked in Malaysia. Like typical neighbors in depressed areas, with nowhere else to spend their leisure time, Khristine and her siblings would go to the room of the Marianos to play or watch television. It was on one of these occasions that the crime charged supposedly transpired.

On 17 February 1995, at around 1:00 o'clock in the afternoon, four-year old Khristine^[2] went to the room of Roberto Mariano whom she called Kuya Ato to play with his son "JC."^[3] Roberto was watching television in his room together with his children. Khristine and "JC" were playing in the sala with the latter's toy jeep while his sister and a brother were washing dishes.^[4] After some time, Roberto gave money to his children and told them to buy some chicheria from the nearby convenience store. The children left leaving behind Khristine and Roberto alone in the house. According to Khristine, Roberto carried her to his bed, removed her clothes as well as his own, and inserted his penis into her vagina. She felt pain although the contact was brief. Then he carried her again and asked her to sit down beside him. He called for his children and told Khristine to put on her clothes and go back to the room. When the children arrived he asked his older daughter to buy beer for him.^[5]

As the whole incident was taking place, Evelyn C. Custan, Khristine's mother, was in the adjoining room attending to her other children. According to Evelyn, when Khristine returned she noticed that she was wearing her panty inside out. When she asked Khristine why, she answered that it was her Kuya Ato who put it on. Evelyn claimed that Khristine, upon further questioning, told her that her Kuya Ato inserted his finger inside her vagina and then his penis afterwards.

The electric power failed at this moment so Evelyn rushed to a neighbor's house to borrow a flashlight and returned immediately to examine Khristine's private part. According to Evelyn, she noticed bloodstains and bruises in Khristine's vagina, prompting her to report the incident to the police station near her home. The police however did not believe her story so they were refused assistance. Evelyn then brought Khristine to the Taguig Police Station where they gave their statements, after which, mother and daughter led the police officers to Roberto's residence; however, he was not there.

Evelyn then brought Khristine to the PC Crime Laboratory Service in Camp Crame for medical examination. The medico-legal report of Dr. Jesusa N. Vergara, Khristine's examining physician, contained the following

CONCLUSION: "Subject is in virgin state physically x x x x no external signs of application of any form of violence. REMARKS: Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."[6]

The following day, 18 February 1995, Evelyn and her family moved out. The Marianos also followed suit. Thus, the warrant for Roberto's arrest could not be served.

On 26 December 1996 or more than a year after their last meeting, Roberto unexpectedly appeared at Evelyn's place. Evelyn wasted no time in calling for the police and Roberto was arrested.

Testifying alone in his defense, Roberto denied the charge. He explained that at about 11 o'clock in the morning of 17 February 1995 he arrived home from his work as a taxi driver to prepare food for his children; that while he was cooking, Dandan (referring to Khristine) went to his room to watch television. Kisay (Khristine's mother) joined them but watched only through the window.

After his lunch Roberto laid down on his bed and talked to Evelyn as both watched television, while Khristine and Roberto's children were playing. Their conversation lasted until 1:15 in the afternoon just after the noontime TV show. Evelyn retired to her room afterwards.

Meanwhile, the two (2) youngest children of Roberto - Ezequiel and Chonalyn - playfully sat on their father's belly and prodded him to play with them. Tired and sleepless the night before from long hours of driving a taxi, Roberto tried to discourage the children but they insisted on playing "horsie-horsie" with their father for about fifteen minutes. Khristine also joined them. To dissuade the children from further disturbing him, he gave P2.00 to each of them including Khristine so that they could play outside and leave him alone to sleep.

At about four or five o'clock in the afternoon, according to Roberto, he was interrupted in his sleep by his daughter Cathy who told him that Evelyn wanted to see him in her room. There, Evelyn confronted him why Khristine was already wearing her "shorts"[7] inside out. After Roberto professed ignorance, Evelyn threatened to have him and his family killed by her brother whom she claimed to be a member of the New People's Army (NPA). Sensing that he was being accused of having sexually molested Khristine, Roberto advised Evelyn to have her daughter physically examined before making such an accusation. When Evelyn did not respond, Roberto returned to his room as he was having a headache and slept until 5 o'clock the following morning.

On 18 February 1995 Gloria Cidagan, Roberto's mother, arrived to fetch her grandchildren after hearing from Cathy that Evelyn had threatened to harm them and that she would file a case against their father. Roberto merely shrugged off his mother's report. Although he did not believe at once that Evelyn would carry out her threat, he became apprehensive later in the evening when Evelyn packed up their things, destroyed the door of their rented room and left. Then Roberto realized that the threat to the security of his family was real.

The next day, 19 February 1995, Roberto went to his mother's place to confirm from his children the things Evelyn had told them. He drove until 9:30 p.m. when his taxi developed engine trouble. He brought his cab to the garage and reported the matter to the owner. He also told the owner that he was going to stop driving the taxi temporarily; instead, he decided to drive a passenger jeepney so he could be nearer his mother's house, thus affording him a better opportunity of protecting his family in case Evelyn made good her threats.

Roberto learned later from his friend Rene Montes that Evelyn filed a rape case against him. This was confirmed by Roberto's sister-in-law who was shown by Evelyn a warrant for Roberto's arrest. Roberto immediately informed his wife about the charge.

When Roberto's wife, Melinda Mariano, arrived from Malaysia, she approached Evelyn about the case. According

to Roberto, Evelyn demanded from the spouses P50,000.00 in exchange for dropping the charges. When Roberto's mother learned about the offer, she offered to sell their house, but Roberto dissuaded her saying that she was not going to give Evelyn a single centavo as he did not do anything wrong.

On 26 December 1996 Roberto went to the house of Evelyn in order to ask her about the case she filed against him. But before he could do so Evelyn called for the police who promptly arrested him.

On 9 June 1997 Roberto was arraigned and trial ensued. However, soon after Evelyn executed a "Salaysay ng Pag-uurong ng Demanda" paragraphs 2 and 3 of which read: 2. Na aking nakita sa Medico Legal Report na ang aking anak ay hindi naman pala nagalaw ng kahit kanino (sic); 3. Na matapos akong makipag-usap sa inakusahan, aking nabatid na hindi lamang kami nagkaintindihan sa pangyayari x x x x When confronted with this document on cross-examination, Evelyn explained that she had Atty. Mendoza of the Public Attorney's Office (PAO) prepare the document after taking pity on Roberto's wife, who frequently visited her and begged her to drop the charges. When the trial court noted that the document was not subscribed to by the public prosecutor, Evelyn further explained that the prosecutor did not want her to sign and advised her instead to think the matter over. Afterwards, she decided to pursue her case.

On 26 May 1998 the trial court found the accused Roberto Mariano alias Ato guilty of statutory rape and sentenced him to death and the accessory penalties consequent thereto, and ordered him to pay private offended party Khristine C. Custan P50,000.00 by way of civil indemnity, plus the costs.

Accused-appellant Roberto Mariano now insists that the prosecution failed to prove his guilt beyond reasonable doubt. In support of his claim, Mariano asserts that the testimony of Khristine declaring that he inserted his penis into her vagina because of which she suffered pain, and the claim of Evelyn that she discovered blood and bruises in Khristine's vagina, were both belied by the medico-legal report of Dr. Jesusa N. Vergara of the PC Crime Laboratory which indubitably showed that Khristine was physically a virgin, that her hymen was intact, and that there were no external signs of the application of any form of violence. He further claims that the "Salaysay ng Pag-uurong ng Dimanda" executed by Evelyn C. Custan clearly proves his innocence of the crime charged as she would not have wavered in her resolve to pursue the case if their accusation of rape was indeed true.

We reiterate at the outset that the evaluation of testimonies of witnesses by the trial court is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain circumstances of substance or value which, if considered, might affect the result of the case. In prosecutions for rape, this Court in the evaluation of the evidence has always been guided by the following considerations: (a) an accusation of rape can be easily made, is hard to prove, but harder to defend by the party accused, though innocent; (b) in view of the nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[8] In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish his guilt beyond reasonable doubt.[9]

With these guidelines in mind, we proceed with the instant case. Once again, it is up to this Court to see to it that only the strictest standard of evidence has been met in order to justify the taking of a life. The exacting standard of proof beyond reasonable doubt acquires more relevance in rape charges which are easy to make but harder to prove and harder still to defend by the party accused who may be innocent.[10] This Court will not condemn a person to his death if there exists the slightest hint of reasonable doubt as to his guilt. In reviewing the factual circumstances of the instant case, the Court has seen doubt cast on the evidence of the prosecution, sufficient to

warrant a reversal of his conviction.

The trial court convicted the accused of statutory rape. In so doing, it relied mainly on the testimonies of complaining witness Khristine Custan and her mother Evelyn C. Custan. But, in reviewing this case, it is imperative to ensure that their testimonies can withstand the strictest judicial scrutiny.

This Court is not unaware of cases where we held that it was unthinkable for a youthful rape victim to undergo the humiliation of a public trial unless she was merely protecting her honor and bringing to justice the person who raped her.[11] However, this does not remove the necessity of scrutinizing the testimony of the complaining witness with extreme caution. The trial court was probably convinced that Khristine gave a truthful account of what actually transpired during her ordeal considering her demeanor, her apparent immaturity, youthfulness and lack of malice. But we are not as easily convinced, as we are conscious of our constitutional duty to exact proof beyond reasonable doubt before convicting an accused. Although we do not generally disturb conclusions of the trial court on credibility of witnesses, we will do so in this case as the lower court has clearly overlooked certain facts of substance. An examination of Khristine's testimony and demeanor reveals spatters of irregularities that the lower court apparently overlooked, but are simply too glaring for us to ignore.

Khristine told the trial court that Roberto carried her to his bed, removed her clothes as well as his own, and inserted his penis into her vagina. When asked by the prosecutor what she felt at this time, the victim replied, "It was painful, sir." [12] It is highly inconceivable that Khristine would not cry for assistance considering that her mother was only in the next room that was separated only by lawanit and flattened carton boxes from that of Mariano where she was supposedly sexually abused. Nowhere in her entire testimony was there any indication that she shouted or wept at the invasion into her private organ. In fact, when the prosecutor asked what she was doing while Roberto was inserting his penis into her vagina, she failed to give any answer, which strongly indicated that she was in all probability coached on the other questions propounded to her.

Her actions immediately after the incident did not suggest the slightest hint of discomfort on her part. In the normal state of things, a rape victim, particularly a girl of very tender years, would have at the very least exhibited some form of uneasiness or discomfort. It would not have been unusual for Khristine to come running to her mother who was just in the adjoining room with an informal partition. But after her alleged defilement Khristine meekly obeyed Roberto's order to sit down beside him in the sala.[13] When she was later instructed to put on her clothes and go home she meekly obeyed.[14] Not once did she exhibit a grain of discomfiture, soreness or uneasiness. Neither did she offer any resistance, nor declare her abhorrence towards the molester; more so, to the evil done to her. Instead, she reacted in complete submission and supplication to the instructions of her offender, all inconsistent with her claim that she felt pain.

In *People v. Bormeo*, [15] the 2-[1]/2-year old victim immediately ran to her grandmother crying, with her legs apart and blood trickling down her feet, after having been violated by her grandmother's common-law husband. While we are not unmindful that rape victims may react in different ways, [16] given the variance of their background and upbringing and the nature of the crime, we have however said often enough that the conduct of the victim immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge. [17] Khristine's apparent nonchalance to the evil done to her by accused-appellant seems to suggest indeed that no rape was committed, or at the very least, that she was not harmed after all.

The testimony of Khristine's mother is likewise replete with inconsistencies. According to Evelyn, when she confronted Khristine about her inverted shorts Khristine answered that Roberto inserted his finger insider her vagina and then his penis. [18] However, according to her testimony in court, Roberto performed no act other than inserting his penis into her vagina. [19]

Evelyn's affidavit taken before the Taguig Police Station confirms this inconsistency. Her initial complaint that Roberto touched her daughter's private parts ("hinipo daw ni Kuya Ato niya ang pekpek niya").[20] It was only at the end of her statement, when she was prodded to add something to her narration, that she said that Roberto likewise inserted his penis into Khristine's vagina. ("Gusto ko pong idagdag na sinabi rin po ni Khristine na ipinasok daw po ng Kuya Ato niya ang titi niya sa pekpek niya").[21] In the natural course of a truthful narration, this piece of information would have been revealed at the earliest opportunity; at least, at the very instance when she revealed the insertion of his finger that supposedly preceeded the insertion of the penis. Incongruously, Evelyn divulged it only at the very end of the statement, and only after she was coaxed to add something more, which leads as to the inevitable conclusion that the statement about the insertion of the penis was merely added as an afterthought.

Finally, Evelyn claimed that when she inspected the vagina of Khristine with the use of the flashlight she saw bloodstains and bruises. This was improbable, to say the least. The medical examination on Khristine conducted on the very same day she was supposedly sexually assaulted not only failed to support the assertion but expressly declared that Khristine's hymen was intact, she was physically virgin, and there were no signs of violence applied on her sexual organ.[22] But the trial court belittled the medico-legal report thus -

x x x the consummation of the crime of rape does not call for a complete penetration of the female organ. Neither is it essential that there be rupture of the hymen or laceration of the vagina. It is sufficient that the labia be penetrated. To repeat, the slightest penetration of the pudenda would suffice, and vaginal bleeding is not an element of rape. In fact, the absence of penetration or laceration, or the fact that the victim remains a virgin, does not, in itself, negate the consummation of the crime of rape (citations omitted).

To that extent we have no quarrel. We agree that bleeding and bruising are not elements of rape; neither does the finding that the victim is a virgin negate it. However, Evelyn herself stated that she saw blood and bruises when she inspected Khristine's vagina immediately after the supposed assault on her virginity. Khristine herself testified that Roberto actually inserted his penis into her vagina, and that she felt pain as a result. In short, the prosecution's contention was that there was actual penetration, and not only mere contact between Roberto's penis and Khristine's pudendum, in which case, the medico-legal report assumes importance, not necessarily to prove or disprove an element of the crime but, more importantly to verify the credibility of the two (2) principal witnesses. If indeed there were bruises and blood on Khristine's vagina, as Evelyn claimed, the medical examination of Khristine on the very same day would have revealed a wound, laceration or contusion of some sort, or any sign that would indicate that there were indeed bruises and blood on the area several hours before. But the medico-legal report showed nothing of that sort.

With such dubious testimonies and obvious inconsistencies, the prosecution should have presented the examining physician, Dr. Jesusa Vergara, as witness to explain the apparent contradictory evidence, if such was reasonably explainable. It should not have left this very important issue hanging in the air. Surely, the prosecution knows that it is not the obligation of the defense to provide the explanation. The failure of the prosecution in that regard is fatal to its cause, as the Court will have no choice but to resolve the doubt in favor of the accused.

Under the circumstances, this Court cannot help viewing the execution of the Affidavit of Desistance as a confirmation of a scheme to extort money from Roberto. It is not entirely true that the unsubscribed Affidavit of Desistance has no legal effect whatsoever, and hence, must be treated as a mere scrap of paper. Evelyn admitted that she signed the affidavit. Therefore, even if not subscribed, it already partook the nature of a private document which was properly identified and authenticated during the trial under Sec. 20, Rule 132, of the Revised Rules of Court. Thus it may now be taken as proof of its contents. We cannot simply ignore that, at one point after the trial had commenced, the mother of the victim herself declared that the accused was innocent of the rape charges.

While an affidavit of desistance is not generally looked upon with favor, yet, it may create serious doubts as to the liability of the accused, especially if it corroborates his explanation about the filing of the criminal charges against him.[23]

Indeed, the existence of the Affidavit of Desistance opens a host of new questions that seriously hint at the mother's motives in filing the case. Both parties offer conflicting explanations as to why this document came about. According to Evelyn, she executed the document out of pity for the wife of Roberto who implored her to withdraw the complaint. Roberto however countered that Evelyn conditioned the preparation of the document on the payment of P50,000.00, which he refused to pay as he claimed to have done nothing wrong. We believe Roberto's version. No amount of imploring will convince a person to withdraw a complaint if truly she has sufficient and valid grievance against another. Moreover, it should be noted that Evelyn did not conduct one; as in fact the prosecution did not present any evidence on rebuttal;[24] in fact, there was no rebuttal at all. On the other hand, it is apparent from the records that the family of Roberto has a more stable income than the family of Evelyn, Roberto being a full-time taxi driver while his wife was employed in Malaysia. It is not unlikely that the relatively comfortable living of Roberto's family may have been the cause of some envy on the part of Evelyn, or was at least an economic inducement for her to concoct the rape story.

As held in *People v. Godoy*,[25] the facts of which bear some striking resemblance to the instant case -

Although the trial court did observe that a mother would not sacrifice her daughter to tell a story of defloration, that is not always the case as this Court has noted a long time ago. The books disclose too many instances of false charges of rape. While this Court has, in numerous cases, affirmed the judgments of conviction rendered by trial courts in rape charges, especially where the offended parties were very young and presumptively had no ill motives to concoct a story just to secure indictments for a crime as grave as rape, the Court has likewise reversed judgments of conviction and acquitted the accused when there are strong indications pointing to the possibility that the rape charges were merely motivated by some factors except the truth as to their commission. This is a case in point. The Court, therefore, cannot abdicate its duty to declare that the prosecution has failed to meet the exacting test of moral certainty and proof of guilt of appellant beyond reasonable doubt (citations omitted).

Among our well-entrenched principles is that an accused is presumed innocent until proved guilty. To overcome the presumption, his guilt must be shown by proof beyond reasonable doubt. While this does not connote absolute certainty, it means that degree of proof which, after an investigation of the whole record, produces moral certainty in an unprejudiced mind of accused-appellant's culpability. It signifies such proof that convinces and satisfies the reason and conscience of those who are to act upon it that accused-appellant is guilty of the crime charged. In the instant case, the constitutional presumption of innocence has not been overcome by the prosecution; hence, accused-appellant must be acquitted.

WHEREFORE, the conviction of accused-appellant ROBERTO MARIANO alias ATO of statutory rape, sentencing him to DEATH and imposing the accessory penalties consequent thereto, as well as to pay damages to Khirstine Custan, the offended party, plus costs, is REVERSED and SET ASIDE. Consequently, he is ACQUITTED of the crime charged and ordered released immediately from custody unless he is being held for some other lawful cause.

The Director of Prisons, or whoever is in charge of his detention by reason of this case, is DIRECTED to release immediately from custody accused-appellant Roberto Mariano alias Ato and to report to this Court the action taken hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago and De Leon, Jr., JJ., concur.

Mendoza J., on leave.

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- [1] Decision penned by Judge Gregory S. Ong, RTC-Br. 262, Pasig City, docketed as Crim. Case No. 107999-H.
- [2] Khristine's Certificate of Live Birth shows she was born 26 April 1990 so that she was four (4) years nine (9) months and nineteen (19) days, more or less, at the time of the commission of the crime; Records, p. 127.
- [3] Roberto Mariano had four (4) children: Carolyn, 18; Kathleen, 14; Ezequiel, 7; and, Chonalyn, 4. He had no child called "JC" although Khristine could be referring to Ezequiel who was about her age.
- [4] See Note 2. If Ezequiel was the only son of Roberto and most likely the "JC" referred to by Khristine, the only remaining children of Roberto would be girls; in which case, this will be inconsistent with Khristine's claim that the brother and sister of JC were then cleaning dishes when she and JC were playing.
- [5] Khristine initially claimed that it was Roberto's son who went inside and asked her to put on her shorts and ordered her to go home.
- [6] Medico-Legal Report No. M-204-95 reflected the findings of Dr. Jesusa N. Vergara on her medical examination of Khristine C. Custan on 17 February 1995 at the Crime Laboratory Service Office, Camp Crame.
- [7] Earlier referred to by Evelyn as "panty."
- [8] *People v. Lim*, G.R. No. 95753, 13 February 1992, 206 SCRA 176; *People v. Tacipit*, G.R. No. 109140, 8 March 1995, 242 SCRA 241.
- [9] *People v. Godoy*, G.R. Nos. 115908-09, 6 December 1995, 250 SCRA 676.
- [10] *People v. Castillon*, G.R. No. 100586, 15 January 1993, 217 SCRA 76.
- [11] *People v. Buyok*, G.R. No. 109771, 25 August 1994, 235 SCRA 622; *People v. Rivera*, G.R. Nos. 88298-99, 1 March 1995, 242 SCRA 26.
- [12] TSN, 12 August 1997, p. 7.
- [13] *Ibid.*
- [14] *Ibid.*
- [15] G.R. No. 91734, 30 March 1993, 220 SCRA 557.
- [16] *People v. Bautista*, G.R. No. 89967, 1 September 1994, 236 SCRA 102.
- [17] *People v. Godoy*; see Note 8.
- [18] TSN, 15 September 1997, p. 6.
- [19] See Note 11, pp. 6-7.
- [20] "Salaysay ni Evelyn Custan y Casadas," dated 18 February 1995, 10:35 a.m., with SPO4 Eufemia Tagle Mendoza as investigating officer, and SPO3 Salvio de Lima, as witness.

[21] Ibid.

[22] See Note 6.

[23] Alonzo v. Intermediate Appellate Court, et al. G.R. No. 68624, 30 June 1987, 151 SCRA 552.

[24] TSN, 15 September 1997, pp. 24-27.

[25] See Note 8.

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