

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NATHANIEL SURIO, ACCUSED-APPELLANT.***G.R. No. 139235. August 07, 2002*

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-139235/>**KAPUNAN, J.:**

For automatic review is the Decision dated June 28, 1999 of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 1224-M-97 finding accused-appellant Nathaniel Surio guilty beyond reasonable doubt of the crime of rape and imposing upon him the penalty of death.

In a complaint filed on March 24, 1997, accused-appellant Nathaniel Surio was charged with sexually abusing complainant Claranette Y. Ligon, the 12 year-old daughter of his common-law wife by her first husband, on six separate occasions from August 15, 1996 to March 11, 1997. The case was assigned for preliminary investigation to Presiding Judge Luisito G. Cortes of the Municipal Trial Court of Plaridel, Bulacan. After the conduct of preliminary investigation, the MTC found probable cause for rape committed on August 15, 1996 and acts of lasciviousness committed on March 11, 1997. The other four counts of rape were dismissed for lack of evidence.[1] The case was then forwarded to the Office of the Provincial Prosecutor for the filing of the appropriate information in court.

Before the Provincial Prosecutor could issue his resolution, complainant Claranette, assisted by her mother Marites Ligon, executed an affidavit on May 16, 1997, stating that she was desisting from prosecuting the rape cases, as well as those involving acts of lasciviousness. This prompted counsel for accused-appellant to write the Assistant Provincial Prosecutor, to whom the cases were assigned for review, requesting for their dismissal. Thus, on May 19, 1997, the Public Prosecutor filed a motion to dismiss the cases.[2]

However, on May 23, 1997, complainant's counsel wrote the Provincial Prosecutor of Bulacan requesting the withdrawal of the Affidavit of Desistance "due to the mistaken belief that the accused had settled to indemnify the civil aspect of the case for at least P300,000.00 and not P150,000.00." [3]

In a Resolution dated July 9, 1997, the Assistant Provincial Prosecutor recommended the filing of an Information for rape on six counts against accused-appellant.[4] This Resolution was later amended on August 15, 1997 which, in effect, reinstated the March 24, 1997 Order of the MTC judge for the filing of an Information for one count of rape and another for acts of lasciviousness.

On September 10, 1997, the Provincial Prosecutor filed the corresponding Information against accused-appellant for one count of rape committed as follows:

That on or about the 15th day of August 1996, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously with lewd designs, by means of force and intimidation have carnal knowledge of the said offended party, Claranette Y. Ligon, a 12 year old girl, against her will and without her consent.

Contrary to law.[5]

The case was docketed as Criminal Case No. 1224-M-97 before the Regional Trial Court of Malolos, Branch 78. Upon arraignment, accused-appellant pleaded “Not Guilty” and trial ensued.

The prosecution presented the testimonies of complainant Claranette Y. Ligon, the victim’s mother, Marites Ligon and Dr. Edgardo Gueco, the medico-legal officer.

Complainant testified that her mother, Marites Ligon, and accused-appellant lived together as common-law husband and wife for seven years. Around six o’clock in the morning of August 15, 1996, she (complainant) was in their rented apartment in Maria Lourdes, Plaridel, Bulacan, preparing for school. With her was accused-appellant. Her mother, Marites Ligon, left the house early to attend a town fiesta.[6]

After taking a bath, complainant proceeded to her mother’s room to dress up. She had already put on her panty and bra when somebody knocked. She wrapped herself in a towel and opened the door. Accused-appellant who was clad only in briefs suddenly entered the room and pushed complainant towards the bed. Accused-appellant went on top of her, removed her panty and inserted his penis into her vagina. Complainant shouted and kicked accused-appellant but her efforts proved futile.[7]

Shortly after accused-appellant inserted his penis into her vagina, complainant saw a sticky substance coming out of accused-appellant’s sexual organ. Accused-appellant took a face towel and wiped the sticky substance. He then ordered complainant to dress up. Before leaving, accused-appellant threatened to kill her mother should complainant tell her about the incident.[8]

Because of such threat, complainant did not tell anyone about what happened that day. Several months after the incident, accused-appellant was detained in the Plaridel police station. It was only then that complainant summoned enough courage to tell her mother what accused-appellant did to her. Her mother immediately reported the matter to the Plaridel police and brought complainant to the hospital for examination on the same day.[9]

Marites Ligon, complainant’s mother, corroborated her daughter’s testimony. She testified that she lived together with accused-appellant for six years, from 1992 to 1997. Complainant is her daughter by her first husband.[10]

On March 21, 1997, Marites had a serious quarrel with accused-appellant during which he mauled her. As a result, she filed a complaint against him for serious physical injuries and malicious mischief with the Plaridel police. Accused-appellant was immediately arrested and detained. It was only then that her daughter told her that she was raped by accused-appellant. Marites was shocked at her daughter’s revelation and as advised, she filed a complaint for rape against accused-appellant. She brought her daughter to San Fernando, Pampanga for medical examination. Prior to the revelation, she noticed that her daughter appeared to be always in a state of shock (“tulala”) and was always sad and crying.[11]

Dr. Edgardo Gueco, Chief of the Medico-Legal Division of the PNP Crime Laboratory, testified that on March 21, 1997, he conducted a physical examination on the victim. He found no signs of recent trauma but there were healed lacerations on the victim’s hymen supporting the conclusion that she had previous sexual intercourse.[12] However, he could not tell whether such sexual intercourse was forcibly done. The test was negative for the presence of spermatozoa and showed that complainant was in a non-virgin state physically.[13]

The evidence for the defense, on the other hand, consisted of the testimonies of Lolita Tayao, PO3 Reynaldo Rivas, Rosalinda Montehermoso, accused-appellant’s mother Aurora Surio, and accused-appellant himself.

Lolita Tayao[14] stated that on March 20, 1997, Marites Ligon, went to her house and told her that she was mauled by accused-appellant. For this reason, Marites asked Tayao to connive with her (“kinantsaba at

kinasabwat”) and charge accused-appellant of raping her daughter Claranette. Out of pity, she assented to Marites’ request and made such a report to the police station.[15] However, Tayao was later bothered by her conscience so she went back to the police and retracted her statement. She executed a sworn statement dated April 16, 1997, which stated, among others: “Nasabi niya sa akin na para madiin ng husto si Nathaniel Surio na kanyang kausapin ang kanyang anak na si Claranette Ligon at ako’y kanyang ipakikilala na tiyahin ng kanyang anak na para sabihin sa akin na nagsumbong ang kanyang anak na siya (Claranette) ay ginahasa ni Nathaniel Surio, na hindi naman totoo na nagahasa ang kanyang anak” and “Na sinabi rin sa akin ni Marites Ligon na kaya nya lang gagawin ang ganitong kasinungalingan ay para makaganti sa ginawang pambubugbog sa kanya ng kanyang kinakasama na si Nathaniel Surion.”[16]

PO3 Reynaldo Rivas corroborated Tayao’s assertion that she executed a statement before the Plaridel police recanting her first statement which charged accused-appellant with rape of complainant. He narrated that on several occasions, he saw Tayao in the police station accompanying Marites Ligon who was then filing a complaint against accused-appellant. On April 16, 1997, after an information has been filed, Tayao went back unaccompanied to the police station and executed a sworn statement alleging that accused-appellant was merely framed-up by Marites. Because such allegation was contrary to her first statement, Rivas asked Tayao to have her statement subscribed before a notary public.[17]

Accused-appellant Nathaniel Surio testified that Marites Ligon was his common-law wife from 1992 to 1997. They resided in Ma. Lourdes Subdivision, Plaridel, Bulacan, occupying the third unit of an apartment owned by a certain Mrs. De Jesus while Marites’ daughter (complainant) resided with a friend in the next unit, Unit No. 4.[18] Accused-appellant worked as lineman-driver of Meralco in its office in Agnaya, Plaridel, Bulacan.[19]

On August 14, 1996, he went to work from seven o’clock in the morning to three o’clock in the afternoon. Because it was payday, he went drinking with some friends after office hours and arrived home at around 11:30 in the evening. The following day, August 15, 1996, he was awakened by Marites who was furious at him for coming home late and for not giving her his salary. She also suspected him of keeping a mistress. Marites cursed him, slapped him in the face and boxed him.[20] Accused-appellant retaliated and hit Marites. Complainant who was preparing for school that morning, saw and heard everything that transpired between her mother and accused-appellant. When she saw accused-appellant hit her mother, complainant cursed and shouted at him. Marites threatened to send accused-appellant to jail and complainant told him that she will help her mother in having him imprisoned. After the incident, accused-appellant went to his place of work, Marites left the house while complainant went to school.[21]

The mother of accused-appellant, Aurora Surio, testified that after the case was filed, Judge Luisito Cortez issued an order fixing bail in the amount of P200,000.00. While she was trying to raise the amount, she was approached by Atty. Loy, counsel for complainant, and a certain Pablo Macasiray, suggesting that instead of using the P200,000.00 as bail bond, the money could be given directly to complainant and her mother and the case would be withdrawn. Thus, Aurora sold a parcel of land she owned for P150,000.00 and gave the proceeds to Macasiray. Complainant and her mother then executed affidavits of desistance.[22]

Finally, the defense also presented Rosalinda Montehermoso who attested to the fact that the town fiesta in Hagonoy, Bulacan is celebrated every 28th day of August and that there was neither a feast nor a barrio fiesta in Hagonoy on August 15, 1996 contrary to complainant’s allegation.[23]

After the reception of evidence for both parties, the trial court, on June 28, 1999, rendered a decision convicting accused-appellant and sentencing him as follows:

WHEREFORE, the foregoing considered, this Court hereby finds accused Nathaniel Surio GUILTY beyond

reasonable doubt of the offense of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentences him to suffer the penalty of DEATH and to pay private complainant Claranette Ligon the amount of P75,000.00 as moral damages. With costs.

SO ORDERED.[24]

By reason of the imposition of the penalty of death, the case is now for automatic review by this Court. Accused-appellant raised the following errors in his Brief:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED BASED ON THE INCREDULOUS AND INCONSISTENT STATEMENTS OF PROSECUTION WITNESSES PARTICULARLY OF CLARANETTE LIGON

II

LIKEWISE THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE THEREBY IMPOSING THE SUPREME PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION THE AFFIDAVIT OF DESISTANCE EXECUTED BY THE COMPLAINANT AND HER MOTHER IN ARRIVING INTO A JUDGMENT OF CONVICTION AGAINST THE ACCUSED.[25]

In every criminal prosecution, the guilt of the accused must be established by proof beyond reasonable doubt in order to warrant a conviction. Proof beyond reasonable doubt is that degree of proof which produces conviction in an unprejudiced mind.[26] It is not the absolute certainty of guilt but only a moral certainty as to the presence of the elements constituting the offense, as well as the identity of the offender.[27]

This exacting standard of proof beyond reasonable doubt, the Court observed, acquires more relevance in rape because an accusation of rape is fairly easy to make but difficult to prove, and even more difficult for the accused, though innocent, to disprove.[28] Moreover, the lone testimony of the victim may be made the sole basis of a conviction for rape, if such testimony is clear, positive and credible.[29]

The matter of the assessment and evaluation of the credibility of witnesses and their testimonies, such as that of a victim in a rape case, is best left to the trial court.[30] The Court has consistently accorded with utmost respect the findings and conclusions of the trial court on the credibility of witnesses and their testimonies because it has the advantage of directly observing the demeanor and comportment of witnesses when they testify. However, when there is a showing that the trial court failed to appreciate certain facts and circumstances that would have altered its conclusion, it is incumbent upon the Supreme Court to correct such a mistake.[31]

After a careful study of the case under scrutiny, the Court finds sufficient grounds to overrule the factual findings and conclusions of the trial court especially as to the credibility of complainant's testimony.

In her direct examination, complainant narrated the manner in which she was allegedly raped by accused-appellant on August 15, 1996 in this wise:

Q On August 15, 1996, about 6:00 a.m., can you still remember where you were at that time?

A I was in our house.

xxx

Q Who was with you at that time if you can still remember

A Me and my stepfather.

Q You are referring to accused Nathaniel Surio?

A Yes, sir.

Q How about your mother, where was she at that time?

A She was at a fiesta.

xxx

Q On August 15, 1996, about 6 AM, can you still remember what you were doing at that time?

A Taking my bath.

xxx

Q After taking bath, what did you do next, if any?

A I am about to dress up.

Q Where were you dressing up?

A In the room, sir.

Q Which room are you referring to?

A Room of my mother and stepfather.

Q Where (sic) you able to dress up at that time?

A Only my panty and bra.

xxx

Q While dressing up, was there any occasion you saw your stepfather?

A Yes, sir.

Q When was that?

A In the morning.

Q How did you see him while you were dressing up?

A I am dressing inside the room when my stepfather knocked on the door then I opened the door.

xxx

Q You said you opened the door when you heard your stepfather knocking, will you describe to the Honorable Court what you were wearing at that time.

A Only panty and bra.

xxx

Q What happened next when you opened the door to your stepfather?

A He removed my panty and bra.

Q And what did you do if any when your stepfather started removing your bra and panty?

A I was resisting.

Q How are you resisting him?

A By kicking him.

Q And was your stepfather able to remove your bra and panty?

A Yes, sir.

Q What happened next?

A He lied (sic) me on a bed.

Q When your father entered the room, describe to the court what he was wearing at that time?

A Only brief.

Q And you said your father caused you to lie on the bed, did you lie on the bed?

A He pushed me.

Q And what happened next?

A He inserted his penis to my vagina.

Q Did you feel anything after your stepfather inserted his penis into your vagina?

A Yes, a sticky substance came out.

xxx

Q After you felt that sticky substance, what did the accused do, if you know?

A He took a face towel.

Q What did he do with the face towel?

A He wiped his penis.

xxx

Q What about you, what were you doing at that time?

A I am dressing up.

Q What did your stepfather do after wiping his penis with face towel?

A He dressed up.

Q After dressing up, what did he do?

A He told me not to tell anyone and once I do, he will kill my mother.

Q After making that threat, what else did accused do?

A He dressed up and left.

Q What about you, were (sic) did you go after that incident?

A I went to school.

xxx[32]

However, during the preliminary investigation conducted by Presiding Judge Cortez, complainant alleged that:

. . . on August 15, 1996, while she was dressing herself to go to school at around 6:00 in the morning, the accused, Nathaniel Surio, upon seeing her, dragged her to go inside the room of her mother and Nathaniel Surio; that once inside, the accused required to undress her; that when she resisted, the accused instead undressed her and dressed her with a duster “nighties” and covered her mouth to prevent the victim from shouting and thereafter, required the victim to lay on bed; the accused placed on top of the victim with warning not to shout otherwise he will kill her and her mother who at that time was at the market buying food. Thereafter, the accused inserted his penis to the private part of the complainant, and succeeded with his vestial (sic) desire.[33]

It is significant to note that complainant’s allegations in the preliminary investigation and her testimony during trial vary in material points.

First, complainant alleged that accused-appellant dragged her towards the room of her mother and

accused-appellant. During trial, however, she claimed that she was already inside the room getting dressed when accused-appellant knocked on the door, entered wearing only briefs, and pushed her towards the bed. She reiterated this during cross-examination, to wit:

Q Now, you said during your direct testimony that after taking a bath, you went inside the room of your mother and stepfather, is it not?

A Yes, sir.

Q And you were dressing inside the room, is it not?

A Yes, sir.

Q And it is during that time that your stepfather knocked in the room?

A Yes, sir.

Q Now, please describe to the court how your stepfather knocked in that room, was it a loud knock or a soft knock?

A Soft knock.

Q And you opened the door.

A I opened the door but I was wrapped with a bath towel.

xxx

Q When you opened the door and as you said you were just wrapped in a bath towel, what happened next?

A My stepfather pushed me on the bed.[34]

Second, complainant stated in the preliminary investigation that accused-appellant asked her to undress and when she refused, he undressed her and made her wear a “duster” (nighties).[35] She again changed her testimony during trial and testified that she just finished taking a bath and was wearing only her underwear when accused-appellant knocked at the door.

Third, in her direct as well as cross-examination, complainant alleged that on the day of the incident, August 15, 1996, she was left alone with accused-appellant in her mother’s house because the latter was attending a town fiesta in Hagonoy, Bulacan.[36] This is again contrary to her allegation during the preliminary investigation that her mother went to market that morning.

These inconsistencies in complainant’s allegations cannot be considered so minor as to not affect the veracity of her accusation. In fact, these inconsistencies bear on material facts attending the rape allegedly committed on August 15, 1996 for which accused-appellant was indicted. If complainant could remember exactly the date of the alleged rape, six o’clock in the morning of August 15, 1996, it is baffling why she could not recall the circumstances surrounding the same and the manner in which the act was committed. Certainly, the act of opening the door to a person and being pushed by that person towards the bed is different from being dragged and pulled by someone towards a room. In the same manner that being ordered to undress and then asked to wear a “nightie” is not the same as wearing only underwear when accused-appellant entered who then removed such underwear himself. The Court has ruled that when serious and inexplicable discrepancies in important details are found in a witness’ testimony, his/her testimony may be disregarded.[37] Also, when discrepancies pervade the testimonies of prosecution witnesses such that the totality of the prosecution evidence fails to constitute a coherent account, the conviction of the accused cannot be justified.[38] In this case, where the lone testimony of the complainant may be the sole basis for conviction, the serious discrepancies in her testimony hardly lend credence to her supposed positive testimony and cast a serious doubt as to the credibility of her charge.

The trial court also erred in failing to appreciate the testimony of witness Lolita dela Cruz-Tayao in favor of

accused-appellant. Tayao positively declared that she was asked by Marites Ligon to pretend that she was the aunt of complainant and to falsely charge accused-appellant of raping the latter. Her statement was duly contained in an affidavit dated April 16, 1997 which stated, among others:

xxx

Na, sinabi rin niya sa akin na para madiin ng husto si Nathaniel Surio na kanyang kausapin ang kanyang anak na si Claranette Ligon at ako'y kanyang ipakikilala na tiyahin ng kanyang anak na para sabihin sa akin na nagsumbong ang kanyang anak na siya (Claranette) ay ginahasa ni Nathaniel Surio, na hindi naman totoo na nagahasa ang kanyang anak;

Na, sinabi rin sa akin ni Marites Ligon na kaya nya lang gagawin ang ganitong kasinungalingan ay para makaganti sa ginawang pambubugbog sa kanya ng kanyang kinakasama na si Nathaniel Surio;

xxx

Na, ginawa ko ang salaysay na ito sa sarili kong kagustuhan at walang sinumang pumilit, tumakot o nag-bigay ng pabuya upang gawin ito.

xxx[39]

This affidavit was duly presented in evidence and the execution thereof was corroborated by defense witness PO3 Reynaldo Rivas who narrated that after she implicated accused-appellant in the rape case, Lolita Tayao went back to the police station alone and retracted this statement voluntarily.[40]

Lolita Tayao's testimony on the witness stand was likewise categorical:

Q Madam witness, on March 20, 1997, do you still recall where you were?

A Yes, sir.

Q Where were you on that date?

A I was in our house because that is the graduation day of my youngest child.

Q In the afternoon of that date, could you recall if there was anything that happened while you were in your house?

A Yes, sir.

Q What happened during that afternoon on that date?

A On that date, Maritess Ligon proceeded in our house and she was asking for help because she was being mauled by Nathaniel Surio.

Q After Maritess Ligon came to you and asked your help because she was allegedly mauled by Nathaniel Surio, what happened?

A Maritess Ligon asked me to connive with her that her daughter was raped by Nathaniel Surio.

Q I would request the two word used by the witness kinantsaba at kinasabwat be placed on record. Mrs. witness, after you were asked by Maritess Ligon to connive with her and to say that her daughter was raped by Nathaniel Surio, what else happened?

A I returned to the municipal building because "hindi ko kasi matanggap na salita na yon na di naman totoo."

Q You said that you went back to the municipal building now, which municipal building are you referring to?

A Plaridel, Bulacan.

Q Did you reach the municipal building of Plaridel?

A Yes, sir.

Q When you went there, according to you, with whom were you?

A I'm alone, sir.

Q Upon reaching the municipal building of Plaridel, what happened?

A I gave my statement there about the incident.[41]

The prosecution failed to rebut the foregoing testimony. Marites Ligon did not deny that she knew Tayao and that on March 20, 1997, she went to see the latter after she was mauled by accused-appellant. This fact was also corroborated by SPO3 Rivas who testified that prior to April 16, 1997, witness Tayao and Marites Ligon used to go to the police station together, to wit:

Q Will you please tell the Court if you have occasion to meet a certain Lolita Tayao during that investigation?

A Yes, sir.

Q Will you please tell the circumstances when you met this Lolita Tayao?

A I met her when I brought the rape victim to the PNP Crime Laboratory, Camp Olivas, San Fernando, Pampanga.

xxx

Q After that you have met again Lolita Tayao?

A Yes. Everytime the complainant went to our office she was with the mother of the private complainant.

Q Do you know the name of the mother of the private complainant?

A As far as I recall, Marites.

xxx

Q Will you tell the Court under what circumstances?

A Regarding the frame up case filed by the mother of the victim against the accused.

Q Tell the Court if this testimony given to you by Lolita Tayao reduced in writing.

A Yes, sir.

xxx

Q Will you please explain if why this statement given to you was notarized by another person?

A Because after Lolita Tayao voluntarily gave her statement I advised her to subscribe to any notary public.

Q Why did you advise that?

A Because at first Lolita Tayao was frequently accompanied by the mother of the complainant and when I filed the case she went to our office and voluntarily gave the statement in favor of the accused.[42]

Tayao's assertion that the rape charge was preceded by a serious altercation between Marites and accused-appellant was in fact admitted in part by Marites Ligon herself. Marites averred that on March 20, 1997, she had a violent quarrel with accused-appellant and the following day, she filed a complaint against him for physical injuries and malicious mischief with the Plaridel police. Two days after, March 24, 1997, she assisted her daughter Claranette in filing the rape charge against accused-appellant.[43]

The Court has ruled that when there is nothing to indicate that a witness was actuated by improper motives, her positive and categorical declarations on the witness stand under solemn oath deserve full faith and credence.[44] Tayao's declaration that she was asked by Marites Ligon to conspire with her and falsely charge accused-appellant of raping Claranette is clear, positive and categorical. There is no evidence of any ill or improper motive on the part of Tayao that would discredit her testimony. She was not in any way related to

accused-appellant. As a matter of fact, it was complainant's mother who knew Tayao because they were friends. Neither was the prosecution able to show that some form of consideration induced Tayao to retract her first statement and testify in favor of accused-appellant. The Court notes that the prosecution did not at all try to rebut Tayao's testimony.

Finally, we rule that the trial court failed to appreciate the value of the affidavit of desistance executed by complainant and her mother. On May 16, 1997, complainant executed an affidavit of desistance which reads:

AKO, CLARANETTE Y. LIGON, matapos manumpa ng ayon sa batas, ay malaya at kusang-loob na nagpapahayag ng mga sumusunod:

Na ako ang siyang nagsasakdal laban kay Nathaniel Surio sa Hukumang Pambayan ng Plaridel, sa ilalim ng sumbong na makikilala bilang Crim. Case No. 11555-97 sa salang "RA 7659, Sec. 11 (Six Counts of Rape)", na sa ngayon ay nasa Tanggapan ng Panlalawigang Tagausig ng Bulacan;

Na ako ay wala nang hangarin na ipagpatuloy pa ang nasabing sakdal laban sa kanya, sapagkat matapos kong pagbalikan ang mga pangyayari, aking napagtanto na ito ay bunga lamang ng hindi namin pagkakaunawaan.

Na hinihiling ko sa Kgg. na Tanggapan ng Panlalawigang Tagausig ng Bulacan, na pawalang saysay ang aking sakdal laban sa nasabing si Nathaniel Surio.

CLARANETTE Y. LIGON

Nagsasalaysay[45]

This affidavit and copies thereof are duly attached to the records of the case repudiating the Solicitor General's claim that there is no such affidavit. The prosecution tried to deny its existence by presenting Marites Ligon who testified on rebuttal that said affidavit referred to the cases for malicious mischief and serious physical injuries filed against accused-appellant. However, what Marites was referring to was the affidavit of desistance she executed herself and not that of complainant.[46] Records show that there were in fact two affidavits of desistance - one was executed by Marites relative to the cases for malicious mischief and serious physical injuries filed against accused-appellant where Marites herself was the complainant;[47] the other affidavit was executed by complainant Claranette Ligon relative to the six counts of rape she filed against accused-appellant.[48] While it is true that counsel for complainant asked the provincial prosecutor to withdraw the affidavit of desistance executed by complainant, it is relevant to note that the reason for such withdrawal was insufficiency of the amount offered, to wit:

xxx

This is to request your good Office to WITHDRAW THE DESISTANCE (copy attached) executed by my clients (Marites Ligon and her daughter Claranette Ligon, rape victim), due to the mistaken belief that the accused had settled to indemnify the civil aspect of the case for at least P300,000.00 and not P150,000.00.

xxx[49]

This fact was corroborated by Aurora Surio, accused-appellant's mother, who testified that when the Presiding Judge issued an order setting bail for P200,000.00, counsel for complainant (Atty. Loy), through a certain Pablo Macasiray, suggested that the amount be given instead to complainant and her mother who needed it badly in exchange for the withdrawal of the rape case. Her testimony reads:

xxx

ATTY. PUNO:

Madam witness, after this Order was issued by Judge Louie Cortez, what happened?

A Because of the amount I need and I'm only poor person I need to raise that P200,000.00. Atty. Loy asked somebody together with Maritess and Claranette by the name of Pablo Macasiray.

Q By the way who is this Atty. Loy?

A Atty. Loy is a lawyer at Camp Aguinaldo and the lawyer of the private complainant.

Q So, what happened after that?

A Pablo Macasiray went to our house several times and informed us that instead of paying P200,000.00 for the bail of my son he just told us the said amount of money to the child. They were the one who approached us sir, so that the case will be dismissed.

XXX

Q After that what happened?

A Because during that time I don't have money and Pablo Macasiray frequented to our place and he told us that the child needed the money very badly. And because I have a small lot I sold the same and gave the amount of P150,000.00 just to execute the affidavit of desistance.

XXX

Q At that time, Madam witness, will you please tell the Court if Nathaniel Surio knew about this circumstances that you have mentioned, the execution of these Affidavit of Desistance?

A No, sir.

XXX

PROS. SANTIAGO:

Madam witness, in connection with these Affidavit of Desistance that you have just identified a while ago executed by one Claranette Ligon, did you personally pay Claranette Ligon?

A The truth is they were the one (sic) who went to our place. They settled with us together with Atty. Loy, Claranette Ligon and Pablo Macasiray and we proceeded to the Fiscal's Office.

XXX

Q This Affidavit of Desistance that you have identified were (sic) signed by Claranette Ligon before Fiscal Santos, is that what you mean?

A Yes, sir.

XXX

Q When you came to know that Atty. Loy filed that motion to withdraw the execution of the Affidavit of Desistance, what did you do?

A My son got mad at me. My son told me that's the reason "para madiin ako". What I'm asking for you to prepare is the payment for my bail bond.

XXX

PROS. SANTIAGO:

My question, what did you do upon learning that Atty. Loy filed a motion to withdraw the execution of the Affidavit of Desistance?

A First, I approached my counsel.

Q Did you try to get or retrieve the money given to the victim?

A Yes. I tried.

Q What happened?

A They did not give the money.[50]

While affidavits of recantation or desistance can be easily obtained for monetary consideration or through intimidation,[51] such affidavits can, likewise, be used as a tool for extortion of innocent people under threat of criminal prosecution and incarceration.

In *People vs. Bravo*,[52] we have said that the unpardonable assault on a child is tragic and the trial court may be swayed by the tide of human indignation; however, the primacy of the presumption of innocence in favor of the accused must always be upheld when the evidence at hand falls short of the quantum required to support a conviction. Evidence showing a mere possibility of guilt is not sufficient to sustain a conviction.[53] The conscience must be satisfied that the crime has been committed by the person on trial. In the present case, the prosecution failed to establish the guilt of accused-appellant by proof beyond reasonable doubt. The material discrepancies in complainant's testimony, the evidence of frame-up and the execution of an affidavit of desistance taken together are strong indications pointing to the possibility that the charge was motivated by some factors other than the truth as to its commission. Thus, there being a serious doubt as to accused-appellant's guilt, acquittal must follow.

WHEREFORE, the Decision dated June 28, 1999 of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 1224-M-97 finding accused-appellant Nathaniel Surio guilty beyond reasonable doubt of the crime of rape and imposing upon him the penalty of death is REVERSED and accused-appellant Surio is hereby ACQUITTED of the crime charged with costs de oficio. His immediate release is hereby ordered unless he is held for some other valid charges.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez and Corona, JJ., concur.

Puno, J., no part, related to counsel.

[1] Records, pp. 275-277 (Order dated March 24, 1997 by Presiding Judge Luisito G. Cortez, MTC, Plaridel, Bulacan).

[2] *Id.*, at. 273-274.

[3] *Id.*, at 42.

[4] *Id.*, at 3.

[5] *Id.*, at 2.

[6] TSN of May 22, 1998, pp. 1-2.

[7] *Id.*, at 4-5.

[8] *Id.*, at 5-6.

[9] *Id.* at 7-8.

[10] TSN of August 7, 1998, pp. 3-4.

[11] *Id.*, at 4-6.

[12] TSN of July 10, 1998, pp. 3-4.

[13] *Id.*, at 4-5; see also Medico-Legal Report, Records, p. 158.

[14] Also referred to as Lolita dela Cruz in the TSN.

- [15] TSN of September 16, 1998, pp. 2-3.
- [16] *Id.*, at 3-5.
- [17] TSN of November 13, 1998, pp. 2-4.
- [18] TSN of January 22, 1999, pp. 4-5.
- [19] *Id.*, at 8.
- [20] *Id.*, at 9-11.
- [21] *Id.*, at 12-14.
- [22] TSN of February 26, 1999, pp. 2-4.
- [23] TSN of November 13, 1998, pp. 7-8.
- [24] *Supra*, Note 1, p. 362.
- [25] Rollo, pp. 65-66.
- [26] *People vs. Bao-in*, 295 SCRA 745 (1998).
- [27] *People vs. Mijano*, 311 SCRA 81 [(1999).
- [28] *People vs. Vidal*, 308 SCRA 1 (1999).
- [29] *People vs. Gementiza*, 285 SCRA 478 (1998).
- [30] *People vs. Magpantay*, 284 SCRA 79 (1998).
- [31] *People vs. Desoy*, 312 SCRA 432 (1999); *People vs. Caratay*, 316 SCRA 251 (1999); *Henedes vs. CA*, 316 SCRA 347 (1999); *People vs. Raganes*, 316 SCRA 457 (1999).
- [32] *Supra*, Note 6, pp. 2-6.
- [33] *Supra*, Note 1.
- [34] TSN of June 5, 1998, pp.7-8.
- [35] *Supra*, Note 33.
- [36] *Supra*, Note 34, pp. 2-3.
- [37] *People vs. Palma*, 308 SCRA 466 (1999).
- [38] *People vs. Diaz*, 308 SCRA 744 (1999).
- [39] Records, p. 269.
- [40] *Supra*, Note 17.
- [41] *Supra*, Note 15 , p. 3.
- [42] *Supra*, Note 17, pp. 3-4.
- [43] *Supra*, Note 11.
- [44] *People vs. Desito*, 303 SCRA 468 (1999).
- [45] Records, p. 272.
- [46] *Id.*, at 271
- [47] *Id.*
- [48] *Supra*, Note 44.
- [49] Records, p. 42.
- [50] *Supra*, Note 22, pp. 3-6.
- [51] *People vs. Bermudez*, 309 SCRA 124 (1999).
- [52] 318 SCRA 812 (1999).
- [53] *People vs. Comesario*, 306 SCRA 400 (1999).

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