

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO (FERDINAND) MONJEY ROSARIO @ FERNAN, LORDINO (BERNARD) MAGLAYA Y ALVAREZ @ ODENG (ACQUITTED), CHRISTOPHER BAUTISTA Y ...

G.R. No. 146689. September 27, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

To administer by final judgment the dreaded lethal injection on the basis of cumulus circumstantial evidence - consisting mainly of the testimony of a witness who failed and refused to return to court and submit to cross-examination four (4) times - is judicial tyranny of the highest order, which this Court should never commit. In conscience and in absolute fidelity to our trust, we cannot agree to what would amount to a blatant misuse of the strong arm of the law, in complete disregard of the constitutional guaranties of the accused. Where the life of a human being - who is presumed to be innocent - is at stake, we should require nothing less than proof beyond reasonable doubt. And if proof is by circumstantial evidence, the circumstances must be established to form an unbroken chain of events leading to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime. Otherwise, *indubilis reus est absolendus*. All doubts must be resolved in favor of the accused.

To illustrate: A met B with blood-stained clothes hurriedly coming out of the room still holding a knife dripping with blood. A entered the room and saw his wife lifeless on the floor with blood still oozing from a stab wound on her chest. There was no other person in the room which had only one door for ingress and egress. By a chain of unbroken circumstantial evidence, there can be no other conclusion than that B and B alone, and no other, could have stabbed A's wife to death.

The case before us is a classic example of circumstantial evidence of what the above illustration is not. Aside from the unexplained non-appearance of the "principal witness" at his scheduled cross-examination no less than four (4) times, the chain of circumstances brought out by the witness is too weak - not unbroken to incriminate the accused-appellant in the crime charged. The possibility of other people being responsible therefor is not remote considering that it supposedly happened in a wide open ricefield freely accessible to people from all walks of life, as may be shown hereunder:

Fernando (Ferdinand) Monje y Rosario alias Fernan, together with Lordino (Bernard) Maglaya y Alvarez alias Odeng, Christopher Bautista y Rosario alias Totde and Michael Castro y Osias alias Iking were charged with rape with homicide for the brutal rape and killing of 15-year old Imee Diez Paulino.[1] On 13 November 2000, after trial, the Regional Trial Court, Branch 12, of Malolos, Bulacan, acquitted Maglaya, Bautista and Castro but convicted Monje of the crime charged and sentenced him to death, and to indemnify the heirs of the victim P75,000.00 as actual damages and P50,000.00 as moral damages, plus costs.[2]

As the trial court found, in the evening of 24 April 1997 at around 9:00 o'clock Imee Diez Paulino asked

permission from her mother to play bingo at the house of their barangay captain at Francisco Homes, San Jose del Monte, Bulacan. Three (3) days later, Imee's lifeless body was found lying in the ricefields naked, except for her brassiere, with several injuries including a fractured skull that caused massive brain hemorrhage. The body was already in a state of decomposition. The medico-legal officer surmised that the injuries on the skull were caused by fist blows or by a hard blunt instrument. The genital examination disclosed that Imee was brutally raped before she was killed. Her hymen was completely lacerated and there was a 2.5-centimeter laceration of the perineum. The medico-legal officer further opined that such laceration could not have been caused by an ordinary-sized penis but by a much bigger object forcibly inserted to the vagina. The blood clots in the vaginal area showed that Imee was still alive when the object was forced into her.

During the wake, Michael Cordero, a tricycle driver plying the vicinity of Francisco Homes, told Maria Isabel Diez Paulino, mother of Imee, that in the evening of 24 April 1997 at around 11:00 o'clock he saw the victim back-riding with accused-appellant Fernando Monje with three (3) other persons in the sidecar whom he did not know. From a distance of about six (6) arms length he allegedly saw Imee, accused-appellant Monje, and the three (3) unidentified persons alight from the tricycle and walk towards the ricefields. At about 1:00 o'clock the following morning only Monje and his three (3) companions returned to the tricycle.

When placed on the witness stand Cordero identified the three (3) companions of Monje as Lordino Maglaya, also a tricycle driver, Christopher Baustista, a taxi driver, and Michael Castro, a bus conductor, all residents of Francisco Homes.

Another prosecution witness Jojit Vasquez testified that at about midnight of 24 April 1997 he eloped with Irene, sister of Imee, and they went to the vacant house of a certain Alvin situated also at Francisco Homes. At about 2:00 o'clock the following morning, 25 April 1997, Monje and Maglaya followed by Bautista and Castro arrived at the same house on board two (2) tricycles, but Bautista and Castro left after a short while. Monje appeared surprised, especially upon seeing Irene. At around 3:00 o'clock Jojit and Irene left the house and proceeded to Cubao where they boarded a bus for Pangasinan.

Monje denied complicity in the crime charged and pleaded for his acquittal. He claimed that on 24 April 1997 at about 9:00 o'clock in the evening he was already sleeping in his uncle's house in Francisco Homes, San Jose Del Monte, Bulacan. He further claimed that he never woke up until 6:00 o'clock the following morning.

Nobody saw the actual commission of the crime. But death now lurks upon accused-appellant Monje on the basis alone of the following circumstantial evidence put together by the court a quo: (a) the testimony of Michael Cordero to the effect that he saw the accused and his three (3) companions with victim Imee Paulino back-riding with the accused on a tricycle at around 11:00 o'clock in the evening of 24 April 1997 heading towards a ricefield, and that at around 1:00 o'clock the following morning he saw accused-appellant with three (3) companions returning to the tricycle without the victim; (b) the testimony of Jojit Vasquez that at around 2:00 o'clock in the morning of 25 April 1997 he saw the accused and his unidentified companions in the house of a certain Alvin; (c) the fact that the decomposing body of the victim was later found in a ricefield naked except for a brassiere; and, (d) that the accused went home to Cagayan two (2) weeks after he learned that an Information had been filed implicating him in the crime.

Quite significantly, these circumstances do not establish an unbroken chain of events that would show the complicity of the accused in the rape-slay of victim Imee Paulino. Apparently, the case for the prosecution is woven principally around the testimony of witness Michael Cordero. It must be emphasized however that his testimony was not sufficiently tested on the crucible of cross-examination, specifically, that significant portion of his direct examination where he purportedly saw the accused and three (3) unidentified persons returning to the tricycle from the ricefield without the victim around 1:00 o'clock the following morning.

After his initial cross-examination by defense counsel, witness Cordero failed and refused to return to court for the continuation of his cross-examination. In other words, except for his brief cross-examination which had barely scratched the surface, so to speak, and despite the insistence of the defense counsel to pursue his cross-examination and the repeated warnings from the trial court that it would be constrained to strike out and disregard his testimony should he fail to appear again, the witness stubbornly refused to return to court for his cross-examination.[3]

It bears stressing that the cross-examination of a witness is an absolute right, not a mere privilege, of the party against whom he is called. With regard to the accused, it is a right guaranteed by the fundamental law as part of due process. Article III, Sec. 14, par. (2), of the 1987 Constitution specifically mandates that "the accused shall enjoy the right to meet the witnesses face to face," and Rule 115, Sec. 1, par. (f), of the 2000 Rules of Criminal Procedure enjoins that in all criminal prosecutions the accused shall be entitled to confront and cross-examine the witnesses against him at the trial.[4] Cross-examination serves as a safeguard to combat unreliable testimony, providing means for discrediting a witness' testimony, and is in the nature of an attack on the truth and accuracy of his testimony. The purpose of cross-examination, however, is not limited to bringing out a falsehood, since it is also a leading and searching inquiry of the witness for further disclosure touching the particular matters detailed by him in his direct examination, and it serves to sift, modify, or explain what has been said, in order to develop new or old facts in a view favorable to the cross-examiner. The object of cross-examination therefore is to weaken or disprove the case of one's adversary, and break down his testimony in chief, test the recollection, veracity, accuracy, honesty and bias or prejudice of the witness, his source of information, his motives, interest and memory, and exhibit the improbabilities of his testimony.[5]

In other words, the ultimate purpose of cross-examination is to test the truth or falsity of the statements of a witness during direct examination. Unfortunately, for the accused, these objectives of cross-examination were never attained in this case because of the continued failure and refusal of witness Cordero to appear for his cross-examination. How can the truth be ascertained if the cross-examination is not completed?

In the Sur-Rejoinder of Mme. Justice Consuelo Ynares-Santiago, it is submitted that Cordero was sufficiently cross-examined on the substantial points of his direct testimony, citing *People v. Seneris*[6] which held that testimony may not be stricken from the record where the witness has already been sufficiently cross-examined.

We discussed at length in *Seneris* the effects of the absence or the incomplete cross-examination of a witness on the admissibility in evidence of his testimony on direct examination. The basic rule is that the testimony of a witness given on direct examination should be stricken off the record where there was no adequate opportunity for cross-examination. Of course, there are notable modifications to the basic rule which make its application essentially on a case-to-case basis. Thus, where a party had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits his right to cross-examine and the testimony given by the witness on direct examination will be allowed to remain on record.[7] But when the cross-examination is not or cannot be done or completed due to causes attributable to the party offering the witness, or to the witness himself, the uncompleted testimony is thereby rendered incompetent and inadmissible in evidence.[8] The direct testimony of a witness who dies before the conclusion of the cross-examination can be stricken only insofar as not covered by the cross-examination,[9] and the absence of a witness is not enough to warrant striking of his testimony for failure to appear for further cross-examination where the witness has already been sufficiently cross-examined, which is not true in the present case, or that the matter on which further cross-examination is sought is not in controversy.[10]

Under the facts of the present case, the prosecution witness Michael Cordero alone was responsible for his failure to appear on four (4) scheduled hearings for his cross-examination. He was absent from the hearings without valid

cause on record. In *Seneris*, the prosecution witness Mario Nemenio was not responsible for his failure to appear and complete his cross-examination owing to his untimely death. Hence, it was impossible for him to return to court for his cross-examination. On the other hand, Cordero was directed by the trial court to complete his cross-examination in four (4) scheduled hearings but which he failed to attend without giving any justifiable reason.

In the instant case, it is beyond cavil that the accused was not afforded adequate opportunity to cross-examine, not of his own design but because of the unexplained failure of the witness to appear on the succeeding four (4) scheduled hearings despite repeated warnings from the court. As may be noted, the defense counsel was barely through with his preliminary questions at the initial stage of his cross-examination. In fact, the defense counsel repeatedly manifested his desire to further cross-examine witness Cordero as counsel still had "important matters" to clear up with the witness regarding some "conflicting testimonies."^[11]

In the case before us, no less than the presiding judge himself recognized the need for further cross-examination when he warned that witness Cordero should return otherwise his testimony "not touched upon by the cross-examination would be stricken off the record." And the cross-examiner was insisting on the constitutional right of the accused to confront the witnesses against him and to cross-examine them. Even the other witness, Jojit Vasquez, failed to appear on 8 October 1998 when required as may be gathered from the order of the trial court issued on that date. In the instant case, prosecution witness Cordero failed to appear four (4) times for his cross-examination without justifiable reason, thus depriving the cross-examiner of the right to confront him and test his credibility and shed light on matters vital to the defense.

Combining the testimony of Cordero with those of the other prosecution witnesses, the identity of the perpetrator or perpetrators of this abominable crime could not have been deduced. A reasonable inference about a matter in issue, more specifically, about the likely existence of a fact in issue is necessary to achieve sufficient circumstantial evidence to support not only a conviction but the death sentence. Having allegedly seen the victim and the accused on that fateful evening of 24 April 1997 from a distance of six (6) arms length, what did the witness observe about the behavior of the victim in relation to the accused? Did the witness notice anything unusual about the appearance of the accused at 11:00 o'clock that evening of 24 April 1997, and again at 2:00 o'clock the following morning? Were there marked differences observed between the appearance of the accused at 11:00 o'clock that evening and their appearance at 2:00 o'clock the following morning? What clothes were they wearing? What were their sizes - height, build, or possibly their estimated weight? What was the color of the tricycle or tricycles or tricycles; was there only one or were there two (2) tricycles? Did the vehicle or vehicles have any distinguishing marks, dents, or other peculiar physical distinguishing appearances? Did the witness or witnesses notice any marks or signs of physical struggle on the bodies of the accused when seen at 2:00 o'clock in the morning of 25 April 1997? These are only a few of the questions which could have been propounded to witness Cordero to ascertain the truth or falsity of his testimony. But, unfortunately, he failed to attend the scheduled hearings for his cross-examination. Thus, he left more questions than answers on the circumstances of the tragedy that befell the Paulino family.

Cordero's cross-examination did not even delve on the matter that Monje and his three (3) unidentified companions returned to the tricycle without the victim. Besides, even if we take into account Cordero's partial cross-examination, the same would not have proved beyond reasonable doubt that Monje was the perpetrator of the heinous crime. At the very least, what it tended to establish was that at around 11:00 o'clock in the evening of 24 April 1997 Cordero saw Imee in the company of Monje and three (3) unidentified persons. But was this enough to deny the accused his fundamental right to life and to be free?

Right from the beginning, Cordero was already a reluctant witness for the prosecution. He could not be found in

the address given by the prosecution when the first subpoena ad testificandum was served. On the second attempt to secure his attendance in court, he could not again be located. Only his mother was at the given address but she even refused to sign and acknowledge receipt of the subpoena.[12] Cordero was cross-examined on 24 October 1997 but only briefly because of lack of time and the court had to call the other scheduled cases; on 29 January 1998 Cordero could not be cross-examined because, as the court observed, he appeared physically and emotionally unfit to go on with his cross-examination. He never showed up in court on the subsequent trial dates, i.e., 19 March, 28 August, 17 September and 8 October 1998. No valid excuse or justification can be discerned from the records to explain his continued refusal to appear for his cross-examination.

Being the supposed "star witness" for the prosecution, the presence of Cordero in court was the responsibility of the public prosecutor, and it was incumbent upon him to take the initiative in ensuring the attendance of his witnesses at the trial; more so in this case where, as admitted no less by the public prosecutor himself, "Cordero's testimony was very vital considering that the evidence against the accused were (sic) purely circumstantial and none of the witnesses saw the actual rape-slay." [13] The public prosecutor could have easily moved for an arrest, or in the alternative, to have the witness cited in contempt for his willful failure to appear at the trial as a material witness for the prosecution.

Quite significantly, during the hearing on 17 September 1998 the defense counsel moved that the testimony of Cordero be stricken off the record. But the public prosecutor prayed for a last chance to present Cordero on the next scheduled hearing, which was granted by the trial court with a warning that should Cordero "fail to give any satisfactory explanation for his failure to appear, his testimony given so far will be stricken off the record." [14] Then, on 8 October 1998 the court a quo made good its warning, albeit qualifiedly, and ordered thus -

Despite due notice, the last two (2) witnesses for the prosecution, Michael Cordero and Jojit Vasquez, as shown in the return of service by the Court Process Server, again failed to appear without justifiable cause or reason. For that reason, as agreed upon by the prosecution and the defense, the testimony so far given by witness Michael Cordero not touched upon by the cross-examination partially conducted by the defense counsel is hereby stricken off the record, saving that part of his testimony upon which he was duly cross-examined by the defense counsel (underscoring supplied).[15]

The foregoing order notwithstanding, the trial court convicted the accused and sentence him to death on the basis of the testimony of Cordero, but at the same time acquitting his three (3) co-accused after observing that such testimony was an "unexplained development." Without the benefit of a full cross-examination, the ex parte statements of the witness are too uncertain, shaky and unreliable to be included in the review of controverted facts. They cannot be allowed to form part of the evidence and their consideration by the court a quo was clearly unwarranted.

It is a well-entrenched doctrine that courts should only consider and rely on duly established evidence and never on mere conjectures or suppositions. Professor Wigmore explains that legal relevancy of evidence denotes "something more than a minimum of probative value," suggesting that such evidentiary relevance must contain a "plus value." [16] This may be necessary to prevent the court from being satisfied by matters of slight value, capable of being exaggerated by prejudice and hasty conclusions. Evidence without this "plus value" may be logically relevant but not legally sufficient to convict. It is incumbent upon the court to balance the probative value of such evidence against the likely harm that would result from its admission.

The verdict in a criminal case can be sustained only when there is relevant evidence from which the court can properly find or infer that the accused is guilty beyond a reasonable doubt. Thus, the test in determining the sufficiency of circumstantial evidence can be summed up as follows: Is the evidence sufficient to exclude every reasonable hypothesis proving innocence, except the guilt of the accused, given the circumstances of the case? In

reviewing criminal cases that could very well exact the ultimate penalty of death, we should do more than merely determine whether the trial court could reasonably conclude that the established facts were more probable than not. We must, in every instance, determine whether the trial court could reasonably conclude that the facts were certain to have occurred.

It bears stressing that even the trial judge who was privy to the entire proceedings below did not lend full credence to the entire testimony of Cordero. On the contrary, he even expressed doubt as to their veracity. Consider the following: When Cordero executed his sworn statement before the police authorities he declared that he did not know the identities of the three (3) companions of Monje, but when finally placed on the witness stand he readily identified them as Maglaya, Bautista and Castro. No explanation was proffered on why he flip-flopped on his testimony. Perplexed, the trial court described this as an unexplained development -

While the Court believes that he indeed saw at that time accused Monje with the victim before she was found dead at the same vicinity they were seen, the Court also believes that in both instances he saw with said accused in the same vicinity three other persons not known to him, like he said to the police. That is why his testimony at the trial that those three persons were the three other accused known to him and he pointed to in court as the companions of accused Monje when he saw them with the victim that fatal night, came as an unexplained development. If he saw and recognized that night his co-tricycle driver accused Monje, he could not have failed to recognize accused Lordino "Odeng" Maglaya, another tricycle driver at Francisco Homes, and most probably also accused Christopher Bautista and Michael Castro who were residents of Francisco Homes like he was, if indeed, these were the three unknown persons he saw that night with accused Monje and victim Imee.[17]

Interestingly, the trial judge acquitted the three (3) other accused based on the weakness of the testimony of Cordero and Vasquez. Strangely, however, based on the same weak evidence, the trial judge convicted the accused-appellant. Could it not be that the most logical step for the court a quo was to acquit likewise herein accused Monje in view of the clearly weak and unreliable testimony of witnesses Cordero and Vasquez? In hindsight, even if we take into account Cordero's partial cross-examination, the same would not have established an unbroken chain of circumstances proving beyond reasonable doubt that the accused was the perpetrator of the heinous crime. At most, what it tended to establish was that at about 11:00 o'clock in the evening of 24 April 1997 Cordero saw Imee in the company of Monje and three (3) unidentified persons and nothing more - nothing of the rape and slaying of Imee!

Indeed, other than the anemic testimony of Cordero, there is no evidence effectively linking the accused to the rape and brutal slaying of Imee Diez Paulino. The testimony of the second witness for the prosecution, Jojit Vasquez, as to the presence of the accused and his companions in the house of a certain Alvin, is likewise disappointingly unreliable to establish a logical relationship between the commission of the crime and complicity of the accused therein. This evidence, even if tied up with the testimony of Cordero that accused was last seen with the victim, does not establish a causal connection, nor support an inference, much less a conclusion, that accused had something to do with the rape and killing of the victim.

In assaying the probative value of circumstantial evidence, four (4) basic guidelines must be observed: (a) It should be acted upon with caution; (b) All the essential facts must be consistent with the hypothesis of guilt; (c) The facts must exclude every other theory but that of guilt of the accused; and, (d) The facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense. The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated not singly but collectively. The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. It is more like a puzzle which when put together reveals a convincing picture pointing to the conclusion that the accused is the author of the crime.[18]

Under the rules, circumstantial evidence is sufficient to convict an accused if the following requisites concur: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proved; and, (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Circumstantial evidence finds application in crimes such as rape with homicide. The nature of the crime of rape, where usually only the victim and the rapist are present at the crime scene, makes prosecutions for the complex crime of rape with homicide particularly difficult since the victim can no longer testify against the perpetrator of the crime.[19] Circumstantial evidence must form a complete and unbroken chain which, taking the evidence as a whole, leads directly to the guilt of the accused beyond reasonable doubt excluding any reasonable inference other than that of guilt.

Conceding *arguendo* that indeed Imee was last seen alive at 11:00 o'clock in the evening of 24 April 1997 in the company of the accused, yet, there was no other circumstance tending to prove that he was the one who raped and killed her. In fact, the time of the rape as well as the killing was not even satisfactorily established. The medico-legal officer did not give a categorical answer as to the exact time of death of the victim. On the contrary, he merely gave an approximation, i.e., "two (2), three (3), four (4) days or more." In fact, this approximation is of no help at all because if we reckon it from the time when the decomposing body of the victim was found, i.e., on 27 April 1997, the three (3) dates when the victim supposedly died would be 25 April (counting two (2) days from 27 April), 24 April (counting three (3) days from 27 April), 23 April (counting four (4) days from 27 April), and 22 April backwards (counting more than four (4) days). This would have been absurd and in no way coincide with the date when the victim was supposedly last seen alive.

Notably, no mention was made of the circumstances leading to the discovery and retrieval of the decomposing body of the victim. Plainly, there is no basis to deduce, much less conclude, that the victim was brought to and later recovered from the same ricefield.

So much time elapsed from the moment Imee was last seen alive on 24 April 1997 and when her decomposing body was found on 27 April 1997. Possibilities abound as to what actually happened between 24 and 27 April 1997. The prosecution miserably failed to fill the void with satisfactory and convincing evidence.

Accused-appellant allegedly "fled" to Cagayan after the filing of the Information, supposedly when he learned he was included therein, which the trial court considered as evidence of a guilty conscience. Although as a general rule flight is an indication of guilt, the same should not be flippantly considered. "Flight" is a circumstance from which an inference of guilt may be drawn only when it is unexplained and with an evident purpose of evading prosecution. The accused-appellant adequately explained that he went home to Cagayan upon the prodding of an uncle after a quarrel with his cousin who chided him as one they had to feed or "palamunin" since he was allegedly jobless. Accused-appellant went to his home province after more than two (2) weeks from the filing of the Information. Thus, he did not leave the place immediately after learning he was being implicated in the crime. There was no indication whatsoever that he intentionally made his presence scarce in his community to evade prosecution.

Admittedly, the evidence for the defense is weak and that the facts established do not entirely rule out the possibility that the accused could be responsible for the crime. However, from our understanding of basic procedural due process, his conviction must come from the strength of the prosecution evidence and not from the weakness of his defense; never upon possibilities. Proof, to sustain conviction, must withstand the test of reason and the constitutional right of confrontation. Mere suspicion of guilt, no matter how strong, cannot be permitted to sway judgment.

So, too, while this Court as a rule desists from disturbing the findings and conclusions of the trial court, especially

with respect to the credibility of witnesses, we must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt because the law presumes that the accused-appellant is innocent. This presumption must prevail until the end unless overcome by strong, clear and compelling evidence.

A proposal has been expressed for the remand of this case to the trial court for further proceedings, apparently to enable the prosecution to prove again what it failed to prove in the first instance. We cannot agree because it will set a dangerous precedent. Aside from its being unprocedural, it would open the floodgates to endless litigations because whenever an accused is on the brink of acquittal after trial, and realizing its inadequacy, the prosecution would insist to be allowed to augment its evidence which should have been presented much earlier. This is a criminal prosecution, and to order the remand of this case to the court a quo to enable the prosecution to present additional evidence would violate the constitutional right of the accused to due process, and to speedy determination of his case. The lamentable failure of the prosecution to fill the vital gaps in its evidence, while prejudicial to the State and the private offended party, should not be treated by this Court with indulgence, to the extent of affording the prosecution a fresh opportunity to refurbish its evidence.

In fine, we are not unmindful of the gravity of the crime charged; but justice must be dispensed with an even hand. Regardless of how much we want to punish the perpetrators of this ghastly crime and give justice to the victim and her family, the protection provided by the Bill of Rights is bestowed upon all individuals, without exception, regardless of race, color, creed, gender or political persuasion - whether privileged or less privileged - to be invoked without fear or favor. Hence, the accused deserves no less than an acquittal; ergo, he is not called upon to disprove what the prosecution has not proved.

WHEREFORE, the assailed Decision of the court a quo finding accused FERNANDO (FERDINAND) MONJE y Rosario alias Fernan guilty of rape with homicide is REVERSED and SET ASIDE for insufficiency of evidence; at least, on reasonable doubt. Consequently, he is ACQUITTED of the crime charged and is ordered IMMEDIATELY RELEASED from custody unless lawfully held for another cause.

The Director of the Bureau of Corrections is DIRECTED to implement this Decision immediately and to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynarez-Santiago, Sandoval- Gutierrez, Carpio, Austria-Martinez, Corona, Morales, and Callejo, Sr., JJ., concur. Mendoza, J., no part in deliberation.

[1] Rollo, p. 11.

[2] Decision penned by Judge Crisanto C. Concepcion, RTC-Br. 12, Malolos, Bulacan, in Crim. Case No. 795-M-97, Rollo, pp. 28-31.

[3] TSN, 28 November 1997, p. 24; id., 19 June 1998, p. 2; id., 17 September 1998, pp. 1-8.

[4] Francisco, Evidence, Third Ed., 1996, p. 459, citing *People v. Cole*, 43 N.Y. 508-512, and *Bradley v. Mirick*, 91 N.Y. 293.

[5] Id., at 560.

[6] G. R. No. L-48883, 6 August 1980, 99 SCRA 92.

[7] See *Savory Luncheonetter v. Lakas ng Manggagawang Pilipino*, G. R. No. L-38964, 31 January 1975, 62 SCRA 258.

[8] See *Ortigas, Jr. v. Lufthansa, et al.*, G. R. No. L-28773, 30 June 1975, 64 SCRA 610.

[9] *People v. Seneris, et al.*, citing *Curtice v. West*, 2 NYS 507.

[10] *People v. Seneris, et al.*, citing *Lew Choy v. Lim Sing*, 216 P. 888, 125 Wash. 631.

[11] TSN, 17 September 1998, p. 4.

[12] Original Records, Vol. I, p. 33.

[13] *Id.*

[14] *Id.*, p. 77.

[15] *Id.*, p. 82.

[16] See I Wigmore Sec. 28, 409-410.

[17] Judgment of 13 November 2000, *supra* at 3-4; Rollo, pp. 30-31.

[18] *People v. Licayan*, G.R. No. 144422, 28 February 2002.

[19] *Id.*

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