

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELINO PAREDES Y ALGARA, ACCUSED-APPELLANT.

G.R. No. 176154. October 05, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be reversed and set aside in this appeal by accused-appellant Marcelino Paredes y Algara, assisted by the Public Attorneys' Office, is the decision[1] dated May 30, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00366, affirming an earlier decision[2] of the Regional Trial Court (RTC) of Calamba City, Branch 34, in Criminal Case No. 11761-B, which adjudged appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to reclusion perpetua with moral and exemplary damages and civil indemnity.

Conformably with our decision in *People v. Cabalquinto*,[3] and subsequent cases, the real name of the rape victim in this case is withheld and instead fictitious initials (XXX) are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

The case commenced with a complaint,[4] dated July 29, 2001, signed by MMM,[5] therein alleging that sometime in the morning of the same date, at Jesusa Subdivision in Barangay Pooc, Santa Rosa, Laguna within the jurisdiction of the Municipal Trial Court (MTC) of Santa Rosa, the appellant, with intent to satisfy his lust, did then and there willfully, unlawfully and feloniously insert his penis into the labia of the pudendum of her daughter, XXX, then only about ten years old.

Appellant was detained since July 29, 2001 and continues to remain on detention until today.

Accompanying the aforesaid complaint is a Salaysay[6] of MMM dated “ika-30 ng Hulyo 2001” or one (1) day after the complaint date. In question-and-manner form, MMM's Salaysay reads:

1. TANONG:

Maari mo bang sabihin ang iyong tunay na pangalan at ilang bagay na maaaring pagkakilanlan sa iyo?

SAGOT:

[MMM], 40 taong gulang, biyuda at kasalukuyang naninirahan [sa] xxx.

2. T:

Anong dahilan at naririto kayo sa aming Himpilan?

S:

Idinudulog ko nga po ang anak ko.

3. T:

Bakit ano ang nagyari sa iyong anak?

S:

Sinabi po niya sa akin na ipinasubo ni Lino ang ari nito sa kanya.

4. T:

Anong ginawa mo ng malaman mo ang ginawa ni Lino sa anak mo?

S:

Nagpunta agad ako sa barangay at isinumbong ko ang ginawa ni Lino sa aking anak at hinuli siya ng Barangay at dinala dito.

5. T:

Alam mo ba ang tunay ng pangalan ni Lino?

S:

Marcelino Paredes y Algaraz.

6. T:

Kilala mo ba itong si Marcelino?

S:

Kalapit bahay po namin.

7. T:

Nasaan ka ng maganap ang mga pangyayari?

S:

Nasa [amin] po natutulog.

8. T:

Paano mo naman nalaman ang naganap?

S:

Ng dumating kasi ang anak ko ay naiyak siya kaya tinanong ko at doon niya sinabi ang ginawa ni Lino sa kanya.

xxx xxx xxx

Likewise accompanying the same complaint is another Salaysay,[7] dated ika-30 ng Hulyo 2001, purporting to be the statements of XXX in answering the questions of a police investigator. It reads:

01:

TANONG:

Ano ang iyong tunay na pangalan?

SAGOT:

[XXX].

02.

TANONG:

Ilan taon ka na?

SAGOT:

Ten.

03.

TANONG:

Nag-aaral ka na?

SAGOT:

Opo.

04.

TANONG:

Anong grade mo na?

SAGOT:

Grade II sa Zavalla.

05.

TANONG:

Marunong ka bang bumasa?

SAGOT:

Hindi pa po.

05.

TANONG:

Marunong kang sumulat?[8]

SAGOT:

Opo.

06.

TANONG:

Anong pangalan ng nanay mo?

SAGOT:

[MMM].

07.

TANONG:

Anong pangalan ng tatay mo?

SAGOT:

FFF

08.

TANONG:

Saan ka nakatira?

SAGOT:

Sa Pooc.

09.

TANONG:

Kailan ang birthday mo?

SAGOT:

December 23.

10.

TANONG:

Galit ka ba kay Kuya Lino?

SAGOT:

Opo.

11.

TANONG:

Bakit ka galit kay Kuya Lino?

SAGOT:

Kinantut ako.

12.

TANONG:

Paano ka kinantut ni Kuya Lino?

SAGOT:

Hinimod ang pepe ko hinubad ang panty ko tapos yung tite niya sa ipinasok sa pepe ko tapos nilagyan ng laway yung tite niya tapos isinubo sa bibig ko tapos tinagpan niya ako sa bibig.

13.

TANONG:

Alam mo ba ang tunay na pangalan ni Kuya Lino?

SAGOT:

Hindi.

14.

TANONG:

Kailan ka kinantot ni Kuya Lino?

SAGOT:

Kahapon ng umaga.

15.

TANONG:

Saan ginawa ni Kuya Lino ang mga sinasabi mo?

SAGOT:

Sa kanila.

16.

TANONG:

Bakit ka nasa bahay nila Kuya Lino?

SAGOT:

Tinawag niya ako.

17.

TANONG:

Ng tinawag ka ni Kuya Lino ano ang sabi niya sa iyo?

SAGOT:

Wag kang maingay.

18.

TANONG:

Ng isubo ni kuya Lino ang kanyang tite sa iyong bibig ano ang ginawa mo?

SAGOT:

Tinakpan niya ako ng bibig.

19.

TANONG:

Ipinasok ba ni Kuya Lino ang kanyang tite sa pepe mo?

SAGOT:

Ipinatong lang.

20.

TANONG:

May hawak bang si Kuya Lino ng kantutin ka niya?

SAGOT:

Wala.

21.

TANONG:

Ng kantutin ka ni Kuya Lino sumakit ba ang pepe mo?

SAGOT:

Opo.

22.

TANONG:

Kanino mo sinabi ang ginawa sa iyo ng Kuya Lino?

SAGOT:

Sa nanay ko.

23.

TANONG:

Anong sinabi mo sa nanay mo?

SAGOT:

Nanay kinantot ako ni Lino.

24.

TANONG:

Tutoo bang lahat ang sinabi mo?

SAGOT:

OO.

The last attachment to the complaint is a Medico-Legal Report[9] of 1000H 30 July 2001, purporting to be the result of a medical examination conducted on XXX within approximately twenty-four (24) hours from the time of the incident in question, therein finding as follows:

EXTRA-GENITAL FINDINGS:

Fairly nourished, fairly developed female child. Breasts are undeveloped. Abdomen is soft and flat.

There are no pubic hair noted. Labia majora are full, convex and coaptated with light brown and non-hypertrophied labia minor presenting in between. On separating the same is disclosed and elastic and fleshy type of hymen with NO LACERATION NOTED (Intact Hymen). Posterior fourchette is sharp and ABRADED. External vaginal orifice offers moderate resistance to the examiner's little finger. Vaginal canal is narrow with prominent vaginal folds or rugosities.

CONCLUSION:

The subject is in VIRGIN STATE physically.

There are no external signs of application of any form of physical trauma.

Negative for Spermatozoa and Gram Negative Diplococci.

The complaint was docketed as Criminal Case No. 14056 in the MTC of Santa Rosa, Laguna which court, after preliminary examination, issued an Order[10] finding probable grounds to believe that the crime complained of has been committed and that appellant may be held guilty thereof. No bail was recommended.

The same Order required the accused to file his counter-affidavit and those of his witnesses. Complying thereto, his wife, Juliana B. Perez-Paredes, filed a Sinumpaang Salaysay[11] dated September 21, 2001. Another Sinumpaang Salaysay [12] also dated September 21, 2001 was filed by a certain Engineer Bienvenido O. Onayan of the Poor Voters Association of the Philippines (PVAP) and the Jesus Providence Victory Association of the Philippines Church. Lastly, it appears that appellant signed a Sinumpaang Salaysay[13] dated September 25, 2001 while on detention.

In an order[14] dated October 16, 2001, the MTC forwarded the case to the Office of the Provincial Prosecutor which, in due time, filed with the RTC of Laguna an Information[15] for Rape under Article 334 of the Revised Penal Code, in relation to Republic Act No. 7610, allegedly committed as follows:

That on or about July 29, 2001, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Marcelino Paredes y Algara, with lewd design, did then and there willfully, unlawfully and feloniously had carnal knowledge with one [XXX], a ten (10) year old minor, against her will and consent.

CONTRARY TO LAW.

The case was docketed in the RTC of Calamba City as Criminal Case No. 11761-B and was raffled to Branch 34 thereof. On arraignment, appellant, assisted by a counsel de oficio, pleaded NOT GUILTY to the charge.[16]

In a decision[17] dated September 15, 2004, the trial court found appellant guilty beyond reasonable doubt of the offense charged against him. Dispositively, the decision reads:

ACCORDINGLY, this Court finds accused Marcelino Paredes y Algara GUILTY beyond reasonable doubt of the crime of Rape, as defined and penalized under Article 266-A 1 (d) and 2 of the Revised Penal Code, as amended, and hereby sentences him under paragraph 1 of Art. 266-B of the Revised Penal Code to suffer the penalty of Reclusion Perpetua with all its attendant accessory penalties.

Accused is further directed to indemnify the victim [XXX] the sum of P50,000.00 as moral damages, P50,000.00 as civil indemnity and P25,000.00 as exemplary damages.

SO ORDERED.

On appeal to the CA whereat the appellate recourse was docketed as CA-G.R. CR-H.C. No. 00366, the appellate court, in its herein assailed decision[18] of May 30, 2006, affirmed that of the trial court, thus:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Calamba City, Branch 34, dated September 15, 2004, in Criminal Case No. 11761-B, finding accused-appellant guilty beyond reasonable doubt of the crime of rape is hereby AFFIRMED and UPHOLD.

With costs against the accused-appellant.

SO ORDERED.

Hence, this appeal by accused-appellant. In response to our Resolution[19] of February 21, 2007, on the filing of supplemental briefs, the parties separately manifested[20] that they are waiving the filing of supplemental briefs.

By way of preliminary statement, we note, upon a careful scrutiny of the transcript of stenographic notes (TSN), that XXX's mother, MMM, has been a complainant in a rape case twice. In both rape cases, MMM presented her minor daughter XXX as the rape victim. What comes as a shock is the admission of MMM during the trial of this case that she caused the dismissal of the first rape case against one Benjamin de Jesus allegedly committed against her very own daughter XXX. More specifically, MMM said the following while under cross examination:[21]

ATTY. ZUMARAGA:

Q:

Madam Witness, before you filed a complaint against Mr. Paredes, you have filed first a case against your "Kumpare", also with regard to the rape committed on your daughter?

[MMM]:

Q:

Yes, sir, I also filed a complaint against him.

Q:

What happened now to that case, Madam Witness?

A:

The case was dismissed because he was just about to place himself on top of my daughter when I saw him so I caused the dismissal of the complaint.

Q:

You have actually seen that?

A:

Yes, sir.

Q:

But Mr. Paredes, you have not seen him actually doing something on your daughter?

A:

Yes, sir.

THE COURT:

Against the same daughter?

A:

Yes, sir.

ATTY. ZUMARAGA:

That's all, your Honor.

THE FISCAL:

Few re-direct, your Honor.

Q:

This case wherein you caused the dismissal where you just saw the accused just about to place himself on top of your daughter, this is not the same case as the case being tried now?

A:

yes, sir.

THE FISCAL:

That's all, your Honor.

THE COURT:

Q:

The other case that you told us, the accused there was your kumpare?

THE WITNESS:

A:

The kumpare of my husband, your Honor.

Q:

But you call him kumpare?

A:

He is just being called kumpare by my husband.

Q:

What about Marcelino Paredes?

A:

We have no relation to him, your Honor.

Q:

When did the other case happen?

A:

I think that was in 1999 or 2000.

Q:

How old was your daughter then?

A:

Seven (7) years old.

Q:

That incident, you actually saw it?

A:

Yes, your Honor.

ATTY. ZUMARAGA [to the Court]:

May we be furnished with the copy of the complaint, your Honor.

THE COURT [to MMM]:

Did you file it?

A:

No, your Honor, because my husband died at that time.

Incidentally, an earlier Sinumpaang Salaysay[22] dated September 21, 2001 of Juliana B. Perez-Paredes, wife or

herein appellant, mentions about the first rape case and identifies the perpetrator therein as follows:

- Na katunayan itong kaso na sinampa sa aking asawa na si Marcelino A. Paredes Sr. ay ikalawang (2) kaso na ng batang si [XXX], dahilan na noong unang kaso, mayroon din silang sinampahan ng kasong rape, at ito ay si Mr. Benjamin de Jesus na noong mga panahon na iyon ay kasalukuyan siya'y naninirahan sa Daang Bakal, Pooc, Sta. Rosa, Laguna. At itong kasong ito ay nagkaroon ng aregluhan sa halagang "Three thousand pesos only" (P3,000.00). At mismong sa bibig ni [MMM] na na rape na ang kanyang anak. Sinabi niya sa Brgy. Hall noong July 29, 2001 ng gabi.

Undeniably, after piecing together the evidence, more particularly the judicial admissions of MMM, a huge dark cloud of doubt now looms over her credibility. The big question that demands a satisfactory explanation is, why did MMM cause the dismissal of the first rape case?

Consider this: In the first rape case, MMM herself was an eyewitness to an act of raping her minor daughter XXX who was then only seven (7) years old. Neither MMM nor the prosecution made any attempt to refute or at least explain why MMM was willing to cause the dismissal of a rape case for the paltry sum of three thousand pesos only. In contrast thereto, in the present case, even when relying on the prosecution's version of the facts, none of the acts in question took place within the plain view of any independent eyewitness. This brings to mind what the Court has earlier said on the matter of credibility:

Complainant's credibility having been put in serious doubt, the rule that "the judgment of the trial court in passing on the credibility of the witness will not be interfered with by the appellate court" does not apply in this case.[23]

Given the above, we find it difficult to accept the RTC's depiction of MMM as a "loving mother" as written in its decision, viz:

It is highly inconceivable that a loving mother of a young girl as in the instant case would concoct a story of defloration, allow an examination of her daughter's private parts and thereafter, pervert her by being subjected to public trial, if she was not motivated solely by her desire to obtain justice, nay revenge, for the heinous act committed against her child. xxx xxx xxx.[24]

Then, too, the language of the above quotation is quite too trite and over familiar to us since numerous rape case decisions repeat and rehash the same mantra. The problem with copying word-for-word from the obiter dictum of jurisprudence is that some of the words therein are no longer applicable to the present case. One glaring example is the misuse in the trial court's decision of the word "defloration" because, according to the prosecution's own evidence (the Medico-Legal Report),[25] there was no defloration in the present case.

As with the RTC, the CA, too, had been amiss in recycling the term in its obiter dictum, saying that –

xxx it is quite unbelievable that she could fabricate such a sordid story of personal defloration xxx xxx xxx,[26]

because, in the first place, there was no defloration at all in the present case.

Notably, both the RTC and CA share the view that the accused recanted his testimony during cross-examination. In the words of the RTC:

The defense on the other hand presented the accused, their sole witness, who testified that at the time the incident happened, he had left his house after his breakfast and went to Maria Jesusa Subdivision to look for customers who were in need of fixing their umbrellas. At around 11:00 a.m. he went back to Mercedes Subdivision to look once more for customers in need of fixing their umbrellas.

The accused testified that the charges against him were all lies and that it was only made up.

However, during the cross-examination of the accused when he was subjected to lengthy questioning by the public prosecutor, the accused categorically admitted that he was in his house the whole day, the same day the incident happened, and recanted his testimony during his direct examination.[27]

The confusion about recantation arose from the Sinumpaang Salaysay[28] of September 25, 2001 which bears the signature of appellant. During re-direct examination, appellant disowned authorship of that Sinumpaang Salaysay but admitted having signed a blank piece of paper which later became the Sinumpaang Salaysay dated September 25, 2001. Thus:

ATTY. ZUMARAGA:

Re-direct, your Honor. In the interest of substantial justice, may we ask...

There appears in the Record, your Honor a Sinumpaang Salaysay allegedly admitted by Marcelino Paredes but according to him, he was not the one who accomplished this Sinumpaang Salaysay.

Q: Mr. Paredes, I am showing to you this Sinumpaang Salaysay, allegedly signed by you Marcelino Paredes. What can you say about this Sinumpaang Salaysay?

WITNESS:

A: This is my signature but when I signed it, there was no content. It's a blank form, sir.

COURT:

Q: Where were you when you signed that?

WITNESS:

A: Inside the jail, sir.

Q: "Sino nagpapirma sayo?"

A: "Marami pong attorney napunta sa akin."

Q: “Pero may attorney ka?”

A: “Dati po si Callado.”

Q: “Pero noong pinirmahan mo yan may attorney ka?”

A: “Sa amin pong selda tinawag ako.”

Q: “Walang laman noong pinirmahan mo?”

A: “Wala po.”

Q: “Bakit mo pinirmahan?”

A: “Basta po sabi pumirma ka, pinirmahan ko naman.”

xxx xxx xxx [29]

From the mute details of the Sinumpaang Salaysay, we find some indications therein in support of the defense theory that its preparation and signing were held on different occasions.

For one, the signature portion of the same Sinumpaang Salaysay shows quite clearly that the typewriter used to print the name of the signatory “MARCELINO A. PAREDES, SR.” is different from the typewriter used to print the main body of the document and the page number “– 1 –” at the bottom of the page. By merely looking at the face of the said Salaysay, one will immediately notice that the typewriter used for the signatory portion is dilapidated since the individual letters appear loose and out of alignment. In contrast, the typewriter used for the main body of the same document appears more modern and neat in alignment and fonts. More telling still is the zigzagging direction of the signatory’s typewritten name which is slanting down in the first name until a sharp dip in the middle initial, then up again at the surname, then finally another sharp dip down with the suffix “Sr.” (abbreviation of “Senior”). No such zigzagging is noticeable in all the other parts of the document.

We now come to the alleged recantation of appellant. In all likelihood, the prosecution was referring to the last answer of the accused during his re-cross examination. For clarity, let us retrace the line of questions and answers on re-cross, to wit:

COURT:

Fiscal, you have some questions?

FISCAL:

Yes, your Honor.

FISCAL [to witness]:

What is your educational attainment?

WITNESS:

Grade 4, sir.

Q: And as a Grade 4 pupil, you know how to read Tagalog?

A: Yes, sir.

Q: You can understand Tagalog?

A: Yes, sir.

Q: In what place where you born?

A: Makati, sir.

Q: And from the time you were born up to this time, you speak Tagalog?

A: Yes, sir.

Q: You even understand and speak Tagalog fluently?

A: Yes, sir.

Q: And as a Grade 4 pupil you can even write your name?

A: Yes, sir.

Q: You denied having executed this statement. Now do you know who prepared this statement and your signature?

A: No, sir.

Q: Your complete name is Marcelino Paredes y Algara. That's correct?

A: Yes, sir.

Q: In September of 2001, your age was 53?

A: Yes, sir.

Q: And at that time, you are married?

A: Yes, sir.

Q: And at that time you had two children?

A: Yes, sir.

Q: You were residing at Ma. Jesusa Subd., Pook Sta. Rosa, Laguna then before you were incarcerated?

A: Yes, sir.

Q: So the circumstances appearing here in your Sworn Statement are correct. That your name as indicated here is Marcelino Paredes y Algara, 53 years old, married, with two children residing then at Ma. Jesusa Subd. Pook, Sta. Rosa, Laguna. That's correct?

A: Yes, sir.

Q: And you claim here that July 28 was a Saturday and you left your house in the morning at 7:00 to go to the house of a person wherein you're hauling soil?

A: Yes, sir.

Q: And you return at your house at 5:30 in the afternoon of that same date?

A: Yes, sir.

Q: When you returned to your house, after resting, you helped your wife prepare your food?

A: Yes, sir.

Q: And [your] wife has a physical disability?

A: Yes, sir.

FISCAL [to the Court]:

May I manifest that that is what [is] stated here.

Q: Now, July 29, 2001, in the afternoon, with your wife and two children you said you were in your house?

WITNESS:

A: Yes, sir.

Q: You know one Engr. Bienvenido Onayan? Do you know him?

A: No, sir.

Q: Who is the founder and president of PVAP-NGO at your subdivision - Jesusa PVAP? Do you know the president and founder?

A: No, sir.

Q: At that same day of July 29, 2001, you were arrested by the barangay tanod of your place – Brgy. Pook?

A: Yes, sir.

Q: You were brought to the barangay hall?

A: Yes, sir.

Q: And after you were brought to the barangay hall, the barangay tanods called your wife, is it not? When you were at the barangay hall?

A: Yes, sir.

Q: And the name of your wife is Juliana B. Perez-Paredes?

A: Yes, sir.

Q: You claimed that you do not know this statement. Can you explain to us how come that all the statements appearing here which I have read to you were admitted by you and were testified by you to be correct?

A: It was prepared by my wife, sir.

Q: You testified a while ago that you were represented by a PAO lawyer while you were already detained after this complaint was filed against you?

A: Yes, sir.

Q: When you said you were represented by a lawyer, your lawyer talked to you?

A: No, sir.

Q: You mean to say that the PAO lawyer did not talk to you, did not see you?

A: Yes, sir.

Q: You admitted that the signature appearing over your typewritten name in this statement is your signature?

A: Yes, sir.

Q: You sworn this statement before an administering office? Is it not?

A: Yes, sir.

Q: When you said that you sworn it before an administering officer, you are referring to Alberto Nofuente, the 3rd Assistant Provincial Prosecutor of Laguna and you sworn the same in Sta. Rosa, Laguna on 25th of September 2001?

A: Yes, sir.

Q: When you were made to swear, you know you were apprised, you were told of the importance of an oath, is it not?

A: Yes, sir.

Q: Which is now correct, Mr. Witness? You said that in the morning up to 11:00 o'clock you went around the subdivision to repair umbrella. Whereas, in your statement which I read to you, which you admitted, you said that the whole day of July 29 you were in you house?

A: In my statement, sir.

FISCAL [to the Court]:

That is all, your Honor.[30]

To the mind of the prosecution, the word “statement” in the last answer of the appellant refers only to the Sinumpaang Salaysay[31] of September 25, 2001. The RTC did not bother to clarify what “statement” the accused was referring to and simply jumped to the conclusion that –

xxx during the cross-examination of the accused when he was subjected to lengthy questioning by the public prosecutor, the accused categorically admitted that he was in his house the whole day, the same day the incident happened, and recanted his testimony during his direct examination.[32]

The CA held on to the same view, saying:

On cross-examination, however, upon being confronted by the prosecution with his Sinumpaang Salaysay wherein he stated that he was in his house the whole day of July 29, 2001, appellant recanted his testimony and admitted that he was indeed in their house the whole day of July 29, 2001.[33]

We are not ready to jump to the same conclusion because the word “statement” refers to either one of two different declarations: first, it may refer to the typewritten statements in the Sinumpaang Salaysay of September 25, 2001; and second, it may refer to what the accused said verbally in open court during his direct examination on October 30, 2003. The implication is crucial.

For one, the decisive rule in criminal law is that when inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, then the evidence does not pass the test of moral certainty and is not sufficient to support a conviction.[34]

For another, we find it difficult to believe that someone whose highest educational attainment is only “Grade 4” is capable of crafting a legal document like the Sinumpaang Salaysay of September 25, 2001. On the contrary, his monosyllabic way of answering on the witness stand fits perfectly well into the profile of a “Grade 4” pauper litigant. Sad to say but the reality is that most Sinumpaang Salaysay attributable to pauper litigants are adhesion documents wherein signatories merely affix their signatures without opportunity of participating in the preparation of the document.

Let us assume, *arguendo*, that the accused was referring to the written Sinumpaang Salaysay instead of his verbal testimony in open court. What then did the accused recant? According to the RTC and the CA, the accused said in his Sinumpaang Salaysay that he was “in his house the whole day”[35] on July 29, 2001, and, on direct examination, he abandoned the Sinumpaang Salaysay by saying that he was looking for umbrella-repair customers the whole day, and lastly, on re-cross examination, he recanted by reinstating the Sinumpaang Salaysay. Regrettably, the RTC and the CA were imprecise in placing English words into the “Grade 4” mouth of the accused. For, if we are to chain him to what was written in the Sinumpaang Salaysay, then he was not in his house the “whole day” but only for a “maghapon” as written in Paragraph 2 thereof, to wit:

- Noong araw naman ng Linggo, July 29, 2001, maghapon po akong nasa bahay kasama ng aking asawa at dalawang (2) anak at naging panauhin or bisita pa namin ang aming Founder/President ng PVAP-NGO at JESUS-PVAP si Engr. Bienvenido O. Onayan, at iyong binibintang sa aking ni [MMM] na ni rape ko raw ang kanyang anak na si [XXX] noong July 29, 2001, araw ng Linggo, umaga, sa bahay daw namin wala pong katotohanan, dahil paano po mangyayari iyong mga bagay na iyon na kanilang ibinibintang sa akin, samantalang ang bahay naming ay butas-butas at takpi-takpi at ang dingding ay mga sirang plastic at ang bubong ay mga plastic na itim at napakaliit ng aming bahay at dikit-dikit pa ang mga bahay at halos iisa lamang ang dingding ng aming mga kapitbahay.

A whole day is a period of twenty-four (24) hours[36] while “maghapon” is a much shorter period – starting from sometime in the afternoon and ending at sometime around sunset. Besides, “maghapon” is a loose subjective term with different meanings to different persons. A person in a hurry may grumble as “maghapon” a short moment of delay in the afternoon when in a rush to finish some task that same afternoon, while another person who was just relaxing may use also the same word “maghapon” when describing the long lazy Sunday afternoon mood.

Here, therefore, the Sinumpaang Salaysay of September 25, 2001 is not irreconcilably repugnant to the testimony

of October 30, 2003 because it is possible that the appellant went out looking for umbrella-repair customers from morning until sometime in the afternoon (as testified on direct examination) and thereafter “maghapon” he assisted his wife entertain visitors from the PVAPNGO (as written in the Sinumpaang Salaysay). Incidentally, in the summer month of July, sunsets may be as late as 7:00 in the evening, and so the “maghapon” had enough room to accommodate the visitation event.

Notably, the Sinumpaang Salaysay depicts appellant as entertaining PVAP-NGO visitors on July 29, 2001. However, during recross examination, appellant said he does not know the founder and president of PVAP-NGO. Perhaps this was what the trial court was referring to when it branded appellant as a recanting witness. If so, we cannot share the same view. There is recantation if, after saying he did entertain PVAP-NGO visitors on July 29, 2001, he later says he did not entertain PVAP-NGO visitors on July 29, 2001. Here, however, appellant merely said that he entertained PVAP-NGO visitors but was not familiar with the founder and president of that group.

Since there is no real conflict between the Sinumpaang Salaysay of September 25, 2001 and appellant’s testimony of October 30, 2003, he had nothing substantial to recant.

Recapitulating, we find the credibility of MMM under serious doubt for causing the dismissal of the first rape case, while, on the other hand, the appellant was not a recanting witness, hence the two courts below had no sufficient legal basis for discrediting his credibility. Basic is the principle in criminal law that the evidence for the prosecution must stand or fall on its own merits and may not draw strength from the weakness of defense evidence.[37] With the credibility of MMM crippled and the credibility of the appellant restored, the only last remaining hope for a prosecution victory is the testimony of XXX herself.

According to the two courts below, XXX was spontaneous and straightforward in her demeanor during direct and cross examinations. As we see it, however, most of the questions to which XXX gave straightforward answers were about simple personal circumstances, such as her name, age, schooling, and other common inquiries which any ten (10)-year old girl may answer easily. More importantly, we find it extremely difficult to insulate XXX’s testimony from the contaminating effects of MMM’s plummeting credibility. Grabbing our attention is XXX’s use of graphic pornographic language that is quite very unusual for a girl of tender age. In this portion of her direct testimony, she was no longer straightforward as she fumbled in combining in the vernacular the accusations of “hinimod” with “kinantot” which are words usually heard in tandem when in tabloid news but they cannot mix as a single act here if we are to believe XXX’s version of the Sunday morning incident.

More specifically, it took four (4) pages of the TSN to cover the preliminary matters on direct examination where the answers of XXX were straightforward. But when the prosecutor finally asked questions about actual acts necessary for establishing a rape charge, these were the answers of XXX, as recorded in the TSNs:

[FISCAL:]

Q:

You were asked this question “Galit ka ba kay Kuya Lino?”;

[XXX:]

A:

Yes, sir.

Q:

“Bakit ka galit kay Kuya Lino?” – that was the follow up question. What was your answer?

A:

“Hinimod nya po pepe ko.”

Q:

When you were asked this question “Bakit ka galit kay Kuya Lino, the answer here is “Kinantot ako.”, you gave this answer?

A:

Yes, sir. [38]

From the above, we can observe that the prosecutor, who was conducting a direct examination, was frequently referring back to XXX’s Salaysay[39] of July 30, 2001, so as to guide her, but he ended up crossexamining XXX. Be that as it may, the vernacular words “hinimod” and “kinantot” have meanings that are so different from each other to the point of raising reasonable doubt against the prosecution. On the face of it all, we strongly suspect that the author of XXX’s lurid vocabulary can be none other but her own mother MMM who is a veteran in taking up rape charges.

Adding to the doubt is XXX’s inconsistency during direct examination when explaining the reason why she strayed into appellant’s house that Sunday morning of July 29, 2001, to wit:

[FISCAL:]

Q:

You were asked this question, “Saan ginawa ni Kuya Lino ang sinabi mo?”

[XXX:]

A:

In the house of Kuya Lino.

Q: You were asked this question, “Bakit ka nasa bahay ni Kuya Lino?”

A:

I was called, sir.

Q:

Again you were asked this question “Bakit ng tinawag ka ni Kuya Lino, ano ang sinabi nya sa iyo?”

A:

He said “Come here.”

Q: And you were asked “Come here.” – did you go to his house?

A: No, sir, I ran.

Q: If you said you were able to run, how come that you were in the house and the accused did to you what you have narrated?

A: He called me.

Q: When you were called, did you go to his house?

A: Yes, sir. [40]

We are at a loss at visualizing how XXX was, in one moment running away scared, and then, in the next moment, she went back to the one who scared her, and then in the next moment the one who scared her is performing the acrobatic feat of combining “himod” with “kantot” without causing defloration to XXX. The mere fact that she was already able to ran away makes us wonder why she went back, considering that she had an earlier trauma with a previous rape attempt by Benjamin De Jesus, the rape charge which her mother MMM initiated and later compromised. Moreover, at the precise moment of running away, XXX had abundant opportunity to go to her mother MMM since no less than MMM herself said that she was at home at that time, and appellant is a “kalapit bahay”[41] in the same neighborhood. According to appellant’s estimate, the distance between his house and that of MMM is about 30 to 40 meters.[42] Likewise, no less than MMM herself said that there is a Day Care Center with a playground near appellant’s house.[43]

What is more, on that Sunday morning of July 29, 2001, XXX said nothing about a rape incident. According to no less than MMM herself, she had to hit XXX with a ladle before the rape story came out: [44]

[FISCAL:]

Q: Now the complaint that you filed before the Municipal Trial Court of Sta. Rosa, Laguna, states that:

xxx xxx xxx

How did you come to know of this incident?

[MMM:]

A: I was in our house and my daughter went to the mother of my husband because she wanted to stay there.

Q: What happened after your daughter went to the house of your in-laws to stay there?

A: When she came home and I was giving her food, I noticed that she was sad and I asked her why she's sad.

Q: And what was the answer given by your daughter [XXX]?

A: She did not talk at first. She just cried.

Q: And what did you do when you noticed that your daughter did not answer your question but instead she cried?

A: I hit her with a ladle and that was the time she complained to me.

The prosecution's version of the sequence of events that Sunday morning of July 29, 2001 is simply too unrealistic and vulnerable to reasonable doubt. In any event, considering the topsy-turvy credibility of the prosecution witnesses herein, the safest path to take is in line with the fundamental principle in constitutional and criminal law that it is far more acceptable to acquit the guilty erroneously rather than to convict the innocent wrongly.

WHEREFORE, on ground of serious reasonable doubt arising from the judicial admission by the complaining party, and the failure of the prosecution to explain the same, the assailed decision of the CA, affirmatory of that of the trial court, is REVERSED and SET ASIDE and herein accused-appellant is ACQUITTED of the offense charged against him.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by CA Associate Justice Martin S. Villarama Jr. with the concurrence of Associate Justices Edgardo F.

- Sundiam and Japar B. Dimaampao; rollo, pp. 2-17.
- [2] Penned by Judge Jesus A. Santiago; records, pp. 216-222; Id. at 45-51.
- [3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.
- [4] Exhibit “E,” records, p. 1.
- [5] Exhibit “E-1,” id.
- [6] Exhibit “A,” id. at 2.
- [7] Exhibits “B” to “B-3,” id. at 3-4.
- [8] This is the sixth question. It is erroneously written as “05” in the Salaysay.
- [9] Exhibits “C” to “C-2,” records, pp. 5-6.
- [10] MTC Order of August 28, 2001; id. at 8.
- [11] Exhibit “3,” id. at 13-14.
- [12] Exhibit “2,” id. at 15.
- [13] Exhibit “1,” id. at 11-12.
- [14] Id. at 16.
- [15] Id. at 18-19.
- [16] Id. at 24.
- [17] Supra note 2.
- [18] Supra note 1.
- [19] Rollo, p. 18.
- [20] Id. at 19-23.
- [21] TSN of August 9, 2002, pp. 9-10.
- [22] Supra note 11.
- [23] People v. Subido, G.R. No. 115004, February 5, 1996, 253 SCRA 196, 208.
- [24] RTC Decision, p. 5; CA rollo, p. 220.
- [25] Supra note 9.
- [26] CA Decision, p. 15; rollo, p. 15.
- [27] RTC Decision, p. 4; CA rollo, p. 48.
- [28] Supra note 13.
- [29] TSN of October 30, 2003, pp. 10-11.
- [30] Id. at 12-17.
- [31] Supra note 13.

[32] RTC Decision, p. 4; CA rollo, p. 48.

[33] CA Decision, p. 4; CA rollo, p. 5.

[34] *People v. Baro*, G.R. Nos. 146327-29, June 5, 2002, 383 SCRA 75, 91, citing *US v. Maaño*, 2 Phil. 718 (1903).

[35] *Supra* notes 32 and 33.

[36] Article 13 of the Civil Code

[37] *People v. Suyat*, G.R. No. 173484, March 20, 2007, Supreme Court eLibrary.

[38] TSN of October 24, 2002, pp. 10-11.

[39] *Supra* note 7.

[40] TSN of October 24, 2002, p. 12.

[41] See Sagot 6 of the July 30, 2001 Salaysay of MMM, Exhibit “A,” records, p. 2.

[42] TSN of October 30, 2003, p. 6.

[43] TSN of August 9, 2002, p. 13.

[44] *Id.* at 5.

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