

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO TIGULO AND PACIFICO VELASQUEZ,
DEFENDANTS-APPELLANTS.***G.R. No. 34334. November 07, 1979*

Ponente: FERNANDO, C.J.

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This appeal from a conviction of rape presents the rather novel feature that while appellants Mariano Tigulo and Pacifico Velasquez were named in the information, the decision made clear that the force employed came solely from the former, complainant Erlinda Ubaldo thus being compelled to submit to his carnal desire. The participation of appellant Velasquez was limited to removing her panties and holding her feet while the sexual act was being performed. Nonetheless, as found by the trial Judge, the extent of his cooperation was such that without his aid, the crime could not have been committed. The defense put up by appellant Tigulo was one of denial. He alleged that there was an existing illicit relationship between him and the complainant and that on the evening in question no rape was committed. According to his version, he went at the time and place of assignation. Once there, they started kissing each other, with her allowing him to caress her on various parts of her body. There was, however, no opportunity to engage in sexual intercourse as her mother appeared on the scene. In a very exhaustive decision with a detailed scrutiny of the evidence submitted by both the prosecution and defense, the then Judge Placido C. Ramos convicted both accused of the crime of rape and sentenced each of them to reclusion perpetua as well as to the indemnification of the complainant in the sum of P20,000.00, with accessories provided for by law. Considering the gravity of the penalty imposed on those found guilty of the offense of rape, this Court took particular pains in scrutinizing carefully the testimonies offered by the complainant as well as the accused. There is justification for the decision reached. Rape was committed. The amount of the indemnification though must be decreased. To that extent, the judgment is modified.

Erlinda Ubaldo was on the evening of May 4, 1969 in her house in a rather isolated place in a rural site in Pacac, Guimba, Nueva Ecija.[1] With her were her four children, the oldest of whom was seven (7) years old.[2] Her husband was away, working in the house of the then Governor of Nueva Ecija.[3] Sometime about seven o'clock, she went downstairs to get firewood for the rice she was cooking.[4] She was surprised by the sudden appearance of appellant who immediately covered her mouth, pointed a gun at her[5] and, by means of force took her to a place, east of her house.[6] She resisted but to no avail, as the other appellant Velasquez was also there to help.[7] It was the latter, who held her legs and pulled down her panties.[8] Then Tigulo had carnal intercourse with her.[9] She could not shout, as he placed one hand on her mouth and the other pinned down below her nape.[10] In the meanwhile, her mother, Francisca Pagaling, whose house was adjacent,[11] heard her grandchildren crying.[12] With a flashlight, she looked for Erlinda.[13] She was thus able to observe Erlinda being ravished.[14] The two accused then fled.[15] The mother was informed of the act perpetrated on her.[16] Forthwith, they went to Anselmo Magbitang, a barrio captain of Pacac, Guimba, to complain.[17] On their way, they were accosted by appellant Velasquez with the threat that they would be killed should he be implicated.[18] That led Erlinda not to

include his name in her complaint to their barrio captain.[19] They also went to the Chief of Police of Guimba where Erlinda's statement was taken.[20] Upon advice of the Chief of Police,[21] Erlinda underwent a physical examination in the provincial hospital at Cabanatuan City conducted by Dr. Flor Dayao the following day.[22] She was issued a medical certificate,[23] which revealed the "presence of old healed lacerations at 1,4,5, 6 and 8 at the face of the clock." [24] According to Dr. Dayao, it was possible that the lacerations were caused by sexual intercourse.[25] Thereafter, Erlinda Ubaldo filed a complaint of rape against both accused Tigulo and Velasquez in the municipal court of Guimba.[26]

Based on the above testimony where the conviction of both accused was predicated, the lower court care-fully took into consideration the defense offered by appellants. It was its conclusion, however, as earlier pointed out, that the evidence of record sufficed for a conviction. To repeat, such a finding must be accorded credence although the participation of appellant Velasquez should be that of an accomplice.

1. The contention vigorously pressed by appellant Tigulo is that the testimony offered by complainant failed to overcome the constitutional presumption of innocence.[27] Appellant could very well rely on such a constitutional guarantee. Time and again this Court has stressed the significance of such a safe-guard to the rights of an accused person. In a leading case of *People v. Dramayo*,[28] it was made clear: "Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." [29] Such a principle has guided this Court in several recent decisions.[30] From the evidence of record, it is quite apparent that the lower court did not ignore it. The stage of moral certainty was certainly reached. Hence, such a defense is un-availing.

2. To bolster their argument of the consti-tutional presumption of innocence not having been overcome, appellants would impugn the findings of fact. Counsel did try his best to make out a case for a reversal but the attempt was unsuccessful. It is understandable why. The principle well-entrenched in our jurisprudence is that the conclusion reached by the trial judge which has the opportunity to observe the witnesses testify as to what did transpire is entitled to full respect unless of course it could be demonstrated that there was a failure to judge correctly the significance of a fact or circumstance or what is worse, that it was ignored. The first case of such consequence, *United States v. Pico*,[31] came from the pen of Justice Moreland, a 1910 decision. Since then, this Court has been committed to such a view.[32] Moreover, independently of such a doctrine of long standing, the very defenses offered by the accused would justify the credence that was paid to the evidence for the prosecution. If it were true that there was really an illicit relationship between complainant and appellant Tigulo, it defies rational explanation why he needed to have a companion that night they were supposed to have an assignation, the very concept of which, especially where the other party is a married woman, calls for the utmost secrecy. A third party under such circumstances is decidedly unwelcome. Even if only for the sake of mutual enjoyment, the exclusion of any other participant is of the essence. Yet in this case, appellant Velasquez was clearly identified by the complainant and her mother. What is worse, there is evidence of his threat to kill them if they would reveal his participation. His defense of alibi, inherently weak in itself, is completely discredited. Clearly then, appellants have not made out a case for acquittal.

WHEREFORE, appellants Mariano Tigulo and Pacifico Velasquez are convicted of the crime of rape and each of them sentenced to serve the penalty of reclusion perpetua. Each of the accused is likewise sentenced to indemnify the offended party in the amount of P12,000.00, as well as to suffer the accessory penalties imposed by law. As

thus modified, the judgment stands affirmed.

Barredo, Antonio, Aquino, Concepcion, Jr., Santos, and Abad Santos, JJ., concur.

[1] T.s.n., Session of July 7, 1970, 2-3.

[2] Ibid, 3.

[3] Ibid, 4.

[4] Ibid.

[5] Ibid.

[6] Ibid, 5.

[7] Ibid.

[8] Ibid, 5-6.

[9] Ibid, 6-7.

[10] Ibid, 12-13.

[11] T.s.n., Session of July 29, 1970, 58-59.

[12] Ibid, 62.

[13] Ibid, 63.

[14] Ibid, 63-64.

[15] Ibid, 64.

[16] Ibid, 66-67.

[17] Ibid, 68.

[18] Ibid, 69.

[19] T.s.n., Session of July 7, 1970, 27.

[20] T.s.n., Session of July 29, 1970, 72-73.

[21] Ibid, 73.

[22] T.s.n., Session of December 2, 1970, 2.

[23] Ibid, 2 and Exhibit B.

[24] Ibid, 3.

[25] Ibid, 5.

[26] T.s.n., Session of July 7, 1970, 10.

[27] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved,* * *."

[28] L-21325, October 29, 1971, 42 SCRA 59.

[29] Ibid, 64.

[30] Cf. *People v. Molina*, L-30191, Oct. 27, 1973, 53 SCRA 495; *People v. Zamora*, L-34090, Nov. 26, 1973, 54 SCRA 47; *People v. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81; *People v. Barbo*, L--30988, March 29, 1974, 56 SCRA 459; *People v. Roa*, L-35284, Jan. 17, 1975, 62 SCRA 51; *People v. Joven*, L-36022, May 22, 1975, 64 SCRA 126; *People v. Cawili*, L-30543, July 15, 1975, 65 SCRA 24; *People v. Ogapay*, L-28566, Aug. 21, 1975, 66 SCRA 209; *People v. Padirayon*, L-39207, Sept. 25, 1975, 67 SCRA 135; *People v. Ramirez*, L-30635-6, Jan. 29, 1976, 69 SCRA 144; *People v. Andal*, L-39763, March 8, 1976, 70 SCRA 30; *People v. Lopez*, L-41974, Nov. 29, 1976, 74 SCRA 205; *People v. Montero*, L-33155, April 22, 1977, 76 SCRA 437; *People v. Poblador*, L-44129, April 29, 1977, 77 SCRA 140; *People v. Marcina*, L-29912, May 31, 1977, 77 SCRA 238; *People v. Quiazon*, L-44299, Aug. 31, 1977, 78 SCRA 513.

[31] 15 Phil. 549.

[32] Cf. *People v. Augcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 259; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37184, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. Villa-mala*, L-41312, July 29, 1977, 78 SCRA 145; *People v. Rapada*, L-31243, Oct. 28, 1977, 80 SCRA 63; *People v. Gorgoles*, L-40885, May 18, 1978, 83 SCRA 282; *People v. Conchada*, L-39367-69, Feb. 28, 1979, 88 SCRA 638.

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