

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IRENEO TIWAKEN, ACCUSED-APPELLANT.

*G.R. No. 92988. September 09, 1992*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is an appeal from the decision\* of the Regional Trial Court, First Judicial Region, Branch 35, Bontoc, Mt. Province in Criminal Case No. 645 entitled "People of the Philippines v. Ireneo D. Tiwaken," finding the accused guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of Reclusion Perpetua, and to indemnify the victim in the amount of P25,000.00.

The information[1] against the accused reads as follows:

"That at nighttime on or about August 25, 1984, at Tue, Tadian, Mt. Province, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of violence, force and intimidation did then and there willfully, unlawfully and feloniously had sexual intercourse with one, Floresita V. Albing, after rendering the latter unconscious, and immediately after the said victim regained consciousness, the said accused, with continuing employment of force and intimidation and use of a bolo, which is a deadly weapon, repeated sexual intercourse with the said victim, against her will and consent and to her damage and prejudice."

When arraigned, the accused pleaded not guilty to the charge.

The prosecution's version, of how the offense was committed, as adopted by the trial court in its decision, is as follows:

"That on the afternoon of August 25, 1984, Floresita Albing, a Cathecist of the Roman Catholic religion of Tue, Tadian, Mountain Province, escorted Sister Grace Leano to visit the barrios leaving her sister of 12 years old, a brother of 5 years old and a niece of 3 years old in the house after cooking food for them and instructed them not to wait for her as she might be invited for supper. That the last house they visited that day was the house of Mr. and Mrs. Romeo Kidikchan who let Mrs. Albing and Sister Grace stay for supper. After supper Floresita Albing escorted Sister Grace Leano to her auntie's house which was converted and used as convent. After bringing Sister Grace to the convent and preparing her bed Mrs. Albing begged permission and left for home. That on her way home she remembered she was earlier invited to a birthday party and the persons who invited her saw her and called so she went to attend the party given by Mr. and Mrs. Mariano Bolay for their grand child. That Mrs. Floresita Albing led the prayers for supper and thereafter left for home with the excuse that she had visitors. That Mrs. Albing reached her house past 9:00 o'clock in the evening and as she was about to sleep, her teeth ached so she went down to the kitchen to brush her teeth. That at the kitchen Mrs. Albing took her brush and opened a little the window and as she was brushing at the window she was suddenly frightened by the appearance of accused Ireneo Tiwaken below the window and the window seal being only 3 feet above the ground, accused Ireneo Tiwaken climbed inside and held the mouth of Mrs. Floresita Albing stopping her from shouting. Both victim and accused then struggled until they reached the fireplace where Floresita took hold of a bolo; however accused grabbed the bolo and stuck it on the fireplace and thereafter

accused pushed Mrs. Albing against the fireplace. At this instance Mrs. Albing clawed the hands and face of accused. She also bit his shoulders and Ireneo Tiwaken boxed the abdomen of Mrs. Albing rendering her unconscious.

"That when Mrs. Floresita Albing regained consciousness she was lying on her back near the fireplace and she felt dizzy and weak and thirsty and she asked for water and somebody gave her water. After drinking Mrs. Albing felt better and when she opened her eyes she saw Ireneo Tiwaken standing naked near her feet. Mrs. Albing got frightened and she touched her body and found her dress unzipped and her bra lifted and her panty removed, and felt her private part bloody and wet. At this point Mrs. Albing asked accused Ireneo Tiwaken, 'What did you do with me?' and Tiwaken told her, 'I had sexual intercourse with you twice.' Thereafter accused Ireneo Tiwaken got the bolo and said: 'We will have sexual intercourse again and if you don't want, I will kill you.' And while saying these words he was brandishing the bolo. Thereafter, accused again raped Mrs. Albing. Then after raping Mrs. Albing for the third time, accused put on his dress (sic) and said to Mrs. Albing: 'You are already finished. Even if I will be jailed for this.' After saying that accused left through the kitchen door. After accused left, Mrs. Albing managed to wake up even though she was weak and went upstairs where her kid brother and sister were sleeping and there she lied down and cried.

"...that the following morning after the incident Mrs. Floresita Albing went early to Tadian, Mt. Province and saw Cpl. Paul Pespes in his house at past 7:00 o'clock in the morning and reported the incident to Cpl. Pespes in the presence of Mrs. Pespes and his daughter Rosalyn Pespes, and told Cpl. Pespes that Ireneo Tiwaken was the one who raped her. That after Mrs. Albing made the report to Cpl. Pespes, Cpl. Pespes instructed Mrs. Albing to go to the hospital for check-up and seeing her to be pale and weak, Cpl. Pespes asked his daughter Rosalyn to accompany Mrs. Albing to the hospital while he, Cpl. Pespes went to the police station to enter into the Police Blotter the reported incident. That Mrs. Albing and Rosalyn Pespes hiked to the Abatan Mt. Province General Hospital and reached there at 11:00 o'clock, and Dr. Philip Guinid treated and examined Mrs. Floresita Albing.

"...that on August 26, 1984, Cpl. Pespes after entering into the Police Blotter the incident narrated by Mrs. Albing, x x x, Cpl. Pespes called for Pat. Bonifacio San Jose and both of them went to Tue, Tadian, Mt. Province, to investigate the reported rape case. That upon arriving at Tue and with the help of Donato Alibet a Barangay CHDF, Cpl. Pespes and Pat. San Jose located the place of accused Ireneo Tiwaken who was sleeping and after waking Tiwaken up, Cpl. Pespes asked him if he, accused, committed an unusual incident and accused answered; 'linokok ni Mrs. Albing', meaning, 'I did something bad to Mrs. Albing', or 'I wronged Mrs. Albing'. After that Cpl. Pespes invited accused Ireneo Tiwaken to the Police Station at Tadian and upon arrival recorded their mission in the Police Blotter. 'x x x'. After recording in the Police Blotter their mission, accused Ireneo Tiwaken was brought for medical examination as he appeared to have sustained some injuries during the raping incident. That as a result of the medical examination a medico legal certificate was issued." [2]

The version of the defense, on the other hand, is as follows:

"That accused Ireneo Tiwaken knows Mrs. Floresita Albing because they are barriomates and former friends. That accused courted Mrs. Floresita Albing in 1981 and (she) became his girl friend for 4 months. That during that (sic) four months in 1981 accused and Floresita Albing who was then single, lived-in together. Thereafter, accused went to Baguio to work with the plan of returning home on (sic) December, 1981, but because Floresita got married to Mr. Pedro Albing his plan did not materialize. Accused then worked off and on until he was taken in Philex Mines where after working for one year he was removed and accused loafed around until finally he went home to Tue, Tadian in 1984 to attend the wedding of his sister Gema. That after the wedding accused Ireneo Tiwaken helped his parents in the harvest of their fields at Segseg and Abit. That in the harvest at Abit in the year 1984, Mrs. Floresita Albing was one of those who helped in the harvest. That on the first day of the harvest at Abit, accused and Floresita walked together to the ricefield and on the way they hugged and kissed each other. That on the second day they again went together to harvest at Abit and on the river bank accused and Floresita made love before working. That on the third day accused and complainant

again went together to the ricefield at Abit kissing each other and holding hands; and on the fourth day accused and Floresita again went together to Abit and made love on the wayside. After the harvest at Abit was over, accused Ireneo Tiwaken went for a whole week, to the mountains to fetch fuel.

"...that in the evening of August 25, 1984, accused Ireneo Tiwaken went with one Peter Tanan to the house of Felipa Bonay and there they had conversations and singing with Mrs. Floresita Albing and some children. After staying in the house of Felipa Bonay (sic) for two hours accused was called by Mrs. Albing to accompany her home located at a distance of about 300 to 400 meters away from the house of Mrs. Bonay (sic). That upon reaching the house of Mrs. Albing, the kitchen door was opened by Floresita and both of them with Ireneo Tiwaken entered and after exchanging some words their love got arose (sic) and they started kissing and embracing and made love. Thereafter, Floresita went to get a mat and they slept on the kitchen floor and again made love before sleeping. Late that night Ireneo was awaken (sic) by Floresita telling him to leave as she will go preaching doctrine at Balaoa that morning so they again made love for the third time that night and after that accused left the house and went to sleep in the incomplete house of Floresita located above. In the following morning, August 26, 1984, accused woke up and went home and ate and after eating, he attended a meeting at the Atato and after the meeting he went to sleep again in his usual sleeping place. Later that day he was awaken (sic) by two policemen named Pespes and San Jose and was informed that Floresita sued him for rape so accused was brought to Tadian and placed in jail. The following day, August 27, 1984, accused was brought to the Abatan hospital for medical examination and the doctor asked accused if he quarreled with anybody and the policeman who accompanied accused informed the doctor that accused was sued for rape." [3]

The court a quo gave full credence to the prosecution's version and rendered the aforestated judgment of conviction. Hence, the present appeal. Appellant assigns the following errors allegedly committed by the court a quo:

#### I

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT THIS (HIS) GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT;

#### II

THAT THE TRIAL COURT ERRED IN NOT APPRECIATING THAT THE ELEMENTS OF RAPE ARE LACKING IN THE INSTANT CASE;

#### III

THAT THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND UNSUBSTANTIATED TESTIMONY OF THE COMPLAINANT.

#### IV

THAT THE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE UNPREJUDICED AND HIGHLY CREDIBLE TESTIMONIES OF THE WITNESSES FOR THE ACCUSED.

#### V

THAT THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF THE PROSECUTION WITNESS, PAUL PESPE AS TO WHAT ACCUSED IS SUPPOSED TO HAVE STATED WHEN BEING INVESTIGATED FOR THE RAPE CHARGE MADE BY THE COMPLAINANT.

The foregoing assignments of error, being interrelated, will be discussed jointly.

The basic principle in criminal prosecutions is that accusation is not synonymous with guilt. The accused is presumed innocent until the contrary is proved by the prosecution. If the prosecution fails, it fails utterly, even if the defense is weak or, indeed, even if there is no defense at all. The accused faces the full panoply of state authority with "The People of the Philippines" arrayed against him. In a manner of speaking, the odds are heavily against him. It is important, therefore, to balance the positions of the prosecution and the defense by presuming the innocence of the accused until the state is able to overcome the presumption by proof of guilt beyond reasonable doubt.

The Court has stressed time and again that in view of the severity of the penalties for the offense of rape, justified by the "traumatic consequences for the unfortunate victim and grievous injury to the peace and good order of the community," there is need 'for extreme care on the part of the judiciary to avoid an injustice done to an accused. For it is equally true that this is an offense to which, as is often the case, only two people can testify, thus requiring the most conscientious effort on the part of the arbiter to weigh and appraise the conflicting testimony. If a reasonable doubt exists, the verdict must be one of acquittal.' It must be borne in mind that it is an accusation easy to be made, hard to be proved but harder to be defended by the accused, though innocent. The evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence." [4]

In the case at bar, numerous circumstances detract from the credibility of the testimony and version of the alleged rape victim, resulting in the failure of her case to meet the test of moral certainty and guilt of the accused beyond reasonable doubt.

To begin with, there were no witnesses presented to corroborate the story of the complainant, despite the fact that her brother and sister were inside the house at the time of the alleged rape therein. Likewise, while complainant had neighbors all around her house - scene of the alleged rape - including an uncle who lived very near her house (who would have noticed any struggle or commotion inside the house of the complainant if there really was any), yet, none of such neighbors was presented as witness for the complainant.

Indeed, it is hard to believe why the complainant did not shout or raise any outcry which she could have easily done at the time she was supposed to have been sexually assaulted. [5] Why did she not shout for help when, according to her testimony, accused Ireneo Tiwaken suddenly opened the window of her house and was trying to climb in order to enter the house? Why did she not do the same thing even after Tiwaken had supposedly entered the house, considering that she had the needed time to do so? [6]

When one considers that complainant had a brother and sister who were staying with her in the house where the rape allegedly took place and that she had neighbors within the immediate vicinity of her house, including an uncle, who were well within hearing distance, [7] her testimony as to the alleged sexual assault on her becomes a bit difficult to really appreciate.

It is even harder to fathom how the complainant merely went to sleep in her room after having been allegedly sexually assaulted and ravished by the accused three (3) times. It is unnatural and contrary to human experience for a woman not to immediately seek the help of a brother and sister, an uncle and other neighbors who were within the vicinity of her house at the time of the alleged assault or immediately thereafter.

In *People vs. Hayag*, [8] this Court ruled:

"In all such cases, the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth or fidelity of the charge."

and in *People vs. Monsalud*, [9] this Court said:

"Subjecting the evidence on record to the crucible of scrutiny, we find that the most significant fact decisive of this appeal, is the very conduct of the complainant immediately after the alleged rape. The actuations do not show any sign of fatigue, disturbance or predicament to her brothers, to her parents nor to the policeman who came after the alleged rape. (People of the Philippines vs. Acogido, C.A. GR No. 21513-R, April 30, 1969). Her silent acquiescence which she maintained until the following morning seriously casts doubt on the prosecution's theory of rape."

Besides, there is no evidence to show that the complainant was really forced to have sexual intercourse with the accused. In fact, when the complainant went for medical examination, what was found on her body were minor abrasions on the external genitalia which could have been caused by fingernails as reported in the testimony of Dr. Camilo Rivera[10] and affirmed by Dr. Philip Guinid, who actually examined Florecita Albing's condition during the earlier inquiry and who stated that the abrasions in the genitalia of the woman could have been caused by anything such as "fingering (of) her own."

Court: In your findings, what caused the wounds?

Answer: It could have been caused by anything such as fingering her own ....

Court: From August 26, 1984 at 10:30 a.m. a few number of hours before examination, could a wound have been inflicted?

Answer: That is possible. (TSN, Nov. 29, 1984)

These answers give some credence to the theory that the abrasions on the genitalia of Florecita Albing (which were minor and did not even require treatment) could have been self-inflicted by the complainant for reasons of her own.

The testimony of the complainant in this case must be considered with caution. In *People vs. Reyes*[11] and in *People vs. de Guia*,[12] this Court held:

"In the appreciation of the evidence in a prosecution for the crime of rape, we have been invariably guided by three well-known principles:

1. That an accusation for rape can be made with facility; it is difficult for the complainant to prove it, even more difficult for the person accused, though innocent, to disprove it.
2. That in view of the intrinsic nature of the crime of rape where only two (2) persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and
3. That the evidence for the prosecution must stand or fall on its own merits, and can not draw strength from the weakness of the evidence for the defense."

In its totality, the constitutional presumption of innocence of the accused in this case has not been overcome by proof of guilt beyond reasonable doubt. There is doubt because the complainant had no contusions in her stomach caused by a blow of such severity as to have rendered her unconscious.[13] And it is almost impossible for the complainant to have been unconscious for so long a time as not to have been fully aware that accused had sexual intercourse with her two times (2) before she allegedly regained consciousness. It takes time to consummate an act of coitus and an even longer time to consummate the next.

In *People vs. Monsalud*,[14] this Court held:

"Complainant claimed that in a period of 30 minutes appellant had sexual intercourse with her three (3) times. If there was any resistance, no matter how token, put up by complainant, appellant could not have had carnal knowledge three (3) times in 30 minutes. The assault was repeated thrice, she said, but she did not explain or

even as much as intimate, how the second and third sexual assaults happened. It has been held that 'the fact that the accused had succeeded in having sexual intercourse with the complainant for the 2nd and 3rd time is a very strong circumstance against complainant's claim that her previous intercourse was perpetrated by the force or with imminent threat of her life.' (People of the Philippines vs. Lacson, 53 O.G. 1823)"

Furthermore, doubt is also raised by complainant's own act of bringing her supposed underwear and dress as well as the bolo that was supposed to have been held by Tiwaken, as exhibits, fifteen (15) days after the alleged rape. While the assault was allegedly committed on 25 August 1984, the exhibits were submitted to the police only on 10 September 1984. The intervening period, no doubt, could have given the complainant sufficient time to "manufacture" her own evidence. It is in this connection that the ruling in *People vs. Dramayo*,<sup>14</sup> acquires significance:

"Accusation is not, according to fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is a need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. 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."

So also in *People vs. Tempongko*,<sup>16</sup> where this Court held:

"The theory of the prosecution has too many loose ends that it has failed to tie up to the satisfaction of this Court. The guilt of the appellant has not been established beyond reasonable doubt and so cannot be affirmed in this appeal. x x x The ambiguous evidence of the prosecution cannot justify our condemning the appellant to prison for the rest of his life where there are whispers of doubt that he is guilty."

and in *People vs. Alcaraz*,<sup>17</sup> where we said:

"However, the Constitution and the law are clear that in case of reasonable doubt, the accused must be acquitted. Our jurisprudence is built around the concept that it is preferable for the guilty to remain unpunished than an innocent person to suffer a long prison term unjustly."

Felipa Bonay Tanan testified that the complainant was in her house in the evening of 25 August 1984 to attend the birthday party that she and her husband hosted. This was admitted by the complainant. Felipa also testified that the accused accompanied the complainant home after the birthday party and that she provided the complainant with some light which the latter in turn handed over to the accused.<sup>18</sup>

Victor Gonan and Simeon Benbenen testified to the effect that it was of common knowledge in Tue, Tadian, Mt. Province that the complainant and the accused were lovers. According to them, many residents of their place expected that they would soon get married because it was widely known that they were already sleeping together, just like husband and wife. However, when the accused went to Baguio sometime in 1981 to look for work, the complainant suddenly got married to a certain Pedro Albing, probably thinking that the accused had left her for another girl. Due in turn to some marital misunderstanding, Pedro Albing left the complainant sometime in 1983 and did not return home for a significant period of time. The same witnesses further testified that sometime in the evening of 25 August 1984, they met the complainant and the accused headed towards the former's house.<sup>19</sup>

The testimony of Capt. Rafael Delson, the station commander of the Integrated National Police of Tadian, is also of importance in evaluating the accused's innocence or guilt of the crime charged. Substantially, he testified that the complainant herself went to visit the accused on 27 August 1984 or a day after she filed the complaint against him to tell him about her predicament. Delon testified that when the accused asked the complainant why she filed a case against him, she replied that she was confused because she just learned that her husband had arrived on 25 August 1984 and that he went directly to his uncle's residence in Kayan.<sup>20</sup>

According to the complainant herself, she went directly to the residence of Paul Pespes on 26 August 1984, to report the rape instead of reporting directly to the Police Station.<sup>21</sup>

Paul Pespes requested his daughter to personally accompany the complainant to the hospital. He admitted that he knew the complainant even before the incident and that his wife and the mother of the complainant are related to each other.<sup>22</sup> Pespes proceeded right away to arrest the accused and elicited admissions from the latter, in clear violation of the constitutional right of the accused to remain silent and to be assisted by counsel. It can be gathered from the circumstances narrated by Pespes that he directly asked of the accused what he committed. The question, in effect, asked for an admission on the part of the accused and did not partake of a general investigation, as the accused had already been charged by complainant of the offense. The accused was a suspect and he should have been apprised of his constitutional rights to counsel and to remain silent first before any investigation could proceed against him.

The sustained scratches and bruises on the face of the accused and on the dorsal side of his hands as well as the human bite marks on his shoulders at the time he was picked up for questioning can not by any means and by themselves be taken against the accused as evidence of guilt.<sup>23</sup>

The prosecution has not, in short, demonstrated the link between the injuries of the accused and the offense charged. It is plain conjecture to say that the accused must have been guilty of rape because he had such scratches and bruises on his body.

Finally, from the totality of the circumstances, the reasonable idea cannot be ruled out that the ulterior motive of the complainant in filing the rape charge against the appellant was to avoid retribution from her husband who might have found out her sexual union with the accused during his absence from the conjugal abode.

WHEREFORE, the appealed judgment is SET ASIDE. Accused-appellant Ireneo Tiwaken is hereby ACQUITTED on the ground that his guilt for the crime of rape has not been proved beyond reasonable doubt.

### **SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

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\* Penned by Judge Nicasio A. Baguilat

[1] Rollo, p. 17

[2] RTC Decision, Rollo, pp. 66-68

[3] RTC Decision, Rollo, pp. 68-69

[4] People vs. Estacio, G.R. No. L-54221, January 30, 1982; 111 SCRA 537

[5] TSN, p. 59, September 19, 1985

[6] TSN, p. 59, September 17, 1985

- [7] TSN, pp. 46-51, September 19, 1985
- [8] G.R. No. L-38635, November 17, 1980; 101 SCRA 67
- [9] G.R. No. L-35136, May 31, 1982; 114 SCRA 191
- [10] TSN, p. 14, April 9, 1985
- [11] G.R. No. L-36874-76, September 30, 1974, 60 SCRA 126
- [12] G.R. No. L-49825, May 14, 1990, 185 SCRA 336
- [13] TSN, p. 12, April 9, 1985
- [14] G.R. No. L-35136, May 31, 1982, 114 SCRA 191
- 14 G.R. No. L-21325, October 29, 1971; 42 SCRA 59
- 16 G.R. No. 69668, October 2, 1986; 144 SCRA 588
- 17 G.R. No. 66509 April; 136 SCRA 74
- 18 TSN, pp. 98-99, December 16, 1987
- 19 TSN, pp. 98-99, October 27, 1987
- 20 TSN, pp. 118-120, November 21, 1989
- 21 TSN, p. 30, August 16, 1985
- 22 TSN, Paul Pespes, pp. 23-24
- 23 People vs. Flores, G.R. No. L-58170, June 6, 1990; 186 SCRA 303

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