

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO MADRIDANO Y TACBAO ALIAS TATA AND RONNIE DAG-ON Y LAGHAY, ACCUSED-APPELLANT.*G.R. No. 93435. October 22, 1993*

Ponente: CRUZ, J.

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They first came to rob, then returned to rape. The robbery is under a different information and court; we do not deal with it here. What concerns us is the alleged rape, or rapes, committed by the herein appellant, who continues to deny them.

There were two of them originally accused and eventually convicted. Notices of appeal were filed on their behalf by Atty. Leo G. Rey of the Public Attorney's Office, Department of Justice, who was told to file their brief. He did not. Required to show cause why he should not be disciplined for his disobedience, he explained that he had filed the notice of appeal without consulting the two convicts who, upon a later interview with them, confessed their guilt. He therefore asked to be relieved as their counsel.[1]

The two convicts were required by the Court to comment on this explanation. Only Gregorio Madridano replied, denying that he had admitted his guilt and asking that he be permitted to continue his appeal with the assistance of a new lawyer.[2] His plea was granted. Atty. Romeo B. Igot was appointed by the Court as his counsel de oficio and filed the appellant's brief in due time.[3] The other convict, Ronnie Dag-on, did not bother to comment and is hereby deemed not to have appealed at all. The judgment of the trial court is final and executory as to him. The decision is here being reviewed only as it is challenged by appellant Madridano.

There were four witnesses who testified for the prosecution.[4] Their collective testimonies, principally that of Perlita Dag-on, the alleged victim, tended to show that she had indeed been raped twice by Madridano with the assistance of Ronnie Dag-on.

The incident happened on March 2, 1989, at about nine o'clock in the evening, at barangay Old Nongnongan, San Carlos, Bukidnon. As related by Perlita, three men, including Madridano and Dag-on, robbed her Aunt Luzmin Dag-on that same night and then left. After a few minutes, they came back to her house and demanded that Perlita come down. Afraid for their lives, Perlita obeyed, but accompanied by Luzmin and her six-year old niece, Richelle. The men took them outside the house into a clearing, where the third man, Efren Ganaba, detained Luzmin.[5] The rest of the group proceeded farther down the field. Madridano tripped Perlita, making her stumble, whereupon he fell upon her and was able to undress her. She struggled against him, however, so he called on Dag-on to help him subdue her. Dag-on came to his aid and pulled up Perlita's arms as she lay on the ground and locked her head with his elbow. Perlita continued to resist as best she could, but in the end Madridano succeeded in penetrating her. That was the first time.[6] A few minutes later, his lust not yet sated, Madridano was upon her again, with Dag-on still helping, and she had to suffer the same outrage all over again.[7] Then they released her and, together with the child Richelle, who had watched everything in tears and terror, took her back

home and left.[8]

Perlita and Richelle stayed outside until morning when they found their Aunt Luzmin walking in the field. With the help of neighbors, they took her to the hospital for treatment of her injuries. Perlita went to her father's house to tell him her Aunt Luzmin had been robbed and hurt. It was only much later, after her father had visited her aunt, that she summoned enough courage to tell him that she had been abused by Madridano with Dag-on's help.[9] He immediately reported the matter to the authorities. Perlita was subjected that same day to medical examination by Dr. Carlos Gamboa, who made the following findings.[10]

Diagnosis/Findings: P.E. - No sign of external injury except at the lateral portion of left scapular region. Echymatic with superficial linear abrasions, about 2 inches in length.

Perenial and vaginal exam. Hymen - presence of old, healed laceration of 3:00, 5:00, 7:00 and 11:00 o'clock. Admits one finger easily.

Laboratory Exam: Gram staining for vaginal smear for the presence of spermatozoa.

Slide I - No spermatozoa seen.

Slide II - No spermatozoa seen.

Madridano's defense was denial and alibi. He said he could not have committed the rapes because he was in barangay Santo, Ritaotao, in the province of Bukidnon, working in his Uncle Marcelo Bulatao's farm. He had been there since February 25, 1989, until his arrest on May 24, 1989, for the rape of Perlita, whom he did not know before that date.[11] He was corroborated by his uncle and Anastacio Sulatan, a neighbor.[12]

Ronnie also pleaded alibi, alleging that he was in Kalinan, Davao, from February 5, 1989, until May 22, 1989, the date he was arrested.[13] He had no corroboration. He admitted Perlita was his cousin and that he had several conversations with her earlier, before leaving for Davao.[14] He also said he stayed in his Aunt Luzmin's house for two months and that he knew Madridano.[15]

Rejecting their defense, Judge Vivencio P. Estrada of the Regional Trial Court of Malaybalay, Bukidnon, found them both guilty of rape and sentenced them to suffer the penalty of reclusion perpetua, to indemnify Perlita Dag-on in the amount of P15,000.00, and to pay the costs.[16]

Madridano now claims this was all a mistake and that he should never have been convicted at all.

We do not think so. The mistake was his. He should never have raped Perlita at all.

Alibi is especially weak in the face of the positive identification of the accused. In the case at bar, there was such identification, both of Madridano and Dag-on, by the victim herself. Perlita recognized their voices; she had heard and had even talked to them before the incident.[17] Although they were initially masked, the masks, which consisted only of t-shirts wrapped around their faces, fell off during the struggle and Perlita could see their faces in the bright moonlight.[18] No less importantly, Perlita related that after the rapes, when they took the two girls back to their house, Madridano and Dag-on were no longer masked.[19] Hence, Perlita relied not only on her identification of their voices, which the appellant says she could not have remembered from their alleged casual conversations, but upon her recollection of the face of the man who raped her as the mask fell off during their struggle.

Madridano's face was thrust on hers. He was on top of her. She could not have failed to see the man who was pushing her thighs apart to lay wide open the threatened target. How could she not remember that terrible face that was leering at her as he forced his lechery into her? How could she not remember the lust in that face, the

lascivious greed that fed the wicked craving in his loins when, even as she lay pinioned and exposed, he impaled and defiled her?

The defense stresses that the medical report shows no signs of violence on Perlita's body and not even spermatozoa in her vagina, let alone the fact that the lacerations in her hymen are old and healed.

Perlita testified, however, that Madridano threatened her with a hunting knife he was holding,[20] and in any case her arms and head were restrained by Dag-on as Madridano raped her. The doctor declared that the scratches on her back could have been caused while she struggled on the ground.[21] According to Perlita, she felt a sticky substance in her vagina after the rapes[22] but, as Dr. Gamboa surmised, this could have been washed away when she cleaned herself.[23] As for the healed lacerations, there was no allegation from the prosecution that the victim was a virgin at the time she was raped, only that she was raped. Rape does not necessarily mean defloration.[24] A freshly broken hymen is not an essential element of rape. The fact that the lacerations are old and healed - which could have been, according to the doctor, "two weeks old, one month old, one year old"[25] - does not disprove that Perlita was raped on March 2, 1989.

We dismiss the defense argument that the appellant should be exonerated because his guilt has not been proved beyond reasonable doubt. This Court would be the first to insist on the application to him of the constitutional presumption of innocence as this is one of the great guarantees of the Bill of Rights to the accused. But the evidence against the appellant is overwhelming. He has been positively identified by the victim, who had no motive for testifying falsely against him. By contrast, his alibi is unconvincing, as the trial court and this Court have found. Even with the presumption of innocence in his favor, the evidence of the prosecution, being heavier, must tip the scales of justice against him.

The Court notes that although it has been proved that Gregorio raped Perlita twice that same night, the information charged him with only one rape. Under the rule he does not deserve, he cannot be punished in this case for the second rape.[26] The Court is also revolted by the fact that Gregorio raped Perlita in the presence of the six-year old Richelle, who did not have to be exposed to the obscene incident. Unfortunately, this circumstance also cannot increase the penalty imposed on him, which is already the maximum prescribed by law.

The phallus is not a battering ram breaking down the gates of chastity. Like the gallant lover, it may enter the lady's chamber only upon invitation and consent.

WHEREFORE, the appealed judgment is AFFIRMED except for the civil indemnity, which is increased to P30,000.00. It is so ordered.

Griño-Aquino, Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Explanation, Rollo, pp. 20-21.

[2] Rollo, p. 20-21.

[3] Ibid.

[4] Perlita Dag-on, her aunt Luzmin Dag-on, the victim's father Marcelino Dag-on and Dr. Carlos Ma. Gamboa; Decision, p. 48.

[5] TSN, November 21, 1989, pp. 4-6.

[6] Ibid., pp. 6-9.

- [7] Id., p. 11.
- [8] Id., p. 12.
- [9] Id., pp. 13-15.
- [10] Exhibit A, Rollo, p. 7.
- [11] TSN, February 6, 1990, pp. 31-36.
- [12] Ibid., pp. 46-53.
- [13] Id., pp. 39-40.
- [14] Id., p. 43.
- [15] Id., p. 40; 43.
- [16] Decision, Rollo, pp. 47-50.
- [17] TSN, November 21, 1989, p. 10.
- [18] Ibid, pp. 9-10; TSN, January 5, 1990, p. 18.
- [19] Id., pp. 12-13.
- [20] Id., p. 7.
- [21] TSN, January 5, 1990, pp. 3-4.
- [22] TSN, November 21, 1989, p. 13.
- [23] TSN, January 5, 1990, p. 6.
- [24] People v. Banayo, 195 SCRA 543; People v. Bacani, 181 SCRA 393.
- [25] TSN, January 5, 1990, p. 4; p. 7.
- [26] People v. Robles 170 SCRA 557; People v. Corral, 157 SCRA 673; Mabilde, Jr., Jr. v. Jabson, 68 SCRA 456.

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