

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO SALOMON Y OLPANGO @ “ALE,” @
“BOYET” AND FELICIANO CONGE @ PEPING,
ACCUSED-APPELLANTS.**

G.R. No. 96848. January 21, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

The novel defense in this prosecution for rape is that the physical evidence of the complainant's violation was caused not by the male organ but by the five fingers of one of the appellants that were thrust into her vagina in anger and not lust. The defense faults the trial judge for giving credence to the complainant. It avers that her testimony should not have been accepted at all because she is admittedly a mental retardate and therefore unreliable per se.

These curious arguments will not be dismissed out of hand by this Court. The appellants are entitled to be heard in their defense, no less than the prosecution, although neither party is necessarily to be believed if its evidence falls short of the strict standards of the law.

The trial court found that on October 11, 1987, while Sylvia Soria, a 20-year old mental retardate, was walking along the Maharlika Highway at Casab-ahan, Gandara, Samar, Alejandro Salomon and Feliciano Conge, who were apparently waiting for her, accosted her and forcibly took her to the ricefield some ten meters away. There she was raped by Salomon with Conge's assistance. On her way home, she met her brother Senecio, to whom she related her ordeal. The two of them reported her rape to their father. That same night, the family walked the three-kilometer distance to the police station, where Restituto Soria signed a complaint for the rape of his daughter by Salomon and Conge.[1] Sylvia was medically examined at the Gandara General Hospital by Dr. Susan Tanseco, who issued the following certificate:[2]

A physical examination has been done on Miss Sylvia Soria, 20 years of age, a resident of Brgy. Casab-ahan, Gandara, Samar. P.E. showed a single, linear laceration on the labia minora at 6:00 o'clock position. There are isolated erythematous areas on both thighs. There is also the presence of sandy particles on the genital area. Speculum exam, however, showed negative findings.

Three days later, Salomon and Feliciano could no longer be found. It was only after a four-month search that they were arrested in Aguado, Plaser, Masbate, from where, after being detained there for one month, they were taken back to Samar.[3] Following a protracted investigation, an information for rape was filed against them on August 9, 1988, with the Regional Trial Court in Calbayog City.[4]

The principal witness for the prosecution was Sylvia Soria herself, who recounted in detail the manner of her ravishment by Salomon with the help of his co-accused Conge. She described how she was dragged to the ricefield by the two accused and there undressed against her will. As Conge spread and pinned her legs, Salomon mounted and penetrated her, although with difficulty because she was still a virgin. She felt pain in her vagina and

"something slippery." She could not cry out or repel the attack because the two were stronger than she and Conge was holding a bolo.[5] After her rape, Salomon sucked and twisted her nipples and demanded that he suck his penis. Her low mentality was demonstrated in her angry testimony of her refusal: "The devil with him, it is not an icedrop." [6]

The prosecution presented several other witnesses,[7] including Dr. Tanseco, who affirmed her medical certificate of the complainant's examination. On cross-examination, she declared that the laceration in Sylvia's vagina could have been caused by penetration of a blunt instrument such as an average-sized penis.[8]

The two accused flatly denied the charge against them. Conge swore that on the night in question, Sylvia arrived at the highway and loudly demanded a lamp from the people in Epifanio de Guzman's house. He approached her and said there was no lamp to spare, whereupon, as he turned his back to leave, she hit him in the neck with a piece of wood, causing him to stagger. In swift reaction, he caught Sylvia by the waist and pushed her to the ground and as she lay there exposed (she was not wearing any underwear), he angrily shoved his five fingers into her vagina. Sylvia cried out at the top of her voice. Fearing that her relatives might come, he withdrew his hand and immediately left the place.[9]

Salomon corroborated his co-accused. He testified that he saw the whole incident, being then about three-arms length away from the highway.[10] De Guzman agreed, saying that he was also in the yard of his house at the time, and playing his guitar, when the encounter occurred.[11]

Both Salomon and Conge also protested that they had not gone to Masbate in order to escape as the trial court held. They pointed out that they were in fact investigated by the police the day following the alleged incident but no action was taken against them.[12] The truth, they said, was that they had gone to Masbate to buy two horses on instructions from Salomon's father, Epifanio, who had given them P3,000.00 for this purpose.[13]

Judge Ricardo A. Navidad disbelieved the accused and found them guilty as charged. As conspirators, they were each sentenced to reclusion perpetua and held solidarily liable to the complainant for P30,000.00 as civil indemnity, P22,000.00 as moral damages, P5,000.00 as exemplary damages, and P5,000.00 as attorney's fees. They were also ordered to pay the costs.[14]

In the appellants' brief (incorrectly denominated as a Petition for Review), the defense suggests that the testimony of Sylvia Soria is flawed because she is an insane person who was confined at the National Mental Hospital a few months before the alleged incident.[15] It is also argued that her testimony was fabricated at the instance of her father, who had a bone to pick with Salomon's father. The appellants insist that their own version of the incident is more plausible and should not have been rejected by the trial court in view of the constitutional presumption of innocence in their favor.

A mental retardate is not for this reason alone disqualified from being a witness. As in the case of other witnesses, acceptance of his testimony depends on its nature and credibility or, otherwise put, the quality of his perceptions and the manner he can make them known to the court.[16] Thus, in *People v. Gerones*, [17] the Court accepted the testimony of a rape victim notwithstanding that she had the mentality of a nine or ten-year old "because she was able to communicate her ordeal... clearly and consistently." In the case of *People v. Rondina*, this Court declared:

The testimony of the offended party herself was especially telling and credible despite the fact that she was somewhat mentally deficient, as the trial court noticed. Although she was really of limited intelligence, the complainant nevertheless did not forget the harrowing experience she suffered during that frightful night in the bushes when the three men seared her memory with the lust they forced upon her. The tale she narrated in court was not woven out of sheer imagination but born in anguish and remembered with pain and as plain and unembellished as the simple life she led. If she spoke in forthright language at the trial, it was because she was

speaking the truth of that horrible ravishment she could not push out of her mind.

In the case before us, the trial court noted that although Sylvia's speech was slurred and it was necessary at times to ask her leading questions, "her testimony was positive, clear, plain, coherent and credible." Her mental condition did not vitiate her credibility. We also believe, as we have observed often enough in many cases[18] that a woman will not expose herself to the humiliation of a rape trial, with its attendant publicity and the morbid curiosity it will arouse, unless she has been truly wronged and seeks atonement for her abuse.

The defense points to a supposed hostility between Sylvia's and Salomon's respective fathers due to a conflict over a piece of land and the administrative charge Epifanio filed against Restituto when they were both teaching at the local school. It suggests that this was the reason for Sylvia's false charge against Salomon, who has simply been caught in the crossfire, as it were, between Restituto and Epifanio.

The connection is far-fetched. It is unnatural for a parent to use his offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma, as in this case. There is no evidence that Sylvia's father is an unnatural parent. Besides, the enmity itself is in the view of the Court not deep enough to provoke the charge, assuming that Restituto Soria was willing to use his daughter to falsely accuse his enemy's son. Significantly, the complaint was filed by Restituto against the son and not the father who was his real adversary.

The lack of a finding of spermatozoa during Sylvia's medical examination did not conclusively establish an absence thereof because the examining doctor simply did not have the necessary equipment to make a more thorough report.[19] In fact, she suggested another examination at the Calbayog General Hospital.[20] At any rate, we have held that the absence of spermatozoa in the complainant's vagina does not negate the commission of rape; there may be a valid explanation for such absence, as when the semen may have been washed away or when the rapist failed to ejaculate.[21]

The appellants decry the trial judge's conclusion that they had gone to Masbate to escape, but it appears that this was really their intention. In the first place, it is not true that they were investigated before they left, for the fact is that Salomon's father stopped the investigation on the ground that there was no lawyer to represent them.[22] It is also noted that Salomon used another name in Masbate and called himself Boyet instead of Ale, his real nickname.[23] Salomon and Conge traveled from place to place in that province but were not able to buy a single horse during the four months that they were there. Instead, they used the P3,000.00 Salomon's father had given them not only for their daily needs but also "in dancing and drinking," as Conge put it.[24] Well indeed has it been said that "the wicked flee when no man pursueth but the innocent are as bold as a lion." The appellants' trip to Masbate was unmistakably a flight from justice.

And now let us consider the interesting defense of what we may call Sylvia's "manual rape" for lack of a more descriptive term. Admitting the laceration in Sylvia's vagina, Salomon nevertheless maintains that it was caused not by his penis but by Conge's fingers. Conge's purpose was to punish her and to disable her and thus prevent her from hitting him again.

The trouble with this defense is that it is too comical for words. It looks like a bawdy-house skit featuring a mad avenger and his naughty fingers. Besides, the two accused and De Guzman have a confused recollection of how this remarkable incident happened, the first perhaps in the annals of Philippine jurisprudence.

Conge declared in his affidavit that Sylvia hit him only once and then swore on direct examination that he was hit twice, whereas both Salomon and De Guzman swore he was hit only once.[25] Salomon and Conge said that Sylvia was wearing pants but De Guzman insisted with equal certainty that it was a skirt.[26] Salomon said Sylvia's pants were pulled down to her knees, but Conge declared that she was completely disrobed, then said the

pants came down only to her ankles.[27] Conge first said his fingers were spread when they thrust them inside Sylvia's vagina but, sensing the trial court's disbelief, recanted and said he put his fingers together in the shape of a cone before plunging them into Sylvia's bared organ.[28]

We are satisfied with the findings of the trial court that the appellants, in conspiracy with each other, committed the crime of rape upon Sylvia Soria, with Salomon actually violating her as Conge helped restrain her while also frightening her with his bolo. The crime was committed with force and intimidation, and worse, against a mental retardate, who fortunately was nevertheless able to narrate the details of her outrage. The theory of the defense is absurd. The trial court was correct in rejecting it. The assessment of the evidence, especially the credibility of the witnesses, is the primary function of the judge presiding at the trial. We defer to the findings of the trial court in the case at bar, there being no showing that they were reached without basis.

The Court cannot conclude this opinion without remarking on the extraordinary lengths to which an accused will go to falsify the truth and evade the sanctions of the law. The defense in this case is illustrative of such desperation. What the appellants have not considered is that the Court is not without experience in detecting falsehood and should not have been expected to be deluded by the ridiculous story they blandly submitted. Counsel should remember that gullibility is not one of the traits of this Court.

WHEREFORE, the appeal is DISMISSED. The decision of the trial court is AFFIRMED, except for the award of moral, exemplary, and actual damages and attorney's fees, which are disallowed. The civil indemnity is retained at P30,000.00. Costs against the appellants.

SO ORDERED.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

[1] TSN, November 25, 1988, pp. 8-27.

[2] Exhibit "A," Records, p. 6.

[3] TSN, December 14, 1988, p. 74.

[4] Records, p. 18.

[5] TSN, November 25, 1988, pp. 12-23.

[6] Ibid., pp. 24-25.

[7] Decision penned by Regional Trial Court Judge Roberto A. Navidad, Branch 32, Calbayog City, on October 2, 1990, pp. 3-16.

[8] TSN, January 16, 1989, p. 68.

[9] TSN, June 14, 1989, pp. 41-50.

[10] TSN, September 4, 1989, pp. 8-13.

[11] Decision, pp. 25-26.

[12] TSN, June 14, 1989, p. 52 and TSN, September 4, 1989, p. 16.

[13] TSN, June 14, 1989, pp. 59 and 61.

[14] Decision, pp.

[15] Appellants' brief, pp. 6-8.

[16] Rule 130, Section 20 of the Rules of Court.

[17] 193 SCRA 263.

[18] *People v. Grefiel*, 215 SCRA 596; *People v. Dabon*, 216 SCRA 656; *People v. De Guzman*, 216 SCRA 754; *People v. Yambao*, 193 SCRA 571; *People v. Patilan*, 197 SCRA 354; *People v. Vinas*, 202 SCRA 720; *People v. Pasco*, 181 SCRA 233; *People v. Rosell*, 181 SCRA 679; *People v. Albarillo*, 188 SCRA 113; *People v. Comasis*, 189 SCRA 649.

[19] TSN, January 16, 1989, p. 72.

[20] *Ibid.*

[21] *People v. Eclarinal*, 182 SCRA 106; *People v. De los Reyes*, 203 SCRA 707; *People v. Pomentel*, 216 SCRA 375.

[22] TSN, December 14, 1988, p. 58.

[23] *Ibid.*, pp. 69.

[24] TSN, June 14, 1989, p. 62.

[25] TSN, June 14, 1989, pp. 43-45; TSN, September 4, 1989, p. 10; TSN, De Guia, p. 7.

[26] TSN, September 4, 1989, p. 11; TSN, June 14, 1989, p. 45; No. 8, Exhibit "10;" Rollo, pp. 140-141; TSN, De Guia, p. 14.

[27] TSN, June 14, 1989, pp. 45-46; TSN, September 4, 1989, p. 12.

[28] TSN, June 14, 1989, p. 49; Decision, p. 38.

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