

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT POCULAN, ACCUSED-APPELLANT.

G.R. Nos. 70565-67. November 09, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Not one but three (3) separate sworn complaints were filed by Conchita Rone charging the accused, Robert Poculan, erstwhile Municipal Mayor of Rizal, Zamboanga del Norte, with Rape, twice in the evening of 22 March 1980 and at dawn the next day or on 23 March 1980.

Three (3) identical Informations differing only as to the date, time and place of commission were subsequently filed on 29 September 1981 before the Court of First Instance of Zamboanga del Norte, Branch VI, Dipolog City.[1] To quote a typical one:

"That in the evening on or about the 22nd day of March 1980, at around 6:30 p.m. in the municipality of Rizal, Zamboanga del Norte, within the jurisdiction of this Hon. court, the said accused moved by lewd and unchaste design, did then and there, by means of force, violence and intimidation, wilfully, unlawfully and feloniously have carnal knowledge with one Conchita Rone, against her will and without her consent.

"Contrary to law, with the aggravating circumstance of abuse of his power as a Municipal mayor by requiring the victim to report to his house in the pretext of performing official work, before she was raped." (Rollo, Crim. Case No. 2712, p. 1)

In a joint Decision, the Trial Court convicted the accused and sentenced him to three (3) penalties of reclusion perpetua; to pay the complaining witness the sum of P75,000.00 as moral damages, and P15,000.00 as exemplary damages. Hence, this appeal.

The prosecution version of the incidents, culled from the People's Brief, may be narrated thus: Complainant Conchita B. Rone, a commerce graduate, then 28 years of age and single, worked as a clerk since 1 November 1977 in the Office of the Mayor, Appellant Atty. Robert Poculan, in Rizal, Zamboanga del Norte. While working as such, she was boarding in the house of her aunt Sofronias B. Eroy in the poblacion of Rizal, Zamboanga del Norte.

In the morning of 22 March 1980, a Saturday, the Vice Mayor of Rizal, Zamboanga del Norte, Julieta Pila, dropped in at Complainant's boarding house and requested Complainant to accompany her in looking for a Ford Fiera to be hired and used by the teacher members of the election committees in going to Dipolog City on the following day of 23 March 1980. A recounting of ballots at the Pilot Demonstration School in Dipolog City was scheduled on that date.

After they found and hired a Ford Fiera, Complainant accompanied by Vice Mayor Pila went to the municipal building of Rizal, Zamboanga del Norte, to prepare and sort out the papers and documents to be brought to Dipolog City on 23 March 1980. At 12:00 noon of 22 March 1980, Complainant went home to her boarding

house.

At 2:00 o'clock in the afternoon of the same day, a certain Servolo Herodias told her that Appellant wanted her to go to his house. At Appellant's house, she arranged some documents and papers, complied with other instructions, and typewrote something.

After finishing her work, Complainant asked permission to leave at 6:30 P.M. Appellant told her to take the motorcab which was parked nearby. After she sat in the motorcab, Appellant followed and said that he was also taking the motorcab to go to the adjoining barangay of Mapang, and he would just drop her at her boarding house along the way.

A certain elderly woman she did not recognize was then already in the motorcab. Pat. Benhur Cabiara also rode in the motorcab. It was driven by Felipe Fuerzas.

After traveling about 1 1/2 kilometers towards barangay Mapang, the elderly woman alighted about a hundred meters from the house of the Pamatongs. At the intersection of the barangay road leading to barangay Nasipang, Pat. Cabiara also alighted. The only passengers left were Complainant and Appellant.

The motorcab did not proceed towards Complainant's boarding house. She thought that Appellant would just pick up something nearby. After the motorcab ran very fast downgrade towards Nilabo, Rizal, Zamboanga del Norte, she became apprehensive. She touched the driver and inquired where the motorcab was bound for. The driver, however, did not answer. She wanted to get out of the cab but Appellant held her hand and said, "Do not move or else I will kill you now."

Upon reaching the small creek of Nilabo, the motorcab stopped. It could not go farther for after the creek was already a hill.

Appellant alighted and pulled complainant who resisted by holding on to the shirt of the motorcab driver. But Appellant abruptly pulled her hand which forced her to get out of the motorcab and even to kneel down. She embraced his legs, pleaded to him and asked him: "Why are we here? What will we do here?". Appellant answered: "There is a coronation in Nilabo and we would be the ones to crown." She, however, only cried and pleaded to be allowed to go home.

Appellant pulled complainant uphill. She resisted but was easily overcome by Appellant who was much stronger. He brought her to a hut, pushed her and told her to enter. She stumbled near the stairs. Inside the hut, he again pushed her which made her lie flat on the floor. Immediately, he laid himself on top of her. He then forcibly pulled up her T-shirt and removed her pants and panty. She resisted and pushed him but he was quite heavy. She said: "Do not! Do not!". He told her: "Do not move."

He pointed his pistol at her and told her that he would kill her. He bit her chin, squeezed her breast and sucked her nipples. Despite her resistance and the wiggling of her body, Appellant finally succeeded in penetrating her private part which made her shout because of the pain.

Thereafter, Appellant lay down on the floor while Complainant squatted at the corner of the room. She looked for her clothes in the dark but after he saw her moving, he pulled her towards him. She stumbled but went back to the corner of the room.

Approximately two hours later, he again forced and succeeded in having sexual congress with her despite her resistance and the moving of her body. Thereafter, he lay down on the floor again. Complainant resumed her search for her clothes and found them.

At about 12:00 o'clock midnight of 22 March 1980, Appellant told Complainant, "Come on, let's go further to that

place," which she later discovered to be a house about 150 meters away. Upon reaching the house, Appellant called the owner and told him to pick young coconuts. After drinking the water of the young coconuts, Appellant told the owner of the house to cook food. While Appellant was eating his very late supper, Complainant was crying for he would not allow her to leave.

At about 3:00 o'clock in the early morning of 23 March 1980, Appellant requested one of the occupants of the house to ascertain if his wagon had already arrived at the place he indicated. After being informed that the wagon was already there, he told Complainant "All right, go ahead." They then walked towards the waiting wagon and boarded it.

The wagon was driven by Orlando Capili who was accompanied by Pat. Benhur Cabiara. It proceeded towards the poblacion of Rizal, Zamboanga del Norte.

On the way back, at about 4:00 or 4:30 in the morning, a little farther from the poblacion, the wagon stopped. Both Capili and Pat. Cabiara alighted from the wagon and stayed elsewhere. Appellant then told Complainant: "If you will not succumb to my wish to have sexual intercourse, the two men - the driver, Capili, and the policeman, Cabiara, will have sexual intercourse with you ... they will take turns in having sexual intercourse with you."

Intimidated, the third carnal assault on Complainant was consummated. Complainant fixed her clothes and Capili and Pat. Cabiara boarded the wagon. The wagon then took a short-cut along a barangay road which passes the boarding house of Complainant.

Upon arrival at her boarding house, she knocked at the door which was opened by a domestic helper of her aunt Sofronias Eroy. She went inside, cried bitterly, collapsed and could not talk. She was then very weak, with swollen eyes and bruises on her arms, chin and face.

When her aunt Eroy came out of the room and inquired where she came from, she told her, "Manay, the Mayor brought me to Nilabo and there he forced me." She then requested her aunt not to reveal to anybody what had happened to her as she was warned that if the incident were revealed, even the Eroy family would be killed.

The whole day of 23 March 1980, Complainant secluded herself. On the following day, 24 March 1980, accompanied by her cousin, she left her boarding house and walked towards her native barrio of Balubohan, Rizal, Zamboanga del Norte, which was about 10 kilometers away. Upon arriving home, she cried and told her brother Virgilio Rone, "I was brought by the Mayor to Nilabo and there he forced me."

In the afternoon of 26 March 1980, Pat. Cabiara accompanied by Filemon Sagaray, the husband of the barangay captain of Balubohan, came to see complainant and told her that Appellant wished to meet her at a neighbor's house. She refused.

On 27 March 1980, Pat. Cabiara together with Filemon Sagaray and his wife Barangay Captain Manoleta Sagaray again informed her of Appellant's wish to talk to her. She bluntly answered that she would not go. Before departing, Barangay Captain Manoleta Sagaray told her, "I would just tell the Mayor to see you in your house". She replied, "It is up to you."

When appellant arrived in her house on 27 March 1980, he muttered, "Oh, the Mayor is under you because it is the Mayor who is now coming to you." He then inquired whether she complained to the Philippine Constabulary. After she replied that she did not, he said, "Yes, I have confidence in you." He praised her and told her that she was religious and educated. He even offered her any work and anything she would like - a house, a coconut plantation or even further studies. To which Complainant answered: "What use is that house, the coconut plantation and sending me to school? I do not need them. I am not interested." He looked at her house and said,

"Don't you like that I would remodel your house?" She did not answer him.

On 1 April 1980, Appellant again went to Complainant's house and reiterated his offer to send her for further studies. He wanted her to report to the office, for the people were wondering why she was not seen there anymore. After she remained silent, Appellant left, saying: "You watch out. If you go out from your place, I will kill you."

On 4 April 1980, Complainant secretly left her house, walked towards barangay Sebaca, Rizal, Zamboanga del Norte, and sought the advice of her aunt, Marcelina Bartolome. After she disclosed her bitter experience with Appellant, her aunt advised her to proceed to Dipolog City and get the assistance of a lawyer. Instead of going directly to Dipolog City, she took a pumpboat and went to the island barangay of Sinipay, Sibutad, Zamboanga del Norte, where she slept in the house of her married sister Nicareta Colaljo.

In the morning of 5 April 1980, she took a pumpboat to barangay Panganoran. From there she hiked for about six (6) kilometers towards barangay Talisay, Dapitan City, where her aunt Agueda Bartolome resided. After she narrated her bitter experience, her aunt advised her to proceed to Dipolog City and see her aunt's friend, Rev. Father Paulo Briones, who was also a lawyer.

So, on 9 April 1980, accompanied by her cousin Antonio Bartolome, she left for Dipolog City. She met Father Paulo Briones and narrated to him everything that Appellant did to her.

Father Briones accompanied her to the NBI Sub-Office for medical examination, but they were advised to go to the NBI in Manila instead. Upon recommendation of Father Briones, she was allowed to stay in the convent of the Religious of the Virgin Mary until 20 April 1980.

On 20 April 1980, accompanied by Father Briones and Atty. Ana C. Aguilar, they took a flight for Manila. In Manila, she and Atty. Aguilar lived with the latter's friend; while Father Briones stayed with his brother.

On 21 April 1980, at the central office of the National Bureau of Investigation, she submitted herself for medico-legal examination.

The Medico-Legal Division of the Manila NBI issued Living Case Report No. MG-80-295, reading:

"FINDINGS

GENERAL PHYSICAL EXAMINATION:

Height: 150 cms. Weight 100 lbs.

Fairly developed, fairly nourished, ambulatory, coherent, cooperative subject. Breasts, fully developed, hemispherical, firm. Areolae, brownish, 4.5 cm. in diameter. Nipples, brownish, protruding, 1.5 cm. in diameter.

No sign of extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hairs, fully grown, moderate in number. Labia majora, gaping. Labia menora, coaptated, hypertrophied anteriorly. Fourchette, lax. Vestibule, pinkish. Hymen, wide and thick, with recently healed lacerations, deep at 9:00 o'clock and complete at 5:00 o'clock positions, edges of which are sharp and coactable. Hymenal orifice admits a tube 2.8 cm. in diameter. Vaginal walls, 4 moderately tight. Rugosities, moderately prominent.

CONCLUSIONS:

- No sign of extragenital physical injuries noted on the body of the subject at the time of the examination.

- Genital findings, compatible with sexual intercourse with man on or about the alleged date of commission."
(Exhibit "A")

On 7 May 1980, Complainant, accompanied by Father Paulo Briones, sought the help of Minister Juan Ponce Enrile, then of the Ministry of National Defense, at Camp General Emilio Aguinaldo, Quezon City, Metro Manila, who, after hearing Complainant's complaints, sent them to the office of Col. Soriano. Thereat, on the same day, she subscribed and swore to her Affidavit (Exhibit "L") before 1st Lt. Camilo A. Catalan, and later re-subscribed it before Major Aniano A. Desierto, Chief, Prosecution Service, Military Tribunals, on 23 July 1980.

On the same day, 7 May 1980, an Arrest, Search and Seizure Order was issued against Appellant, and on 17 May 1980, he was arrested and detained at the Bicutan Rehabilitation Center, Taguig, Metro Manila.

Two Charge Sheets were prepared by the Chief Prosecution Division, Military Tribunals, the first on 25 July 1980, and the second on 16 September 1980.

Upon the accused's written request, the then President of the Philippines transferred the cases to the civil Courts on 15 October 1980 (Exhibit "16").

In its Brief, the defense refrained from giving its own statement of facts. However, exculpatory circumstances relied on by the accused are contained in his question and answer sworn statement before the Trial Judge on 8 November 1984, considered as his direct testimony upon request of defense counsel and without objection on the part of the prosecution. Briefly, the accused maintains:

"9.

x x x that Conchita Rone had filed an application for leave of absence last March 20, 1980.

15.

x x x she did not report for work on March 20, 21 and 22, 1980 because she was already on leave.

16.

x x x Conchita left for Balobohan early in the morning of March 22, 1980. And it was physically impossible for me to be riding in a motorcab during that time because I was suffering of a physical injury in my left and right legs caused by bullet wounds. My left leg then could not be flexed so then I could not ride in a motorcab. And I did not order Pat. Cabiara to get a motorcab that evening.

24.

x x x as I have already stated during that time I could not ride on a motorcab. Also, a motorcab cannot reach Nilabo and I could not have committed such a crime because as already declared she left for Balobohan early in the morning of March 22, 1980.

25.

x x x I do not have a resthouse in Nilabo. What I have is a copra dryer. And then during that time I could not climb a hill or a steep creek because I walk with my crutches and my left leg could not be flexed. x x x

26.

x x x I have only a copra dryer and that copra dryer does not have stairs, does not have any rooms nor walls. x
x x

27.

x x x during that time I could not even take off my pants without the help of anybody. And it would be very impossible for me to lie down on that floor because as I said I could not flex my left leg. Somebody has to help me go down the floor.

28.

x x x and why should I rape her when she was my querida. As I said if I wanted to have a sexual intercourse with her that evening of March 22, 1980 I could have easily prevented her in going home that morning and tell her to accompany me to Dipolog City in the evening of that day because on the following morning I would be in Dipolog to attend the recounting of the ballots at Dipolog City.

32.

x x x considering my age and my physical injury known as osteoarthritis lumbar vertebrae which I suffered since 1943 I could perform the sexual act only once per sexual session and never beyond that.

51.

x x x I can safely say that this charge of multiple rape against me is politically motivated and maliciously fabricated by my political enemies using Conchita Rone as a willing tool.

52.

x x x Not being able to succeed in ending my life in that ambush (in 1978), my political opponents, with the aid of Conchita Rone whom I learned was given no less than P10,000.00 in consideration for abetting the scheme of my political opponents, caused this fabricated case of multiple rape to be filed against me to expose me to public shame and contempt and have me detained in Bicutan in an effort to cause my ultimate political downfall.

x x x all the private prosecutors who appeared in the cases of rape against me are my political enemies.

xxx xxx" (Rollo, Crim. Case No. 2712, pp. 321-332)

Defense witnesses, Julieta T. Pila, Leonilo Tacal, Anastacio Baid, and Manolita Sagaray, corroborated Appellant's declaration that Complainant was his paramour. Julieta Pila, Vice Mayor of Rizal, even said that she used to see them fondling each other in the office. Leonilo Tacal, a janitor in the Mayor's office, added that they used to meet in his house and that even his children noticed now "scandalous(ly)" they acted. Anastacio Baid, Orlando Capili, Leonilo Tacal and Manolita Sagaray echoed Appellant's declaration that he had been using crutches after he was ambushed in 1978. Mrs. Pila further denied that she had passed by Complainant's boarding house in the morning of 22 March 1980. Aniceto Baid, son of Anastacio, and a high school teacher at Sebaca, stated that he was at

Complainant's boarding house in the early morning of 23 March 1980 but that he did not see Complainant thereat. Orlando Capili, who used to drive Appellant's wagon off and on, retracted his sworn statement of 20 May 1980 and denied Complainant's story about his having driven Appellant's wagon, or that he was in Nilabo at all, on 23 March 1980 claiming that he was in Dipolog City then. Felipe Fuerzas, the motorcab driver, and an employee of the Municipal Waterworks Cooperative, also denied Complainant's story regarding his having driven the motorcab stating that he was in Cotabato at that time, and that a motorcab cannot reach Nilabo because of the stony road. This latter statement was corroborated by Gil Alumbro. Manolita Sagaray, Barangay Captain of Balubohan, also denied having gone to see Complainant at her home at Appellant's behest on 27 March and contended that she saw Complainant at her hometown in Balubohan from 22 March to Good Friday on 6 April 1980.

After evaluation of the conflicting versions, the lower Court pronounced a guilty verdict and sentenced the accused on 14 December 1984, as follows:

"PREMISES CONSIDERED, the Court after its innermost-depth study and review of the evidences, testimonial and documentary adduced and offered to it by the prosecution and the defense, the Court finds, as it holds, that the accused ROBERT P. POCULAN, is guilty beyond reasonable doubt, of the two (2) separate criminal acts of RAPE (Crim. Cases Nos. 2712 & 2713), in the evening of March 22, 1980 committed by said accused lewdly and with force on the person of the complaining witness Conchita B. Rone; finding ROBERT P. POCULAN, similarly GUILTY of RAPE committed on the same woman at late dawn of March 23, 1980 (as alleged in the Information of Crim. Case No. 2714), with the attendant aggravating circumstance of advantage taken by said accused because of his public position (denominated as 'abuse of power' in the three informations). No mitigating circumstance. With this verdict, herein accused ROBERT P. POCULAN has to be, as he hereby is, condemned to serve three (3) sentences of RECLUSION PERPETUA (see case of People vs. Antonio Arizala y Flores, G. R. No. 59713, prom. March 15, 1982); to pay to the complaining witness CONCHITA RONE y BARTOLOME, the sum of P75,000.00 as moral damages and P15,000.00 for exemplary damages.

Separate costs for these three (3) cases.

SO ORDERED." (Decision, p. 47)

On the same date, 14 December 1984, the Trial Court issued an "Addendum to the Decision" as well as a "Supplementary Opinion Memorandum (To the Decision)" and found no cause to disturb its conclusions.

From the aforesaid judgment, promulgated on 14 January 1985, this appeal has been interposed.

On 4 May 1987, this Court denied Appellant's "Motion to Admit a Substitute Bond" and for the approval thereof and, instead, ordered his arrest and commitment to the National Penitentiary at Muntinlupa.

In its Assignments of Error, the defense points to alleged fatal defects not only in the evidence but also in the procedure the prosecution had pursued in prosecuting the case. We shall dwell on them in seriatim:

I

"The Trial Court fatally erred in proceeding with the trial of these cases and the rendition of its judgments of conviction upon informations that charged offenses different from the complaints of rape sworn to by the complainant." (p. 1, Brief of Accused-Appellant)

The defense submits that "Appellant was made to undergo arraignment and trial for offenses different from the charges of the complainant, which alone could be the legal initial step of any prosecution for the private offense of rape. Hence, all the proceedings held below from the arraignment to the judgments of conviction

were illegal, null and void ab initio." (pp. 26-27, *ibid.*)

The verified Complaints (Exhibits "N", "O", "P"), *mutatis mutandis*, as to date, time and place of commission, filed by Conchita on 28 May 1981 charged the accused as follows:

"The undersigned accuses Mayor ROBERT POCULAN of the crime of RAPE committed as follows:

"That on or about the 22nd day of March 1980 at about 10:00 P.M. more or less, in the municipality of Rizal, Zamboanga del Norte, and within the jurisdiction of this Honorable Court, said accused ROBERT POCULAN, armed with a revolver, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant Conchita Rone, against her will.

"All contrary to law with the aggravating circumstance that the said offense was committed by a public officer on his subordinate, with the use of firearm and motor vehicle.

"CONTRARY TO LAW.

(SGD.) CONCHITA RONE
Complainant"

It is to be noted that as stressed by the defense, the three (3) Complaints stated that the accused was "armed with a revolver." On the other hand, the three (3) Informations filed by the Prosecuting Fiscal on 29 September 1981, did not so state.

We find nothing "mystifying," however, in the respective texts of the Complaints and Informations. As explained by the Solicitor General, what qualifies the crime of Rape is the "use of a deadly weapon" in its commission (Article 335, Revised Penal Code). The allegation "armed with a revolver" in the sworn Complaints does not necessarily mean that the firearm was used in the commission of the crime. What qualifies the crime of Rape is not the overt act of "being armed with a deadly weapon" but the "use of a deadly weapon" in the commission of the crime. It was up to the Investigating Fiscal to assess the evidence before him and therefrom to charge what he believed was the proper offense.

II

"The trial Court fatally erred in holding that there had been a preliminary investigation of these complaints of the complainant and in proceeding with the trial and convictions subjects of this appeal without such preliminary investigation." (p. 1, Brief of Accused-Appellant)

The purpose of a preliminary investigation, or a previous inquiry of some kind, before an accused person is placed upon trial is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial (*Sausi vs. Querubin*, L-24122, January 29, 1975, 62 SCRA 155).

That purpose has been satisfied in these cases. The records disclose that the accused was given all the opportunity to submit countervailing evidence.

In the proceedings before the Judge Advocate General Service, AFP, Capt. Jose O. Montero, the Summary Preliminary Investigation Officer, issued a Resolution in Case SPI No. 80-390, reading in part:

"1. Pursuant to paragraph 4(a) 1 of PD No. 39, as amended, in relation to PD 911, a preliminary investigation was conducted on the above-entitled case.

xxx xxx

"4. On 29 July 1980, respondent was furnished copies of the charge sheet and copies of the documentary

evidence against him. He was required to file his counter-affidavit and counter-evidence within ten (10) days upon receipt. Before the expiration of the 10-days period given him, he filed, thru counsel, a request that he be granted an extension of twenty (20) days from the expiry date (8 August 1980) within which to file his counter-evidence. The request was granted. On 27 August 1980, counsel for respondent filed a letter-request that respondent be granted authority and permission to go to Rizal, Zamboanga del Norte under escort and in the company of his counsel, to procure the necessary affidavits and other evidences of his defense, and that he be granted a period of ten (10) days after his return from Rizal, Zamboanga del Norte, within which to submit his counter evidence. The request was denied on 1 Sept. 1980 and respondent was required to file immediately his counter-affidavit otherwise his failure to file the same would be considered as a waiver on his part to file his counter-evidence. He is, therefore, deemed to have submitted the case for resolution." (Exhibit "X-4-C-Court", pp. 2-8)

The defense maintains that the rejection of the second request denied him the opportunity to present controverting evidence. That is not so. What was rejected was the accused's plea to be released from detention so he could go home to secure affidavits of his witnesses. That did not bar him nor his lawyers, however, from still presenting counterbalancing evidence as, in fact, the defense was still given the opportunity to do so.

Thus it was that, acting on Capt. Montero's aforesated Resolution recommending prosecution, the letter, dated 15 September 1980, of Brig. Gen. Hamilton B. Dimaya to the Chief, Detainee Affairs, Camp General Emilio Aguinaldo, Quezon City, stated that "the preliminary investigation has been completed and the SPI Officer has recommended prosecution of respondent Mayor before the Military Tribunals" (Exhibit "Y-2 Court" p. 29).

After the cases were ordered transferred to the civilian authorities, the accused availed himself of a Motion for Reinvestigation which, however, was denied by Second Assistant Provincial Fiscal Rodolfo T. Mata who, on 24 March 1981, ruled:

"WHEREFORE, the undersigned will no longer disturb the findings of the Military Authorities who had conducted the proper preliminary investigation finding the existence of a prima facie case of rape against the herein respondent. That respondent's motion for re-investigation is hereby denied and that proper information be filed against him." (Exhibit "X")

The accused appealed to the then Minister of Justice, who sustained the resolution of Fiscal Mata on 3 September 1981 (Exhibits "X-4-E-Court" and "Y").

Fiscal Mata thereafter filed the three (3) criminal Informations in Crim. Cases Nos. 2712, 2713 and 2714 on 29 September 1981 before the Court of First Instance of Zamboanga del Norte at Dipolog City.

On 15 April 1982, the Trial Court denied Appellant's "Extremely Urgent Omnibus Motion to Temporarily Suspend Proceedings and, Either Way, for Trial to be Conducted with Assessors." Appellant assailed said denial in a Petition for Mandamus, Certiorari, Prohibition, Injunction filed with this Court in G. R. No. 60953-55 entitled "Robert Poculan vs. Hon. Simplicio Apalisok, et al." On 22 September 1982, this Court Resolved to dismiss the Petition for lack of merit.

On the basis of the foregoing proceedings of record, therefore, Appellant's claim of denial of due process can hardly be countenanced.

III

"The trial Court erred in finding and holding that complainant Conchita Rone had been raped by appellant three (3) times on March 22 and 23, 1980, thru force or intimidation, considering that neither force nor intimidation had been proven at the trial. The prosecution's own evidences proved that:

-A-

"External evidence did not show rape

"Complainant's own principal witness, Dr. Alberto Reyes of the National Bureau of Investigation who examined her upon the request of the military investigators and her own counsel, testified categorically, without any impeachment, that:

-1-

'When I asked her if she was physically maltreated, such as slapping or kicking or other forms of physical maltreatment usually accompanying rape cases, she said there was no physical maltreatment' (p. 106, TSN, January 24, 1983)

-2-

'I inquired if she was maltreated, as I have already stated, I asked her if she suffered any physical injuries, she answered "she did not".' (p. 107, supra)

-3-

'No sign of extragenital physical injuries noted' . . . 'well the subject denied actually that there was physical violence involved. Now, my examination likewise showed that there were no evidences that there were extragenital physical injuries, meaning injuries outside of the genital organ.' (p. 109, supra)

-4-

'So it is our usual procedure to ask whether she has those pieces of garments (with blood stain or seminal fluid) so that if there was, we could have sent them to the laboratory for examination. But she did not have any' . . . 'According to her, there were no torn panties nor bra.' (p. 113, supra)

-5-

'Questioned again thus: "in the light of all the facts that you gathered extraphysically speaking, meaning, the interview that you conducted, the corresponding answer of the alleged subject, her behavior and the result of your medico-legal examination, would you be willing to admit the fact that you found no evidence to show that the sexual intercourse was done through force or violence?", the doctor answered "well, in the absence of evidence as stated in my report and there were no signs of extragenital physical injuries, I tend to conclude that probably, no evidence was applied or inflicted".' (p. 133, supra)

'Another question, "and let's say the victim was forcibly dragged violently and furious physical wrestling took place, and violent act was committed on the alleged victim to force her to pry open her legs, naturally, you would expect physical injuries; is that correct?" the doctor answered, yes, sir.' (p. 126, supra)

-6-

'Answering a pointed cross-examination question thus: "My question to you is, made to choose in terms of higher probabilities which would be more probable date of the laceration: March 22 and 23, 1980 (the dates charged in the Informations) or April 7 up to 14, 1980?", the Doctor answered, "Well, as I have stated earlier, this is a recently-healed laceration, the period covering April because it is closer" ... "This is the greater probability".' (pp. 131-132, supra).

"-B-

"Neither was there any indication of rape in the examination of complainant's genital organ.

"-1-

"While complainant charged that she was raped (3) times on March 22 and 23, 1980, oh the other hand, consistently with the testimony of the appellant and his witnesses that she was the 'querida' of the appellant with whom she was having sexual intercourse many times, the doctor declared:

"Well, as to the number of intercourses, the result of my findings show that the state of the private parts of the

woman has experienced not only three or four sexual intercourses. I would say, about ten or more sexual intercourses." (p. 135, *supra*)

"I say that because of the result of my findings such as the gaping labia majora, the hyperthrophied labia minora, the lax fourchette, the vagina walls which were no longer tell-tight, and the 'robusticitis which are moderately present'. (id.) And which tends to flatten due to intercourses, and in the case of complainant, 'they were no longer prominent'." (p. 137, Id; see also p. 138, id)

"-C-

"No pistol, no firearm

"His honor, the trial judge himself could not help but ignore the charge of complainant of intimidation with the use of a pistol. Said the trial court in its decision, 'The court may opt not to touch on whether or not the complaining girl was threatened with the sidearm of the accused mayor. True it is that this was not alleged in any of the three (3) criminal informations.' (p. 24, decision) Nor, may we add, was such pistol mentioned in her affidavit Exhibit L, and much less in the charge prepared by the military Exhibit BB. The situation here is similar to the case were the information or complaint merely alleged lack of consent, and this honorable court held that evidence of force is inadmissible and could not cure the defect in the complaint. (People vs. Oso, 62 Phil 217) Again, we submit, that appellant was charged in the informations with offenses different from her charges in her own complaints.

"-D-

"No evidence of rape in wagon

"That there was no rape in the alleged intercourse in the wagon on March 23, 1980 at 3:00 o'clock a.m., is legally manifest, it appearing that all that complainant alleged the appellant told her for her to yield to him was that if she did not, the supposed two persons allegedly with them would be the ones to do it. There was neither force nor intimidation." (pp. 2-7, Brief of Accused-Appellant)

In negating the foregoing assigned errors, we derive our bearings from the following accepted rule:

"x x x. In *People v. Gan*, this Court, through Justice Antonio, held: 'It is an accepted rule that the force employed in rape need not be so great nor of such character as could not be resisted. It is only that the force used by the accused be sufficient to enable him to consummate his purpose.' In *People v. Olden*, the then Justice now retired Chief Justice, Makalintal, reiterated such a view: 'Appellants point out that even assuming that they had sexual intercourse with Edwina Maranga, there is no evidence that they employed force or intimidation. It is true that she could have shown greater physical resistance to their advances than she actually did. Another woman would probably have tried to fight them off, even to the jeopardy of life or limb. But not all women are of the same mettle.' x x x." (*People vs. Equac*, 80 SCRA 665, 671 (1977))

Applying the yardstick given, we affirm the Trial Court's finding that the force employed by Appellant in this case was sufficient to enable him to consummate his purpose.

That the examining physician found no signs of external physical injuries on Complainant's body, nor extragenital physical injuries, on the date of the physical examination is understandable considering that it was undertaken on 21 April 1980 or approximately a month after the incidents. The evidence is sufficiently convincing, however, that Complainant did suffer bruises on the arms, chin and face. Considering their nature, they could not but have been healed on the date of examination. Those injuries were testified to by Complainant herself, by Mrs. Eroy, her aunt with whom Complainant was living, who noticed them when Complainant returned home in the early morning of 23 March 1980 (t.s.n., January 25, 1983, p. 171); and by Virgilio Rone, her brother, who saw Complainant two (2) days after the assault on her honor (t.s.n., March 22, 1983, pp. 364 & 367).

While it may be that Complainant told Dr. Reyes that she was not physically maltreated, it was not incompatible

with her testimony that she was pulled, pushed, or threatened, the force employed being insufficient to inflict serious physical injuries but sufficient to overcome her resistance.

In fact, the rape in the wagon was not accompanied by physical maltreatment. However, Appellant's threat that if Complainant would not succumb to his wish of having carnal knowledge of her, two men, namely, the driver Capili and policeman Cabiara, would take turns in doing so, was sufficient to cow her into submission. Under those circumstances, no physical force need have been employed, but intimidation was nonetheless present.

The non-presentation in evidence of Complainant's torn panties or bra does not necessarily connote the absence of resistance. As she declared, Appellant forcibly took off her clothes and laid on top of her and despite her protestations and resistance and the wiggling of her body, Appellant finally consummated his lustful desires.

Appellant stresses that the medical examination of Complainant's genital organ indicated positively that she had experienced more than three (3) sexual intercours before and after 22 and 23 March 1980, which is inconsistent with her testimony that she was a virgin when raped. He further argues that this was consistent with his testimony and that of his witnesses that Complainant was his "querida" with whom he enjoyed sexual intimacy many times.

Appellant's arguments are untenable. Conclusion No. 2 of the Living Case Report that "Genital findings, compatible with sexual intercourse with man on or about the alleged date of commission," corroborates Complainant's testimony that Appellant had carnal knowledge of her forcibly three (3) times on 22 and 23 March 1980.

Besides, as to whether or not Complainant was still a virgin at the time she was raped is of no moment. The fact that an offended party may have been of unchaste character constitutes no defense in a charge of Rape (People vs. Lamberte, L-65153, July 11, 1986, 142 SCRA 685).

But even assuming that the opinion of Dr. Reyes on the number of sexual intercours that Complainant may have had were accurate, it by no means supports Appellant's claim that he had an illicit amorous affair with Complainant. If it were so, he would not have had to take her to a "God-forsaken" place and to a bare and isolated "hut"; there would have been no need for a motorcab with two passengers to take them to that site to avoid any suspicion on Complainant's part; and Appellant need not have employed the ruse of making Complainant report at his home to perform some official chores in the afternoon of 22 March 1980.

And in so far as the corroborative testimonies of Appellant's witnesses on that aspects are concerned, the Trial Court had aptly observed that: "all of them being subject to varied forms of personal and political attachment to the Mayor, with the latter exercising moral ascendancy over them (they) cannot be expected to tell the whole truth, all the truth, and nothing but the truth." (p. 53, Rollo)

The defense again makes capital of the fact that although Complainant had stated that Appellant intimidated her with the use of a revolver, the criminal Informations filed were for simple Rape, different from her charges in her own complaints, concluding thereby that Complainant's charges were pure "political vendetta." The conclusion is far-fetched. Notwithstanding that the Complaints indicated that Appellant was "armed with a revolver" it does not follow that, procedurally speaking, the Informations filed by the investigating Officer should follow the same to the letter. The prosecuting officer is vested with the discretion to charge what he believes is the proper crime. The complainant in private crimes merely initiates the prosecution thereof. And as stated previously being "armed with a revolver" is not synonymous with the "use of a deadly weapon."

Besides, it is not only a firearm that can produce intimidation. Intimidation can be addressed to the mind as well, as exemplified by the rape of Complainant in the wagon.

IV

"The trial court erred in giving faith and credit to complainant's testimony not only because of what has been already shown above, but also because of more than forty inconsistencies, contradictions, omissions and incredible assertions that characterized her testimony." (p. 7, Brief of Accused-Appellant)

We have gone over the entire transcript of Complainant's testimony, which, of itself alone is already almost a thousand pages long, and find that while there may have been some inconsistencies and inaccuracies, e.g. the name of the motorcab driver which she said was Elias instead of Felipe Fuerzas, and lapses as to her date of birth, they were not on substantial matters nor on pivotal issues. One indubitable fact, however, is that throughout the eleven (11) session days, morning and afternoon, of probing, occasionally insulting and bullying, cross examination, punctuated by outpourings of emotion, she remained resolute and uncowed. We did not discern any intent on her part "to web a fanciful story" impelled by motives of her own said to be "(1) her dismissal from her employment, (2) a P10,000.00 consideration, and (3) political vendetta, in which she was used as an instrument by the political enemies of Appellant." On the contrary, we find them baseless assertions.

Even assuming that, as the defense portrays, Complainant had, indeed, applied for a leave of absence of one month from 20 March 1980 (Exhibit "5"), it does not necessarily follow that she left for her hometown in Balubohan on the 20th so that she could not have been in Nilabo on 22 and 23 March 1980, the dates she maintains the rapes were committed. It is highly doubtful, however, that she had applied for leave since in the morning of 22 March she still helped Vice Mayor Pila hire a Ford Fiera and in the afternoon she was sent for by Appellant himself to work in his house. She also knew that there was to be a recounting of votes in Dipolog City on 23 March and she had to help. It is likewise strange that the original of the leave application (Exhibit "5") should have been in the hands of the Mayor and there were no official entries thereon. Nor did any official custodian testify as to its veracity.

The alleged monetary consideration of P10,000.00 remains unsubstantiated.

"The considerable delay in the initiation of this prosecution" cannot be equated with untruthfulness or vacillation for, as the developments unfolded, she groped for assistance from one relative to another until another aunt, Agueda Bartolome, directed her to Father Briones, who was also a lawyer. She also had to move about with caution not only because Appellant had threatened her life and that of her family but also because Appellant was tracking her movements and sending emissaries.

Complainant's "failure to lodge her complaint with the provincial prosecution authorities of Zamboanga del Norte" can be explained by the fact that even the NBI at Zamboanga had advised her to go to the Manila NBI, not to speak of her fear that her life was in jeopardy, thus accounting for her having left for Manila without even previously informing her family. So much so, that when she returned to Dipolog City the Ministry of National Defense had provided her with security during the initial stages of the trial.

Her "availing of the legal services" of Father Briones was not of her own choosing but was upon advise of her aunt, Agueda Bartolome. If indeed, Father Briones and Atty. Maraon were Appellant's political rivals that was just a coincidence.

Her "failure to take with her to Manila" the apparel she had on and of which she was disrobed by Appellant does not have the effect of destroying her credibility. Notwithstanding her educational attainment she was still a "provinciana" in the words of the Trial Court and she was unaware of the legal import of her clothing besides the fact that absence of torn dresses and underwear does not negative the truth of a rape complaint and the credibility of a victim's testimony (People vs. Balbuena, L-44859-60, April 27, 1984, 129 SCRA 10).

Her version of how she happened to ride with Appellant in a motorcab; of having been pressed to walk up a hill which could be reached only by crossing a creek; of how Appellant was able to have carnal knowledge of her when she slipped inside the hut in Nilabo; of how she was unable to locate her clothes because of the darkness of night when Appellant was lying down in the hut; of her position in the wagon when she was raped, which she demonstrated inside the chambers of the Judge - are not as incredible as the defense would want us to believe.

On the contrary it is Appellant's tale that he could not walk without crutches that has been contradicted by photographs taken on Valentine's Day 1980 and November 1979, respectively, showing him standing erect delivering a speech, without the help of any such crutches (Exhibits "T-1", "U-1"). Similarly, Appellant's denial that he did not carry a firearm is also belied in those same pictures showing him sporting a sidearm. It is true that two medical certificates were presented by Appellant to show that he was suffering from "osteoarthritis lumbar vertebrae." However, the Medical Certificate, dated 26 February 1982 (Exhibit "6"), indicates that Appellant was admitted at the Constabulary Hospital from 14 June 1980 to 21 September 1980 or after the subject incidents, while the Certification (Exhibit "7") showed that he sustained injury in 1943 and was issued only on 2 March 1982. Besides, only xerox copies of the Certifications were presented in Court and were not identified nor testified to by any physician.

V

"The trial court erred in not discarding completely the testimonies and affidavits of Patrolman Benhur Cabiara and Virgilio Rone, the same having been impeached." (p. 7, Brief of Accused?Appellant)

In Pat. Cabiara's first Affidavit, taken on 14 May 1980, at Dipolog City, and sworn to before Assistant City Fiscal Charles D. Adraincem (Exhibit "I") and subsequently re-subscribed and sworn to on 18 July 1980 at Dipolog City before a certain Captain Montero, Jr., Pat. Cabiara substantially corroborated Complainant's version. Thus, he stated that on 22 March 1980 he was at the residence of Appellant Mayor at Rizal, Zamboanga del Norte; that at about 6:30 P.M. of that date, Appellant Mayor ordered him to look for a motorcab; that when he arrived at the residence with a motorcab, driven by Felipe Fuerzas, Appellant boarded it and so did Complainant, who also came from Appellant's residence as she was working on some papers for the Mayor; that Pat. Cabiara also boarded the motorcab which proceeded on its way; that he dropped off at Nasipang; that after going home and changing clothes, he went back to the National Highway to wait for the Appellant Mayor's wagon to tell the driver that the Mayor wanted himself fetched at Nilabo, Rizal, after the wagon returned from Dipolog City; that the wagon arrived at about 7:00 P.M. driven by Boy Capili; that on their way to Nilabo, they met the motorcab driven by Felipe Fuerzas, who told them that the Mayor wanted to be fetched at about 4:00 o'clock dawn of 23 March 1980; that at 3:00 A.M. the next morning, 23 March, on their way to Nilabo in the Mayor's wagon, they were met by a tenant of the Mayor who informed them that the latter wanted to be fetched from his rest house at Nilabo, to which place the tenant guided them; that upon arrival thereat and after waiting for a while, the Mayor and Complainant came out; that Pat. Cabiara noticed Complainant crying although he could not see her physical appearance because it was still dark; that they all boarded the wagon and on their way to Rizal, the Mayor ordered the driver to stop, the Mayor ordered Boy Capili and Pat. Cabiara to attend to their personal necessities leaving him and Conchita in the wagon; after about fifteen (15) minutes the Mayor called for them and they then proceeded in the direction of the Mayor's house with Complainant and the Patrolman dropping off at their respective residences; that in the evening of 26 March 1980 he was ordered by the Mayor to fetch Complainant and take her to the house of Felimon Sagaray where the Mayor was waiting; that because Complainant refused to go with him, Appellant Mayor struck him "with his left hand hitting his abdomen" and told him to go back, but still Complainant refused; that the next morning the wife of Felimon Sagaray went to fetch Complainant but the latter still refused; that Pat. Cabiara noticed "bruises at her (Complainant's) right cheek, on the right side of her

neck, on her forearm right;" that on 19 April 1980 at about 3:00 o'clock P.M. Pat. Cabiara was with Appellant Mayor at Tolon, Rizal, for the induction of the Barangay Councilmen among others, and thereat he read the sign "Joint Induction Ceremony x x x - Tolon, Rizal - April 1980;" but that when they came back at about 5:00 P.M., with a photographer, "the lettering signifying the occasion was changed to 'Welcome Mayor Robert Poculan and Visitors - March 22, 1980';" that in connection with that incident, he signed an Affidavit on 23 April 1980 prepared by Appellant Mayor, typewritten by Pfc. Socrates Tamparong, wherein he stated that 22 March 1980 was his birthday; that there was a thanksgiving celebration at Tolon, Rizal; and that they returned late that night.

However, on 21 January 1981, or eight (8) months after the execution of the first Affidavit, Pat. Cabiara executed an Affidavit of retraction before Municipal Circuit Judge N. A. Cabasag (Exhibit "J") repudiating everything that he had said in his Affidavit of 14 May 1980 contending that it was prepared by Appellant Mayor's political enemies, Father Paulo Briones and Atty. Ana Aguilar, and that its contents were fabrications and lies.

As to Virgilio B. Rone, Complainant's brother, the evidence discloses that on 11 April 1980 (date was originally 22 but erased to 11), he executed his first Affidavit sworn to before Municipal Circuit Judge Nicomedes A. Cabasag (Exhibit "F") to the effect that Complainant arrived at their home in Balubohan on 22 March 1980 at about 5:00 P.M. looking healthy and well; that the next morning she delivered Appellant Mayor's letter to Barangay Capt. Anastacio Baid, at Sebaca; that Complainant was at Balubohan on 2 April 1980 when she invited Appellant Mayor to take lunch at their house; that Appellant Mayor was at Balubohan on 2 April 1980 because he attended to the laying out of water pipes from a place called "Tacia" to Balubohan; and that from 22 March 1980 to 5 April 1980 Complainant was in their family home in Balubohan.

However, on 25 April 1980, Virgilio subscribed to another Affidavit before First Assistant Provincial Fiscal Hermogenes S. Balisado (Exhibit "H") stating that at about 10:00 o'clock A.M. of 22 April 1980, Exequiel Isaal handed to him and his father, Hugo, a letter from Appellant Mayor, dated 22 April 1980, requesting them to see Appellant Mayor at his residence at Rizal (Exhibit "G"); that they complied with the request and Appellant Mayor inquired from them as to the whereabouts of Complainant, to which Virgilio Rone replied that he did not know; that when Appellant Mayor heard the answer, he said that Complainant was already in Manila, and that he wanted them to sign the Affidavit of "11 April 1980" stating that when his sister, the Complainant, arrived at their home she was in good physical condition; that out of fear of Appellant Mayor he and his father signed the Affidavit.

The defense now faults the Trial Court for not discarding completely the testimonies and affidavits of Pat. Cabiara and Virgilio Rone. As the Solicitor General points out, however, the Trial Court made use of them as to their tenor only when it said that those Affidavits, together with others besides "may also have given cause to the preparation of the first "Charge Sheet (Exhibit 'BB')" (Decision, p. 33). If the Prosecuting Fiscal was compelled to offer the Affidavits in evidence, it was to impeach Pat. Cabiara "when he turned hostile on the witness stand since he admitted all the contents of this Affidavit to be true and correct when he was interviewed by the prosecuting fiscal before he took the witness stand" (Formal Offer of Exhibits by the prosecution, p. 4).

And as to Virgilio Rone, it was offered in evidence "as part of (his) testimony that he immediately retracted his Statement, Exhibit 'F', prepared by Mayor Poculan as the latter's advance defense in a case to be filed against him by Conchita Rone" (ibid., p. 3).

VI

"The trial court erred in not giving due weight and credit to the testimonies of the appellant and his witnesses.

VII

"The trial court erred in relying on pure inferences and deductions as well as his honor's baseless imagination

of facts, which he had to resort to because he denied the motion of the defense for an ocular inspection, on the flimsy excuse that he was physically weak to do it.

VIII

"The trial court erred in not finding and holding that the false charges of rape were filed because of (a) the order of appellant separating complainant from her employment in the Municipal Government; (b) a monetary consideration of Ten Thousand (P10,000.00) given to her; and (3) the influence of vendetta, of which she was a willing instrument, of the long time political enemies of the appellant.

IX

"All in all, the trial court erred in evaluating the evidence by not observing the fundamental rules laid by jurisprudence in the appreciation of the testimony of the complaining witnesses in rape cases, namely, that of scrutinizing the same carefully to determine if it could stand on its own weight, aided as it might be by circumstantial evidence, and not relying instead on the weakness of the evidence of the defense.

X

"The trial court erred in rendering the judgments of conviction of the appellant in these three (3) cases instead of acquitting him." (pp. 8-9, Brief of Accused-Appellant).

Again, we are constrained to disagree.

In so far as the testimonies of defense witnesses are concerned, the Trial Court had pointedly observed:

"The testimonies of the defense witnesses such as Julieta T. Pila (incumbent vice mayor of Mayor Poculan), Leonardo Tacal (a municipal janitor of the Mayor), Anastacio Baid (barangay captain of Sebaca), Felipe Fuerzas (employee of municipal waterworks cooperative), Orlando Capili (Barangay captain of West Poblacion, Rizal; the Mayor usually request him to drive the wagon of the Mayor), Aniceto Baid (a son of Sebaca barangay captain Anastacio Baid; he is a barangay high school teacher of Sebaca, the school maintained by municipal funds), Manolita Redillas Sagaray (barangay captain of Balubohan), all of them being subject to varied forms of personal and political attachment to the Mayor, with the latter exercising moral ascendancy over them, cannot be expected to tell the whole truth, all the truth, and nothing but the truth. As stated earlier, they over did what they were supposed to testify, making their testimonies replete with unnaturalness in the ordinary course of things. x x x " (p. 324, Rollo).

The totality of the evidence, indeed, reveals a criminal design well contrived. Appellant made Complainant report to work in his house. When it was time for her to go home, a motorcab was waiting which Appellant told her to board. To deflect suspicion of any kind, an elderly woman passenger was in it and Pat. Cabiara also boarded it. When everyone was seated, unexpectedly, Appellant also rode in the cab and told Complainant that he that he was going to the adjoining barangay of Mapang and would drop her at her boarding house along the way. The woman passenger alighted from the cab near the residence of a certain Pamantong. Left in the cab were Appellant, Pat. Cabiara, and the driver. Thereafter, without a word, Pat. Cabiara alighted from the cab at the intersection of the barangay road leading to Barangay Nasipang, leaving Appellant and Complainant as the remaining passengers. The motorcab, however, did not proceed towards Complainant's boarding house. Instead, without any orders from Appellant, the driver turned his vehicle towards Nilabo. He kept silent but drove fast all the way. After Appellant and Complainant had alighted at Nilabo, he drove away without receiving any instructions. At dawn the following day Pat. Cabiara was on hand in Nilabo with Appellant's wagon driven by Orlando Capili. On their way back towards the poblacion of Rizal, the wagon stopped "on a byway." Driver Capili and Pat. Cabiara alighted and moved away from the wagon. Appellant then succeeded in ravishing Complainant for the third time.

Upon reaching her boarding house that same early morning, Complainant immediately told her aunt that

Appellant had taken her to Nilabo and "forced" her. There was no time for her to concoct a story. She tearfully repeated what had befallen her to her brother when she went home to Balubohan on 24 March 1980.

The physical evidence in the form of photographs showing Appellant standing erect with a sidearm (Exhibits "T-1" and "U-1") belie his alleged inability to board a cab or that he could not move about without crutches. Be it a rest house or a copra dryer that Appellant Mayor had in Nilabo, with or without steps, the evidence shows that it was in some kind of a hut thereat that the sexual assaults were consummated.

The failure of the Trial Judge to conduct an ocular inspection of the road leading to Nilabo because of his advanced age should not detract from the credibility of the prosecution evidence. The inspection would have taken place approximately three (3) to four (4) years after the incident and conditions would not have been the same. Besides, Democrito Cadungog, a farmer of Mapang, Rizal, declared, contrary to what defense witnesses Felipe Fuerzas and Gil Alumbro had stated, that the road to Nilabo was sand and gravel and that it was accessible by motorcab, truck or pick-up, and that they used to campaign there in 1980.

Appellant's actuations after the criminal acts complained of, albeit denied by him, enhance his culpability. If Appellant had not wronged Complainant, why did he have to track her to her hometown at Balubohan and instruct Pat. Cabiara to ask her to meet him at a neighbor's house thereat on 26 March? Why was it repeated on 27 March, this time not only with Pat. Cabiara as the emissary but also the Sagaray couple? And why Appellant's visit to Balubohan again on 1 April 1980 to Complainant's house reiterating his offer to send Complainant for further studies and the threat for her not to leave her place otherwise he would kill her? That he had to supervise the hauling of the water pipes from Tacia to Balubohan on 2 April 1980, assuming it to be true, provided a convenient official excuse. Further, why Complainant's fear for her life necessitating the assignment of security men to her when she returned to Dipolog City for the trial of the case?

It may be that some defense witnesses negated the foregoing and retracted their previous sworn statements, but as the Trial Court had concluded, they were all unworthy of credence because of the "unnaturalness" of their declarations and Appellant's moral ascendancy over them.

Indeed, Appellant Mayor had done everything he could to quash the charges against him including appeals for intercession to the former President to whom he wrote "that the alleged case is a political vendetta authored by the Clergy in the person of Fr. Paulo Briones, political opponent of the KBL Party" (Exhibit "Y" - Court). In his direct testimony (November 8, 1984, p. 14), Appellant also stated that Assemblyman Hussein Loong wrote a letter (Exhibit "12") to Appellant stating that the President had signed his temporary release. Even the Provincial Governor of Zamboanga del Norte, Alberto Q. Ubay, wrote the President on 6 October 1980 "strongly recommend(ing) temporary release" of Appellant (Exhibit "13"). But both the military and the civilian prosecuting officers found prima facie evidence and Complainant's accusations and Appellant's defenses have rightfully been subjected to judicial scrutiny.

The bottomline is one of credibility of witnesses, in which regard, doctrinal jurisprudence has consistently held that the findings of the Trial Court with respect thereto are generally given the highest degree of respect. But even independently thereof, our own findings confirm those of the lower Court's besides the fact that it has not been satisfactorily shown that the Trial Court had overlooked certain facts of weight and importance that might change the result reached in this case.

The consistent ruling of this Court has also been that when a woman testifies that she had been raped, she says all that is needed to signify that the crime has been committed (*People vs. Soterol*, L-53498, December 16, 1985, 140 SCRA 400), provided her testimony meets the test of credibility. Complainant has successfully met that test. The prosecution evidence considered by itself is adequate to sustain the judgment appealed from and is not dependent

on the "weakness of the evidence of the defense."

All told, we conclude that Appellant's culpability for three (3) separate crimes of Rape, with the aggravating circumstance of taking advantage of his public position, and without any mitigating circumstance, has been established beyond reasonable doubt.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with separate costs in the three (3) cases against accused-appellant Robert P. Poculan.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Presided over by Judge Simplicio M. Apalisok.

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