

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO DULAY, ACCUSED-APPELLANT.

*G.R. Nos. 95156-94. January 18, 1993*

Ponente: REGALADO, J.

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### REGALADO, J.:

Accused-appellant Rodolfo Dulay was charged on June 6, 1986 in Criminal Cases Nos. 24167-24205 of the Regional Trial Court of Makati, Metro Manila, Branch 57, with 39 cases of rape in a single information[\*] of the following tenor:

"That on or about the:

20th day of June, 1982; 26th day of June, 1982; 2nd day of July, 1982; 4th day of July, 1982; 5th day of July, 1982; 15th day of July, 1982; 17th day of July 1982; 19th day of July, 1982; 21st day of July, 1982; 31st day of July 1982; 4th day of August, 1982; 7th day of August, 1982; 8th day of August, 1982; 10th day of August, 1982; 12th day of August, 1982; 14th day of August, 1982; 15th day of August, 1982; 17th day of August, 1982; 20th day of August, 1982; 22nd day of August, 1982; 25th day of August, 1982; 28th day of August, 1982; 29th day of August, 1982; 31st day of August, 1982; 4th day of September, 1982; 19th day of September, 1982; 2nd day of October, 1982; 10th day of November, 1982; 12th day of November, 1982; 14th day of November, 1982; 4th day of December, 1982; 12th day of December, 1982; 19th day of December, 1982; 4th day of January, 1983; 16th day of January, 1983; 17th day of January, 1983; 18th day of January, 1983,

in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force, threats, and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one JOAN B. CORPUZ against her will and consent."[1]

With the assistance of counsel de oficio, Atty. Leopoldo Macines of the Citizens Legal Assistance Office, appellant entered a plea of not guilty upon arraignment,[2] hence trial on the merits ensued and was conducted on several dates during the period from August 5, 1987 to May 31, 1990.

On August 20, 1990, the lower court rendered judgment with this decretal portion:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Rodolfo Dulay GUILTY beyond reasonable doubt of the crime of Rape on thirty-nine (39) counts in Criminal Cases Nos. 24167-24205 and hereby sentences him to suffer the penalty of Reclusion Perpetua for each and every rape committed which shall not exceed forty (40) years and to be served simultaneously pursuant to the provisions of Article 70 of the Revised Penal Code and to indemnify Joan Corpuz, the complaining witness, P30,000.00 as indemnification for consequential damages suffered by her and the amount of P50,000.00 as reimbursement for legal expenses incurred in her prosecution of this (sic) present cases and to pay the costs.

"SO ORDERED."[3]

The court a quo summarized the prosecution's version of the antecedent facts as follows:

"The complaining witness is Joan Corpuz, then sixteen (16) years of age and a student of La Concordia College at the time the alleged rape was committed. The accused, Rodolfo Dulay, then 46 years of age and a married man, was the Corpuz family stay-in driver employed by the complainant's mother, Mrs. Arsenia Corpuz, since January 1981 up to 1983, the primary job of whom is (sic) to bring and fetch Joan Corpuz from home to school and vice versa.

"The first offense allegedly occurred on June 20, 1982 at about 9:30 o'clock in the evening, at complainant's residence in Pinagkaisahan, Makati. The complaining witness Joan, was then inside her bedroom reading and studying her lessons, when all of a sudden the accused entered her room, covered her mouth by one hand and tied her hands at her back and then forced her to lie down. Thereafter, accused forcefully removed her panty while the complainant was struggling to free herself, at the same time telling the complainant not to tell her parents or to (sic) anybody of what he is (sic) doing to her, or else, he would kill her. After having succeeded in removing the complainant's panty, accused laid on top of the complainant, inserted his two (2) fingers and then placed one Cortal tablet inside her vagina, inserted his penis inside the complainant's vagina and pushed it in and out of the vagina, thereby succeeded in having sexual intercourse with the complainant. All the time that the accused was doing the sexual abuse, that is, before, during and after the sexual intercourse, the accused kept on repeating the threat that he would kill Joan if she should tell her parents of what happened.

"At the time the first offense was committed, the complainant's parents and brother were in the province of La Union to attend to their business. Joan, scared of the threats made by the accused that she was to be killed if she revealed her ordeal to her parents or to any one, did not report the matter to her mother.

"Several days after, or on June 26, 1982, not contented with the outrageous violation of the honor of the complainant the accused had committed before, at about 9:00 o'clock in the evening, the complainant was then in the sala watching the television while the accused was outside sitting on the swing. As soon as the maid and the complainant's auntie were already asleep, the accused entered the sala, covered her mouth and held both of the complainant's hands at her back, while threatening the complainant that he will kill her if she tells anyone what he is doing, and then ordered the complainant to walk towards his room. Complainant struggled until she lost her strength, the accused's solidly-built body being too much for her. Upon reaching the bedroom of the accused, complainant was forced to lie down and when already lying down, accused covered her mouth so that complainant will not be able to shout. The accused, after having succeeded to let down (sic) complainant's panty until her knee, inserted his two fingers and inserted medicine into her vagina, sucked her nipples and inserted his penis into her vagina, let it in and out and then withdrew his penis, and before the complainant was able to leave the room of the accused, she was threatened by the accused that she will be killed if she revealed the incident to her parents or to anyone. At that time, or on June 26, 1982, when that sexual abuse happened for the second time, complainant's parents were still in the province.

"The dates during which the complainant was repeatedly violated by the accused are all indicated in her own Memorandum marked as Exhs. 'VV' to 'VV-19' introduced in the course of her testimony in Court last November 13, 1987.

"In view of all the threats made by the accused upon her, Joan did not reveal the sexual assaults to her parents, until finally, the mother of the complainant providentially discovered the incident through a letter. In the said letter written by the complainant (Exh. 'D'), she told the accused to stop what he is doing to her because complainant was experiencing difficulty and does not want to lie to her parents. Upon discovery of the letter by Mrs. Arsenia Corpuz, mother of the complaining witness, she talked to her daughter and only then did the complainant reveal that Dulay, the accused herein, was repeatedly raping her for a long time already but she was prevented from telling her mother because of the mortal fear from the threats made by the accused to kill the

complainant.

"After two days from the discovery of the letter, the mother of complainant herself witnessed the sexual act between Dulay and her daughter. But afraid of the threat made by the accused, and not knowing the course of action to take, Mrs. Arsenia Corpuz, mother of complainant did not have enough courage to confront Dulay but decided to first inform her husband who was in La Union. So, the following morning of the incident, together with Joan, she went to La Union and informed her husband of the sexual violations committed by Dulay upon their daughter. Thereupon, they went back to Manila and reported the matter to the police and also the National Bureau of Investigation (NBI) which, after conducting medico-legal examinations, made the following Report:

"FINDINGS:

GENERAL PHYSICAL EXAMINATION:

Normally developed, fairly nourished, conscious, cooperative, slow to react or respond to questions and command.

x x x

GENITAL EXAMINATION:

Pubic Hair, moderate. Labia majora and minora, gaping posteriorly. Fourchette, lax. Vestibule, pinkish. Hymen, moderately thick, wide with complete healed lacerations at 9:00 and 4:00 o'clock positions corresponding to the face of a watch edges rounded and non-coaptable. Hymenal orifice, origin-ally annular, admits a tube 2.8 cm. in diameter. Vaginal walls, lax. Rugosities, shallow.

CONCLUSION:

Old healed hymenal lacerations present. x x x.

"The complaining witness was further examined at the National Bureau of Investigation (NBI) for Neuro-psychiatry examination conducted by Dr. Erlinda Ramos--Marfil, a psychiatrist at the NBI, who submitted her Report, x x x, the findings of which is as follows:

"Impression:

Psychosis. x x x."

"As a result, these thirty nine (39) counts of rape were filed against the accused, and docketed as Criminal Cases Nos. 24167 to 24205."[4]

As expected, the defense came up with an antipodal presentation of its case in this wise:

"Accused Rodolfo Dulay, 56 years old, testified that he is presently detained at the Makati Municipal Jail. Before he was detained, he was employed by Mr. Tiburcio and Mrs. Arsenia Corpuz as their family driver. He denies the charge against him for there's no truth in it. He knew complainant Joan Corpuz being his sweetheart. The last time he talked to her was in 1983 when she visited him in the Makati Jail and asked his present condition. Joan informed him that she was forced to confess what happened to them even if it was not true, and he answered her that he was forgiving her for what they did to him.

"Joan Corpuz is the daughter of Arsenia Corpuz by her first husband who is the cousin of Tiburcio Corpuz, Arsenia's second husband.

"Aside from these 39 counts of rape, he was also charged of rape by Joan Corpuz (o)n April 5, 1983 in the sala of Judge Guerrero for (sic) which he pleaded guilty to a lesser offense of seduction and for which he already served

sentence. He finally left Bicutan on January 9, 1985. After January 9, 1985, he went home to his family in La Union and took care of his animals and the farm. On June 12, 1986, he was arrested by the CIS agents for 39 counts of rape and brought to the Office of the CIS. On June 17, 1986, he was brought to the Makati Jail for this case where he is now detained.

"Joan Corpuz is her (sic) sweetheart, and, as such he had sexual relationship with her. Joan became his sweetheart when he was still their family driver. As a family driver, his duties were to drive (for) the family and to bring to and fetch Joan Corpuz from school which was La Concordia College located at Paco. He was a stay-in family driver.

"The house at Pinagkaisahan, Makati, Metro Manila was two storeyed and all the five (5) rooms were located at the second floor. There was no room at the ground floor except the study room of Joan Corpuz. The garage was located on the left side of the house. He was staying in one of the rooms upstairs. Beside his room was that for the maid. At the left end of the second floor was (the) bedroom of Joan Corpuz. On the other side of the second floor was the bedroom of Tiburcio and Arsenia Corpuz. Joan Corpuz and Arsenia Corpuz could enter his room if they would look into his things. Joan Corpuz would enter into his bedroom to have sex with him, since they were sweethearts and lovers.

"He agreed with Joan that he would put cortical into Joan's private parts so that she would not get pregnant. He put cortical two (2) times only. They would have sex in his bedroom when Joan would enter thereat and in her bedroom. 'Pagniniig' would mean putting his private organ inside the private organ of Joan Corpuz. Joan would not fight him, meaning that since they love each other, they would talk about it. There is no truth to the allegations of Joan that he threatened her with bodily harm, and that he dragged her to the second floor to rape her. Oftentimes, they would have sex during midnight in his bedroom. Only the maid would be inside the house since Joan's parents were at La Union.

"He and Joan became sweethearts because he courted her and Joan accepted his love. The first time he had sexual relationship with Joan was in the middle of January, 1983. He was then almost two (2) years (sic) already as the family driver of the Corpuzes. He courted her for almost 8 months before they became sweethearts and finally had sexual intercourse.

"He was recommended by the parents of Arsenia Corpuz, who happened to be their neighbor in the province, and his kumare, as family driver of the Corpuz family. His first sexual intercourse with Joan was in January, 1983. It was nighttime, in her bedroom and they talked about it. He put his private part into Joan's organ. He ejaculated. Joan did not bleed then as they did the sexual act in a very slow process only. Before he had sexual intercourse with Joan, they first talked about it. The only other person in the house was the maid who was then sleeping already in her room located in between Joan and his room. They did the sexual act in five (5) minutes. After they had sex, they rested first in her bedroom. Then he went downstairs and took a bath while Joan also took a bath upstairs. In the morning, he brought her to school at La Concordia College. Some of the neighbors of Joan are their relatives.

"His first sexual intercourse with Joan Corpuz was repeated for so many times in her bedroom and in his bedroom also and during these times, only the maid was present in the house. It is not true that he had sex with Joan at the garage.

"Everytime he would bring Joan to and fetch her from school, they would talk to each other about their love affair. He would give her advice because she would tell him her problems about her studies and that she was often scolded by her mother. He would advi(s)e her to be a good child and to accept the advice of her mother and not to answer back. And Joan was happy about it.

"Whenever he had sexual intercourse with Joan, she would get wet and would have orgasm since he could feel that Joan's vagina would be slippery. Joan was tickled, happy and enjoyed the act. But they would romance each other first before having sex by kissing each other, sucking Joan's breast or nipples. It is not true that he threatened Joan and her family with death. Joan voluntarily submitted herself to sexual intercourse because they love each other. They had relationship and Joan would sometimes write him signed love letters and give it to him personally. He would not write back, instead he would just talk to Joan. He did not know about the letter Mrs. Arsenia Corpuz allegedly found in his drawer. This was the first time he saw that letter. The love letters which Joan sent to him were already thrown (sic) by him because Joan did not want her mother to know that she was writing him love letters.

"He was in his house at Bauang when he was apprehended by the police for this (sic) 39 counts of rape. With regard, however, to the first rape case filed by Joan against him, he was then at Pinagkaisahan, Makati when he was arrested by the police. He was still the driver of the Corpuzes at that time.[5]

x x x

Appellant is now before us praying for the reversal of the lower court's judgment which he assails, contending that said court erred (1) in finding him guilty beyond reasonable doubt of the crimes charged (39 counts of rape) despite the fact that the information under which he was charged was patently defective for being violative of Section 13, Rule 110 of the 1985 Rules on Criminal Procedure; and (2) in finding him guilty beyond reasonable doubt of the crimes charged (39 counts of rape) despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[6]

Anent the first assigned error, Rule 110 of the 1985 Rules on Criminal Procedure pertinently provides:

"Sec. 13. Duplicity of offense. A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses."

The purpose of this rule is to give the accused the necessary knowledge of the charge so that he may not be confused in his defense.[7] The instant case does not fall under the aforequoted exception to the rule against duplicitous informations, which exception refers to the complex crimes and the special complex or composite crimes under the Revised Penal Code wherein a single penalty is imposed.

Under Section 3(e) of Rule 117, if more than one offense is charged, except in those cases in which existing laws prescribe a single punishment for various offenses, the accused may move to quash the complaint or information. Section 8 of the same rule further provides that the failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy.

In the case at bar, appellant moved to quash the information, but on the ground of double jeopardy under Section 3(h) of Rule 117, invoking the fact of his previous conviction by the same court for qualified seduction committed against the same complainant in Criminal Case No. 1880 thereof.[8] This motion, however, was denied for lack of merit considering that his conviction stated therein was for sexual acts committed from February, 1983 to March 20, 1983, while the instant cases are for sexual acts committed against the complainant during the period from June 20, 1982 to January 18, 1983.[9] Needless to say, therefore, appellant has waived any objection founded on duplicity of offenses charged in the questioned information, and he may be validly convicted of as many offenses as are charged in the information and may be proved by the People.

On the second assigned error, which is the crux of this petition, a painstaking scrutiny of the testimonial and documentary evidence in the records of these consolidated cases, a thorough evaluation of the import and probative value thereof, and a careful analysis of the arguments adduced by the contending parties convince us that the trial court erred in convicting appellant of the 39 crimes of rape alleged in the information.

It has, of course, been the jurisprudential policy that when it comes to the issue of credibility of witnesses, appellate courts give much weight and respect to the findings of the trial court, owing to the latter's opportunity to observe and examine the witnesses' conduct and attitude at the trial and in the witness' chair.[10] This is merely the general rule, however, for if the trial court has overlooked or disregarded facts and circumstances of significance in the case, then this Court has no option but to review the facts under consideration, a deviation from the general rule being imperative.[11]

In rape cases, what normally matters for the conviction of the accused therein is the testimony of the rape victim, since the witnesses to the rape are often only the victim and the offender.[12] It is nonetheless a well-entrenched doctrine in this jurisdiction that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity.[13] We have, accordingly, dissected and analyzed the testimony of the complainant Joan Corpuz which the trial court has adjudged to be credible.[14]

Complainant's version of the first rape incident allegedly committed on June 20, 1982 appears to be implausible, if not fabricated, marked as it is by inexplicable flaws and inconsistencies. On direct examination, she gave the following account:

"Q:

On that date at 9:30 in the evening, do you recall of (sic) anything unusual that happened to you?

A:

On that date at 9:30 o'clock in the evening I was in my room studying my lessons when suddenly the accused entered my room and stripped me of my clothes then he cover(ed) my mouth and tell (sic) me that I will not tell it to my parents then he let me lie down on bed and he took my panty. x x x[15]

On cross-examination, however, when asked about "the first thing that the accused did when he entered her room," she replied: "He covered my mouth so I cannot shout and grabbed my wrist so I can not struggle and he said he will kill me." [16] However, upon reiteration of the question for purposes of clarification, she changed her answer, thus:

x x x

"Atty. Cargo: So you said that when the accused entered your room, he covered your mouth so that you cannot shout. So it was the first thing he did?

A:

It is the first thing he did after he entered my room.

Q:

I understand you were then reading at the time the accused entered your room?

A:

Yes.

Q:

You mean to tell the Court you did not parried (sic) before he closed your mouth?

A:

No, sir, but I dropped the book harshly (sic), because he grabbed it.

Q:

Which is first, you first drop(ped) the book before you (sic) closed your mouth or he closed your mouth first before he grabbed the book?

A:

He grab(bed) the book and close(d) my mouth."[17]

It seems that complainant herself was not sure of what appellant actually did upon entering her room. Her conflicting answers are not mere minor inconsistencies since the facts sought to be elicited by the questions are directly determinative of the controverted issue as to whether force or intimidation was used by appellant, as complainant claims, or that the act was with her consent, as appellant contends. The dissonance is glaringly projected even from the cold inanimate pages of the transcripts since the questions and answers were asked and given one after the other.

Even on the precise moment the penis of appellant entered her vagina in the alleged rape on that occasion, complainant has this to say:

"Q

While you and the accused were standing where was the penis of the accused, still in your vagina?

A

He was about to insert it, sir.

Q

And it was only when you were lying down when he was able to insert his penis?

A

Yes, sir." x x x"[18]

So, the complainant was then lying down. How about the accused? This is how she explains it:

"Q

Now can you demonstrate how that penis entered your vagina on June 20, 1982, your position for instance? Just describe, were you standing, sitting or lying down?

A

Sometimes sitting, sometimes standing and sometimes lying down.

Q

What about the accused?

A

He was standing, sir?"[19]

Shortly thereafter, however, she changed her answer, obviously realizing the ridiculous situation she had just described:

"Q

And while he was kneeling down facing you, what happened?

A

He is about to insert his penis and do the sexual intercourse, sir.

Q

Was he able to insert his penis in this particular position?

A

Yes, sir. He was able to." [20]

We are, therefore, constrained to observe that, taking complainant at her word, whether appellant was standing or kneeling, we cannot conceive of how appellant could thereby insert his penis into the vagina of the complainant who was then lying in bed, especially, as she says, over her strenuous resistance.

Complainant likewise gave a vacillating account of the incident, in spite of the fact that, being allegedly the first time, the details thereof are psychologically more easily retained in one's memory. She said that appellant let her lie down in bed. [21] During the cross-examination, however, she testified that when appellant entered her room she was already lying in bed, the same position she was in while allegedly reading her book. [22] Upon entering, appellant covered her mouth, held both of her wrists, removed her panty and inserted his penis into her vagina -- all while he was in a standing position. [23] The impression she thereby creates upon this Court is that appellant raped her while he was standing and she was then lying down or, worse still, sometimes sitting, sometimes standing and sometimes lying down, as earlier observed from her own lips.

Aside from complainant's testimony, the lower court gave much credence to, and in fact relied heavily on, the typewritten diary she filed in court, which is supposed to be a memorandum of all that transpired during the 39 times she was raped: [24]

Even at first glance, however, this memorandum appears to be more of an attempt at a work of composition and narrative skill rather than a true report on the alleged 39 counts of rape. It is further significant that the alleged original copy of the diary, which was claimed to be in the handwriting of the complainant, was not preserved and presented in court. Only a purported typewritten copy thereof was presented.

In her supplemental affidavit signed and sworn to by her on May 10, 1985 and submitted to the court below, she hazards the following justification:

x x x

"2. x x x That after I told my lawyer the whole story with the aid of my handwritten diary, he advised me to type the entries of my diary so that they would be readable.

x x x

4. That after I typed my diary - copied from the one I wrote immediately (sic) each event occurred - I destroyed the handwritten one, for I was not aware that it would be still needed, since, after all, I already typed its contents." [25]

It cannot but arouse the incredulous curiosity of this Court why a precious piece of evidence like the handwritten diary would, if it had really existed and bespoke the truth of the supposed events coetaneously chronicled therein as they occurred, would have been so carelessly discarded. If indeed such a diary existed, we wonder why complainant's lawyer did not advise his client to preserve it after having typed its contents, knowing fully well that the same could have been a vital, if not the best, written corroborative evidence at hand. This consideration could not have been unknown to or overlooked by her lawyer, unless such original diary was a mere figment of the imagination.

Withal, even assuming arguendo that such a diary truly existed, the contents of its supposed copy exude the essence of falsity for being in sharp contrast to complainant's testimony in court. As correctly pointed out by appellant in his brief, complainant testified that on June 20, 1982, she was in her room, reading her book when appellant suddenly entered. However, in her diary, she claimed that she was then sleeping. Moreover, in court she said that at that time, only she, their maid and appellant were in the house. However, in her diary, she mentioned that her aunt was also there.[26]

Further exposing the untruthfulness of the supposed copy of her diary are the last three lines of the entry of June 20, 1982:

"x x x my mother knew only about his abuses to me, when she confiscated my letter to (sic) his pocket, begging him to stop abusing me, but he did not want to stop his abuses to me." [27]

How could the complainant have written this on that date, when her mother found the letter almost a year later, or on March 25, 1983?[28] Besides, if the rapes were true, it was only on June 20, 1982 that the first rape occurred. To what then was the complainant referring when she wrote about appellant's alleged abuses against her, and her begging him to stop abusing her? And yet, complainant affirms that the contents of her diary were written immediately after each event occurred.[29]

We turn now to the June 26, 1982 incident, or the date of the alleged second rape. As complainant declared, she was in the sala alone, watching television while her aunt and the maid were sleeping upstairs, and with appellant sitting on the swing outside. A few moments later, accused molested her, this time inside the former's bedroom.[30]

Again, this is a perplexing situation. The first rape was allegedly committed on June 20, 1982 or just six days before the alleged second rape. We cannot but wonder why, despite the fact that appellant was a stay-in driver, complainant did not take the necessary precautions to ensure that the sexual abuse on her could not be committed again. She did not invite either their maid or her aunt to sleep with her, nor did she sleep in their respective rooms with them. If she was really bent on watching television that night, the least that she could have done, but which she admitted she did not do without explaining why, was to lock the door which separates the sala from the swing outside[31] so that appellant could not have entered the place where she was. Her inaction, which is an affront to reason, does not speak well of the credibility of her 39 charges of rape.

She also alleged that on that same occasion she was dragged by appellant from the sala to the latter's bedroom;[32] that they passed by the room of her aunt;[33] that she struggled to free herself from appellant;[34] and that the partition between appellant's bedroom and her aunt's is only made of plywood.[35] If these were true, then her professed struggle could not but have created enough noise to awaken her aunt or the maid. As it appeared, however, her aunt just kept sleeping during and after this second rape. And, as it further appears, complainant never even raised her voice to protest or to summon help.

What further defies logic is the fact that, despite all the foregoing, from June 20, 1982 to June 26, 1982, she allowed appellant to continue driving her to school alone.[36] Complainant tried to save face and credibility by

reasoning out that neither her aunt nor their maid was available to accompany her to school.[37] The most we can say on this is that it is an unforgivably lame excuse. Granting arguendo that nobody in the household could indeed be free to accompany her, could she not have requested any of her relatives who are their neighbors, or gone to school together with her classmates? Could she not instead have taken the jeepney in going to school, which would only cost her a fare of P2.50?[38] Moreover, if she were really afraid of the supposed threats of appellant such that she could not tell about the sexual abuses on her to the immediate members of her family, she could have sought the help of the nuns who were running her school, La Concordia College. She had all the time and opportunity to do so, and these religious sisters would not have hesitated to come to her aid and arranged for the prevention of further abuses being committed against her.

In the two alleged rapes, complainant claims that aside from putting a pillow on her back,[39] appellant would put Cortal tablets into her vagina before the sexual act,[40] the purpose of which was to prevent her possible pregnancy.[41] This is ridiculous. It is highly unlikely for a rapist, who would only be too preoccupied in overcoming his victim's resistance and satisfying his lust, to be concerned about contraception,[42] more so with putting a pillow on her back before raping her. When asked how she came to know that it was Cortal which was placed in her vagina, she said that she saw the wrapper of the medicine before it was inserted[43] and that appellant himself told her that he bought it from the store.[44] It is the height of absurdity for a rapist, aside from being concerned about contraceptives, to further be telling his victim what and where he bought an item with the casualness of persiflage from one who went shopping.

We cannot help but reject the credibility of complainant's testimony. Aside from being obviously contrived, the same is not in accordance with the ordinary course of nature and the ordinary habits of life. This and the unnatural, if not inconceivable behavior of the victim, notably after each supposed rape, leave us totally unconvinced of the truth of the charges against appellant.[45]

Neither do we feel the need to go over the 37 other charges of rape, which accusations merely and unduly rely on the narration in complainant's supposed diary. We conclude that the represented existence of the original diary is an imposition on the credulity of the Court and, at any rate, deserves no consideration for not having been presented in evidence. The supposed copy thereof is accordingly tainted by that omission or suppression and is not entitled to any evidentiary weight. While the rule of *falsus in uno, falsus in omnibus* is not a positive rule of law but is addressed more to the weight of the evidence, and is not mandatory or binding upon the court which may reject or accept portions of the witness' testimony depending on the inherent credibility thereof or the corroborative evidence in the case,[46] the foregoing disquisition explains our extreme reluctance to yield any further credence to the other charges catalogued by complainant. We opt in this case to hold that complainant having sworn falsely in a number of details, we consider her unworthy of belief in her other asseverations[47] which are of the same nature and intended to achieve the same objective.

Besides, the records show that each of the 37 other counts of rape were not proven with moral certainty as complainant merely gave a rote-like repetition of affirmative responses to generalized leading questions posed to her, to wit:

x x x

"Q:

And could you please tell the Court whether in all the complaints you filed which already form part of the case in Criminal Cases Nos. 24167-24205, now were you threatened by Mr. Dulay?

A:

He threatened to kill me if I tell to (sic) anyone.

x x x

Q:

In all the criminal complaints you mentioned that you had carnal knowledge with the accused specifically in Criminal Cases Nos. 24167--24205, you mentioned that the carnal knowledge was against your will and your consent, was he able to insert his penis (in) to your vagina?

x x x

A:

Yes, sir.

x x x

Q:

You mentioned about this cortal, will you please tell the Court whether in all this (sic) Criminal cases complaint you mentioned, before he insert(ed) his penis (in)to your vagina, he applied cortal, is that what you mean?

A:

Yes, sir.

Q:

And in all these criminal complaints you mentioned for rape against Mr. Dulay, he was able to insert his penis (in)to your vagina?

A:

Yes, sir.

Q:

And in all the complaints you filed against Mr. Dulay, you mean to say you were forced only and you resisted the force?

A:

Yes, sir.

Q:

And in all the complaints you filed against Mr. Dulay, did all these transpired (sic) at your residence?

A:

Yes, sir.

x x x

Q:

Going back to that incident, you testified a while ago that you were wearing pants is it correct to say that in all the charges that you filed against Mr. Dulay for rape, before he was able to insert his penis (in)to your vagina,

you were always then wearing pants and panty?

A:

Yes, sir.

Q:

And in all the complaints you filed, he was able to remove your pants and your panty?

A:

Yes, sir."[48] (Underscoring supplied.)

Each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. On that score alone, the aforementioned testimonial evidence offered to prove each charge is definitely inadequate and grossly insufficient to establish the guilt of appellant with the required quantum of evidence. Complainant's acolythate answers betray by themselves their couched and rehearsed nature and are consequently bereft of any evidentiary weight or value.

The information alleges that the rapes were committed through force, threats and intimidation.[49] However, the records of this case fail to sufficiently prove any of these modes of commission. The element of force must be established since appellant admitted having carnal knowledge of complainant. The prosecution failed to discharge the burden of evidence hereon and had only the effete, self-serving and inadequate protestations of complainant with which it had vainly hoped to surmount the evidentiary obstacle.

Complainant repeatedly stated in the supposed typewritten copy of her alleged diary that, in all the sexual assaults on her, she struggled and that appellant forced her to do the carnal act.[50] However, she could not even explain either how she resisted or the nature of the alleged force employed by appellant on her. Witness her following testimony:

x x x

"Q:

Do you know what he did to your pants and to your underwear or to your panty?

A:

He tried to remove my pants but I resisted.

Q:

When you resisted, you mean what did you actually do?

A:

(No reply.)

x x x

Q:

How did he forced (sic) you?

A:

(No reply.)

Q:

Were you doing anything when he was making push and pull?

A:

(No reply.)"[51]

Even the trial court itself noted and admitted the absence of evidence that force had been employed by appellant as claimed by complainant, when it recalled to the stand Dr. Erlinda R. Marfil, a psychiatrist from the National Bureau of Investigation (NBI), and explained the situation as follows:

"COURT: Before your testimony doctora, let me give you a brief background on why we have to recall you on the present case. This is a prosecution for rape and in his defense, the accused contended that they are sweethearts. After the accused made a statement, the mother of the complainant came back as a rebuttal witness. She said that their daughter was merely raped because she was compelled by the accused by means of physical force. The Court has not noted any physical signs of force that's why I would like to clarify how is it possible for rape can (sic) be committed without the use of physical force and no other signs of unconsciousness or the complainant was asleep when the crime was committed. x x x."[52] (Emphasis supplied.)

Neither were the elements of threats and intimidation established by the People in this case. Dr. Marfil testified that when she interviewed complainant, the latter told her that appellant threatened her with a knife.[53] However, there is absolutely no evidence that appellant was ever armed during the alleged rapes. In her testimony on the alleged rape of June 20, 1982, this is the most that complainant intimated on that matter:

"Q:

But the fact that at (the) time he entered your room he was not carrying any weapon?

A:

He has no weapon but he was telling it in words, sir."[54]

Nowhere in her testimony in open court did complainant ever make mention of appellant being armed or that he threatened her with a knife or any other weapon. All her contentions were in the general tenor of appellant having continuously made threats against her but which, as we have pointed out, lose veracity in light of her own proven actuations during the periods before, during and after the supposed series of rapes.

We now take a closer look at the testimony of complainant's mother, Mrs. Arsenia Corpuz, who testified that on March 27, 1983, she saw appellant molest her daughter. She gave a vivid picture of this alleged rape, describing it in full detail from the time appellant supposedly led complainant from the sala to the garage, undressed her, let her lie face down on the cement floor, inserted Cortal in her vagina with the index and middle fingers of his right hand while explaining to her that this was to prevent pregnancy, then raped her and afterwards directed her to dress up and go upstairs. All this time she saw everything because the house and living room were lighted with several chandeliers and the garage was lighted both outside and inside, and she was watching about five meters away in the adjoining study room on the ground floor. She further admitted that while her daughter was thus being molested, she did nothing allegedly out of fear. Nor did she telephone the police or any of her neighbors despite the fact that the telephone was located inside the house with an extension in the second floor, while the "rape" was being committed outside in the garage. Thereafter, when her daughter went upstairs and appellant went to the swing, she merely told appellant to go up to his room on the second floor and turn off the lights as they were going to the province the following day.[55]

We cannot believe that Mrs. Corpuz witnessed this harrowing incident, not only from the incredible tenor and details of her testimony but by her own actuations during and subsequent to the alleged rape which she just watched from beginning to end. For what mother would not go to the aid of her daughter upon seeing her being brutally abused and molested? A mother's natural instinct is to protect her child. She would even be willing to risk her own life only to save her child from whoever would dare inflict harm on the latter. As it is written, in moments like these death has no sting, for the salvation of her child is far more important than her very life. For indeed, can a mother forget her baby, or the child she bore in her womb for nine months?[56]

Parenthetically, it is significant that appellant has not been charged for this supposed rape committed by him on March 27, 1983. The present consolidated cases involve alleged rapes committed from June 20, 1982 to January 18, 1983, while the crime of qualified seduction of which appellant had been convicted in Criminal Case No. 1880, as earlier explained, was committed from February, 1983 to March 20, 1983.

Mrs. Corpuz also testified that she was always at home[57] and that she goes to the province only once a year.[58] This was, however, belied by complainant herself, who revealed that when appellant molested her, most of the time her mother was in the province.[59] Moreover, if Mrs. Corpuz were really always in the house, it is a source of wonderment that the series of alleged rapes could transpire therein without her knowledge or even an inkling or suspicion thereof.

The prosecution further presented the letter allegedly written by the complainant to appellant and, as earlier stated, was supposedly discovered by her mother on March 25, 1983, which letter we reproduce in full:

"Meron akong sasabihin sa 'yo pagkat di ko ma-ipersonal eh. Ngayon ko nang ibinigay kasi para mabasa mo at ayaw ko na binabasa mong di pa kami umaalis.

Ito ay tungkol sa ginagawa mo sa akin at kasalanan mo ito kung puwede ng tigilan mo na ako, kasi may asawa ka na, buti kung binata ka pa, tulad ni Junior buti inisip niya na mag-asawa na siya. Ikaw para nang isang taong hindi maintindihan kung saan tutugon.

Isip-isipin mo naman na may asawa ka dapat na di mo yon ginawa sa akin, isa pa di mo dapat ilihim, ito kay Apo Purit, kawawa naman siya para bang you're just taking granted for her (sic), its (sic) useless.

Kaya magbagong buhay ka na dahil ayaw kong magtago ng lihim sa Papa at Mama ko, kaya, please wag no nang gawin. At alam ko na malulungkot ka sa mga sinasabi ko, pero kasalanan mo ito sa Diyos at sa akin. Please tigilan mo na ako at sanay maunawaan mo rin ako, magulo ang isip ko sa ginawa mo sa akin, at sa pag-aaral ko, kaya please magbagong buhay ka na habang maaga pa."[60]

The prosecution has interpreted this letter to mean that Joan was begging appellant to stop molesting her.[61] After carefully analyzing the contents thereof, and considering the same in the context of all known facts heretofore discussed and the ambience in which the same was written, the Court is inclined to adopt a different view and interpretation.

The letter actually reveals that there exists some degree of intimacy between complainant and appellant. We agree that, in said letter, Joan was asking appellant to stop the sexual contact between them, as shown by the words "kung puwede ng tigilan mo na ako." And the reason, Joan continues, is "kasi may asawa ka na, buti kung binata ka pa." This only insinuates that had appellant been single, she would not have stopped him from having carnal relations with her. This is further shown by the succeeding lines of the letter. Moreover, complainant could no longer bear hiding her illicit sexual life from her parents. Nonetheless, she expressed her concern for accused's feelings over the termination of their relationship, as shown by the words "at alam ko na malulungkot ka sa mga sinasabi ko."

The aforementioned letter could not have been written by a rape victim to her rapist, as the prosecution would want to impress on this Court. It speaks more of a person bothered by her conscience since she was engaging in immoral relations with a married man, which she realized is a sin in the eyes of God and a betrayal of her filial duties to her parents. The strained interpretation desired by the prosecution would likewise be a betrayal of reason, unless words have lost their meaning.

It is not far-fetched to theorize, as the defense does, that being uncertain of the outcome of its attempt to establish that complainant was raped by appellant through force and intimidation, the prosecution thought of embarking on another theory to buttress its case, this time, that complainant was mentally ill, so she could not have validly consented to the sexual act.[62] To sustain this theory, the prosecution presented Dr. Nieto Salvador of the medico-legal division of the NBI and Dr. Marfil as previously mentioned. Dr. Salvador examined Joan on March 31, 1983,[63] while Dr. Marfil did so on April 18, 1983.[64] The two medical doctors arrived at the impression that Joan is a borderline psychotic.[65] Dr. Marfil said that Joan is quite underactive and her responses to questions asked are delayed.[66]

We do not find it necessary to pass upon or contest the accuracy of said findings. However, we cannot give much weight to it considering that there was no showing that complainant displayed the same mental state during the time of the 39 alleged rapes from June, 1982 to January, 1983. More importantly, there is neither a claim nor a showing that the supposed mental illness of complainant had deprived her partially or totally of reason, or that she has the mental age or intellectual level of a child below 12 years of age, in order to avail by analogy of the provisions of paragraphs 2 or 3, Article 335 of the Revised Penal Code.

The fact that Joan is a borderline psychotic does not necessarily mean that she was forced to do the sexual act. Dr. Marfil merely said that it is within the realm of possibility that because of the underactivity of the complainant, she could not have resisted the sexual act performed on her.[67] Nonetheless, the physical and neurological examination of Joan showed that she is within normal limits.[68] Besides, the two doctors seemed to have been influenced by the representations of Joan's mother to the effect that Joan, when she was three years old, was allegedly diagnosed by one Dr. W. Warla of Hawaii as a borderline psychotic.[69] Dr. Warla, however, was never presented in court, hence it is impossible to give any evidentiary value to her putative diagnosis dating back to around 1968, Joan having been born on December 24, 1965.[70]

On the other hand, the very testimony of Dr. Marfil even further bolsters the claimed innocence of appellant. Testifying on her psychiatric interview with complainant, she revealed that Joan's "answers were detailed" and "her response was coherent and relevant." [71] Further:

"Q:

And in the course of your interview she could answer your questions intelligently?

A:

Yes, She could answer although her response was quite delayed and she seems to be pre-occupied.

Q:

What do you mean when you said she was well-informed, x x x Madam witness?

A:

She knew where she was at the time I examined her." [72]

We are convinced that complainant was very much aware of the sexual act and that she consented to the same. If

she were indeed mentally ill, how was she able to fully set out in her diary the 39 counts of rape with all their lurid details, remember their sequence and exact dates, and even the exact time when they happened?[73] Why was it that in open court, she continued to fluently testify in English, despite the exhortations of the trial court and the fiscal that she testify in Tagalog?[74] Moreover, while she was then a high school student at the time of the alleged rapes, she finished high school thereafter and was already in the junior year in her nursing studies[75] and rendering hospital services[76] at the time these cases were instituted in 1986. These are not the achievements and manifestations of a mentally ill individual, but of a person with a healthy and normal mind.

Assuming *ex gratia argumenti* that Joan was indeed mentally ill at the time she was allegedly raped, this could not be taken against appellant who asserted, without refutation, to be ignorant of her mental condition,[77] for even Dr. Marfil testified that Joan's sickness has no bizarre manifestations and people afflicted with this illness are just reserved[78] in their behavior.

Even granting that appellant was aware thereof, it should nevertheless be noted that the information filed against him alleges that the rapes were committed through force, threats and intimidation.[79] The prosecution itself concedes that "(t)here can be no quarrel over the well-settled principle that in rape, an accused cannot be convicted of rape by deprivation of reason on the basis of an information alleging rape through force and intimidation." [80] It, however, hastens to add that the trial court did convict appellant of rape through force and intimidation as charged in the information. That correctness of such findings and conclusion of the court a quo are precisely the subject of the present review and, as heretofore stated, we are fully persuaded that it erred.

One more thing. As we have briefly noted earlier, on April 21, 1983 appellant was charged with qualified seduction in Criminal Case No. 1880[81] of which he was convicted and sentenced to serve 6 months of arresto mayor, as minimum to 1 year and 11 months of prision correccional, as maximum.[82] That case was filed long before the present consolidated cases. We are accordingly inclined to entertain the view that the present cases arose as an afterthought in dissatisfaction over the result of and the comparatively light penalty imposed in the seduction case. We repeat our observation that on April 21, 1983, when the case for qualified seduction was filed, the alleged 39 cases of rape charged herein had allegedly already taken place and could have properly been prosecuted ahead of the qualified seduction case. This Court will not hesitate to reverse judgments of conviction and acquit the accused when there are strong indications pointing to the possibility that the rape charges were merely motivated by some factors except the truth as to their commission.[83]

Once again, we emphasize the doctrinal rulings of this Court in cases of rape. The existing standard of proof beyond reasonable doubt acquires more relevance in rape charges which can be made with facility, difficult to prove but more difficult for the person accused, though innocent, to disprove. Accordingly, it is a fundamental principle in rape cases that the evidence for the prosecution must stand or fall on its own merits, and it cannot be allowed to draw its strength from the weakness of the evidence for the defense.[84] Consequently, herein appellant, whatever other crimes the prosecution may be minded to further or alternatively charge him with, cannot be held liable for the crimes of rape as charged herein, no such crimes having been committed by him in light of the evidence and established facts of record in the present cases.

WHEREFORE, on the foregoing premises, the appealed decision is hereby REVERSED and SET ASIDE and another one is hereby entered ACQUITTING accused-appellant Rodolfo Dulay of the crimes charged in the consolidated cases at bar, with costs de oficio.

SO ORDERED.

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

[\*]The said information, as herein quoted, was reportedly filed in the trial court on June 6, 1986 and is reproduced from the "Judgment" of said court in the above-stated consolidated Criminal Cases Nos. 24167-24205, as no copy of the information is found in the original record of said cases or in the rollo in the present appeal. What appear in the original record are the 39 sworn complaints filed by the offended party Joan B. Corpuz which are all dated May 19, 1986, sworn to on May 26, 1986, filed in the court below on June 4, 1986, and uniformly alleging that the accused Rodolfo Dulay, "by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of" the complainant, with each complaint alleging a date of commission as enumerated in the quoted information, except the alleged rapes committed on November 11, 1982, subject of the complaint in Criminal Case No. 24195, and on November 13, 1982, subject of the complaint in Criminal Case No. 24197, both of which appear to have been overlooked in the quoted information.

[1] Original Record, 488.

[2] Ibid., 87.

[3] Ibid., 499-500; per Judge Francisco X. Velez.

[4] Ibid., 489-492.

[5] Appellant's Brief, 13-17; Rollo, 121-125.

[6] Ibid., 1; Rollo, 108.

[7] People vs. Ferrer, 101 Phil. 234 (1957).

[8] Original Record, 108-110.

[9] Ibid., 156.

[10] People vs. Carson, 204 SCRA 266 (1991).

[11] People vs. Pascual, G.R. No. 88282, May 6, 1992.

[12] People vs. Abonada, 169 SCRA 530 (1989).

[13] People vs. Graza, 196 SCRA 512 (1991).

[14] Original Record, 499.

[15] TSN, August 5, 1987, 9.

[16] Ibid., September 9, 1987, 3.

[17] Ibid., id., 4-5.

[18] Ibid., August 5, 1987, 25.

[19] Ibid., id., 24.

[20] Ibid., id., 27.

[21] Ibid., id., 9.

[22] Ibid., id., 42.

[23] Ibid., id., 24.

[24] Original Record, 490.

- [25] Ibid., 385; Exhibit UU.
- [26] Appellant's Brief, 30; Rollo, 138.
- [27] Exhibit VV-1; Original Record, 388.
- [28] TSN, May 28, 1990, 3.
- [29] Original Record, 385.
- [30] TSN, December 9, 1987, 7.
- [31] Ibid., id., 29.
- [32] Ibid., id., 12.
- [33] Ibid., id., 34.
- [34] Ibid., id., 11-12.
- [35] Ibid., id., 40.
- [36] Ibid., June 13, 1988, 22.
- [37] Ibid., id., 22-25.
- [38] Ibid., August 5, 1987, 35.
- [39] Exhibit VV-2, Original Record, 389.
- [40] Exhibit VV-1, *ibid.*, 388; Exhibit VV-2, *ibid.*; 389.
- [41] TSN, May 2, 1990, 26-27.
- [42] *People vs. Balares*, 165 SCRA 645 (1991).
- [43] TSN, December 9, 1987, 19.
- [44] Ibid., id., 44-45.
- [45] See *People vs. Herrick*, 187 SCRA 364 (1990).
- [46] *People vs. Surban, et al.*, 123 SCRA 218 (1983); *People vs. Pacis, et al.*, 130 SCRA 546 (1984).
- [47] See *Grimes vs. State*, 63 Ala. 168; *Wilson vs. Coulter*, 51 N.Y.S. 804 29 App. Div. 85; *White vs. Disher*, 67 Col., 402, 7 P. 826.
- [48] TSN; November 27, 1989, 8, 15-16, 19-21.
- [49] Original Record. 488.
- [50] Exhibit VV-1 to VV-19; Original Record, 388-406.
- [51] TSN, November 27, 1989, 15-17.
- [52] Ibid., May 30, 1990, 3-4.
- [53] Ibid., January 11, 1989, 23.
- [54] Ibid., September 9, 1987, 13.

- [55] Ibid., February 27, 1989, 27-35; March 29, 1989, 7-23.
- [56] Isaiah, 49; New American Bible.
- [57] TSN, March 29, 1989, 10; TSN, May 23, 1990, 20.
- [58] Ibid., May 23, 1990, 20.
- [59] Exhibit VV-1 to VV-19, *supra*.
- [60] Exhibit D; Original Record, 371.
- [61] Appellee's Brief, 50; Rollo, 175.
- [62] Ibid., 42-45; *id*.
- [63] Original Record, 369.
- [64] TSN, January 11, 1989, 6.
- [65] Original Record, 370; TSN, May 30, 1990, 6.
- [66] TSN, January 11, 1989, 16.
- [67] Ibid., May 30, 1990, 9.
- [68] Original Record, 366.
- [69] TSN, May 30, 1990, 6; TSN, February 27, 1989, 7.
- [70] Ibid., February 27, 1989, 7-8.
- [71] Ibid., January 11, 1989, 16.
- [72] Ibid., January 30, 1989, 4, 5.
- [73] Exhibit VV-1 to VV-19; Original Record, 388.
- [74] TSN, August 5, 1987, 6.
- [75] Ibid., May 28, 1990, 7.
- [76] Original Record, 211.
- [77] TSN, April 25, 1990, 15.
- [78] Ibid., May 30, 1990, 17.
- [79] Original Record, 488.
- [80] Citing *People vs. Pailano*, 169 SCRA 649 (1989); *People vs. Bugtong*, 169 SCRA 797 (1989).
- [81] Original Record, 456.
- [82] Ibid., 108.
- [83] *People vs. Permison*, 199 SCRA 635 (1991).
- [84] *People vs. Bacdad*, 196 SCRA 786 (1991).

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