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[G.R. No. 124329, December 14, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR MASALIHIT Y MONDIDO, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

N O T H I N G can really be more abhorring than when the crime (of rape) is perpetrated by the victim's own flesh and blood;[1] and, the perpetrator certainly deserves, without any tinge of hesitation, the supreme penalty of death.

Before we condemn, however, the crime must first be positively established and that the accused is guilty sans any scintilla of doubt. This is elementary and fundamental in our criminal justice system. Any suspicion or belief that the accused is guilty - no matter how strong - cannot substitute for the quantum of evidence that is required to prove his guilt beyond reasonable doubt.

Many times over we have been called upon to review death sentences for the heinous crime of rape. This is one such case. Cesar Masalihit y Mondido, accused-appellant, was charged with and convicted of having on New Year's Day '94 sexually assaulted his own daughter Analyn C. Masalihit, then only fourteen (14) years of age, for which he was sentenced to die. His case is now with us to pass upon once again with finality.

What is the evidence against the accused? Let us carefully examine and analyze the evidence for the prosecution as recounted by complaining witness Analyn Masalihit -

Fiscal Velazco:

Q: Where were you sleeping? In what part of your house were you sleeping on January 1, 1994 at about 1:00 o'clock in the morning?

Analyn Masalahit:

A: There was no room, sir.
Q: And how about your father? Where did he sleep that evening?
A: Beside my brother, sir.
Q: And how about you? Was there anybody beside you?
A: The accused slept beside my brother because we were accompanied by our neighbor and my neighbor was beside me.
Q: Who was that neighbor of yours?

A: Ate Pilar, sir.

Q: Now, a while ago, you mentioned that you were raped in the early morning (of 1:00 o'clock in the morning) of January 1, 1994.

A: Yes, sir.

Q: Do you understand what is the meaning of rape?

A: Yes, sir.

Q: What do you understand by rape?

A: Being raped by a person, sir.

Q: Now, who raped you?

A: My father, sir.

Q: You mean the accused?

A: Yes, sir.

Q: Please tell the Honorable Court how you were raped by your father, if you still recall.

A: I was then sleeping when I woke up, I felt that there was something heavy above me, and I sensed that there was a person on top of me, sir.

Q: What did you do upon feeling that there was something heavy on top of you?

A: When I woke up, I saw my father, sir.

Q: What did you do?

A: Because I was frightened, I ran towards the side of our house, and then I "bumaluktot."

Q: And what did your father do?

A: He was just silent, sir.

Q: Now, what was his appearance when you woke up and saw him?

A: He was wearing shorts, sir.

Q: Was he wearing his shorts?

A: He was pulling up his shorts, sir.

Q: And how about you? Were you wearing something?

A: My panty was lowered down, sir.

Q: What was that something heavy?

A: On top of me, sir, and I was lying on my back, sir.

Q: Now, what about your father. What was he doing when you first noticed him on top of you?

A: When I noticed him, I suddenly stood up, sir.

Q: How about you? After you stood up did you feel something?

A: Yes, sir.

Q: What did you feel?

A: I felt pain on my private organ, sir.

Q: Did you notice anything from your private organ?

A: None, sir, but he was wiping something, sir.

Q: What was he wiping?

A: I do not know because it was dark. He put off the light, sir.

Q: So, how were you able to recognize your father if your house was dark at that time?

A: Because the moon was bright and our house has holes, butas-butas.

Q: Now, what part of your body was he wiping?

A: My private organ, sir.

Q: And you said you were sleeping at that time. How were you be able to know or how did you notice that he was wiping your organs?

A: I was suddenly awakened, sir, as if I was awakened, sir.

Q: How many times were you raped?

A: Twice, sir.

Q: And in that incident that occurred on January 1, 1994, was this the first time or was this the second time?

A: I do not recall, sir.

Q: Now, did you confront your father right after that incident?

A: No, sir, because I was afraid.

Q: What made you afraid?

A: Because I have read in the newspaper that the father killed his daughter, sir.

Q: Now, did he say something to you?

A: None, sir[2] (underscoring supplied).

From the above dialogue, there is nothing to establish the fact of sexual intercourse - much less, to a degree of moral certainty. No mention is made that the organ of accused-appellant ever touched that of complaining witness; nor that complaining witness even saw what could have been the mischievous organ; much less that accused-appellant displayed any lewd designs. There being no carnal knowledge, there could not be any rape; hence, his conviction for rape cannot be sustained. Although a female's statement of actual penetration is not required in the prosecution for rape, some evidence, other than inference, is essential to prove intercourse.[3] There is none in the present case. For, not even Analyn's *Ate Pilar* nor Analyn's brother who were supposed to be sleeping with her at the time of the alleged rape was presented to confirm Analyn's claim that she was raped by her father. The conclusion then is inevitable that the testimonies of her *Ate Pilar* and her brother, if presented, would have been adverse to the prosecution.

By definition, rape is committed by having carnal knowledge of a woman with the use of force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under twelve (12) years of age or is demented.[4] Carnal knowledge or sexual intercourse is a must-element in the crime of rape. Although full penetration is not required to sustain a conviction for rape, there must at least be proof beyond reasonable doubt of the entrance of the male organ within the labia of the pudendum of the female organ. Penetration of the penis into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape.[5] But under Art. 335 of the Revised Penal Code, under which the accused was prosecuted, actual penetration of the female sex organ by the male sex organ is required as an element of rape. This penetration constitutes carnal knowledge which is synonymous with sexual intercourse.[6]

The trial court found that there was sexual intercourse. That conclusion, unfortunately, could have only been inferred from the fact that when Analyn woke up she found accused-appellant on top of her wiping her private parts. This is merely a sweeping generalization that cannot provide adequate basis for the conclusion that there was indeed carnal knowledge and therefore rape was perpetrated. While the intention of the prosecution might have been to establish that what was wiped out was semen or fluid released in orgasm by her father, neither Analyn nor any witness for that matter ever said so, much less, that it was preceded by an intercourse. Besides, that it could have possibly been the dènouement of self-indulgence by the father - who after coming home from a drinking spree found in the lure of the night a young body in his daughter lying before him, perhaps scantily clothed or bare at least to the waist - is not remote, otherwise, it could have been infused serum-like into her genitalia with nothing more to wipe out. This is a missing link, a vacuity, a vital element that is miserably lacking in the successful prosecution of the case.

It is settled jurisprudence that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat,* i.e., he who asserts, not he who denies, must prove. The prosecution in the instant case failed to discharge this burden. This is especially significant in rape cases for, generally, in the prosecution thereof, the only two (2) parties who can testify as to the occurrence are the complainant and the accused. Often enough, their respective testimonies are diametrically contradictory.[7] Quite interestingly, when this incident took place, there were two (2) other persons present at that time according to Analyn, namely, her brother Angelo and her *Ate Pilar.* But, as already adverted to, for reasons known only to the prosecution, none of them was presented to augment the anemic and decrepit testimony of Analyn; worse, no explanation was ever given for their non-presentation. Could it be that calling them to the witness stand would further enervate the evidence for the prosecution?

For the lone and uncorroborated testimony of the offended party to be sufficient to convict accused-appellant of rape, it must be clear and free from any serious contradiction. Complaining witness' testimony must be impeccable and must ring throughout with, or bear the stamp of, absolute truth and candor.[8] In crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity. The crime of rape is of such a nature that it can only be established by clear and positive evidence; the same cannot be made to depend on inference or dubious circumstantial evidence.[9]

Indeed, in proving rape, resort to inference is not correct. Inference means a truth or proposition drawn from another which is supposed or admitted to be true. It is a process of reasoning by which a fact or proposition sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted.[10] The fact or proposition sought to be established in the case at bench is the crime of rape which the prosecution attempted to prove by showing that there was carnal knowledge. But, as already discussed, the prosecution failed precisely to establish the fact of carnal knowledge. It therefore follows that rape was not likewise proved. Thus, while inferences are permissible in the proof of a crime, the law requires in the making of the inference that "in the experience of mankind the existence of the one fact (that which is inferred) ordinarily and logically follows

from the existence of the other (that which has been proved)."[11]

The medical findings did not in any way support the claim of complaining witness that she was indeed raped by accused-appellant. A ruptured hymen is not synonymous with rape. If at all, it may only prove that complaining witness had prior sexual intercourse but not necessarily with accused-appellant. Dr. Godwyn N. Bernardo, the examining physician, could not be certain that the lacerations - which were no longer fresh as the examination was done five (5) months after the alleged sexual molestation - were the result of a sexual encounter, as they could have also been caused by any blunt object, a finger, or by Analyn herself.[12] In *People v. Batis*[13] we held -

> The trial court went on to state that "x x x the fact of sexual intercourse was substantially corroborated by the medical findings of Dr. Soliva who conducted the examination. It goes to show that it is not incredible for a man to rape his own flesh and blood daughter. Neither was it impossible to commit rape in a small space which was occupied by members of a family especially with a callous mother and the rapist was the father."
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> Such sweeping statements of the trial court create the impression that rape and sexual intercourse mean one and the same thing when in fact they are not. That a female is found to have had sexual intercourse does not necessarily mean that she was raped x x x x
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> In fine, the medical report adds nothing to bolster the prosecution's claim that complainant was raped by appellant. Rather, it merely confirms that as early as one year ago, the complainant has already engaged in sexual intercourse. While this confirmation does not discount the possibility that appellant could have taken advantage of complainant on the stated dates, the evidence adduced at the trial is not sufficient to pass the test of moral certainty which is sufficient to convict the accused (*underscoring supplied*).

We do not agree with the trial court that "the accused had nothing exculpatory to offer except his testimony denying to have committed the crime of rape imputed against him."[14] Although denial is weak, it still constitutes a valid defense. Considering the nature of the crime of rape where normally only two (2) persons are involved, denial becomes the most plausible line of defense. In *People v. Ignacio*[15] we held -

The accused-appellant's defense is no less convincing either. It is a mere denial. Nevertheless, considering that he was the defendant and not the prosecutor, we do not see what more he could have said at the trial beyond that spirited denial. After all, it was a negative averment. It was not for the accused-appellant to prove that he did not rape his daughter but for the prosecution to prove that he did rape her. Ei incumbit probatio qui dicit non qui negat. He who asserts, not he who denies, must prove.

Another nemesis of the prosecution is credibility. The court a quo held that the variances in the testimony of the complaining witness refer only to matters of minor