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Quisumbing, J., on leave.

Austria-Martinez, J., on official leave.

EN BANC

[G.R. Nos. 142553-54. July 1, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALBERT SAYANA,** *appellant.*

SYNOPSIS

Appellant was convicted of two counts of qualified rape allegedly committed against Cheska, the 11 year-old daughter of his common-law wife. He insisted it was impossible for him to rape Cheska in March 1997 as he was residing in Bataan at that time, while Cheska and her mother were residing in Manila; and that on October 4, 1998, he could not have raped Cheska because he was working in Malolos town proper.

The Supreme Court set aside his conviction on automatic review, finding complainant's testimony unclear and incredible. First of all, she failed to establish when they moved to Bulacan to live with appellant, which is a material fact; in addition, her narration of how appellant allegedly ravished her on two occasions were incredibly identical, as if lifted from a single transcript. The Court also held that complainant's aunts have sufficient motive to concoct falsehoods against appellant. The law requires moral certainty to support a judgment of conviction.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UNCLEAR ALLEGATIONS OF A MATERIAL FACT RENDERS DOUBTFUL VICTIM'S TESTIMONY; CASE AT BAR. — We find complainant's testimony to be unclear and marked by some

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doubtful allegations. For one, she failed to establish that they were already living with appellant in Tabang, Plaridel, Bulacan in March 1997, the alleged time of the commission of the first offense. She testified on direct examination that they were already residing in Tabang, Plaridel, Bulacan in March 1997. Her testimony, however, was impugned by her school records which showed that she went to school in A. Aquino Elementary School in Tondo, Manila as Grade II pupil until October 1997. It was only in October 1997 when she transferred to Tabang Elementary School in Bulacan. . . The time when complainant moved to Bulacan is a material fact that must be clearly established by the prosecution because appellant could not have committed the offense if it were true that complainant was still in Manila and appellant was in Bataan at the alleged time of its commission. In addition, we observe that complainant's narration of how appellant allegedly ravished her on two occasions were incredibly identical, as if lifted from a single script.

2. **ID.; ID.; ID.; VICTIM'S AUNTS HAVE SUFFICIENT MOTIVE TO CONCOCT FALSEHOODS IN CASE AT BAR.** — It appears that complainant's aunts have sufficient motive to concoct falsehoods against appellant. The latter mentioned several reasons why they resented him and the prosecution never refuted these allegations. The records show that these charges were filed against appellant upon the prompting of complainant's aunts.

3. **ID.; ID.; PROOF BEYOND REASONABLE DOUBT; ACQUITTAL PROPER WHERE EVIDENCE ADDUCED FAILS TO MEET THE TEST OF MORAL CERTAINTY.** — In rape cases, it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that conviction becomes the only logical and inevitable conclusion. Proof beyond reasonable doubt is required. Although the law does not demand absolute certainty of guilt, it nonetheless requires moral certainty to support a judgment of conviction. Where the inculpatory facts admit of several interpretations, one consistent with accused's innocence and another with his guilt, the evidence thus adduced fails to meet the test of moral certainty and it becomes the constitutional duty of the Court to acquit the accused. Such is the case here.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Misa Law Offices for accused-appellant.

D E C I S I O N

PUNO, *J.*:

Before us for automatic review is the Decision[1] of the Regional Trial Court of Malolos, Bulacan, Branch 21, sentencing Albert Sayana to the supreme penalty of death for two counts of qualified rape.

Appellant was charged with two counts of rape committed against Cheska Angelika de Dios, the daughter of his common-law wife, Alma de Dios. The Informations alleged:

Criminal Case No. 456-M-99

That on or about the 4th day of October 1998, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was the common-law husband of the victim's mother did then and there willfully (*sic*), unlawfully and feloniously, by means of force, threat and intimidation and with lewd designs, have carnal knowledge of Cheska Angelika de Dios *y* Ely, an 11-year old girl, against her will and without her consent.

Contrary to law.[2]

Criminal Case No. 457-M-99

That on or about the month of March 1997, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was the common-law husband of the mother of the victim, did then and there willfully, unlawfully and feloniously, by means of force, threat and intimidation and with lewd designs, have carnal knowledge of Cheska

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[1] Original Records, pp. 108-115.

[2] *Id.* at 2.

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Angelika de Dios *y* Ely, an 11-year old girl, against her will and without her consent.

Contrary to law.[3]

The prosecution evidence showed that some time in March 1997, appellant forced himself upon the daughter of his common-law wife, eleven-year old Cheska Angelika de Dios. The deed took place in their residence at Maria Lourdes Subdivision, Tabang, Plaridel, Bulacan. Cheska recounted that after dinnertime, while her mother was out of the house, appellant undressed her, laid on top of her, and made an up and down movement while he kissed her neck. She felt pain in her private part. She tried to scream but appellant covered her mouth. After the act, appellant wiped her private part, and proceeded to the bathroom to wash himself. Fear prevented Cheska from telling her mother about the incident as she had often witnessed how appellant would beat her mother.[4]

According to Cheska, appellant again violated her in the evening of October 4, 1998. As before, appellant undressed her and placed himself on top of her. Cheska felt an up and down movement, his private part touching hers. At the same time, appellant would kiss her on the neck. She felt pain in her private part. Cheska also tried to free herself from his hold but appellant pinned her hands. He also prevented her from shouting by covering her mouth. After satisfying his lust, appellant wiped Cheska's private part, and then went to the bathroom to wash.[5]

Cheska's aunt, Erlinda Obuyes, told the court that Cheska's mother called her on the phone on October 5, 1998, asking her to fetch her and her children at their residence in Bulacan as appellant had mauled her. Erlinda brought Alma and her children to her home in Las Piñas, Metro Manila. After two days, however, appellant came to get Alma and the children. Alma went with

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[3] *Id.* at 11.

[4] TSN, April 5, 1999, pp. 6-13.

[5] TSN, April 14, 1999, pp. 4-12.

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appellant, together with their two children, but left Cheska to the care of Erlinda. Erlinda sought the help of their other sister, Arlene Dy, to enroll Cheska at Isabelo Elementary School in Tondo, Manila so that she could continue her studies. In mid-October, while Cheska was in the bathroom, Erlinda noticed a foul-smelling yellowish substance on Cheska's underwear. Erlinda brought Cheska to a midwife, then to a gynecologist, Dr. Nieves Montinola, who advised her to bring the young girl to the National Bureau of Investigation (NBI) for examination. At the NBI, however, Erlinda did not allow Cheska to be examined because the examining officer wanted to insert a tube measuring 4 centimeters in diameter and 1 foot in length into her niece's genitalia. Cheska eventually admitted to Erlinda that appellant had abused her.[6]

Upon advice of her brother, Erlinda brought Cheska to the Bulacan Provincial Crime Laboratory Office for examination. Dr. Manuel Aves, a medico-legal officer at said office, examined Cheska on October 31, 1998. The examination revealed:[7]

GENERAL AND EXTRA-GENITAL:

PHYSICAL BUILT	: Heavy
MENTAL STATUS	:
BREAST	: Budding
ABDOMEN	: Flat, soft
PHYSICAL INJURIES	: No signs of physical injury

GENITAL : The vulva is erythematous

PUBIC HAIR	: Absent
LABIA MAJORA	: Coaptated
LABIA MINORA	: Light pinkish
HYMEN	: Superficial laceration healed at 12 o'clock The hymen is elastic w/diameter of 1.2 to 1.5 cm.

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[6] TSN, May 10, 1999, pp. 4-12; May 14, 1999, pp. 2-5.

[7] Exhibit "B", Original Records, p. 45.

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EXTERNAL VAGINAL ORIFICE : The orifice w/ less resistance upon inserting prominent examining finger

VAGINAL CANAL :

CERVIX : rugosities smooth

PERI-URETHRAL AND VAGINAL SMEARS: NEGATIVE for spermatozoa

REMARKS: The subject is in non-virgin state on time of exam.

Dr. Aves explained that the erythematous vulva was a sign that there was manipulation in that area. He also stated that the vaginal laceration could have been due to either: intercourse, masturbation or instrumentation. Dr. Aves also observed that the diameter of the hymen was too wide for Cheska's age. He said that this could have been caused by penetration of the organ, either by instrument, or using of fingers or object, or intercourse.[8]

For his part, appellant interposed denial and alibi. He claimed that it was impossible for him to rape Cheska in March 1997 as he was residing in Bataan at that time while Cheska and her mother were residing in Manila. They moved to Bulacan only in October 1997. He likewise denied having raped Cheska in the evening of October 4, 1998 because at that time, he was working in Malolos town proper. He was employed as delivery driver at Chowking, Malolos Poblacion. On that day, he left the house and went to work at 3:00 in the afternoon and returned home past 11:00 in the evening.[9]

Appellant swore that he treated Cheska as his own child and he did not have the heart to molest her. He belied the testimony of Erlinda Obuyes that he was mauling Cheska's mother, Alma. He narrated that on October 5, 1998, Erlinda went to their house in Bulacan to get Alma and the children and brought them to her home in Las Piñas. The following day, Alma went to see him and asked him to take them back. But because he was busy, he found time to fetch them only after

[8] TSN, June 25, 1999, pp. 5-8.

[9] TSN, April 9, 1999, pp. 3-8; August 18, 1999, pp. 2-9.

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four days. By that time, Arlene Dy had already taken Cheska in her custody. Appellant, together with Alma and their two children, returned to their home in Plaridel, Bulacan. They lived together as husband and wife until his parents took him back to Bataan on October 20, 1998. Appellant alleged that Alma's sisters might have concocted the charges against him for several reasons. One, they were opposed to his relationship with Alma because they were cousins. Two, he disapproved of Alma's habit of going to her sisters in Manila whenever they would quarrel. He said that Alma's sisters resented this because it was Alma whom they would often instruct to procure illegal drugs to sustain their drug habit. Three, he knew of the sisters' vice and he once threatened to expose them to Arlene Dy's husband who was providing financial support to the entire family. Four, he knew of Arlene Dy's illicit affair with another man and the fact that she had killed her former driver. And fifth, during one of his fights with Alma, he threatened to reveal to the authorities the whereabouts of their father who was wanted for murder.[10]

Appellant's alibi was corroborated by his father, Fausto Sayana, and their neighbor, Dominador Rivera, and also by his time card. Fausto Sayana and Dominador Rivera both testified that appellant lived with his parents in Morong, Bataan from February to August, 1997.[11] Appellant's time card, on the other hand, showed that on October 4, 1998, he reported for work at 3:20 pm and went off duty at 9:18 pm.[12]

The defense also presented Cheska's school record[13] showing that in October 1997, she transferred from A. Aquino Elementary School to Tabang Elementary School as grade II pupil. The following school year, she enrolled in third grade at Tabang Elementary School but again transferred to another school in October 1998.

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[10] TSN, September 6, 1999, pp. 4-13.

[11] TSN, November 22, 1999, p. 4; December 17, 1999, p. 3.

[12] Exhibits "8" & "9", Original Records, p. 95.

[13] Exhibits "10" & "13", Original Records, pp. 96-97.

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Another evidence proferred by the defense was the Medico-Legal Report executed by Dr. Annabelle Soliman, Medico Legal Officer at NBI who examined Cheska on October 28, 1998. Her findings indicate:[14]

GENERAL PHYSICAL EXAMINATION:

Height: 144.0 cms. Weight: 100 lbs.

Fairly nourished, conscious, coherent, cooperative, ambulatory. Breast, infantile. Areolae, light brown, measures 2.5 cms. in diameter. Nipples, flat, light brown, measures 0.5 cm. in diameter.

No extragenital physical injury noted.

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora, minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin, intact. Hymenal orifice measures 1.2 cm. in diameter. Vaginal walls and rugosities cannot be reached by examining finger.

CONCLUSIONS:

No evident signs of extragenital physical injury noted on the body of the subject at the time of examination.
Hymen, intact and its orifice small (1.2 cm. in diameter) as to preclude complete penetration by an average-sized adult male organ in full erection without producing hymenal injury.

Giving more weight to Cheska's testimony, the trial court found appellant guilty of the charges and meted him the death penalty, thus:

All premises considered, the Court finds and so holds the accused Albert Sayana to be GUILTY beyond reasonable doubt of the crimes of Rape in Criminal Case No. 456-M-99 and Criminal Case No. 457-M-99.

Accordingly, he is hereby sentenced to suffer the supreme penalty of Death by lethal injection on both counts. Further, he is hereby ordered to indemnify the complaining witness Cheska Angelica de Dios in the sum of ₱75,000.00 in each of the two cases.

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[14] Exhibit "1", Original Records, p. 90.

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With costs against the accused.

SO ORDERED.[15]

Appellant raised the following arguments in his brief:

1. The trial court misappreciated the findings of the medico-legal, Dr. Aves and disregarded the findings of the medico-legal, Dr. Soliman.
2. The trial court erred in failing to appreciate the inconsistencies in the statement and declarations of the complainant.
3. The trial court erred in finding that the Prosecution has established the moral certainty sufficient to overcome the innocence of the accused beyond doubt, despite the contradictions and inconsistencies of her declarations and her witness and impossibility of her story.
4. The trial court erred in completely disregarding the defense of the accused.
5. The trial court erred in failing to consider that complainant and her aunt were ill-motivated.[16]

We reverse the decision of the trial court.

In reviewing rape cases, the Court has always been guided by the following principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[17]

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[15] Decision, Crim. Cases Nos. 456-M-99 & 457-M-99, p. 8, Original Records, p. 115.

[16] Appellant's Brief, pp. 13-14, *Rollo*, pp. 63-64.

[17] *People vs. Morales*, 363 SCRA 342 (2001); *People vs. Villalobos*, 358 SCRA 84 (2001); *People vs. De la Cruz*, 356 SCRA 704 (2001).

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The gravamen in the crime of rape is carnal knowledge. The prosecution must prove beyond reasonable doubt that the accused had sexual contact with the alleged victim. This, the prosecution failed to do in this case. While the complainant testified that appellant forced her into sexual intercourse on two occasions, the physical evidence clouds her testimony. Records show that the complainant was examined by several doctors. However, only the reports of the last two doctors who examined her were offered as evidence. The report of Dr. Annabel Soliman, Medico-Legal Officer of the NBI shows that there were no signs of injury in complainant's genitalia. In a later examination, however, conducted by Dr. Manuel Aves of the Bulacan Provincial Crime Laboratory Office, a healed superficial hymenal laceration at 12:00 position was found. Dr. Aves explained that the location of the laceration excludes sexual intercourse as possible cause thereof. Dr. Aves explained that lacerations found on the upper portion of the hymen are normally caused by instrumentation but not by sexual contact. Dr. Aves testified as follows on direct examination:

x x x x x x x x x

Q: Will you please tell us, on the basis of this medico legal report, what were your findings in your examination?

A: There are two stages of examining the victim. One is extragenital and two is genital area. In the extragenital, there was (*sic*) no remarkable findings. The vulva is erythematous, the full area of the genital area is inflamed, congested. There is absence of pubic hair, the labia majora is captated (*sic*) which is normal, the labia minora is light pinkish which is normal color and then on the hymen I noted a superficial laceration, healed at 12 o'clock position and then it is also elastic with a diameter of 1.2 to 1.5 cm. which is too wide for her at her age and then the external orifice, there is a less resistance upon inserting rugositis (*sic*) then the cervix is smooth, negative for spermatozoa with the remarks that the subject is in a non-virgin state during the time of examination.

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Q: Mr. Witness, what could be (*sic*) caused this vulva to become erythematous?
A: There is a sign of manipulation on that area, sir.

x x x x x x x x x[18]

On cross-examination, Dr. Aves ruled out penile penetration as possible cause of the hymenal laceration, and submitted that it was more probably caused by instrumentation, thus:

x x x x x x x x x

Q: Now, you have this finding here superficial laceration healed at 12 o'clock position, in layman's language, what do you mean here when you say 12 o'clock?
A: It is the position of the laceration. For example, that clock, the 12 o'clock is on the upper portion, the 6 o'clock position is the lower position, sir.

Q: On the basis of your experience, when you had examined the patients in connection with rape cases, is it normal in rape case that the laceration is 12 o'clock or at the 6 o'clock position?
A: If there were (*sic*) sexual intercourse or penetration of the vagina, the most common of the laceration is the lower portion 5, 6, 7 o'clock position, sir.

Q: When you said the most common laceration if there was sexual intercourse is 5, 6, 7 o'clock position, it is unusual to have laceration at 12 o'clock position?
A: There is no penile penetration on that part. It might be insertion of the finger or any instrument, sir. If the laceration is 6 o'clock, I said if the laceration is located at the lower portion of the area of the hymen, the most common cause is sexual intercourse or penile penetration, sir.

Q: And what do you attribute usually to the presence of the laceration at 12 o'clock position?
A: Usually it might be caused by insertion of fingers or any instrument, sir.

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[18] TSN, June 25, 1999, pp. 6-7.

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Q: Would you say that such is more common with respect to the 12 o'clock position?
A: Yes, sir.

Q: Than sexual intercourse?
A: Yes, sir.

Q: But you are precluding the possibility that it was due to penile penetration?
A: Yes, sir.

Atty. Ramos:

Q: Doctor, the purported laceration that you found to (*sic*) Cheska Angelica is at 12 o'clock, you did not find any laceration at 6 o'clock area?
A: It is only at the 12 o'clock position, sir.

Court:

Q: Is it not a fact that there are some hymenal elasticity if there is sexual intercourse, (*sic*) you cannot find laceration?
A: Yes, sir.

Atty. Ramos:

Q: Mr. Witness, in the case of sexual intercourse, when a man is on top of a woman and making an up and down movement of the penis, you will agree that it is 6 o'clock position would be the possible laceration?
A: Yes, sir, it is common.

Q: And before the 12 o'clock position could be affected, (*sic*) it should be the 6 o'clock position in an up and down movement?
A: Usually it is the 6 o'clock position the most common, sir.

Q: On the basis of your findings, Doctor, what could be the cause of your finding of the laceration at 12 o'clock position could it be sexual intercourse or manipulation?
A: In this particular case, it is manipulation, sir.

Q: In this case?
A: Yes, Your Honor.

Q: Why do you say that?
A: Because the position of the laceration of the hymen, sir.

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Q: The extent of the laceration?
A: Yes, sir, it is too shallow.

x x x x x x x x x[19]

The explanation given by Dr. Aves who testified for the prosecution itself, plus the fact that complainant underwent several gynecological examinations before she went to the Bulacan Provincial Crime Laboratory Office discount the credibility of the latter's testimony that she has been raped.

We are not unmindful of the Court's ruling that the absence of laceration in the hymen does not preclude the existence of rape and that when a woman states that she has been raped, she states all that is necessary to prove the offense. These principles, however, do not in themselves support a conviction. They must be weighed with the presumption of innocence of the accused. To support a finding of guilt, it is necessary that the complainant's story be believable in itself.[20]

In this case, we find complainant's testimony to be unclear and marked by some doubtful allegations. For one, she failed to establish that they were already living with appellant in Tabang, Plaridel, Bulacan in March 1997, the alleged time of the commission of the first offense. She testified on direct examination that they were already residing in Tabang, Plaridel, Bulacan in March 1997. Her testimony, however, was impugned by her school records which showed that she went to school in A. Aquino Elementary School in Tondo, Manila as Grade II pupil until October 1997. It was only in October 1997 when she transferred to Tabang Elementary School in Bulacan. On cross examination, it appeared that she was unsure of the time when they moved to appellant's house in Bulacan, thus:

x x x x x x x x x

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[19] TSN, June 25, 1999, pp. 13-16.

[20] See *People vs. Dela Cruz*, *supra* note 17.

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Atty. Ramos:

Cheska Angelica, last time you stated that before you lived in Plaridel, Bulacan, you were in Manila?

A: Yes, sir.

Q: And you would agree with me that your address in Manila is at Solis Street, Tondo, Manila?

A: Yes, sir.

Q: And you left that place sometime in October 1997?

A: No, sir.

Court:

When was it when you and your family transferred to (*sic*) Tondo to Plaridel?

A: Month of January. I forgot the year and date.

x x x x x x x x x

Court:

In Tondo, did you go to school?

A: Yes, sir.

Q: What grade?

A: Grade I and kinder.

Atty. Ramos:

Did you not start your grade II in Tondo?

A: No, sir.

Court:

So, you started schooling for grade II in Tabang and not in Tondo?

A: I started my grade II in Tondo and I stopped then and transferred to Tabang, Plaridel.

Atty. Ramos:

And you continued your grade II in Tabang, Plaridel because at that time, you transferred your residence from Tondo to Tabang?

A: Yes, sir.

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Q: You transferred your grade II in Tabang, Plaridel, Bulacan sometime in January when you transferred to Plaridel?
A: (no answer.)

Court:

The Court will propound the question. When you were in grade II, can you recall whether it was Christmas before or after Christmas when you transferred to Tabang and ultimately you conducted your grade II in the elementary school of the latter's plac(e)?
A: Before Christmas, your Honor.

Atty. Ramos:

A while ago, you said that it was in the month of January when you transferred your residence from Tondo to Plaridel, now are you saying that that was also the month when you transferred to Plaridel and enrolled in Grade II?
A: Yes, sir.

Court:

Why did you say that you transferred before Christmas, what can you say about that?
A: Before Christmas.

Q: Do you understand (what) the month of January is?
A: (no answer.)

Court:

The Court would like to apprise you that the month of January comes after Christmas?
A: Yes, sir.

Q: So, why is it that earlier, you said that you transferred in January; whereas, in the latter part when you were asked by the Court, you said you transferred before Christmas and of course, before Christmas, did you mean that was before January when you transferred?
A: I do not know.

Q: The child maybe in (*sic*) confused, because there were transfer of residence and transfer of school. Now, the time that you

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transferred, was it from the place, from the grade II in Tondo to grade II in Tabang?

A: Both, your Honor.

x x x x x x x x x[21]

The time when complainant moved to Bulacan is a material fact that must be clearly established by the prosecution because appellant could not have committed the offense if it were true that complainant was still in Manila and appellant was in Bataan at the alleged time of its commission.

In addition, we observe that complainant's narration of how appellant allegedly ravished her on two occasions were incredibly identical, as if lifted from a single script.

We have held in several cases that the lone uncorroborated testimony of the complainant is sufficient to warrant a conviction, provided that such is credible, natural, convincing and consistent with human nature and the normal course of things. However, we have also held that the testimony of the complainant should not be received with precipitate credulity but with utmost caution. The test for determining the credibility of complainant's testimony is whether it is in conformity with common knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside judicial cognizance.[22] Complainant's testimony in this case fails to satisfy the test of credibility.

Moreover, it appears that complainant's aunts have sufficient motive to concoct falsehoods against appellant. The latter mentioned several reasons why they resented him and the prosecution never refuted these allegations. The records show that these charges were filed against appellant upon the prompting of complainant's aunts.

In rape cases, it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that

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[21] TSN, April 26, 1999, pp. 2-6.

[22] *People vs. De la Cruz, supra* note 17.

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conviction becomes the only logical and inevitable conclusion. Proof beyond reasonable doubt is required. Although the law does not demand absolute certainty of guilt, it nonetheless requires moral certainty to support a judgment of conviction. Where the inculpatory facts admit of several interpretations, one consistent with accused's innocence and another with his guilt, the evidence thus adduced fails to meet the test of moral certainty and it becomes the constitutional duty of the Court to acquit the accused.[23] Such is the case here.

IN VIEW WHEREOF, appellant Albert Sayana is *ACQUITTED*. The Director of the Bureau of Corrections is hereby ordered to immediately release appellant from the New Bilibid Prison and to report to this Court compliance with this order within five (5) days from receipt hereof.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

Quisumbing, J., on leave.

Austria-Martinez, J., on official leave.

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[23] *People vs. De la Cruz, supra* note 17; *People vs. Aballe*, 357 SCRA 802 (2001); *People vs. Villalobos, supra* note 17.