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[G.R. No. 136849. October 23, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NESTOR CODERES** *y* **ABLAZA,** *appellant.*

SYNOPSIS

Seventeen-year old Elsa Coderes claimed that her father, Nelson Coderes, repeatedly raped her since she was eight years old and the latest was on November 16, 1996. Consequently, Nelson was charged and convicted of single count of rape that happened on November 16, 1996 and the penalty of death was imposed upon him. Hence, this automatic review.

The Court ruled that in rape committed through force or intimidation under Article 335, paragraph 1 of the Revised Penal Code (as amended by Republic Act No. 7659), the prosecution must prove that force and intimidation was actually employed by the appellant upon his victim to achieve his end. Failure to do so is fatal to the prosecution's cause. In the instant case, the prosecution failed to establish the presence of sufficient force or intimidation that would have created a state of fear in the mind of Elsa so as to effectively prevent her from putting up a determined resistance.

Further, a review of the evidence presented in the present case disclosed that the rule on moral ascendancy cannot be applied in this particular case. The Court found that the trial court failed to appreciate the fact that appellant could have hardly wielded any moral ascendancy or parental influence over complainant as evidenced by the unrefuted testimony of appellant that since her birth, Elsa lived with her grandmother and stayed in the house of her parents for only one year in 1992 when she was only twelve years old or four years before the complained incident. On November 16, 1996, Elsa was already sixteen years old. Thus, she could hardly be considered to be of such tender age that she would be easily conditioned or controlled into submitting herself to appellant's sexual desires specially so, when she lived with appellant for only one year when she was twelve years old. Accordingly, Nelson Coderes was acquitted.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRINCIPLES IN REVIEWING RAPE CASES.** — In reviewing rape cases, we have 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.

2. **CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; NOT ESTABLISHED IN CASE AT BAR.** — It is clear from complainant's above-quoted testimony that while she claims that she was threatened and injured by appellant, Elsa did not specify how she was threatened, why she was threatened and on what particular occasion she was threatened by appellant. Thus, the prosecution failed to establish that threat or injury was employed by appellant during or on the occasion of the rape allegedly committed on November 16, 1996 as a means to force complainant to have sex with him. In rape committed through force or intimidation under Article 335, paragraph 1 of the Revised Penal Code (as amended by Republic Act No. *7659),* the prosecution must prove that force or intimidation was actually employed by the appellant upon his victim to achieve his end. Failure to do so is fatal to prosecution's cause. In the instant case, the prosecution failed to establish the presence of sufficient force or intimidation that would have created a state of fear in the mind of Elsa so as to effectively prevent her from putting up a determined resistance.

3. **ID.; ID.; FATHER'S MORAL ASCENDANCY SUBSTITUTES VIOLENCE AND INTIMIDATION.** — It is true that in a long line of cases, the most recent of which is *People vs. Servano,* we held that in rape committed by a father against his own daughter, the former's moral ascendancy or influence over the latter substitutes for violence and intimidation; that ascendancy or influence necessarily flows from the father's parental authority as well as the children's duty to obey and observe respect

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towards their parents; that such reverence and respect are deeply ingrained in the minds of Filipino children; that abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.

4. **ID.; ID.; ID.; NOT APPLICABLE WHEN THE COMPLAINANT STAYED WITH HER FATHER FOR ONLY A YEAR AND SHE WAS ALREADY SIXTEEN YEARS OLD WHEN THE INCIDENT HAPPENED.** — A review of the evidence presented in the present case discloses that the rule on moral ascendancy cannot be applied in this particular case. We find that the trial court failed to appreciate the fact that appellant could have hardly wielded any moral ascendancy or parental influence over complainant as evidenced by the *unrefuted* testimony of appellant that since her birth, Elsa lived with her grandmother and stayed in the house of her parents for only one year in 1992 when she was only twelve years old or four years before the complained incident. On November 16, 1996, Elsa was already sixteen years old. Thus, she could hardly be considered to be of such tender age that she would be easily conditioned or controlled into submitting herself to appellant's sexual desires specially so, when she lived with appellant for only one year when she was twelve years old.

5. **ID.; ID.; NEGATED BY LACK OF EVIDENCE SIGNIFYING OBSTINATE RESISTANCE TO SUBMIT TO THE INTERCOURSE.** — In his Brief, appellant does not deny having sexual intercourse with complainant. He claims that she consented to the sexual act. As earlier found by us, the prosecution failed to adduce evidence to prove that complainant resisted the sexual advances of appellant when she was allegedly raped on November 16, 1996. The gravamen in the crime of rape is carnal knowledge of a woman against her will or without her consent. We find nothing in the testimony of complainant to show that she offered any semblance of resistance when appellant allegedly raped her. While it may be said that tenacious resistance from the victim is not a requirement for the crime of rape, the lack of evidence signifying obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred. Nothing in private complainant's testimony indicates that she struggled against the sexual advances of appellant. There was no evidence of appellant's

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use of force or threat in having sex with her that evening of November 16, 1996.

6. **ID.; ID.; WHEN A WOMAN SAYS THAT SHE HAS BEEN RAPED, SHE SAYS, IN EFFECT, ALL THAT IS NECESSARY TO PROVE THAT RAPE WAS COMMITTED; NOT PRESENT IN CASE AT BAR.** — So too, we are not unmindful of the doctrine that when a woman says that she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Moreover, there is no question that a rape by a father of his own daughter is an odious and despicable crime that deserves condemnation in the strongest possible terms. In the present case, after scrutiny of the testimonies of complainant and appellant, we found certain facts and circumstances that evince reasonable doubt as to the guilt of appellant. Unfortunately, the trial court failed to comprehend the same.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; IN CRIMINAL CASE, EVERY CIRCUMSTANCE FAVORING A MAN'S INNOCENCE MUST BE TAKEN INTO ACCOUNT.** — In a criminal case, every circumstance or evidence favoring a man's innocence must be taken into account. If the inculpatory facts and circumstances are capable of two or more interpretations, one of which is consistent with innocence and the other with guilt, then the evidence does not pass the test of moral certainty and is not sufficient to support a conviction. Thus, the presumption of innocence founded on the basic principle of justice as embodied in our Constitution prevails in the present case.

8. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PROSECUTION MUST DEPEND ON THE STRENGTH OF ITS OWN EVIDENCE; NOT COMPLIED WITH IN CASE AT BAR.** — [A]ppellant's act of trying to settle the case filed by Elsa against him cannot be considered in this particular case as an implied admission that he raped his daughter. x x x [I]t can be seen that while appellant admits that he tried to settle the case filed against him by his daughter, he, nonetheless, denied that he raped her. Thus, the fact that appellant admitted having tried to settle the case against him may not be used as a basis of his conviction in the absence of competent evidence presented by the prosecution that complainant was raped through force and intimidation. The prosecution may not rely on the weakness of the evidence for the defense. Instead, it must depend on the strength of its own evidence and establish

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the guilt of appellant beyond reasonable doubt. This, the prosecution failed to do. Where the prosecution has failed to discharge the *onus probandi* for a pronouncement of guilt beyond reasonable doubt, the constitutional presumption of innocence in favor of the accused will result in acquittal.

APPEARANCES OF COUNSEL

Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us for automatic review is the decision of the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro finding appellant Nestor Coderes *y* Ablaza guilty beyond reasonable doubt of raping his daughter, Elsa Coderes *y* Mauhay, sentencing him to suffer the penalty of death and ordering him to indemnify Elsa in the amount of ₱50,000.00.

The criminal complaint,[1] dated January 24, 1997, filed by Elsa against herein appellant reads as follows:

That on or about the 16th day of November, 1996 at 8:00 o'clock in the evening, more or less, in barangay Subaan, municipality of Socorro, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, NESTOR CODERES *y* Ablaza, by means of force and intimidation, with lewd and unchaste design, did then and there willfully, unlawfully, and feloniously lay with and have carnal knowledge of the undersigned complainant against her will and without her consent.

That the commission of the crime is attended by the aggravating circumstance of the victim being only 16 years old and the offender-accused is her own father and living in the same house.

CONTRARY TO ART. 335 OF THE RPC IN RELATION TO R.A. 7659.[2]

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[1] Docketed as Criminal Case No. P-5586.

[2] Original Records, p. 1.

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When arraigned on March 3, 1997, appellant pleaded not guilty. Trial ensued.

The prosecution presented the complainant and Dr. Alita Fetizanan Venturanza as witnesses.

Complainant Elsa, 17 years-old, declared on the witness stand that she had been repeatedly raped by her father since she was eight years old, the first sexual molestation having been committed on November 23, 1988 and the latest on November 16, 1996 when she was already sixteen years old. Around 8:00 in the evening of November 16, 1996, Elsa testified that she was sleeping together with her two sisters in one of the rooms of their house located at Subaan, Socorro, Oriental Mindoro. She woke up finding appellant lying beside her. He undressed her and, thereafter, inserted his penis in her vagina. Elsa knew that her sisters were aware of the various times that their father raped her but they did not inform anybody about these incidents. Complainant herself did not tell their mother that their own father was raping her. However, after she was raped on November 16, 1996, she was prompted by her conscience and her fear that her sisters might suffer the same fate in the hands of their father to reveal her ordeal to her Lola Mercedes who in turn informed her Lola Leonor. Both grandmothers brought her to the Municipal Health Officer in Socorro and had her examined.[3]

Testifying on the physical examination she conducted on Elsa, Dr. Venturanza confirmed her findings that complainant's sexual organ had a "healed lacerated hymen with non-coaptible borders and retraction of the edges, 7 o'clock position" which could have been caused by the penetration of a hard object, like a penis, or by the stretching of the thigh.[4]

Defense, on the other hand, presented appellant as its lone witness. He admitted that complainant Elsa is her daughter and that she was born in 1980. However, he denies her accusations against him. Appellant testified that since the birth of Elsa, she stayed

[3] TSN, November 24, 1997.

[4] TSN, March 17, 1997, p. 4; Exh. "B", OR, p. 5.

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with her maternal grandmother, Leonora Mauhay, whose house is located at Zone I, Socorro, Oriental Mindoro. Complainant only went to live with her parents for one year in 1992. On November 17, 1996, complainant returned to her parents' house. She told her father that she eloped with her boyfriend four days earlier. Surprised by her daughter's revelation, appellant hit her telling her that she is still too young. Complainant answered back saying, "*Isinusumpa ko kayo bilang magulang*". Thereafter, appellant returned complainant to the care of her grandmother. On December 8, 1996, appellant came to know of the charges against him. He cannot think of any reason why her daughter accused him of raping her.[5]

After evaluation of the evidence presented by the opposing parties, the trial court upheld the prosecution evidence and rendered judgment convicting appellant of the crime of rape, imposing upon him the penalty of death.[6] Hence, this automatic review under Article 47 of the Revised Penal Code, as amended.

In his Brief, appellant assails the decision of the trial court and submits the following Assignment of Errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT.

II

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT HAD CARNAL KNOWLEDGE OF THE COMPLAINANT, THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP.[7]

We find the appeal meritorious.

In reviewing rape cases, we have always been guided by the following principles: (1) an accusation of rape can be made

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[5] TSN, March 24, 1998.

[6] See RTC Decision, OR, pp. 80–83.

[7] *Rollo*, p. 39.

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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.[8]

In the case at bar, we find that the prosecution failed to discharge its burden of proving the guilt of the appellant beyond reasonable doubt. There was no evidence that appellant forced or threatened Elsa in having carnal knowledge with him on November 16, 1996. We quote verbatim her testimony, thus:

Q: Will you please tell the Honorable Court why you filed this case, in Court?
A: Because the reason behind is that even my sister will be raped by him if I will not file this case sir.

Q: How about you, what did your father do to you which compel you to file this case?
A: He often times injure me sir.

Q: Aside from bitting you or injuring your physical body, what did he do to you?
A: He threatened me sir.

Q: What was done to you by your father, please tell the Honorable Court.
A: He raped me sir.

. . . . . .

Q: And the last time that you were raped by your own father, when was that if you still remember?
A: November 16, 1996 sir.

Q: What time more or less, if you still remember?
A: 8:00 o'clock in the evening sir.

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[8] *People vs. Sayana*, G.R. Nos. 142553-54, July 1, 2003.

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Q: In what place were you rape?
A: At Subaan, Socorro sir.

Q: In whose house?
A: In our own house sir.

Q: Will you please tell the Honorable Court, how you were raped by your own father on November 16, 1996?
A: He laid beside me in our room and undressed me sir.

Q: And thereafter, what did he do?
A: He again inserted his penis in my vagina sir.

Q: This time, after you were rape by your father on November 16, 1996, what did you do in order to protect your rights?
A: I reported this matter to my Lola Mercedes.[9]

It is clear from complainant's above-quoted testimony that while she claims that she was threatened and injured by appellant, Elsa did not specify how she was threatened, why she was threatened and on what particular occasion she was threatened by appellant. Thus, the prosecution failed to establish that threat or injury was employed by appellant during or on the occasion of the rape allegedly committed on November 16, 1996 as a means to force complainant to have sex with him.

In rape committed through force or intimidation under Article 335, paragraph 1 of the Revised Penal Code (as amended by Republic Act No. 7659), the prosecution must prove that force or intimidation was actually employed by the appellant upon his victim to achieve his end. Failure to do so is fatal to prosecution's cause.[10] In the instant case, the prosecution failed to establish the presence of sufficient force or intimidation that would have created a state of fear in the mind of Elsa so as to effectively prevent her from putting up a determined resistance.

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[9] TSN, November 24, 1997, pp. 3-4, 6-8.

[10] *People vs. Sodsod*, G.R. Nos. 141280-81, June 16, 2003.

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It is true that in a long line of cases,[11] the most recent of which is *People vs. Servano*,[12] we held that in rape committed by a father against his own daughter, the former's moral ascendancy or influence over the latter substitutes for violence and intimidation; that ascendancy or influence necessarily flows from the father's parental authority as well as the children's duty to obey and observe respect towards their parents; that such reverence and respect are deeply ingrained in the minds of Filipino children; that abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.[13]

However, a review of the evidence presented in the present case discloses that the rule on moral ascendancy cannot be applied in this particular case. We find that the trial court failed to appreciate the fact that appellant could have hardly wielded any moral ascendancy or parental influence over complainant as evidenced by the *unrefuted* testimony of appellant that since her birth, Elsa lived with her grandmother and stayed in the house of her parents for only one year in 1992 when she was only twelve years old or four years before the complained incident. On November 16, 1996, Elsa was already sixteen years old. Thus, she could hardly be considered to be of such tender age that she would be easily conditioned or controlled into submitting herself to appellant's sexual desires specially so, when she lived with appellant for only one year when she was twelve years old.

In his Brief, appellant does not deny having sexual intercourse with complainant. He claims that she consented to the sexual act. As earlier found by us, the prosecution failed to adduce evidence to prove that complainant resisted the sexual advances of appellant when she was allegedly raped on November 16, 1996. The gravamen in the crime of rape is carnal knowledge of a woman against her will or without her consent.[14] We find nothing in the testimony

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[11] *People vs. Tabugoca*, 285 SCRA 312, 331 (1998); *People vs. Panique*, 316 SCRA 757, 767 (1999); *People vs. Bayona*, 327 SCRA 190, 200 (2000); *People vs. Serrano*, 353 SCRA 161, 172-173 (2001); *People vs. Morfi*, G.R. Nos. 145449-50, August 1, 2002.

[12] G.R. Nos. 143002-03, July 17, 2003.

[13] Serrano case, *supra*.

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of complainant to show that she offered any semblance of resistance when appellant allegedly raped her. While it may be said that tenacious resistance from the victim is not a requirement for the crime of rape, the lack of evidence signifying obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred.[15] Nothing in private complainant's testimony indicates that she struggled against the sexual advances of appellant. There was no evidence of appellant's use of force or threat in having sex with her that evening of November 16, 1996.

So too, we are not unmindful of the doctrine that when a woman says that she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Moreover, there is no question that a rape by a father of his own daughter is an odious and despicable crime that deserves condemnation in the strongest possible terms.

In the present case, after scrutiny of the testimonies of complainant and appellant, we found certain facts and circumstances that evince reasonable doubt as to the guilt of appellant. Unfortunately, the trial court failed to comprehend the same.

First, when complainant was asked, during her direct examination, as to what impelled her to inform her grandmother of the rape committed against her by appellant on November 16, 1996, she testified as follows:

Q: After you were raped by your own father on November 16, 1996 what prompted you to report this matter to your *lola*?

A: *Nakukunsensya po ako at baka gawin sa aking mga kapatid ang gahasain din ng aking magulang.*[16]

During her cross-examination, she testified thus:

Q: And the reason why you finally revealed what according to you, your father did against you was that you were *nakukunsensya*, is it not?

A: Yes ma'm.

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[14] *People vs. Salvador*, G.R. Nos. 136870-72, January 28, 2003.

[15] *People vs. Eliarda*, G.R. Nos. 148394-96, April 30, 2003.

[16] TSN, November 24, 1997, p. 8.

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Q: And you were *nakukunsensya* because you know for a fact that what you and your father were doing was a sin against your mother, is it not?

A: Yes ma'm.[17]

While we find the last quoted question propounded by the counsel for appellant to be downright misleading under the Rules on Evidence, to which the inattentive prosecutor unfortunately did not object, private complainant could have easily denied the same, if it were not really true. But she did not. Although misleading, the question is simple enough to be easily understood and evaluated by Elsa who, on the date of her testimony was already seventeen years old.

Her above-quoted statements are open to different interpretations. Was she bothered by her conscience ("*nakunsiyensya*") because she was afraid that appellant would also rape her sisters; or was she bothered by her conscience because she realized that what she and her father were doing was a sin against her mother?

In a criminal case, every circumstance or evidence favoring a man's innocence must be taken into account. If the inculpatory facts and circumstances are capable of two or more interpretations, one of which is consistent with innocence and the other with guilt, then the evidence does not pass the test of moral certainty and is not sufficient to support a conviction.[18] Thus, the presumption of innocence founded on the basic principle of justice as embodied in our Constitution prevails in the present case.

Second, appellant's act of trying to settle the case filed by Elsa against him cannot be considered in this particular case as an implied admission that he raped his daughter. During his cross-examination, the public prosecutor propounded questions on him to which he answered, as follows:

Q: Mr. Witness, I would like you to listen very well and understand my question before you answer, because this is a grave offense charged against you and if the Court will find you guilty, you maybe included in the list of those who will be given lethal

[17] *Id.*, p. 19.

[18] *People vs. Baro*, G.R. Nos. 146327-29, June 5, 2002.

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injection. I would like to remind you that I filed this case with a weak heart, bearing in mind that you are the father of the complainant. And to remind you clearly, when you and your wife was (*sic*) crying in our office. Do you remember that?

A: Yes, sir.

Q: And you were pleading to your wife that you be given pity and commensuration (*sic*). Is it not?

A: Yes, sir.

Q: And that was for several occasion (*sic*). If I remember right, there were 3-5 times coming to our office and trying to settle the case between you and your wife and Elsa?

A: Yes, sir.

Q: You will agree with me that your wife, at that time, as well as Elsa Coderes did not conform with the amicable settlement, for which reason, I was constrained to file this case as actually you were raping her since childhood. Is it not?

A: No, sir.

Q: When Elsa Coderes testified here in Court, you were present, and when I directed her to point at you, she went down from that witness stand and shouted to you, in this wise: "*Ito po ang aking walang hiyang ama na gumahasa sa akin*". Do you still remember that?

A: Yes, sir.

Q: And when you were pointed at, your head bowed as if in acceptance. Is it not?

A: No, sir.[19]

From the foregoing, it can be seen that while appellant admits that he tried to settle the case filed against him by his daughter, he, nonetheless, denied that he raped her. Thus, the fact that appellant admitted having tried to settle the case against him may not be used as a basis of his conviction in the absence of competent evidence presented by the prosecution that complainant was raped through force and intimidation. The prosecution may not rely on the weakness of the evidence for the defense. Instead, it must depend on the strength

[19] TSN, March 24, 1998, pp. 9-10.

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of its own evidence and establish the guilt of appellant beyond reasonable doubt. This, the prosecution failed to do.

Where the prosecution has failed to discharge the *onus probandi* for a pronouncement of guilt beyond reasonable doubt, the constitutional presumption of innocence in favor of the accused will result in acquittal.[20]

We need to emphasize however what we have enunciated in *People vs. Eliarda*, to wit:

> In an acquittal, an accused is set free not necessarily because he did not commit the offense but, more likely than not, because the exacting proof for conviction may not have been met. A person is presumed innocent of a crime unless his guilt has been proven beyond any reasonable doubt. Thus, an acquittal does not always mean that the defense evidence is given full credence, but, rather that the prosecution has failed to overcome the presumption of innocence.[21]

WHEREFORE, for failure of the prosecution to prove the guilt of appellant beyond reasonable doubt, the decision of the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro in Criminal Case No. P-5586 is *REVERSED* and *SET ASIDE*. Appellant Nestor Coderes y Ablaza is *ACQUITTED* and his immediate *RELEASE* from confinement is ordered, unless some other lawful cause warrants his further detention. The Director of Prisons is *DIRECTED* to inform this Court immediately of the action taken hereon within five (5) days from receipt hereof.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C. J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Corono, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.*, concur.

Ynares-Santiago, J., on official leave.

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[20] *People vs. Saturno*, 355 SCRA 578, 589 (2001), citing *People vs. Castillon*, 217 SCRA 76 (1993).

[21] *Supra*, see Note 15.