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FIRST DIVISION

[G.R. No. 127128. August 15, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROEL MENDIGURIN *Y* CANLAS**, *appellant.*

SYNOPSIS

Accused-appellant Roel Mendigurin was convicted of rape by the Regional Trial Court of Malabon and was sentenced to suffer the penalty of *reclusion perpetua.* In his appeal, appellant contended that the trial court erred in convicting him of rape and in giving full faith and credence to the testimony of the complainant. He also claimed that his conviction which was based on the allegation found in the information that rape was committed by means of force and intimidation, is not found in the evidence presented by the prosecution.

The Supreme Court reversed and set aside the judgment of conviction and acquitted appellant. The Court was constrained to entertain reasonable doubt because of the glaring inconsistencies in the testimony of the complainant. Complainant's failure to promptly report her agonizing experience to the authorities, or at the very least to her family, despite all the opportunities to do so, also seriously affected the veracity of her narration. She also claimed that she has a heart ailment which caused her to faint under extreme emotional condition. However, said claim is unsupported by any medical finding. The prosecution only presented the testimony of Dr. Puentespina, who stated that the results of the two examinations conducted on complainant both proved negative for any heart disorder. The Court also ruled that the conviction of appellant under the information filed will not stand. The allegation in the information that appellant succeeded in having sexual intercourse by employing force, threat or intimidation was contrary to complainant's admissions that no such means attended the assault. Complainant herself attested during the trial that no force was employed on her by appellant.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GLARING INCONSISTENCIES IN COMPLAINANT'S TESTIMONY IS SUFFICIENT TO ENTERTAIN REASONABLE DOUBT AS TO APPELLANT'S GUILT.**— We have repeatedly stressed that the resolution of a rape case often hinges on the credibility of the victim. If her testimony does not meet the test of credibility, the acquittal of the accused is inevitable. After thoroughly examining complainant's testimony, along with the other evidence at hand, we find glaring inconsistencies therein which constrain us to entertain a reasonable doubt as to the guilt of appellant. As principal evidence, the prosecution proffered the testimony of complainant, who attested that she was raped while she was unconscious and that the only thing she could remember upon regaining consciousness was seeing appellant putting on his shorts. Of equal significance is Mark Figueroa's testimony, which the prosecution presented as an eyewitness account of the incident, and which, upon a closer scrutiny, fails to corroborate complainant's testimony. Mark's narration of what he saw that fateful morning of June 15, 1992 belies complainant's claim that she was unconscious. It is worth noting that Mark is related to both appellant and complainant. Considering this and the fact that he was only eleven years old at the time he witnessed the incident, we give full weight to his testimony. Moreover, we cannot help but notice that complainant's testimony and affidavit failed to mention the presence of Mark during the incident. When asked, she even denied knowledge as to when her nephew woke up that morning. In comparison, except as to who approached and talked to the child, appellant's account on this point conforms with Mark's testimony. In addition, complainant's claim that she has a heart ailment which caused her to faint under extreme emotional condition was unsupported by any medical finding. The prosecution only presented the testimony of Dr. Puentespina, who stated that the results of the two examinations conducted on complainant both proved negative for any heart disorder. She testified that she only prescribed medicines to calm her, as she observed complainant to be frequently emotional each time she consulted her.

2. **ID.; ID.; COMPLAINANT'S FAILURE PROMPTLY TO REPORT HER AGONIZING EXPERIENCE AFFECTS THE VERACITY**

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OF HER NARRATION.— Complainant's failure promptly to report her agonizing experience to the authorities, or at the very least to her family, despite all the opportunities to do so, also seriously affects the veracity of her narration. She stated that it took her four months before divulging the incident because she feared appellant's threat to kill her elder sister. However, she admitted that she had many relatives living in the same neighborhood where she resided. She also admitted that just a week after the date of the alleged rape, she spent one week in her family's home in Pampanga, away from the watchful eyes of appellant. Considering that appellant was many kilometers away in Manila and the protection afforded by her household, her life cannot be said to have been in danger then. Furthermore, she kept silent and did not protest when appellant slept overnight in their house on the same floor where she slept, while her parents slept downstairs.

3. **CRIMINAL LAW; RAPE; CONVICTION OF APPELLANT UNDER THE INFORMATION FILED CANNOT STAND; ALLEGATION THAT APPELLANT SUCCEEDED IN HAVING SEXUAL INTERCOURSE BY EMPLOYING FORCE, THREAT OR INTIMIDATION IS CONTRARY TO COMPLAINANT'S ADMISSIONS THAT NO SUCH MEANS ATTENDED THE SEXUAL ASSAULT.**— The information herein specifically alleged that appellant succeeded in having sexual intercourse with the complainant "by employing force, threat, and intimidation," thus invoking paragraph 1 of Article 355. It was also on this ground that appellant was convicted by the trial court. After painstakingly searching through the records, however, we find no evidence of force, threat, or intimidation used by appellant to consummate the alleged rape. On the contrary, what we found were complainant's admissions that no such means attended the sexual act. Complainant herself attested that no force was employed on her by appellant. The threat and intimidation, on the other hand, were claimed to have been used by appellant only *after* consummating the sexual act. This is not what is contemplated by Article 355 (1) of the Revised Penal Code. To convict under this mode, the accused must have used force or intimidation to compel complainant into having sexual relations with him.

4. **CONSTITUTIONAL LAW; BILL OF RIGHTS; INFORMATION CHARGING APPELLANT FOR RAPE CANNOT BE MADE**

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THE BASIS OF CONVICTION WITHOUT VIOLATING HIS RIGHT TO DUE PROCESS AND TO BE INFORMED OF THE NATURE OF THE ACCUSATION AGAINST HIM.— As the prosecution failed to present evidence to substantiate the charge of rape through force, threat and intimidation, we are duty-bound to uphold appellant's innocence. It is an elementary rule in criminal procedure that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. If the prosecution in this case sought to convict appellant by proving that complainant was violated while in a state of unconsciousness, as provided under the 2nd paragraph of Article 355, the information should have stated so. We find, however, that the element of unconsciousness was not alleged much less specified in the information, which charged appellant for rape under the first circumstance. Hence, it cannot be made the basis of conviction without violating appellant's right to due process, in particular to be informed of the nature of the accusation against him. We have ruled that this right is accorded by the Constitution so that the accused can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

AZCUNA, *J.*:

Appellant Roel Mendigurin challenges the decision[1] of the Regional Trial Court of Malabon, Metro Manila, Branch 74, convicting him of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay ₱30,000 as moral damages.

The information under which appellant was charged states, as follows:

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[1] *Rollo*, pp. 25-37.

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That on or about the 15th day of June 1992, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with lewd design, have sexual intercourse with ELENA SEBASTIAN and successfully did so by employing force, threat and intimidation on her person.

Contrary to law.[2]

In his arraignment on March 1, 1993, appellant, assisted by his counsel, pleaded not guilty[3] and trial thereafter ensued.

Appellant's conviction was principally based on the testimonies of complainant Elena Sebastian, her nephew Mark Figueroa who allegedly witnessed the incident, and Dr. Louella Nario of the National Bureau of Investigation (NBI). Also testifying for the prosecution on peripheral matters were the elder sister of complainant, Edna Figueroa, and Dr. Remedios Puentespina.

Complainant *Elena Sebastian*, who was 19 years old on the date of the alleged rape, is a native of Pampanga. After her elementary education, she moved in with her elder sister Edna Figueroa to the latter's residence in 217 Gov. Pascual, Sipac, Navotas, Metro Manila. Edna Figueroa is married to Salvador Figueroa, who happens to be the brother of Daisy Mendigurin, wife of appellant herein. Appellant's house is adjacent to the Figueroa's. In fact the two houses are separated only by a concrete wall.

In her testimony,[4] complainant narrated that on June 15, 1992, she woke up at 5:00 a.m. to prepare breakfast for her brother-in-law and his two children, who were then sleeping upstairs. As she unlocked the kitchen door leading outside to throw out water from the rice pot, appellant suddenly pushed the door and barged in. To her surprise, appellant locked the door, and embraced and kissed her. Startled by appellant's sudden attack,

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[2] *Id.*, at 8.

[3] Records, p. 17.

[4] TSN, May 5, 1993, pp. 3–12; TSN, May 13, 1993, pp. 3–4; TSN, June 9, 1993, pp. 3–14; TSN, July 5, 1993, pp. 3–12; TSN, August 2, 1993, pp. 11–31.

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she fell unconscious. When she regained consciousness, she felt pain in her abdomen and noticed blood in her private part. At that moment, she saw appellant putting on his shorts with a smirk on his face. He threatened her not to report the incident to anyone, or else he would kill her sister. He then left and complainant was unable to do anything but weep. She went to the bathroom with a knife and attempted to commit suicide. Her fear, however, prevented her from doing so.

Complainant kept the incident to herself until September 26, 1992, when she was rushed to the hospital for slashing her wrist. It was then that she divulged to her relatives the ordeal she suffered at the hands of appellant. On October 22, 1992, she filed a complaint against appellant before the police authorities of Navotas, where she gave a written statement[5] relating the June 15, 1992 incident. She was thereafter brought to the NBI for physical examination.

She further testified that due to her heart ailment, it was usual for her to lose consciousness whenever she felt frightened, as in the past when her elder sister scolded her. On cross-examination, she said that at the time of the assault, she was unable to cry for help to her relatives upstairs because she was so surprised. She also stated that it took her a long time to report the matter to the authorities because of appellant's threat to her and her fear that everybody would know about it.

To buttress complainant's testimony, the prosecution also presented the testimony[6] of *Mark Figueroa* (Mark), complainant's nephew who also happens to be the godchild of appellant. He was then eleven years old at the time of the incident. He declared that at around 5:30 a.m. of June 15, 1992, while descending the stairs, he saw appellant bare-buttocked on top of complainant on the kitchen floor. Appellant immediately stood up, approached him and told him not to tell anybody what he just witnessed. At that instance, Mark also saw complainant

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[5] Records, p. 175.

[6] TSN, September 12, 1994, pp. 1–10.

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get up to dress up. Out of fear, he ran back upstairs and thereafter kept silent about the incident. It was only after complainant's confinement in the hospital that he volunteered to take the witness stand because he pitied his aunt. On cross-examination, he recounted that before going down the stairs, he heard a soft outcry and an angry voice, which prompted him to go down. He added that his aunt, upon getting up, went into the bathroom where he heard her crying.

Dr. Louella Nario, the NBI Medico-Legal Officer who examined complainant, confirmed in her testimony[7] her findings as stated in Living Case Report No. MG-92-858[8] which showed a healed deep laceration in complainant's hymen. She further opined that the laceration could have been effected three to four months before October 4, 1992, the date of the examination.

The prosecution also presented testimonial evidence to support complainant's claim that it was common for her to lose consciousness whenever she feels afraid. *Edna Figueroa* testified[9] that sometime in 1991, complainant fell unconscious when she scolded the latter. In corroboration, *Dr. Remedios Puentespina* testified[10] on the medical history of complainant, who had consulted her on three occasions since 1991. She stated that complainant's frequent complaint since the first consultation was the latter's tendency to lose consciousness whenever she felt emotional stress. She testified, however, that based on the results of the examinations previously conducted on complainant, she found nothing wrong with the latter's heart.

Appellant Roel Mendigurin and his wife, Daisy Mendigurin, testified for the defense.

Roel Mendigurin took the witness stand and admitted engaging in sexual intercourse with complainant on June 15, 1992. He, however, denied the rape charge and interposed the defense

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[7] TSN, August 2, 1993, pp. 2-10.

[8] Records, p. 177.

[9] TSN, July 8, 1994, pp. 1-3.

[10] TSN, June 29, 1995, pp. 1-6.

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that he and complainant were lovers. In his testimony,[11] he stated that his work as a *batilyo*[12] required him to leave the house before 7:00 p.m., and come home at past 3:00 a.m. He testified that from March until sometime in September, 1992, he secretly maintained a sexual affair with complainant, who lived just next door. He recalled that his first sexual intercourse with complainant was in the afternoon of March 1992 in the room of complainant's elder sister. He testified that it was on this occasion that he discovered that complainant was no longer a virgin. They had their sexual escapades usually in the mornings, either in his house or in complainant's house, whenever his wife was at work.

He narrated a different version of the incident. He stated that in the early morning of June 15, 1992, he arrived home from work and was allowed entry by complainant into her sister's house. He walked into the kitchen, where they voluntarily engaged in sex. Complainant's nephew, Mark Figueroa, later came down from upstairs and saw them in the act of intercourse. At this instance, appellant and complainant stood up. He went to the door, while complainant approached her nephew. He, thereafter, went home. He said that contrary to complainant's claim, she never lost consciousness while they were having sex. He also denied threatening Mark, asserting instead that it was complainant who talked to the child.

To bolster his defense, he further testified that even after the date of the alleged rape, he and complainant continued with their illicit sexual affair. In fact he recounted that on June 28, 1992, they again engaged in sex in the house of complainant's parents in Apalit, Pampanga, where appellant stayed overnight on the occasion of the town fiesta. He alleged that complainant's shame for having been caught by her nephew, who later spread the word about their sexual relations, must have moved her to accuse him of rape.

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[11] TSN, October 20, 1995, pp. 1-7.

[12] Fishing boat crew member.

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Daisy Mendigurin also testified[13] in defense of her husband, appellant herein. As a fish vendor, her usual routine was to leave for work at 9:00 p.m., and to come home at 9:00 or 10:00 a.m. Most of the time, she was also away in the afternoon to sell more fish in the market. Whenever she arrives home from work, she would often see her husband and complainant talking and teasing each other, which caused her to suspect that they were having an affair. However, because she treated complainant as her sister, she kept silent and waited for proof to confirm her suspicion. Eventually, in September, as complainant was rushed to the hospital for having slashed her wrist, her husband talked to her and admitted the affair. As a natural reaction, she got mad and lost control of herself in rage.

In rebuttal, the prosecution recalled complainant to the witness stand, and also presented a new witness, complainant's father, Federico Sebastian.

Complainant *Elena Sebastian* in her testimony[14] on rebuttal denied appellant's claim that she and appellant had an affair and that what occurred on June 15, 1992 was consensual. She admitted that on June 28, 1992, appellant did stay overnight in her parents' house in Pampanga; but denied that they had any sexual contact. She clarified that although they both slept on the same floor of the house, they were about ten feet apart from each other, in different rooms. At the time, she did not have the strength to report the rape incident to her family because she was afraid of appellant's threat.

Federico Sebastian testified[15] that on the night of June 28, 1992, while his daughter, his grandchildren and appellant were asleep on the second floor of their house in Pampanga, he went up to check on them and noticed nothing unusual.

The trial court lent credence to the prosecution's version of the incident. Observing that complainant appeared to be the

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[13] TSN, December 15, 1995, pp. 2-15.

[14] TSN, January 29, 1996, pp. 2-5.

[15] TSN, January 19, 1996, pp. 2-5.

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"Maria Clara" type, it rejected appellant's claim that the sexual intercourse that occurred on June 15, 1992 was out of an illicit affair. It concluded that the medico-legal finding that the hymenal laceration of the complainant was about four months old strongly negated appellant's claim that they had had sexual contact as early as March of 1992. It further found that appellant's act of sudden entry into the house and pushing the victim to the door sufficed to be considered as an employment of force, threat, and intimidation to consummate the rape.[16]

Hence, this appeal.

Appellant alleges the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONY OF ELENA SEBASTIAN.

II

THE TRIAL COURT LIKEWISE ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

III

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED WAS INDEED GUILTY, THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BASED ON THE ALLEGATION FOUND IN THE INFORMATION THAT RAPE WAS COMMITTED BY MEANS OF FORCE AND INTIMIDATION WHICH IS NOT FOUND ON THE EVIDENCE PRESENTED BY THE PROSECUTION.[17]

It is constitutionally mandated that the accused be accorded the presumption of innocence. The burden of proof rests on the State to establish every circumstance which proves his guilt beyond reasonable doubt.[18] This exacting standard of proof acquires more relevance in rape charges which are easy to make but hard to prove and harder still to defend by the party

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[16] *Rollo*, pp. 32–36.

[17] *Id.*, at 66–67.

[18] *People v. Relorcasa*, 225 SCRA 59 (1993).

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accused who may be innocent.[19] Thus, we have exhorted courts to keep in mind settled principles in the decision-making process: (1) to accuse a man of rape is easy but to disprove it is difficult although the accused may be innocent; (2) considering the nature of things, and that only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; (3) the evidence for the prosecution must stand or fall on its own merits and not be allowed to draw strength from the weakness of the evidence of the defense.[20]

On the other hand, it is the general rule that factual findings by the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the result of the case.[21]

In the present case, however, a careful review of the evidence compels us to take exception to the aforesaid rule.

We have repeatedly stressed that the resolution of a rape case often hinges on the credibility of the victim. If her testimony does not meet the test of credibility, the acquittal of the accused is inevitable.[22]

After thoroughly examining complainant's testimony, along with the other evidence at hand, we find glaring inconsistencies therein which constrain us to entertain a reasonable doubt as to the guilt of appellant. As principal evidence, the prosecution proffered the testimony of complainant, who attested that she was raped while she was unconscious and that the only thing she could remember upon regaining consciousness was seeing appellant putting on his shorts. Of equal significance is Mark Figueroa's testimony, which the prosecution presented as an

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[19] *People v. Cantila, Jr.*, G.R. No. 139458, December 27, 2002.

[20] *People v. Rabago*, G.R. No. 149893, April 2, 2003, citing *People v. Lizada*, G.R. No. 143468–71, January 24, 2003.

[21] *People v. Bon*, G.R. No. 149199, January 28, 2003.

[22] *People v, Malacura*, 346 SCRA 781 (2000).

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eyewitness account of the incident, and which, upon a closer scrutiny, fails to corroborate complainant's testimony. Mark's narration of what he saw that fateful morning of June 15, 1992 belies complainant's claim that she was unconscious:

Q. You testified that sometime on June 15, 1992 between the hours of 5:00 to 6:00 a.m., when you woke up and while descending the stairs you saw your uncle, who happens to be your godfather, on top of your Ate Lena is that correct?

A. Yes sir.

Q. Now, before you descended the stairs did you hear any outcry from downstairs coming from your Ate Lena?

A. Yes sir.

Q. You mean to say you heard your Ate Lena making a loud outcry?

A. Little bit soft, sir.

Q. But why did you descend from your upper house?

A. Because it[']s as if I heard something, sir.

Q. You heard murmur?

A. No sir.

Q. You heard what, what more did you hear?

A. I heard an angry voice, sir.

Q. Do you hear the words being uttered by someone whom you heard?

A. None sir.

Q. When you saw your uncle atop your Ate Lena, did you hear any outcry from your Ate Lena?

A. Yes sir.

Q. Was the cry loud?

A. No sir.

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Q. And you testified that immediately your *Ninong* stood up[,] is that correct?

A. Yes sir.

Q. What if any did your Ate Lena do after your *Ninong* stood up?

A. She dressed up, sir.[23]

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COURT:

When you saw your godfather, the accused herein, on top of your Ate Lena, will you please tell the Honorable Court whether at that time your Ate Lena was moving?

A. Yes sir.[24]

It is worth noting that Mark is related to both appellant and complainant. Considering this and the fact that he was only eleven years old at the time he witnessed the incident, we give full weight to his testimony.

Moreover, we cannot help but notice that complainant's testimony and affidavit failed to mention the presence of Mark during the incident. When asked, she even denied knowledge as to when her nephew woke up that morning.[25] In comparison, except as to who approached and talked to the child, appellant's account on this point conforms with Mark's testimony.[26]

In addition, complainant's claim that she has a heart ailment which caused her to faint under extreme emotional condition was unsupported by any medical finding. The prosecution only presented the testimony of Dr. Puentespina, who stated that the results of the two examinations conducted on complainant both proved negative for any heart disorder. She testified that she only prescribed medicines to calm her, as she observed

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[23] TSN September 12, 1994, p. 8.

[24] *Id.*, at 10.

[25] TSN, August 2, 1993, p. 23.

[26] TSN, October 20, 1995, p. 4.

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complainant to be frequently emotional each time she consulted her.[27]

Complainant's failure promptly to report her agonizing experience to the authorities, or at the very least to her family, despite all the opportunities to do so, also seriously affects the veracity of her narration.[28] She stated that it took her four months before divulging the incident because she feared appellant's threat to kill her elder sister.[29] However, she admitted that she had many relatives living in the same neighborhood where she resided.[30] She also admitted that just a week after the date of the alleged rape, she spent one week in her family's home in Pampanga, away from the watchful eyes of appellant.[31] Considering that appellant was many kilometers away in Manila and the protection afforded by her household, her life cannot be said to have been in danger then. Furthermore, she kept silent and did not protest when appellant slept overnight in their house on the same floor where she slept, while her parents slept downstairs.[32]

In view of the foregoing, we find the prosecution's evidence insufficient to prove appellant's guilt beyond reasonable doubt.

And even assuming, for argument's sake, that the evidence at hand suffices to prove the alleged rape, still, conviction of appellant under the information filed herein cannot stand.

Article 355 of the Revised Penal Code, the governing law in this case, provides that the crime of rape is committed by having carnal knowledge of a woman under any of the following circumstances:

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[27] TSN, June 29, 1995, p. 205.

[28] *People v. Castillon,* 217 SCRA 76 (1993).

[29] TSN, May 5, 1993, pp. 32–33.

[30] TSN, August 2, 1993, pp. 20–21.

[31] *Id.*, at 26.

[32] TSN, January 29, 1996, pp. 318–319.

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1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The information herein specifically alleged that appellant succeeded in having sexual intercourse with the complainant "by employing force, threat, and intimidation," thus invoking paragraph 1 of Article 355. It was also on this ground that appellant was convicted by the trial court. After painstakingly searching through the records, however, we find no evidence of force, threat, or intimidation used by appellant to consummate the alleged rape. On the contrary, what we found were complainant's admissions that no such means attended the sexual act:

Q. Now, it states here, that the accused did, then and there will fully, unlawfully and feloniously, with lewd design, have sexual intercourse with Elena Sebastian and [successfully] did so by employing force, threat and intimidation with you, my question to you Miss Sebastian [is], what kind of force was made to you by the accused?

A. None, Sir, he only pushed the door.

Q. And what kind of threat [or] intimidation [was] perpetrated or done to you by the accused?

A. After he raped me, [he] told me that he would kill me if I complain to anybody.

Q. But that threat or intimidation happened, according to you, after you have been abused by the accused?

A. Yes, Sir.[33]

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Q. You also testified on rebuttal that what happened to you on June 15, 1992 was no[t] voluntary but by means of force

[33] TSN, August 2, 1993, pp. 18–19.

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and intimidation, my question is, how were you forced and intimidated by the accused?

A. He told me that if I tell what happened to anybody, he will kill my sister, sir.

Q. Is it not a fact that [those] utterances, according to you, [were] made by the accused after you woke up and found yourself to have been molested by the accused in this case?

A. Yes sir.

Q. So the intimidation happened after you found and discovered yourself to have been abused by the accused in this case?

A. Yes sir.[34]

As clearly shown from the foregoing, complainant herself attested that no force was employed on her by appellant. The threat and intimidation, on the other hand, were claimed to have been used by appellant only *after* consummating the sexual act. This is not what is contemplated by Article 355 (1) of the Revised Penal Code. To convict under this mode, the accused must have used force or intimidation to compel complainant into having sexual relations with him.[35]

As the prosecution failed to present evidence to substantiate the charge of rape through force, threat and intimidation, we are duty-bound to uphold appellant's innocence. It is an elementary rule in criminal procedure that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information.[36] If the prosecution in this case sought to convict appellant by proving that complainant was violated while in a state of unconsciousness, as provided under the 2nd paragraph of Article 355, the information should have stated so. We find, however, that the element of unconsciousness was not alleged much less specified in the information, which charged appellant for rape under the first circumstance. Hence, it cannot be made the basis of conviction without violating

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[34] TSN, January 29, 1996, p. 4.

[35] *People v. de la Cruz*, G.R. No. 136158, August 6, 2002.

[36] *People v. Reyes*, 311 SCRA 408 (1999).

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appellant's right to due process, in particular to be informed of the nature of the accusation against him.[37] We have ruled that this right is accorded by the Constitution so that the accused can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded.[38]

The trial court, in holding for conviction, relied on the *praesumptio hominis* that no young Filipina would cry rape if it were not true. However, its decision totally disregarded the paramount constitutional presumption that an accused is deemed innocent until proven otherwise.[39] Where the evidence gives rise to two possibilities, one consistent with the accused's innocence and the other indicative of his guilt, that which favors the accused should be properly considered.[40]

WHEREFORE, the decision of the trial court in Criminal Case No. 12501-MN is *REVERSED* and *SET ASIDE*, and appellant Roel Mendigurin *y* Canlas is hereby *ACQUITTED* on the ground of reasonable doubt. He is ordered *RELEASED* forthwith from confinement, unless held for another cause. The Director of the Bureau of Corrections is further ordered to report to us, within five days from notice, his compliance with this decision.

Cost *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Vitug, Ynares-Santiago and *Carpio, JJ.*, concur.

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[37] *People v. Gavina*, G.R. No. 143237, October 28, 2002; *People v. Abino*, 372 SCRA 50 (2001).

[38] *People v. Capinpin*, 244 SCRA 420 (2000) citing *People v. Pailano*, 169 SCRA 649 (1989).

[39] *People v. Gavina, supra*, note 37.

[40] *People v. Relorcasa, supra*, note 18.