Supreme Court E-Library

pleading or proof of the basis thereof.[37] The anguish and pain she has endured are evident.

WHEREFORE, the Decision dated June 19, 1998 of the Regional Trial Court, Branch 15, Malolos, Bulacan, in *Criminal Case No. 837-M-96*, convicting appellant Manolito Pancho of rape and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED*, with the *MODIFICATION* that he is ordered to pay the victim, Michelle dela Torre, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

In *Criminal Case No. 838-M-96,* the trial court's judgment convicting the appellant of attempted rape is *REVERSED AND SET ASIDE* and a new one is entered *ACQUITTING* him of the crime charged.

Costs *de oficio*.

SO ORDERED.

Vitug (Chairman), Corona and *Carpio Morales, JJ.*, concur.

THIRD DIVISION

[G.R. No. 137366. November 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROMEO MOLE** *y* **SANTOS,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing Emerita Reyes. He was sentenced

---

[37] *Id.*, citing *People vs. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 193; *People vs. Agustin,* G.R. Nos. 132524-25, September 24, 2001, 365 SCRA 667.

Supreme Court E-Library

to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

The Supreme Court ruled that the credibility of the victim is of vital importance in the crime of rape for, in view of the nature of the crime, conviction or acquittal rests entirely upon her. It has thus become doctrine that the accused may be convicted even solely on the basis of the victim's testimony provided that the testimony is clear, credible, convincing, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points. In the case at bar, the victim's vacillating account of the incident failed to stand the test of consistency. For while minor inconsistencies do not detract from the actual fact of rape, those in the victim's testimony may not be considered minor for they relate to the fact of commission of the offense charged. Save for the victim's inconsistent testimonies, there was no other evidence showing that appellant did have carnal knowledge with her.

The failure of the prosecution to establish appellant's guilt for rape notwithstanding, the Court found him liable for the lesser crime of acts of lasciviousness. The records clearly showed that appellant laid on top of the victim, mashed her breasts and kissed her lips, acts from which appellant's lewd design was evident. Although the information filed was for the crime of rape, appellant can be convicted of acts of lasciviousness because the latter is necessarily included in rape.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE ACCUSED MAY BE CONVICTED EVEN SOLELY ON THE BASIS OF VICTIM'S TESTIMONY PROVIDED THE TESTIMONY IS CREDIBLE.**— 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. And the credibility of the private complainant is of vital importance for, in view of the peculiar nature of rape, conviction or acquittal rests entirely upon her. It has thus become doctrine that the accused may be convicted even solely on the basis of the victim's testimony provided that the testimony is clear, credible, convincing, unshaken by rigid cross-examination

Supreme Court E-Library

and unflawed by inconsistencies or contradictions in its material points.

2. **ID.; ID.; ID.; IMPAIRED BY INCONSISTENCIES ON THE VICTIM'S TESTIMONY RELATING TO THE FACT OF COMMISSION OF THE OFFENSE CHARGED; CASE AT BAR.**— Emerita's vacillating account of the incident failed to stand the test of consistency. This Court is thus put on guard as to the veracity of her claim. For while minor inconsistencies do not detract from the actual fact of rape, those in Emerita's testimony may not be considered minor for they relate to the fact of commission of the offense charged. A woman raped in a state of unconsciousness would not be able to narrate her defloration during that state, and her violation may be proved indirectly by other evidence. Whereas, a woman fully conscious at the time of rape need only testify in a categorical, straightforward, spontaneous and frank manner, and remain consistent in her testimony to convict the accused.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Badando Encinas Garcia Law Office for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the Decision[1] of the Regional Trial Court of Makati City, Branch 143, finding appellant Romeo Mole *y* Santos guilty of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim ₱50,000.00 and to pay the costs.

The accusatory portion of the Information[2] charged appellant as follows:

That on or about the 13th day of April, 1997 in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court,

---

[1] *Rollo* at 16-23.

[2] Records at 1.

Supreme Court E-Library

the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with one EMERITA REYES *Y* TAMAYO, against her will and consent.

On motion of the prosecution, the accusatory portion was later amended to read:

That on or about the 13th day of April, 1997 in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with one EMERITA REYES *Y* TAMAYO, against her will and consent, *while dizzy or otherwise unconscious*. (Emphasis supplied.)

Culled from the documentary and the testimonial evidence for the prosecution consisting of the testimonies of the following witnesses, *to wit*: private complainant Emerita Reyes (Emerita); Aurea Villena, the Medico-Legal Officer from the National Bureau of Investigation; SPO4 Lilia R. Hogar, the police investigator; and Wilfredo Reyes, the husband of Emerita, are the following:

On April 11, 1997, the then 34-year old Emerita, her husband Wilfredo and their three children consulted appellant, Romeo Mole, an *albularyo* (quack doctor), in the latter's house, they having been experiencing itchiness all over their bodies. Appellant, diagnosing the Reyeses to be victims of *kulam* (witchcraft), asked for and was given ₱935.00 for the purchase of 17 black candles which he needed to insulate them from the spell. Appellant asked them to return the next day for treatment.[3]

As advised, the Reyeses returned to appellant's house the next day, April 12, 1997. On appellant's instructions, the Reyeses removed their clothes upon which appellant massaged their bodies one at a time with cotton dipped in oil.[4]

After the "treatment," the Reyeses repaired home, accompanied by appellant who brought with him two black

---

[3] Transcript of Stenographic Notes (TSN), June 2, 1997 at 3-4.

[4] *Id.* at 4.

Supreme Court E-Library

candles. Upon reaching the Reyeses' house, appellant lit the candles and placed one at the main door and another near the door of the kitchen. He then invited Emerita's husband Wilfredo to drink gin while waiting for the candles to burn out. After three shots, Wilfredo became dizzy and passed out. Appellant thereupon brought Wilfredo to the only bedroom of the house and blew something on his (Wilfredo's) chest.[5]

At about 11:00 p.m., appellant left the Reyeses' residence after asking for and receiving the amount of ₱350.00 representing payment for his services.[6]

Emerita then went to sleep. At about 12:00 midnight, however, she heard someone knock at the main door. Clad in a *duster*, she opened the door and saw appellant who was looking for her youngest son, he saying that "the sorcerer will take and kill him" and to save him (the son), appellant needed ₱2,500.00. Panicky and crying, Emerita immediately gave the said amount to appellant who thereafter went to the bedroom and sprinkled a pungent liquid on Wilfredo and their three children. Appellant also sprinkled the same liquid on Emerita, blew something on her chest and, while looking at her eyes, mumbled as if in prayer at which point Emerita instantly felt weak and dizzy.[7]

Appellant then dragged Emerita to the kitchen, laid her on the floor and removed her underwear. She felt appellant, who was naked from the waist down, lie on top of her. While she wanted to resist she was too weak and dizzy and eventually lost consciousness.[8]

Before losing consciousness, however, Emerita felt something heavy on her breast as appellant lay on top of her.[9]

---

[5] *Id.* at 4-5; TSN, July 30, 1997 at 7-9.

[6] *Id.* at 6.

[7] TSN, June 2, 1997 at 5-9.

[8] *Id.* at 9-11.

[9] *Id.* at 9-11.

Supreme Court E-Library

When Emerita regained consciousness, appellant had left and her entire body, including her vagina, was aching. She was later to declare in the course of her testimony in court, when asked why her vagina was aching, that appellant "raped" her.[10]

The next morning, or on April 13, 1997, Emerita, without the knowledge of her husband, reported her experience to the police.[11] Her husband, however, was informed by a neighbor that Emerita went to the police station, prompting him to follow her. On arrival at the police station, he was unable to talk to his wife, and it was only on her return home at around 3:00 or 4:00 p.m. of that day that Emerita related to him the incidents that occurred the night before, albeit he could not remember if Emerita ever mentioned to him that she became unconscious, because there have been a lot of things which then occupied his mind.[12]

On April 14, 1997, Emerita was physically examined by Dr. Aurea Villena who found multiple lacerations on her hymen which are secondary to child birth[13] and noted the following:

1. No extragenital physical injuries noted on the body of the subject at the time of the examination.
2. Hymen, reduced to myrtiformis.[14]

At the witness stand, the doctor disclosed that the seminology examination conducted on Emerita yielded negative result, and that there was no medical basis to conclude that she had been subjected to sexual abuse.[15]

---

[10] *Id.* at 11-12.

[11] *Id.* at 13.

[12] TSN, June 30, 1997 at 23-32.

[13] TSN, May 28, 1997 at 10-12.

[14] Records at 65; Exhibit "B".

[15] *Id.* at 13-14.

Supreme Court E-Library

From the Final Investigation Report[16] of SPO4 Lilia Hogar to whom the case was referred for investigation, the following *datum* appears:

x x x x x x x x x

07. Suspect ROMEO MOLE when apprised of his constitutional rights admitted raping EMERITA and also told the same admission to the PRESS people who interviewed him.

x x x x x x x x x

SPO4 Hogar's testimony in court was dispensed with after the prosecution stipulated that appellant was investigated and "gave the statement to her."[17]

Appellant on the other hand denied the accusation. He claims that it was his wife Adoracion Mole, not him, who treated Emerita; that both Emerita and Wilfredo were awake when he returned to their house on the night of April 13, 1997; that he merely fell asleep on the Reyeses' sofa in the living room; and that when he awoke at around 8:00 the following morning, Wilfredo even offered him breakfast which he turned down as it was already late. He, however, admitted that there is no reason why Emerita would file a complaint for rape against him.[18]

Appellant's testimony was corroborated by his wife Adoracion Mole.[19]

Giving weight to the testimony of Emerita and relying on Romeo's verbal admission to SPO4 Hogar of having raped the victim, as reflected in the aforementioned *datum* in the Final Investigation Report, the trial court convicted appellant of rape by the assailed decision, the dispositive portion of which reads:

---

[16] Records at 68-69, Exhibit "E".

[17] TSN, June 13, 1997 at 26.

[18] TSN, August 11, 1997 at 5-26.

[19] TSN, July 14, 2001 at 3-19.

Supreme Court E-Library

WHEREFORE, the Court finds Romeo Mole *y* Santos GUILTY beyond reasonable doubt of the crime of rape. Accordingly, accused Romeo Mole *y* Santos is hereby sentenced to *RECLUSION PERPETUA* and to INDEMNIFY private complainant Emerita Reyes *y* Tamayo in the amount of ₱50,000.00 and to pay the costs.[20]

In his brief, appellant assigns the following errors to the trial court:

1. . . . IN DECIDING THE CASE BY MERE CONFUSION OR SUPPOSITION, AND IN FAILING TO CONSIDER CERTAIN UNREBUTTED SUBSTANTIAL MATTERS OF FACTS TENDING TO SHOW THE NON-OCCURRENCE OR AT LEAST A DOUBTFUL OCCURRENCE OF RAPE.
2. . . . IN FAILING TO APPLY THE RULE THAT IN CASE OF DOUBT, THE SAME MUST BE RESOLVED IN FAVOR OF THE ACCUSED.[21]

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.[22]

And the credibility of the private complainant is of vital importance for, in view of the peculiar nature of rape, conviction or acquittal rests entirely upon her.[23] It has thus become doctrine that the accused may be convicted even solely on the basis of the victim's testimony provided that the testimony is clear, credible, convincing, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points.[24]

---

[20] *Rollo* at 23.

[21] *Id.* at 48.

[22] *People v. Aballe*, 357 SCRA 802, 810 (2001).

[23] *People v. Blazo*, 352 SCRA 94, 100 (2001).

[24] *People v. Umayam*, G.R. No. 147033, April 30, 2003; *People v. Biong*, G.R. Nos. 144445-47, April 30, 2003; *People v. Manallo*, G.R. No. 143704, March 28, 2003; *People v. Delos Santos*, G.R. No. 134525, February 28, 2003; *People v. Sorongon*, G.R. No. 142416, February 11, 2003.

Supreme Court E-Library

Although the findings of trial courts are normally respected and not disturbed on appeal,[25] inconsistencies in the testimony of Emerita put serious doubts on her claim of rape, compelling this Court to reverse appellant's conviction.

Thus, on direct examination, she related that appellant, who was naked from waist down, lay on top of her after removing her underwear, whereupon she lost consciousness; and that after she regained consciousness, her entire body, including her vagina, was aching. She thus concluded that she was raped:

Q You mean Madam Witness that after your panty was removed and accused was able to l[ay] you down [o]n the floor you lost consciousness and you don't remember anything?

A Yes, sir.

Q Prior [to] you[r] los[s of] consciousness, what was the accused doing [to] you that you could remember?

A I just felt that there was something heavy on my breast, sir.

x x x x x x x x x

Q What was the condition of your body when you regained consciousness?

A I felt pain all over my body, sir.

Q What particular portion of your body was aching or suffering from pain?

A My whole body and also my vagina, sir.

Q Do you know of any reason why your vagina is aching?

A Yes, sir.

Q What was that?

A He raped me, sir.[26] (Emphasis supplied)

---

[25] *People v. Balano*, 355 SCRA 627, 638-639 (2001).

[26] TSN, June 2, 1997 at 11-12.

Supreme Court E-Library

On cross-examination, Emerita gave the following account:

ATTY. OLIVA

Q You testified Madam Witness on direct examinatio[n] that the last time you were conscious that you felt that the accused was on top of you, is that correct?

A Yes, sir.

Q You also testified that you lost consciousness and that when you regained consciousnes[s] the accused ha[d] left already, am I right, Madam Witness?

A Yes, sir.

Q Now, my question, Madam Witness, when did you lose your consciousness?

A When he was halfway [with] what he was doing to me, Sir.

Q Are you referring to the . . . [m]ashing of your breast and kissing of your lips, Madam Witness?

A Yes, Sir.

x x x x x x x x x

Q Miss Witness, can you possibly tell the Honorabl[e] Court if there was actual penetration of the sexual organ of the accused to you?

WITNESS

A Yes, sir.

COURT

Q *Why do you know that there was [f]ull penetratio[n] Madam Witness?*

A *Because Your Honor, when I regained consciousnes[s] and he already left the house, I felt that my vagina was somewhat forced and it was very painful, Sir.*

x x x x x x x x x

Q *Why do you know that he was able to have sexual intercourse with you?*

Supreme Court E-Library

WITNESS

A *Because my organ was wet, Sir.*[27] (Italics supplied)

When, also on during cross-examination, she was questioned by the trial court, she gave the following statement:

COURT

Q What was that thing that he did which you felt the accused was doing to you?

WITNESS

A *I felt that he put his sexual organ on top of my body, Sir.*

COURT

Q On top of your body?

[Q] Where did the accused plac[e] his sexual organ, Madam Witness?

[WITNESS]

[A] *On my vagina, Sir.*[28] (Emphasis supplied)

The foregoing testimony of Emerita prompted the defense to propound the following question which elicited the following answer:

ATTY. OLIVA

Q Madam Witness, you made several inconsistent statements during your direct examination that you lost consciousness and that you learned that you were raped after you regained consciousness. Likewise, when asked by this Honorable Court when you came to know that you were raped, you also said that you learned that you were raped because when you woke up, your sexual organ was painful and when you were finally asked when for the first time you c[a]me to know that you were raped, you changed your testimony that you felt that

---

[27] TSN, June 13, 1997 at 9-14.

[28] *Id.* at 14-15.

Supreme Court E-Library

the accused inserted his sex organ into your vagina, which is which now, Madam Witness?

A *I lost consciousness after he was finished having sexual intercourse with me, Sir.*[29] (Emphasis and italics supplied)

When asked to clarify her statements, Emerita did not give categorical answers:

ATTY. OLIVA

Q When the accus[ed] was holding your breast and kissing your lips, in the middle of that, you lost consciousness, Madam Witness?

A I felt what he was doing to me but because my body was very weak, I tried to move my head around so he could not kiss me, Sir.[30]

x x x x x x x x x

COURT

Q When [did] you know that your organ was wet?

WITNESS

A When he was gone already, Sir.

COURT

Q In other words, you only came to know tha[t] there was sexual intercourse after the accused has already left the premises[,] is that correct?

WITNESS

A No, Your Honor, because *when he dragged me, I already felt weak and dizzy but I felt all those things that he did to me.*[31] (Italics supplied)

Emerita's vacillating account of the incident failed to stand the test of consistency. This Court is thus put on guard as to

---

[29] *Id.* at 15-16.

[30] *Id.* at 10.

[31] *Id.* at 14.

Supreme Court E-Library

the veracity of her claim. For while minor inconsistencies do not detract from the actual fact of rape,[32] those in Emerita's testimony may not be considered minor for they relate to the fact of commission of the offense charged.

A woman raped in a state of unconsciousness would not be able to narrate her defloration during that state, and her violation may be proved indirectly by other evidence.[33] Whereas, a woman fully conscious at the time of rape need only testify in a categorical, straightforward, spontaneous and frank manner, and remain consistent in her testimony to convict the accused.[34]

While this Court has held in numerous rape cases that no person would subject herself to a rape trial given the attendant embarrassment of a medical examination and the stigma of a sexual assault unless the accusation be true,[35] it is gathered from those cases that the victim was able to clearly and categorically impute the crime on the offender.

In the case at bar, save for Emerita's inconsistent testimonies as noted above, there is no other evidence showing that appellant did have carnal knowledge with her.

The testimony of Wilfredo merely dwelt on events that occurred before and after the alleged rape, while the result of the medical examination showed no physical manifestations of sexual intercourse. While Dr. Villena did not rule out the possibility of sexual intercourse, her testimony could hardly be characterized as consistent and unwavering, having first ruled out the possibility of sexual intercourse, only to later retract upon being scrutinized by the trial court.[36]

---

[32] *People v. Sagarino*, 364 SCRA 438, 447 (2001).

[33] *People vs. Mercado*, 367 SCRA 252, 261 (2001) citing *People v. Perez*, 307 SCRA 276, 290-291 (1999).

[34] *People v. Supnad*, 362 SCRA 346, 354 (2001).

[35] *People v. Vidal*, 353 SCRA 194, 201-202 (2001); *People v. Cuadro*, 352 SCRA 537, 545 (2001).

[36] TSN, May 28, 1997 at 13-21.

Supreme Court E-Library

As for the trial court's reliance on the investigative report-Exhibit "E" of SPO4 Lilia Hogar in this wise:

> Incidentally, the defense did not interpose any objection to the admission of Exhibit "E", the Investigation report. SPO4 Lilia Hogar, the Investigator-on-Case, stated in the said report that ROMEO, when interviewed by the media people admitted raping EMERITA.[37]

the same report showing that appellant admitted having raped Emerita is inadmissible in evidence. The admission was not in writing and there is no showing that appellant was assisted by a competent and independent counsel of his choice when he made such statement in accordance with Section 2 (d)[38] of Republic Act 7438[39] in relation to Section 12 (1) Article III of the Constitution.[40]

The failure of the prosecution to establish appellant Mole's guilt for rape notwithstanding, this Court finds him liable for the lesser crime of acts of lasciviousness. The records clearly show that appellant lay on top of the victim, mashed her breasts and kissed her lips, acts from which appellant's lewd design was evident. Although the information filed was for the crime

---

[37] *Rollo* at 22-23.

[38] Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in evidence in any proceeding.

[39] An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations thereof.

[40] Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Supreme Court E-Library

of rape, appellant can be convicted of acts of lasciviousness because the latter is necessarily included in rape.[41]

There being no aggravating or mitigating circumstances alleged in the information or proven during trial, the penalty of *prision correccional*[42] shall be imposed in its medium period. Applying the Indeterminate Sentence Law, appellant must suffer the penalty of Six (6) Months of *arresto mayor* as minimum, to Four (4) Years and Two (2) Months of *prision correccional*, as maximum.

WHEREFORE, the July 15, 1998 Decision of the Regional Trial Court of Makati City is hereby *MODIFIED*. Appellant Romeo Mole y Santos is *CONVICTED* of the crime of *ACTS OF LASCIVIOUSNESS* and is sentenced to suffer the indeterminate penalty of Six (6) Months of *arresto mayor* as minimum, to Four (4) Years and Two (2) Months of *prision correccional* as maximum, and to pay the costs of suit.

SO ORDERED.

Vitug (Chairman), Sandoval-Gutierrez and *Corona, JJ.*, concur.

---

[41] Rule 120 of the Rules of Court states:

Section 4. When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged included in the offense proved.

[42] ART. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.