Supreme Court E-Library

was purely ministerial as long as the needed certification by the municipal mayor was present, since there is no law or regulation which requires him to get out into the roads and bridges to see for himself whether or not the persons supposed to be paid were actually performing their jobs.

We believe he should be acquitted on the basis of reasonable doubt, among other things. No proof has been given of the charge, that he knew of the mayor's plan. And besides the presumption of good faith, it is clear that what he did was purely ministerial, in view of the certification that had been made by the municipal mayor. (See *People v. Reodica*, 62 Phil. 567). Were he to be given the task of verifying whether or not the employees and laborers of the municipality are really performing their assigned jobs (See *U.S. v. Balais*, 17 Phil. 503), his would be an impossible function.

WHEREFORE, petitioner is hereby ACQUITTED on reasonable doubt.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and *Feliciano, JJ.*, concur.

FIRST DIVISION

[G.R. No. 69668. October 2, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HUMBERTO TEMPONGKO, JR.,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF IN CRIMINAL CASES; LIES IN THE PROSECUTION.— The

Supreme Court E-Library

basic principle in every criminal prosecution is that accusation is not synonymous with guilt. The accused is presumed innocent until the contrary is proved by the prosecution. If the prosecution fails, it fails utterly, even if the defense is weak or, indeed, even if there is no defense at all. The defendant faces the full panoply of state authority with all "The People of the Philippines" arrayed against him. In a manner of speaking, he goes to bat with all the bases loaded. The odds are heavily against him. It is important, therefore, to equalize the positions of the prosecution and the defense by presuming the innocence of the accused until the state is able to refute the presumption by proof of guilt beyond reasonable doubt.

2. **ID.; ID.; GUILT OF THE ACCUSED; NOT PROVED BEYOND REASONABLE DOUBT; CASE AT BAR.**— What does strain the imagination is the complainant's own implausible story: of a virgin who visited a casual acquaintance of the opposite sex in his own office on a Sunday evening; accepted and drank beer with him; asked to sleep in his office; was awakened by the weight of a person on top of her whom she immediately recognized notwithstanding that her eyes were not yet accustomed to the dark; suffered a blow in her stomach and recovered consciousness to discover she had been raped by the appellant who was still seated on the sofa totally naked; could not leave because her jogging pants were bloodied notwithstanding that she was in a tailoring shop were clothes were available in abundance; finally went to a friend's house instead of straight to her mother from whom she normally would have sought solace. Most significantly, the alleged raped was committed within two arms length of her companion, Rosalita Quinto, who was sleeping with her in the same room, and could have awakened any time and in fact did so, according to Lolita, when she moaned after her ravishment. The theory of the prosecution has too many loose ends that it has failed to tie up to the satisfaction of this Court. The guilt of the appellant has not been established beyond doubt and so cannot be affirmed in this appeal. The defense is weak, to be sure, but for all the persuasive arguments of the Solicitor General and the private prosecutor, this Court remains unconvinced that the appellant raped the complainant. The appellant may have been lying, and there is evidence of this, but we are not prepared to accept, to the point of moral certainly, that the complainant was telling the truth. The ambiguous evidence of the prosecution cannot justify our condemning the

Supreme Court E-Library

appellant to prison for the rest of his life where there are whispers of doubt that he is guilty.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Adriano Pagarigan for defendant-appellant.

DECISION

CRUZ, *J*.:

The appellant is before us to challenge his conviction of the crime of rape. He claims it was not he who erred but the trial court. The usual plea is made: that there was a misappropriation of the evidence, resulting in the sentence of *reclusion perpetua* that he now faces. He prays for a reversal.

At the time of the commission of the alleged offense, the complainant, Lolita Dacoycoy, was an 18-year old senior student at the Manuel L. Quezon High School and undergoing citizen army training (CAT) under the command of the appellant.[1] The appellant was 43 years old, married, with five children, and commandant of the said course, besides being the owner of a tailoring shop.[2]

These are the facts as the trial court saw them.

On November 9, 1981, the complainant and her friend Rosalita Quinto, went to the appellant's tailoring shop in accordance with the appointment made by them the day before. This was about 7 o'clock in the evening. Their purpose was to solicit a contribution for their high school annual. Upon arrival one hour later, the appellant offered them beer, which they drank. Lolita became dizzy and the appellant suggested that the two girls stay for the night. The appellant then left, at about 11:30 o'clock. Lolita slept on the sofa while Rosalita slept on the floor about two arms length from her. It was at dawn when

[1] TSN, p. 4, Dec. 1, 1982.

[2] TSN, pp. 2-4, June 9, 1983.

Supreme Court E-Library

Lolita felt the weight of a person on her whom she immediately recognized as the appellant. She pleaded, "Huwag mong gawin sa akin iyan, sir." The appellant kissed her and bit her lower lip. Lolita boxed him in the back and he boxed her in the stomach, rendering her unconscious. She did not scream or call for help because it all happened so fast. When she woke up, the deed was done and she was bleeding. The appellant was seated on the sofa totally naked. She moaned presumably in anguish and pain, and Rosalita woke up. Rosalita embraced and consoled Lolita. She turned on the light and upbraided the appellant who at that time was already putting on his trousers. The appellant soon left without saying a word, looking very nervous. As Lolita's jogging pants were bloodied, Rosalita left to get her some clothes, Lolita stayed until past noon and when Rosalita did not return decided to leave the office. She proceeded to the house of another friend, a certain Cecile, where she stayed for five days until she was fetched by her stepfather, Delfin Dalisay. This was Lolita Dacoycoy's testimony.[3]

Continuing the story, Delfin Dalisay related that on November 10, Rosalita and her mother informed him of Lolita's rape. He blamed Rosalita for Lolita's misfortune, and Rosalita and her mother left in a huff. Five days later, Cecile's sister informed them at their market stall that Lolita was in their house. He fetched Lolita from there and later, upon advice of the lawyer to whom they had earlier been referred by a friend, he and her mother took Lolita to the National Bureau of Investigation, where she underwent a medical examination.[4] Part of this narration was contributed by Clarita Dacoycoy, Lolita's mother, who also testified on the civil damages suffered by the complainant.[5]

According to the medical report as explained by Dr. Orlando Salvador of the NBI in layman's terms, the complainant was deflowered on or about the date of the alleged rape. This witness

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[3] TSN, pp. 12-25, Dec. 1, 1982; TSN, pp. 4-5, February 17, 1983.

[4] TSN, pp. 21-22, Dec. 1, 1982; TSN, p. 14, February 17, 1983.

[5] TSN, pp. 3-14, April 12, 1983.

Supreme Court E-Library

also testified that the claimed blow inflicted on the complainant's stomach would not necessarily leave any external sign or mark.[6]

Testifying for himself, the appellant denied the charge, saying he was at home with his family when the rape was supposedly committed. He did not deny that he offered the two girls beer and allowed them to sleep in his office in the night of November 9, 1981. He declared, however, that having left his office at about 11:30 p.m. of that date, he returned thereto at about 9 o'clock in the morning of the following day and not earlier. In fact, he saw the complainant having breakfast at that time.[7]

The appellant presented two witnesses to corroborate his testimony, but it seems they did him more harm than good. We shall go to that later.

The medical report suggests that the complainant was a virgin at the time of the supposed intercourse, but it would seem that her conduct in the night of November 9, 1981, was hardly maidenly or at least discreet. First, she went to the office of a man she did not know very well at 7 o'clock on a Sunday evening. Then she accepted beer instead of a soft drink, which would have been the proper refreshment for her and her companion, considering their age and sex. Not only that, instead of taking a few sips just to be polite, what she did was drink about three-fourths of the glass, as a result of which she felt dizzy. Then, instead of going home with her companion, she decided to stay and sleep in the strange office of this person who, to repeat, was by her own narration not close to her.

There is no evidence that her friend Rosalita was also dizzy and could not have taken her home that night. In fact, Lolita herself testified that Rosalita did not complain of being dizzy.[8] The appellant's office on C.M. Recto was not far from the complainant's house on Vicente G. Cruz, which could have been reached by one jeep ride. Alternatively, she had a telephone at her house and could have called one of her relatives to fetch

[6] TSN, p. 22, April 15, 1983.

[7] TSN, pp. 69-73, June 9, 1983.

[8] TSN, p. 8, January 20, 1983.

Supreme Court E-Library

her if she and Rosalita could not leave by themselves.[9] It is incredible that she did not even trouble to tell her parents of her whereabouts. One might expect such thoughtless conduct of an experienced girl of loose discipline but not of the virtuous and virginal girl the complainant was supposed to be.

The other parts of her testimony also raise some perplexing questions. By her own account, she was raped on the sofa while her friend Rosalita was sleeping on the floor only two arms length away and in the same room.[10] The implication is that the appellant was reckless not only of resistance from Lolita but also of discovery by Rosalita. The complainant testified that he immediately recognized the appellant although she had just awakened and that when she recovered consciousness after having been boxed in the stomach, she had already been ravished. Strangely, the appellant was then still seated on the sofa and apparently taking his time about dressing.[11] She also said she was desperate for clothing because her jogging pants were bloody.[12] Yet it did not occur to her to get other attire, which must have been available in abundance in the place where she was then, which was a tailoring shop. In fact, the shop was a contractor for the supplying of, precisely, CAT uniforms.[13]

Instead of going straight home, which would have been the normal reaction of a young woman subjected to her traumatic experience, what she did was stay with a friend, the mysterious Cecile.[14] She stayed there for five days and did not communicate with her mother even once. Neither did her friend Cecile. In fact, it was only on the fifth day that Cecile's sister saw fit to tell the complainant's family where Lolita was notwithstanding Lolita's alleged condition at the time. If, according to Delfin Dalisay, the complainant was "tulala" when he saw her, it would

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[9] TSN, pp. 20-21, June 9, 1983.

[10] TSN, p. 4, February 17, 1983.

[11] *Ibid.*, p. 8.

[12] *Id.*, p. 10.

[13] TSN, p. 4, June 9, 1983.

[14] TSN, pp. 13-15, February 17, 1983.

Supreme Court E-Library

have been the natural thing for Cecile to inform Lolita's family of her state of shock as soon as possible.

One also wonders why Rosalita Quinto, the complainant's companion on the night of the alleged rape, and who was supposed to be in the room when the complainant claimed she was ravished, was not presented as a witness by the prosecution. It is not often that the prosecution has the good fortune of an actual eyewitness in cases like this, and yet neither the fiscal nor the private prosecutor saw fit to ask Rosalita to corroborate the testimony of Lolita. Instead, they presented only the parents of Lolita who testified on what happened *after*, and not before and during, the alleged rape.

For its part, the defense was none-too-convincing either and, in the view of the trial court, fatally flawed. The appellant relied on alibi, an inherently feeble excuse that cannot prevail as against the positive identification of the accused. Moreover, the appellant was living in Sisa, in Sampaloc, only two kilometers or so from his office,[15] where the rape was allegedly committed. It could have been reached from his house in a matter of minutes, as the trial court observed, considering the light traffic at 5 o'clock in the morning or thereabouts.

The appellant's first witness, Remy Oriola, testified that Lolita and Rosalita slept in the appellant's office in the morning of November 8, 1981, and that the appellant returned thereto the following morning of November 9, 1981.[16] By contrast, the appellant's testimony was that the two girls slept in his office on November 9, 1981, and that he returned thereto the following morning of November 10, 1981.[17] And whereas the appellant testified that the complainant came to his office with a paper bag containing clothes,[18] the witness said Lolita was carrying only a handbag.[19]

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[15] TSN, p. 11, June 29, 1983.

[16] TSN, pp. 26-28, November 9, 1983.

[17] TSN, p. 7, 17, June 9, 1983.

[18] *Ibid.*, p. 14.

[19] TSN, p. 21, November 9, 1983.

Supreme Court E-Library

The testimony of the other defense witness, Rolando Hermilo, was not only practically useless but in fact prejudicial to the appellant. In the first place, he testified only up to the time he left the appellant's office at about 11 o'clock in the night of November 9, 1981, and not on what happened later to the girls who were left behind.[20] But what makes his testimony suspect was his admission that he learned of the charge against the appellant, and was asked to testify for him, *only on the date itself of the hearing*, in the *very morning* when he was presented as witness,[21] and this was more than two years after the alleged rape. On top of this, he was by his own admission reading the transcript of the appellant's testimony before he was actually called to the witness stand.[22]

The defendant argues that Lolita should have shouted for help but did not; that he would not have attempted the rape in such a cramped place and with another person in the very room where the crime was supposedly committed; and that there were no signs of the alleged stomach blow on the complainant's stomach.

On the other hand, he could not explain why he offered the two girls beer when soft drinks would have been more appropriate, and also why he allowed them to sleep in his office when they were just trainees under his command and had no special ties with him. His claim was that they had left home because Lolita had been scolded by her mother was belied by his own testimony that he heard Lolita calling her mother on the telephone to say she was sleeping with a friend.[23]

It is unfortunate that the trial court did little to analyze the evidence of the parties and virtually limited itself to the defense of alibi, which it declared to be untenable. There should have been a more careful analysis of the other evidence to get to the truth of this unfortunate mess where there is more than meets

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[20] TSN, pp. 12-13, January 18, 1984.

[21] *Ibid.*, p. 15.

[22] TSN, p. 16, January 18, 1984.

[23] TSN, p. 11, June 9, 1983; pp. 21-25, June 29, 1983.

Supreme Court E-Library

the eye. This is not a pat case, so to speak. There are many unanswered questions. The conduct of both the complainant and the defendant, as narrated by them, requires not a little explaining. The trial judge should have probed deeper instead of simply relying on the question of alibi, which is only part of the intriguing mosaic.

The basic principle in every criminal prosecution is that accusation is not synonymous with guilt. The accused is presumed innocent until the contrary is proved by the prosecution. If the prosecution fails, it fails utterly, even if the defense is weak or, indeed, even if there is no defense at all. The defendant faces the full panoply of state authority with all "The People of the Philippines" arrayed against him. In a manner of speaking, he goes to bat with all the bases loaded. The odds are heavily against him. It is important, therefore, to equalize the positions of the prosecution and the defense by presuming the innocence of the accused until the state is able to refute the presumption by proof of guilt beyond reasonable doubt.

The appellant does not deny that he asked the two girls to see him at his office in the evening of November 9, 1981; that he there offered them beer, which they drank; and that he permitted them to sleep there that night.

The proper thing to do was to receive these girls at his office at the MLQ where he was working as commandant of the CAT, and during school hours. Soft drinks would have been a more appropriate refreshment for the young ladies, especially since such beverages were easily available. And if it is true, as he says, that the complainant asked to sleep in his office because she had been scolded by her mother, the appellant, exercising as he did some moral influence over her as her commandant, should have counseled her to go home. Failing that, he should have at least called up the complainant's mother to tell her that Lolita was in his office.

But all these improprieties and omissions come under the heading of indiscretions and not crimes. Serving beer instead of soft drinks and allowing the use of one's office for sleeping purposes are not indictable offenses. Moral irresponsibility and

Supreme Court E-Library

thoughtlessness are also not prohibited under our criminal laws. More importantly, all these indiscretions do not necessarily lead to the conclusion that the appellant raped the complainant in the morning of November 10, 1981, in his office. The connection is too far-fetched.

The only fact conclusively established by the prosecution is that the complainant was deflowered on or about the time of the alleged rape, but that is all. The rest of its case is based on the improbable testimony of the complainant, whose conduct, even before the alleged rape, was hardly befitting a proper young lady, to say the least.

The almost indifferent reaction of her family is implausible too, if we go by the recorded testimony. After being informed of Lolita's rape, they did not immediately look for her; and when they did, their efforts were hardly energetic. The mother testified that they later searched for her but did not elaborate beyond saying that they asked her friends. They did not inquire from her classmates in MLQ. They did not talk to the alleged rapist, whom Rosalita had identified. In fact, when she and her mother informed Delfin Dalisay that Lolita had been raped, he did not ask where she was — a most natural and logical question to ask at that time. All he did, by his own account, was blame Rosalita for the incident.

It was only five days later that they learned of her whereabouts, and this because Cecile's sister came to see them and informed them. As for Cecile, in whose house the complainant supposedly stayed for five days, she was not even presented as witness to corroborate Lolita's testimony. It is significant that although she and Rosalita Quinto played key roles as it were in this case, they were strangely silent and absent at the trial.

The trouble with the appellant, according to the trial court, is that he could not prove his defense of alibi. But then how could he? He said he was sleeping in his house with his family. At five o'clock in the morning, where else could he have been? How could he have produced third parties as witnesses to testify that he was fast asleep in his own house? His presence in his

Supreme Court E-Library

own bedroom at that time was not incredible or even improbable but perfectly believable.

What does strain the imagination is the complainant's own implausible story: of a virgin who visited a casual acquaintance of the opposite sex in his own office on a Sunday evening; accepted and drank beer with him; asked to sleep in his office; was awakened by the weight of a person on top of her whom she immediately recognized notwithstanding that her eyes were not yet accustomed to the dark; suffered a blow in her stomach and recovered consciousness to discover she had been raped by the appellant who was still seated on the sofa totally naked; could not leave because her jogging pants were bloodied notwithstanding that she was in a tailoring shop where clothes were available in abundance; finally went to a friend's house instead of straight to her mother from whom she normally would have sought solace. Most significantly, the alleged rape was committed within two arms length of her companion, Rosalita Quinto, who was sleeping with her in the same room, and could have awakened any time and in fact did so, according to Lolita, when she moaned after her ravishment.

The theory of the prosecution has too many loose ends that it has failed to tie up to the satisfaction of this Court. The guilt of the appellant has not been established beyond doubt and so cannot be affirmed in this appeal. The defense is weak, to be sure, but for all the persuasive arguments of the Solicitor General and the private prosecutor, this Court remains unconvinced that the appellant raped the complainant. The appellant may have been lying, and there is evidence of this, but we are not prepared to accept, to the point of moral certainty, that the complainant was telling the truth. The ambiguous evidence of the prosecution cannot justify our condemning the appellant to prison for the rest of his life where there are whispers of doubt that he is guilty.

WHEREFORE, the decision of the lower court is REVERSED and the appellant is ACQUITTED, without any pronouncement as to costs. It is so ordered.

Supreme Court E-Library

Yap (Chairman), Narvasa, Melencio-Herrera, and *Paras, JJ.*, concur.

Feliciano, J., is on leave.

SECOND DIVISION

[G.R. No. L-47851. October 3, 1986]

JUAN F. NAKPIL & SONS, and JUAN F. NAKPIL, *petitioners,* **vs. THE COURT OF APPEALS, UNITED CONSTRUCTION COMPANY, INC., JUAN J. CARLOS, and the PHILIPPINE BAR ASSOCIATION,** *respondents.*

[G.R. No. L-47863. October 3, 1986]

THE UNITED CONSTRUCTION CO., INC., *petitioner, vs.* **COURT OF APPEALS, ET AL.,** *respondents.*

[G.R. No. L-47896. October 3, 1986]

PHILIPPINE BAR ASSOCIATION, ET AL., *petitioners, vs.* **COURT OF APPEALS, ET AL.,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS; FORTUITOUS EVENT; DEFINED; REQUISITES FOR EXEMPTION FROM LIABILITY.**— The general rule is that no person shall be responsible for events which could not be foreseen or which, though foreseen, were inevitable (Article 1174, New Civil Code). An act of God has been defined as an accident, due directly and exclusively to natural causes without human intervention, which by no amount of foresight, pains or care, reasonably to have been expected, could have been prevented. (1 Corpus Juris 1174) There is no dispute that the earthquake of August 2, 1968