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FIRST DIVISION

[G.R. Nos. 148394-96. April 30, 2003.]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGER ELIARDA,** *appellant.*

SYNOPSIS

Accused Roger Eliarda was charged with three counts of rape by Julita Gali Pascua, a 38-year old single parent to a 16-year old boy. Eliarda interposed the "sweetheart theory." After trial, the court *a quo* convicted him of the crimes charged and the penalty of *reclusion perpetua* was imposed upon him. Hence, this appeal.

The Court ruled that the burden of the prosecution had not been satisfied. Julita claimed to have pushed the appellant away in all of three incidents complained of. 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 an obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape had occurred. It eluded the Court that Julita could not have posed more than what she did to successfully dissuade appellant who was not even armed during all three instances from having his way. Thus, the constitutional presumption of innocence in favor of the appellant, not having been sufficiently rebutted, judicial conscience would not rest easy with a conviction. Accordingly, the appealed judgment of the court *a quo* was reversed and set aside and appellant was acquitted.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT IS ENTITLED TO THE HIGHEST DEGREE OF RESPECT BY AN APPELLATE COURT; EXCEPTION.** — The factual findings of the trial court on this issue are held to be, as it is so often said, entitled to the highest degree of respect by an appellate court but when something critical and significant would appear to have been ignored or missed, the essence in an appellate review, such evaluation made by the trial court may have to be re-examined.

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2. **ID.; ID.; ID.; IN RAPE CASES, THE TESTIMONY OF THE VICTIM IS THE FOCAL AREA.** — Owing to the character of the crime of rape, the testimony of the victim is the focal area around which the outcome of the charge would naturally revolve. The consistency on material points, or lack of it, can sustain or negate a conviction. Correspondingly, the stringency with which the account of the victim undergoes scrutiny becomes even more pronounced where a conviction could forfeit the life or liberty of an accused. 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.

3. **CRIMINAL LAW; RAPE; NEGATED BY LACK OF EVIDENCE SIGNIFYING AN OBSTINATE RESISTANCE TO SUBMIT TO THE INTERCOURSE.** — Julita claimed to have pushed the appellant away in all of three incidents complained of. 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 an obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred. It eludes the Court that Julita could not have posed more than what she did to successfully dissuade appellant who was not even armed during all three instances from having his way.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; "SWEETHEART THEORY"; CORROBORATIVE EVIDENCE IS AMPLE TO SUGGEST THE VERACITY OF APPELLANT'S CLAIM; CASE AT BAR.** — The "sweetheart theory" has often been discarded and has rightly been held to be a weak defense in an indictment for rape. It would be wrong to say, however, that, under all events, that defense should be altogether ignored. Corroborative evidence is ample to suggest the veracity of appellant's claim. Tecla Cacot, Edna Anac, Enida Corpuz and Hector Corpuz related

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in court that even after the supposed rape incidents, they would regularly gather under a *manzanita* tree, drink beer and eat *besuto*. During these occasions, Julita was observed to have shown no signs of having been a rape victim but, on the contrary, was enjoying herself with the rest of the group. Enida testified to the "unusual closeness" between Julita and Eliarda. Edna said that one time Julita even reserved a seat for appellant and later offered him a drink. Hector Corpuz witnessed the confrontation between the wife of appellant, Mrs. Eliarda, and Julita when the former accused Julita of carrying on with appellant. In October 1998, or a few weeks after the last sexual congress, Julita herself admitted to have gone to appellant's house to join his family in commemorating the death anniversary of his mother-in-law. Corroborative evidence that tend to support the sweetheart theory could assume importance when there are reasons to entertain some doubts on the accuracy of the stance taken by the prosecution.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED; NOT REBUTTED IN CASE AT BAR. — The Court, given all the circumstances, must hold that the prosecution has failed to discharge the *onus probandi* on the requisite evidentiary *quantum* for a pronouncement of guilt beyond reasonable doubt. The constitutional presumption of innocence in favor of the appellant, not having been sufficiently rebutted, judicial conscience would not rest easy with a conviction.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee
Lazo & Romero Law Offices for accused-appellant.

D E C I S I O N

VITUG, *J.*:

A conviction or acquittal in a rape case hinges much on the credibility, or lack of it, of the supposed victim.

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Roger Eliarda was charged with three counts of rape by complainant Julita Gali Pascua, said to have been committed on 04 September 1998, 22 September 1998 and 01 October 1998, in three corresponding Informations that read:

"That on or about the 4th day of September, 1998, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the private complainant Julita G. Pascua, a 38 year old woman, against her will and consent, inside the accused's house/residence at Brgy. 44 Zamboanga, Laoag City.

"xxx xxx xxx

"That on or about the 22nd day of September, 1998, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the private complainant Julita G. Pascua, a 38 year old woman, against her will and consent, inside the complainant's house/residence at Brgy. 44 Zamboanga, Laoag City.

"xxx xxx xxx

"That on or about the 1st day of October, 1998, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the private complainant Julita G. Pascua, a 38 year old woman, against her will and consent, inside the complainant's house/residence at Brgy. 44 Zamboanga, Laoag City."[1]

When arraigned, Roger Eliarda entered a plea of "not guilty" to the charges. The cases were consolidated and tried jointly.

The prosecution placed at the witness stand the complainant and her aunt Remelita delos Santos. The defense, in its case, presented Roger Eliarda himself and a score of witnesses, namely, Gloria Eliarda, Tecla Cacot, Edna Anac, Enida Corpuz, Hector

[1] *Rollo*, pp. 13–17.

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Corpuz, Cleotilde Corpuz and Matilde Marcelo, who gave corroborative testimony.

Julita Gali Pascua, a 38-year old single parent to a 16-year old boy, stayed in Brgy. 44, Zamboanga, Laoag City, at the house of her son's father, Felino Agustin, who migrated to the United States in September 1981. Roger Eliarda, a neighbor in Brgy. 44, lived just across the street. On 04 September 1998, Eliarda summoned Julita to cook for him in his house. At the time, the wife of Eliarda had left for Manila to send off her sister who was leaving for broad. According to Julita, Eliarda poured her a glass of beer. She took it so as not to embarrass Eliarda. Moments later, she felt dizzy and sat on a wooden chair. Eliarda reached for her and embraced her. Julita resisted his embrace and tried to push him away but he was too strong for her. She ran towards the door. Eliarda caught up with her and took her to a nearby room. He laid her on the bed, pinned her two hands, and kissed her. He pulled up her blouse, removed her top undergarment and kissed her breast. Julita tried to stop Eliarda but he was just too quick for her. After removing her walking shorts, Eliarda took off his own. Julita struggled to break herself free from his grasp and moved her legs to avoid Eliarda. He spread her legs open and tried to penetrate Julita but she moved her buttocks to avoid him. Ultimately, she thrice felt the thrusts of his penis into her vagina. After a while, Eliarda stood up and put on his shorts. He warned Julita not to report the incident to anyone.

On 22 September 1998, Julita was cleaning up the yard when Eliarda approached her and remarked, "do not mind cleaning" up the place. She retorted that she would rather clean up her yard "than be bitten by a snake." She then turned her back to him and went in a huff inside her house. Eliarda followed and pushed the door open. Gaining entry into the house, he embraced and carried her to the second floor. She unsuccessfully tried to push him away. He laid her down on a wooden bed. He kissed her lips and immediately went on top of her, pulled up her blouse and kissed her breast. He removed her shorts. He raised her legs and licked her private part. Moments later, despite her struggles, he succeeded in inserting his penis into her organ.

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On 01 October 1998, Julita was at home up on the second floor of the house when Eliarda came up to her. Eliarda covered her mouth to prevent her from shouting for help. He laid her on the floor. Mounting her, he kissed her lips, her breast and pulled down her shorts. He then inserted his penis into her vagina while the latter kept on struggling by wiggling her hips until ultimately his penis dangled out of her. He stood up and left.

Remelita delos Santos, an aunt of Julita, testified that her niece confided to her the last sexual assault. She was present when *barangay* officials came to Julita and encouraged her to settle the case amicably. She said that the Eliarda couple went to Julita to ask for her forgiveness but the latter was unmoved.

In his testimony, Roger Eliarda insisted that he and Julita were lovers and that the sexual encounters were consensual. According to Eliarda, he was smitten by Julita's charm and manners. His admiration for Julita grew when she would frequent his house to take care of his mother-in-law. He took care of Julita when she was sick and he would oftentimes attend to her. While he tried to be discreet about their affair, his wife, however, ultimately found out and he was constrained to confess to her that Julita was his mistress. He denied having forced the complainant in all three occasions of sexual congress between them.

Tecla Cacot, Edna Anac, Hector Corpuz, Enida Corpuz, and Mrs. Gloria Eliarda, sought to corroborate the claim of Eliarda. The witnesses intimated that Eliarda and Julita maintained an amorous relationship and that Julita never behaved like being a rape victim.

When the trial concluded, the court *a quo* found Eliarda guilty of the crimes charged, discarding thereby the "sweetheart theory" advanced by the defense. The trial court held:

"ACCORDINGLY, after assiduously weighing the evidence for the prosecution and the defense, the Court is morally convinced beyond reasonable doubt that the accused Roger Eliarda is GUILTY of the crime of Rape in all the three (3) criminal Informations filed against him.

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"He is hereby sentenced to the penalty of *Reclusion Perpetua* with all the accessory penalties provided by law in each of the crime charged. Likewise, he is ordered to pay a civil indemnity of Fifty Thousand Pesos (₱50,000.00) and moral damages of Fifty Thousand Pesos (₱50,000.00) for each of the three (3) crimes committed; and to pay the costs."[2]

In this appeal, Roger Eliarda would have this Court overturn his conviction upon the thesis that Julita failed to pass the test of credibility.

The factual findings of the trial court on this issue are held to be, as it is so often said, entitled to the highest degree of respect by an appellate court[3] but when something critical and significant would appear to have been ignored or missed, the essence in an appellate review,[4] such evaluation made by the trial court may have to be re-examined.[5]

On the *first* charge of rape, Julita testified on direct examination thusly:

"Q As you were sitting in the sala because you felt dizzy, do you remember what time it was?

"A About 7:30 in the evening, sir.

"Q As you were sitting down . . . by the way on what material were you sitting down?

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[2] *Rollo*, p. 73.

[3] *People vs. Castillon*, G.R. No. 100586, 15 January 1993 (217 SCRA 76).

[4] *Ibid.*

[5] 1) The conclusion is a finding grounded on speculations, surmises or conjectures;

2) the inference is manifestly mistaken, absurd or impossible;

3) there is a grave abuse of discretion in the appreciation of facts;

4) the judgment is based on a misapprehension of facts, and;

5) the findings of facts are conflicting. (*People vs. Narvaez*, G.R. No. 140759, 24 January 2002).

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"A Wooden chair, sir.

"Q At that time that you were sitting down at the sala, do you remember any unusual incident that happened?

"A While I was sitting he came to embrace me, sir.

"Q Will you please describe to the Honorable Court how the accused embraced you?

"A Like this, sir (witness putting his 2 arms around the body of the complainant both the palm of her hands locking its other at the middle of the back of the complainant while the 2 hands of the complainant were on her thighs, the accused is stooping with his face beside the face of the complainant, with the face of the accused placed at the left side of the face of the complainant).

"Q When he embrace[d] you what was your reaction, if any?

"A I pushed him, sir.

"Q What part of his body did you push?

"A His breast, sir.

"Q And what did you use in pushing his breast?

"A My two hands (witness demonstrating her two hands moving them forward).

"Q And when you pushed the accused, what was its effect if any upon him?

"A He [did] not release me, sir.

"Q Because he did not release you eventhough you pushed him, what did you do next?

"A I was struggling, pushing him, sir.

"Atty. Lazo

May we pray your honor, that the movement of the witness be put on record.

"Fiscal Asencion

And we request that the witness demonstrate.

"Atty. Lazo

We are asking the Honorable Court to put on record the demonstration made by the witness.

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"A (Witness demonstrating by showing her 2 hands by moving alternately forward and backward.)

"Fiscal. Asencion

"Q And what was the result of your struggling effort as you said?

"A When I [had] the chance I ran away, sir.

"Q To where did you run?

"A Towards the door, sir.

"Q What was your intention in running to the door?

"A I wanted to escape, sir.

"Q Were you able to escape?

"A No, sir.

"Q Why not?

"A Because he chase[d] me, sir.

"Q Was he able to overtake you?

"A Yes, sir.

"Q Where?

"A Near the door, sir.

"Q When he overtook you near the door, what did he do, if any?

"A He closed the door and he embraced me, sir.

"Q Will you please demonstrate to the Honorable Court how he embrace[d] you after he close[d] the door?

"Court

"Q What was your position when he embrace[d] you?

"A I was standing, your honor.

"Fiscal Asencion

"Q And will you please demonstrate to the Honorable Court how he embraced you?

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"A Like this (witness again putting her 2 hands to the back of the accused with both hands lock[ed] its other while the 2 hands of the complainant [were] stretched downward placed between the accused and the complainant, both of them facing each other).

"Q As soon as the accused embraced you, what did he do next?

"A He carried me inside the room, sir.

"Q How did he carry you, will you please demonstrate?

"A Like this, sir.

"Atty. Lazo

We will just agree the same position when the witness was asked to demonstrate how [she] was embrace[d] but this time [she] was lifted by the accused.

"Q How tall are you, Madam?

"A 4'11 ft., sir.

"Q Do you know your weight?

"A No, sir.

"Fiscal Asencion

Your honor, at any rate, will you please stand madam, may we demonstrate to the Honorable Court the size of the body of the complaining witness. May we place now on record the body built of the complainant as she is of medium built.

"Fiscal Asencion

And may we pray at this point in time that the accused be called upon to stand and that his height be taken on record.

(The accused stood up. The height of the accused is 5'7 and that the body built of the accused be made of record that he has a muscled arm and well developed breast.)

"xxx xxx xxx

"Q And as he kiss[ed] your breast and you mentioned you had a bra, what happened to your bra?

"A He just pulled it up, sir.

"Q And as he was kissing your breast how did you react also?

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"A I struggled, sir.

"Q And what were his two (2) hands doing as he kissed your breast?

"A My two (2) hands were pinned by his two (2) hands, sir.

"Q And how long did he kiss your breast?

"A Not so long, sir.

"Q And after. When he stopped kissing your breast, what did he do next?

"A He remove[d] my walking shorts, sir.

"Q How did he remove your walking shorts?

"A I was lying down and he pulled it [down] (witness making a demonstration by moving her 2 hands moving downward her body).

"Q Did he succeed pulling down your walking shorts?

"A. Yes, sir.

"xxx xxx xxx

"Q In the process that he remove[d] your walking shorts and pantylet which were remove[d] at the same time and he remove[d] your panty next, how did you react?

"A I wanted to get up, sir.

"Q Why, what did you want to do?

"A I wanted to run outside, sir.

"Q And did you succeed getting out?

"A No, because he immediately went on top of me, sir.

"Q And when he went on top of you, what did he do with his two (2) hands?

"A He next remove[d] his shorts, sir.

"Q What was the position of Roger Eliarda at that time he remove[d] his shorts?

"A He was lying face down, sir.

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"Q Where?

"A On top of me, sir.

"Q With how many hands of his did he lower his short pants?

"Atty. Lazo

Already answered, your honor.

"Court

Answered.

"Fiscal Asencion

I withdraw that question, your honor. In the process, while he was removing his shorts, what was your reaction?

"A I [struggled], sir.

"Q Please demonstrate to the Honorable Court, how did you struggle, Roger Eliarda was on top of you facing down, you were lying face up and you said you struggle[d], will you please demonstrate to the Honorable Court how you struggle[d]?

"Atty. Lazo

I will assume that the accused is on top of her.

"A Like this, sir (witness demonstrating by moving her two [2] legs alternately up and down).

"Fiscal Asencion

"Court

"Q While in that process where was the face of the accused?

"A Here, sir (witness pointing to the level of her breast).

"Fiscal Asencion

"Q After he had removed his shorts, what happened next?

"A. He tried to insert his penis but I moved my buttocks, sir.

"Atty. Lazo

May we place on record the Ilocano word, '*Ipilit na nga ipastrek ngem kinutik ti patong ko.*'

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"Fiscal Asencion

You said he tried to insert his penis to where?

"A The opening of my vagina, sir. (*puwerta*).

"Q You said he tried to insert his penis did you ever feel his penis?

"Atty. Lazo

Leading, your honor.

"Court

Sustain.

"Fiscal Asencion

"Q He tried to insert his penis to the opening of your vagina why do you say [*sic*]?

"A He spread my legs and forced to insert his penis inside my vagina, sir.

"Q How did you know, that he was trying to force to insert his penis to your vagina?

"A Because I felt it, sir, because he thrust his penis into my vagina, sir.

"Q For how many times did you feel the thrust of his penis into your vagina?

"A Three (3) times, only, sir.

"Q And as he thrust his penis into your vagina how did you react?

"A I moved my buttocks sidewards, sir.

"Q So, since you move your buttocks sidewards as he thrust his penis into your vagina what was the result?

"A He did not continue, sir.

"Q You said he did not continue, what did he do then?

"A He put on his shorts, sir.

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"Q What did he say, if any as he put on his shorts?

"A If you report I will kill you, he said, sir."[6]

On cross-examination, Julita went on to state —

"ATTY. LAZO:

At any rate, Madam Witness, you say that when he went on top of you, you also shouted especially at that time when you felt that he was then removing his shorts with his two hands?

"A. Yes, sir.

"Q. In fact, you were shouting at the top of your voice?

"A. Yes, sir.

"Q Now, when you noticed the accused trying to insert his penis into your vagina, in fact, you said that you felt it, the more you shouted, is it not?

"A. Yes, sir, I was then pleading to him.

"Q Madam Witness, when your hands were then released why did you not scratch the face or any part of the body of the accused in order to resist the alleged attempt of the accused on your womanhood?

"A. I tried to push him, sir.

"Q At any rate, Madam Witness, you also stated in your affidavit in your answer to question No. 9 you were saying that you were closing your thighs when you said '*ip-ipitek ti mabagbaguik*,' you were closing your thighs to hide your vagina, that is what you mean?

"A. Yes, sir, but he spread them just the same and he inserted his penis into my private part.[7]

Relative to the second charge of rape, Julita narrated the alleged incident of 22 September 1998, *viz*:

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6 TSN, 30 June 1999, pp. 2–11.

7 TSN, 15 August 1999, pp. 17–18.

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"Q. On September 22, 1998, Madam, do you remember where you were, more or less [at] 10:00 o'clock in the morning?

"A. I was in the yard cleaning, sir.

"Q. Did you have companion at home at that time?

"A. None, sir.

"Q. At that time, do you remember if anybody came to your house?

"A. Yes, sir.

"Q. Who?

"A. Roger Eliarda, sir.

"Q. What did he do when he came there?

"A. He told me something, sir.

"Q. Will you please tell the Honorable Court, what he told you?

"A. Do not mind cleaning, you just spray with round up.

"Q And how far was he from you when he said that?

"A. I was sitting down and he came near me, witness demonstrating a distance between her and the accused about 2 feet.

"Q. Did you know he would come to your house at that time?

"A. No, sir.

"Q. When he said that to you what did you say, if any?

"A. It's better to be clean than to be bitten by a snake, I said, sir.

"xxx xxx xxx

"Q. And so after saying that, what did you do next?

"A. I went inside our house, sir.

"Q. And what about Roger Eliarda where did he go also?

"A. I just left him but when I was about to close the door, I noticed his presence, I did not notice him following me.

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"Q. And what did you do when you saw him already at the door?

"A. I tried to close but he pushed it, sir.

"Q. And what happened when he pushed the door?

"A. He entered, sir.

"Q. What was your reaction when he entered in fact you wanted to close the door?

"A. I was afraid, sir.

"Q. Why were you afraid?

"A. Because I remember what he did in their house.

"Q. When?

"A. September 4, 1998, sir.

"Q. But when he was already inside the house what did he do?

"A. The incident was fast because he pressed me at the back of the door.

"xxx xxx xxx

"Q. When he pressed you against the back of the door as you have demonstrated how did you react?

"A. I pushed him (witness demonstrating by making a movement with her two [2] palms open).

"Q. How many times did you push him?

"A. Many times, sir.

"Q And what was the result of your effort in pushing him?

"A. I lost my strength, sir.

"Q And what happened next?

"A. He embraced and carried me towards the wooden bed at the first floor, sir.

"Q. How did he carry you at the wooden bed?

"A. He lifted me while I was standing and facing him, sir.

"Q. And he was able to bring you in that wooden bed?

"A. Yes, sir.

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"xxx xxx xxx

"Q. As he carried you to the wooden bed what did you do?

"A. I was struggling, moving my 2 legs up and down, sir.

"Q. What about your two (2) hands?

"A. I could not move them because they were pinned by the body of the accused against my body.

"Q. And when he reached the wooden bed, what did he do with you?

"A. He laid me down, sir.

"Q. And what did he do next?

"A. He kissed my face while he pinned my two (2) hands with his hands, sir.[8]

On cross-examination, she elaborated:

"Q Madam Witness, when you were inside the house you were pinned against the back of the door by the accused and the next thing that happened is — he carried you to the wooden bed, is that correct?

"A Before he did that I pleaded to him not to repeat what he had done to me and he said 'Even if somebody sees me I fear no one.'

"Q But after that he carried you to the wooden bed?

"A He laid me there, sir.

"Q Is it not a fact, that when you were carried to the wooden bed you shouted again, Madam Witness, for help?

"A Yes, sir, but nobody heard me because the volume of our radio was loud.

"Q And you shouted at the top of your voice?

"A Yes, sir.

"Q Now, Madam Witness, after you were laid down on the wooden bed by the accused Roger Eliarda you were again carried to

[8] TSN, 30 June 1999, pp. 14–17.

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a room at the second floor of the house where you were then staying, is it not?

"A Yes, sir.

"xxx xxx xxx

"Q Now, Madam Witness, when you were being carried from the ground floor to the second floor, naturally, you were struggling, in fact, you were struggling with all your strength just to make sure that what had happened to you on September 4, 1998 will not be repeated on that day?

"A Yes, sir.

"Q One hand of the accused was below your neck and the other was under your thighs, as you demonstrated, right?

"A Yes, sir.

"Q That was the way that you were carried by the accused going up the stairs to the second floor of your house?

"A Yes, sir, and my two hands were pinned so it is only my legs that were free and moving.

"Q You were moving your legs because they were free, right?

"A Yes, sir.

"Q Madam Witness, when you were brought to the room upstairs the window of that room was opened but there was a curtain hanging covering the lower half of the open window?

"A Yes, sir.

"Q Of course, in the same manner that you were shouting when you were being carried to the wooden bed from the ground floor to the second floor, you were shouting at [the] top of your voice?

"A Yes, sir.

"Q Even when you were already inside the room you were still shouting at the top of your voice?

"A Yes, sir.

"Q You stated that when you were already at the second floor of the house where you were then staying, the accused after

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laying you down on the bed immediately went on top of you, is that true?

"A Yes, sir.

"Q When he was on top of you he again kissed your lips and you reacted by moving your head left to right, is that correct?

"A Yes, sir.

"Q After he kissed you he again moved his face down to your breast and he again pulled up your blouse, is that correct?

"A Yes, sir.

"Q Now, Madam Witness, after he was able to pull up your blouse he removed your shorts?

"A Yes, sir.

"Q Despite the fact that you were then holding on to your shorts, the accused was able to remove it?

"A When I lost my strength that was the time when the accused was able to pull down my shorts, sir.

"Q After he was able to remove your shorts, according to you, he also removed your panty, right?

"A Yes, sir.

"Q Now, you were asked: 'After he succeeded in removing your panty, what did he do next?' and the answer you gave was: 'He raised my two legs,' is that true?

"A Yes, sir.

"Q Of course, by doing that he let go off his grip on your two hands, grabbed your legs and raised it, right?

"A Yes, sir.

"Q And you were also asked: 'After raising your two legs, what happened next' and you said: 'He kissed my private part,' right?

"A Yes, sir.

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"Q He did not only kissed your private part according to you he also licked your private part?

"A Yes, sir.

"Q That statement of yours is based on your answer on question no. 16 which states the question [of] which is: 'And what else transpired next' and your answer was: 'When I lost my strength and he was able to pull down my shorts, he raised my two legs and he kissed my private part and he licked it and I was not able to notice him remove his shorts because all of a sudden he inserted his penis in my private part but he was not able to [insert] his penis deeply in my private part because I struggled so he said: '*Magoncilla can sa man* met' — 'as if it is your first time,' was that the question asked of you and that is the answer you gave?

"A Yes, sir.

"Q You were asked — 'after he licked your private part, what happened next' and the answer you gave was — 'the accused went on top of me,' right?

"A Yes, sir.

"Q When he went on top of you, you were asked what did he do and you said he inserted his penis in your private part, right?

"A Yes, sir.

"xxx xxx xxx

"Q Did you say that he went on top of you and tried to [insert] his penis into your vagina?

"A He first spread my two legs, sir.

"Q Do you mean to say that before he went on top of you your legs were together?

"A Yes, sir.

"Q Are you sure?

"A Yes, sir, because he was the one who spread my legs.

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"Q You were asked on direct, Madam, 'how long did he lick your private part' and you said 'not so long,' is that true?

"A Yes, sir.

"Q You were asked — 'after that, what did he do next' and you said 'he went on top of me, sir,' is that true?

"A Yes, sir.

"Q So, do we get from you that after he licked your private part immediately he went on top of you?

"A Yes, sir.

"Q Are you sure of that Madam Witness?

"A Yes, sir."[9]

Finally, on direct examination in connection with the supposed third rape incident, Julita related:

"Q Alright, you said from the place where you were washing clothes he forcibly pulled you to the kitchen, how far from that place where you were [seated] did he pull you inside the kitchen?

"A About two and one/half meters away, sir.

"xxx xxx xxx

"Q And at the place where he stopped pulling you inside the kitchen, after he pulled you, what did the accused do next, if any?

"A He laid me [down] on the floor, sir.

"Q And of what material is the floor made of?

"A Made of wood, sir.

"xxx xxx xxx

"Q And as the accused laid you down on the floor of the kitchen, what did he do next to you?

"A He immediately went on top of me, sir.

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[9] TSN, 15 August 1999, pp. 23–28.

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"Q And on your part, what did you do, Madam?

"A I struggled, sir.

"Q What did he do with his two (2) hands when he immediately went on top of you?

"A He pinned my two hands with his two hands, sir.

"Q Alright, will you please demonstrate, Madam, [what was] his position and your position at that time he was on top of you, and as how he pinned your two hands, as you said?

"COURT

You demonstrate first your position.

"A Like this (witness demonstrating by lying down with her two hands raised her palms beside her head. Zitas was again invited to represent the supposed victim. The witness representing the supposed accused went on top of the body of the supposed victim holding the two hands of the supposed victim with her two hands which were placed beside the head of the supposed victim and the two legs of the witness representing the accused were placed in between the two legs of the supposed victim).

"Q And you said that you also struggled, will you also demonstrate to this Honorable Court how you struggled while in that position you have just demonstrated?

"A Like this (witness demonstrating by moving her body sidewards), sir.

"Q Why did you struggle?

"A Because he pinned me with his body, sir.

"xxx xxx xxx

"Q And after he was able to raise your t-shirt what were his two hands at the time doing as he was kissing your breast?

"A He next brought down my shorts, sir.

"Q When you felt he was pulling down your walking shorts, what did you do, Madam?

"A I held on to my walking shorts (witness demonstrating by putting her two hands on her waistline as if holding something).

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"Q And as you held the waist of your walking shorts, what did the accused do?

"A He insisted in lowering my walking shorts, sir.

"Q And because he insisted in lowering your shorts, what did you do also?

"A When I lost my strength that was the time he succeeded in lowering my shorts, sir.

"Q Until what part of your body was your walking shorts lowered?

"A He was able to remove it from me, sir.

"Q When the accused lowered your shorts, what happened to your panty?

"A He next removed it, sir.

"Q And what happened next after your panty was removed?

"A I did not notice him remove his shorts, sir.

"Q And so what did you notice afterwards?

"A He went on top of me and inserted his penis."[10]

On cross-examination, Julita further declared:

"Q. You were also asked as you were struggling what did the accused next do to you and your answer, he kissed me, sir, is that correct?

"A. Yes, sir.

"Q. And you were asked, if what part of your body did he kiss, you said my lips, sir, is that correct?

"A. Yes, sir.

"Q. The accused on October 1, 1998 kissed your lips because that is what you said, right?

"A. Yes, sir.

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[10] TSN, 12 July 1999, pp. 6–10.

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"Q. And when you were asked how did you react when the accused kissed your lips you said your reaction was moving your head from left to right and right to left, correct?

"A. Yes, sir.

"xxx xxx xxx

"Q. At any rate, you were asked for how long did he try to kiss you and you said not so long, sir, is that true?

"A. Yes, because I moved my face sideways, sir.

"Q. After that you were asked what else did he do to you and your answer, he raised my shirt, sir, is that also true?

"A. Yes, sir.

"Q When the accused was able to raise your shirt he next kissed your breast?

"A. Yes, sir.

"Q And you were also asked, what were his two hands doing at that time he was kissing your breast and you answered he pulled up my t-shirt, is that true?

"A. Yes, sir.

"Q. And you were asked after he was able to raise your t-shirt, what were his two hands at that time doing as he was kissing your breast he next brought down my short, sir, that was your answer?

"Q. And that was the truth?

"A. Yes, sir.

"xxx xxx xxx

"Q. Now after he was able to remove your walking shorts you were asked, what about your panty and you said he next removed it, sir, is that correct?

"A. Yes, sir.

"Q. He removed your panty also with his two hands, right?

"A. Yes, sir.

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"Q. Madam witness, after he removed your panty you were asked, what happened next and you said I did not notice him remove his shorts, sir, is that true?

"A. Yes, sir.

"Q. You did not notice him remove his shorts because at that time he was on top of you, right, and you could not see him remove his shorts, is that what you mean?

"A. Yes, sir.

"xxx xxx xxx

"Q. You were then asked and so what did you notice afterward, you said the accused went on top of you and inserted his penis, is that correct?

"A. Yes, sir.

"Q. You were asked to where and you said to your private part, correct?

"A. Yes, sir.

"Q You were also asked why did you say that he inserted his penis in your private part and you said you [felt] it, right?

"A. Yes, sir.

"Q. And in fact according to you it was hard?

"A. Yes, sir.

"Q And you were asked, what did you do when you [felt] his penis on your private part and you said I struggled, sir, is that correct?

"A. Yes, sir.

"Q. Because you were struggling he was not able to insert his penis very well and in fact it was removed, is it not?

"A. Yes, sir.

"Q After that his penis dangled to borrow your word, '*naipalpi*,' in your private part, right?

"A. Yes, sir.

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"Q. And then he did not continue anymore and he next used his fingers and placed it in your private part?

"A. Yes, sir.

"Q. After he used his fingers on your private part as you claimed you were asked, what happened next, madam witness, and you said, and he stood up and put on his clothes, is that true?

"A. Yes, sir.

"Q. And you were asked, what about you madam, I cried, I could not stand, I was exhausted as a result of my struggling, correct?

"A. Yes, sir."[11]

Owing to the character of the crime of rape, the testimony of the victim is the focal area around which the outcome of the charge would naturally revolve. The consistency on material points, or lack of it, can sustain or negate a conviction. Correspondingly, the stringency with which the account of the victim undergoes scrutiny becomes even more pronounced where a conviction could forfeit the life or liberty of an accused. 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.

The Court, in this instance, has concluded, after having spent much time in deliberating on the case, that the burden of the prosecution has not been satisfied.

Julita claimed to have pushed the appellant away in all of three incidents complained of. While it may be said that tenacious resistance from the victim is not a requirement for the crime of

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[11] TSN, 25 August, 1999, pp. 14–20.

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rape,[12] the lack of evidence signifying an obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred.[13] It eludes the Court that Julita could not have posed more than what she did to successfully dissuade appellant who was not even armed during all three instances from having his way.

The "sweetheart theory" has often been discarded and has rightly been held to be a weak defense in an indictment for rape. It would be wrong to say, however, that, under all events, that defense should be altogether ignored. Corroborative evidence is ample to suggest the veracity of appellant's claim.

Tecla Cacot, Edna Anac, Enida Corpuz and Hector Corpuz related in court that even after the supposed rape incidents, they would regularly gather under a *manzanita* tree, drink beer and eat *besuto*. During these occasions, Julita was observed to have shown no signs of having been a rape victim but, on the contrary, was enjoying herself with the rest of the group. Enida testified to the "unusual closeness" between Julita and Eliarda. Edna said that one time Julita even reserved a seat for appellant and later offered him a drink. Hector Corpuz witnessed the confrontation between the wife of appellant, Mrs. Eliarda, and Julita when the former accused Julita of carrying on with appellant. In October 1998, or a few weeks after the last sexual congress, Julita herself admitted to have gone to appellant's house to join his family in commemorating the death anniversary of his mother-in-law. Corroborative evidence that tend to support the sweetheart theory could assume importance when there are reasons to entertain some doubts on the accuracy of the stance taken by the prosecution.[14]

The Court, given all the circumstances, must hold that the prosecution has failed to discharge the *onus probandi* on the

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[12] *People vs. Galisim*, G.R. No. 144401, 20 November 2001.

[13] *Ibid.*

[14] *People vs. Ratunil*, G.R. No. 137270, 29 June 2000 (334 SCRA 721); *People vs. Medel*, G.R. No. 123803, 26 February 1998 (286 SCRA 567).

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requisite evidentiary *quantum* for a pronouncement of guilt beyond reasonable doubt. The constitutional presumption of innocence in favor of the appellant, not having been sufficiently rebutted, judicial conscience would not rest easy with a conviction.

WHEREFORE, the appealed judgment of the court *a quo* is *REVERSED* and *SET ASIDE*. Appellant ROGER ELIARDA is hereby *ACQUITTED* on reasonable doubt, and his immediate release from confinement, unless there are other valid and lawful grounds to still hold him, is hereby ordered. The Director of the Bureau of Correction is directed to inform this Court of its compliance with this judgment. Costs *de officio*.

SO ORDERED.

Davide, Jr., C. J. (Chairman), *Ynares-Santiago, Carpio* and *Azcuna, JJ.*, concur.

FIRST DIVISION

[G.R. No. 150179. April 30, 2003.]

HEIRS OF WILLIAM SEVILLA, NAMELY: WILFREDO SEVILLA, WILSON SEVILLA, WILMA SEVILLA, WILLINGTON SEVILLA, AND WILLIAM SEVILLA, JR., HEIRS OF MARIA SEVILLA, NAMELY: AMADOR SEVILLA, JENO CORTES, VICTOR CORTES, MARICEL CORTES, ALELEI* CORTES AND ANJEI CORTES,** *petitioners, vs.* **LEOPOLDO SEVILLA, PETER SEVILLA, AND LUZVILLA SEVILLA,** *respondents*.

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* Also spelled as Alili in the Petition.

** Also spelled as Anggie in the Petition.