

Office of the President
of the Philippines
Malacañang

ANNEX K

ALAN DALE EDMONDS,
Complainant-Appellee,

- versus -

OP CASE No. 00-J-9253

FR. SHAY CULLEN,
Respondent-Appellant.

DECISION

This is an appeal from the resolutions of Justice Secretary Artemio G. Tuquero dated July 25, 2000 and September 20, 2000, finding probable cause against appellant Fr. Shay Cullen for the commission of the crime of rape.

The facts of this case are as follows:

On October 19, 1997, seven-year old Gloria Roxanne Edmonds was subjected to a medical examination at the San Marcelino District Hospital after she reported to her teacher that she was touched on her private parts by Ronald Payumo and by her own brother Oliver Edmonds. The result showed that her hymen was intact.

On January 29, 1998, the personnel of the DSWD, PREDA Foundation Inc., and the NBI took her from her school for protective custody. Although she was brought to NBI, Olongapo City Branch for preliminary interview, no formal statement was taken from her at that time. Thereafter, she was brought to PREDA for custody.

To recover custody over his daughter, appellee Alan Dale Edmonds filed a habeas corpus case against appellant Fr. Shay Cullen as the head of PREDA. On February 26, 1998, upon order of the court, the child was transferred to DSWD-Lingap Center in Olongapo City where she was subjected to intake interview and psychological evaluation. In the process, she disclosed to the DSWD personnel that she was sexually molested by Ronald Payumo and by her own brother, Oliver Edmonds. In view of this disclosure, she was subjected to another medical examination at James Gordon Memorial Hospital on March 4, 1998, the result of which showed that her hymen was "lacerated with healed sharp edges".

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DATE: 3/24/97

ATTY. RONALD B. GAVINO
CLERK OF COURT V

Appellee, however, refused to file a complaint against Payumo and Oliver for molesting his daughter. Notwithstanding the said refusal, the NBI forwarded Gloria's sworn statement to the Zambales Provincial Prosecutor and the Special Prosecutor for Child Abuse Cases in Olongapo City and Zambales. Payumo was subsequently charged ten counts of rape, while Oliver Edmonds was charged two counts.

Meanwhile, on April 28, 1998, appellee filed a complaint, docketed as I.S. No. 98-738, against herein appellant for violation of Sec. 5 (b), Art. III, Republic Act No. 7610, otherwise known as "*An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties For Its Violation, and For Other Purposes*" for allegedly sexually abusing his daughter Gloria. The complaint stated that before his daughter was brought to PREDA, the medical examination showed that her hymen was intact but after she was transferred to DSWD-Lingap Center, her medical examination revealed healed laceration. This complaint against appellant was, however, dismissed for insufficiency of evidence.

On May 20, 1998, by order of the trial court in the habeas corpus case, Gloria's custody was returned to appellee.

On May 27, 1998, the complaint filed against Payumo and Oliver Edmonds was dismissed by the trial court for failure of Gloria to appear during the preliminary investigation.

On October 27, 1998, Gloria executed, with the assistance of appellee, a handwritten complaint accusing appellant of rape. In her handwritten complaint, she alleged that a certain Mambing brought her to the PREDA Foundation where she was forced to stay. She wrote that: "... pinainuan ako ng gamot ni Cullens (sic), kulay orange, hugis bilog, at ni-reyp ako ng pari na si Cullens (sic). [D]inala ako sa kuwarto' ni Cullens(sic), at hinubad niya yung damit at short at brep niya. [S]abi niya ilhi siya pero hindi siya umihi, at pinahiga ako sa kama. [P]inatulog ako. [P]aggising ko, wala na ang damit at ang pante ko at masakit ang pepe ko. [N]agbihis ako at nagtago ako sa ilalim ng kama ko at wala[ng] nakakita sa akin. [N]atulog ako sa ilalim ng kama. [L]umabas ako nang maulilim na..."

In response to the charge hurled against him, appellant denied the same and claimed that the handwritten statement of Gloria was "totally false". He alleged that she was merely induced and pressured by her father, herein appellee Alan Dale Edmonds, and the latter's friends to say that she was sexually abused by him. He claimed that appellee and his friends have banded together to vilify and harass him for his work against child prostitution at PREDA. He stated that this rape charge is just one of the numerous harassment suits filed by appellee's group to discredit him and PREDA.

Finding the absence of probable cause to charge and hold appellant for rape, the Office of the Provincial Prosecutor dismissed the complaint on April 8, 1999. In dismissing the complaint, 3rd Asst. Provincial Prosecutor of Bataan and Acting City Prosecutor of Olongapo, Oscar M. Lasam, ratiocinated:

"After thoroughly evaluating the allegations of Gloria as well as the previous circumstances surrounding the case, we honestly believe that no probable cause exists against the respondent (herein appellant) for the crime charged for the following reasons:

1. At the very outset, it was Ronald Payumo whom Gloria was accusing of sexual abuse. This was at the time when she told her teacher about the matter.

2. When Gloria was under the care and custody of the DSWD-Lingap Center, she again related to the DSWD personnel as well as to her father that she was sexually abused by Ronald Payumo and Oliver Edmonds. This is why she was again subjected to medical examination in another hospital.

3. Subsequent thereto, she also gave a statement before the NBI personnel that she was raped by Ronald ten times, and by Oliver two times.

4. During all these times, never did Gloria mention to anybody that she was sexually abused at Preda when she could have easily done so whenever his father was allowed to visit her at Preda, and when she was already transferred at the DSWD-Lingap Center.

5. Moreover, in her affidavit dated 18 August 1998, she stated "that I know that something happened to me, as I have experienced bad dreams about Father Cullen raping me and killing me, I believe that what I dreamed about did happen to me because I felt different afterwards and very afraid." As can be readily observed, her claim of rape against Cullen was brought about by her dreams. But there is no rape through dreaming. If indeed she was raped at Preda by Cullen, why did she not categorically state so in the said affidavit the way she narrated it in her handwritten complaint."

Dissatisfied with the aforesaid order of dismissal, appellee filed a petition for review with the Secretary of Justice. On July 25, 2000, the Secretary of Justice reversed the said order of dismissal, holding that:

"It is an undisputed fact that Gloria was medically examined twice. The first was on October 17, 1997 when she reported that her private parts were touched by her brother Oliver and Ronald Payumo. The said medical examination revealed her hymen was intact. The second was on March 4, 1998, revealing that her hymen had laceration with healed sharp edges. These medical examinations show that before Gloria was brought

to PREDA, her hymen was still intact. It was only after she had come from PREDA that her hymen was lacerated.

The child in her own handwriting clearly described what respondent did to her when she was brought to PREDA. Furthermore, during the habeas corpus hearing, Presiding Judge Ubiadas declared that after he interviewed Gloria and tried to explain how rape is committed, Gloria merely demonstrated that she was just kissed on the lips by Payumo. (page 5, TSN, March 30, 1998, Spec. Proc. 91-0-98).

A candid narration by a victim of rape can bear earmarks of credibility, particularly where no motive is attributed to the rape victim that would make her testify falsely against the accused (People versus Henson, 270 SCRA 634). Furthermore, the failure of Gloria to report the rape immediately to her father will not cast doubt on her credibility, much less, indicate a fabricated charge.

Moreover, the defense raised by the respondent anchored mainly on bare denials cannot prevail over complainant's categorical declaration and positive identification. Lastly, the allegations set forth in his counter affidavit are matters that can be properly ventilated in court during a full-blown trial.

WHEREFORE, premises considered, the questioned resolution is REVERSED. The Acting City Prosecutor of Olongapo City is hereby directed to file an information for rape as defined and penalized under R. A. No. 8353 in relation to R. A. 7610 against respondent Shay Cullen, and to report the action taken hereon within ten (10) days from receipt hereof."

The Secretary of Justice subsequently denied appellant's motion for reconsideration. Hence, this appeal.

The main issue in this appeal is, therefore, whether or not the handwritten complaint of Gloria, and the fact that her second medical examination showed that her hymen has "healed laceration" are sufficient to indict appellant for the crime of rape.

In reviewing rape cases, appellate courts generally apply three (3) guiding principles, namely:

- 1.) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;

- 2.] In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant should be scrutinized with extreme caution; and
- 3.] The evidence of the prosecution stands or falls on its own merits and should not be allowed to draw strength from the weakness of the defense (G. R. No. 124832, Feb. 1, 2000, *People v. Cepeda*; G. R. No. 137270, June 29, 2000, *People v. Ratumil*; G. R. No. 137714, Sept. 8, 2000, *People v. Baniguid*).

There is no reason why the said principles may not be applied by analogy to preliminary investigation considering that its purpose is not only to establish probable cause but also to secure the innocent against hasty, malicious and oppressive prosecution. It is well settled that probable cause should be determined in a summary but scrupulous manner to prevent material damage to respondent's constitutional right to liberty and the guarantees of freedom and fair play (*Drilon v. Court of Appeals*, 258 SCRA 280 [1996]). It is imperative upon the fiscal to relieve a respondent from the pain of going through a trial once it is ascertained during the preliminary investigation that the evidence is insufficient to sustain a prima facie case that he is probably guilty of the crime charged against him. As well put in the landmark case *Brinegar v. United States*, 338 U.S. 160 (1949), while a finding of probable cause requires "less than evidence which would justify conviction", it demands more than "bare suspicion". It is unfortunate, however, that the accusation against appellant involves mere suspicion, bereft of any solid foundation.

The handwritten complaint of the alleged victim merely stated that "*ni-reyn [sivay ng pari na si Cullens (sic)]*" (she was raped by the priest named Cullen). No details as to the manner the alleged rape was committed by appellant was supplied in her complaint. It is doubtful if at her tender age she really knows the meaning of "rape". As correctly pointed out by Asst. Provincial Prosecutor Lasam in his order dismissing this complaint, Ronald Payumo and Oliver Edmonds were the ones the victim originally accused of sexually abusing her for at least twelve (12) times. The victim even said that her father did nothing when she told him about these abuses in the hands of Payumo and Oliver Edmonds. Appellee's apparent inaction was the precise reason why the DSWD and PREDA took protective custody of the victim beginning January 29, 1998. It is highly possible that on account of the repeated sexual abuse she suffered in the hands of Payumo and Oliver Edmonds, she was traumatized to dream "about Father Cullen raping and killing her", as stated in her affidavit dated August 18, 1998. A dream, however, is not a proper basis for a finding of probable cause against appellant.

Moreover, assuming *arguendo* that appellant raped the victim on January 29, 1998, why did she accuse appellant of rape only on October 27, 1998, that is, more than nine (9) month after its alleged commission? There is no claim that violence, threats or intimidation was exerted on her by appellant to silence her. In fact, during her entire stay at PREDA from January 29, 1998 up to February 25, 1998, her father frequently visited her but she told him nothing about the alleged rape. On the other hand, when she was

transferred to DSWD-Lingap Center upon order of the court on February 26, 1998, she also failed to disclose to the authorities that appellant raped her. In fact, when she was thereafter interviewed and psychologically evaluated by the DSWD personnel, she reaffirmed to them her previous revelation that Ronald Payumo and her own brother Oliver had been sexually molesting her.

It is settled that unexplained delay in reporting a crime renders the accusation unreliable in the absence of showing that force, coercion, threat or intimidation was exerted by the culprit on the victim (*People v. Besa*, 183 SCRA 533 [1990]). It is not enough to presume that a girl would not expose herself to humiliation unless her charge of rape is true. For the charge to succeed, it is also necessary to determine that her story, by itself, is believable, independent of the said presumption. Otherwise, if all that mattered were this presumption, every accusation of rape would inevitably result, without need of other evidence, in the indictment and conviction of the accused (*People v. Sandagon*, 233 SCRA 108 [1994]).

The fact that the result of the second medical examination conducted on the victim shows that her hymen has healed laceration does not automatically establish that appellant raped her. At most, the laceration only shows that she was raped, but as to who did it to her, the evidence does not show (*People v. Contreras*, G.R. No. 137123-24, Aug. 23, 2000). The Court has held that a medical examination, as well as the medical certificate, is merely corroborative in character and is not an indispensable element of rape. What is important is that the accusation of the victim about the incident is clear, unequivocal and credible (*People v. Baltazar*, G.R. No. 115990, March 31, 2000). It is unfortunate, however, that the victim's handwritten complaint is not clear and unequivocal that appellant raped her. As already discussed above, her complaint does not indicate how appellant raped her. In view of the intrinsic nature of the crime of rape, the victim's accusation should be scrutinized with extreme caution.

Appellee makes much of the fact that the second medical examination showed that the victim's hymen has "laceration with healed sharp edges". Considering, however, that the medical examination was conducted on March 4, 1998 only, we could only estimate if the age of the laceration jives with the date of the alleged commission of the rape on January 29, 1998, as charged in the complaint.

Generally speaking, a healed laceration on the hymen indicates that the same may have been inflicted approximately three (3) weeks to more than a month's time prior to the date of the medical examination (Pedro P. Solis, *Legal Medicine*, 1987 ed., p. 490). As can be seen therefrom, it is impossible to determine the exact date the laceration was inflicted. Medical experts are merely capable of estimating the possible date of the rape within the range of a certain period. In this case, the age of the healed laceration on the victim's hymen is estimated to be from three (3) weeks to more than a month at the time of the examination conducted on March 4, 1998. The phrase "more than a month" is not qualified so two (2) or three (3) month-old laceration may still fall under the category of healed laceration. Based on this estimate, it can safely be stated that the laceration was inflicted on the victim's hymen within the period November 11, 1997 to February 11,

1998. It must be noted that from November 11, 1997 to January 28, 1998, the victim resided in appellee's house where Payuno and her brother Oliver had access to her. On the other hand, from January 29, 1998 to February 25, 1998, she was taken to PREDA for protective custody. Judging from this set of facts, it cannot be conclusively determined that the alleged rape happened at PREDA, and that the appellant was the culprit because it is equally possible that the alleged rape occurred at appellee's house from November 11, 1997 to January 28, 1998 in the hands of Payuno and her brother Oliver, as the victim herself disclosed on separate occasions to the DSWD and the NBI personnel. In the absence of more direct evidence that appellant sexually abused the victim, this complaint should be dismissed.

Anent the disparity in the results of the two (2) medical examinations conducted on the victim, the counter affidavit dated July 15, 1998 of Lina Apostol, head of the DSWD-Lingap Center, extant in the records of this case, may provide the probable explanation, to wit:

"[T]he disparity in the findings of medico-legal [officers] is not uncommon. In the case of Renalyn Supe, she was subjected to medico-legal examination on August 19, 1994 by San Marcelino Hospital, the same hospital where GLORIA ROXANNE EDMONDS was [originally] examined, with the finding that her hymen was intact or negative of laceration. On the other hand, seven days thereafter, the medico-legal examination conducted [on Renalyn Supe] by the Olongapo General Hospital on August 26, 1994, [resulted] to the finding that her hymen was not intact, [but] with multiple old lacerations" (Counter Affidavit dated July 15, 1998 of Lina Apostol, pp. 8-9, "Attachment 4", Appeal)

Indeed, the same situation obtains in the instant case. Perhaps, medical practitioners, just like any other professionals, are not immune to mistakes of judgment. One set of medical facts may be capable of divergent interpretations. The case of Renalyn Supe creates doubt as to the accuracy and correctness of the result of the first medical examination conducted on the victim by San Marcelino Hospital on October 19, 1997. This doubt certainly weakens her case against appellant.

Finally, while denial is generally regarded as one of the weakest defenses as it could be easily availed of, it should not outrightly be dismissed as false where it appears to be the truth when viewed in the light of the inherent weakness of the evidence against the respondent (*People v. Abellanosa*, 264 SCRA 722 [1996]). The rule is that the evidence of the complainant stands or falls on its merits, and should not be allowed to draw strength from the weakness of the defense.

It is noteworthy that this is not the first time that the victim and her father used the results of the medical examinations conducted on the victim to accuse appellant of rape. The previous complaint docketed as I.S. No. 98-738, which essentially charged appellant with the same crime as in this complaint, was dismissed for insufficiency of evidence. In

view of the foregoing disquisition, the instant complaint should likewise be dismissed for the same flaw of paucity of evidence.

WHEREFORE, the resolutions of the Secretary of Justice dated July 25, 2000 and September 20, 2000 are **REVERSED** and **SET ASIDE**. Accordingly, the City Prosecutor of Olongapo City is hereby directed to dismiss the complaint for rape against Fr. Shay Cullen.

SO ORDERED.

Manila, Philippines, **DEC 07 2000**

By authority of the President:

Ronald B. Zamora

RONALDO B. ZAMORA
Executive Secretary

CERTIFIED COPY:

Aurora T. Aquino
AURORA T. AQUINO
Director IV
Malacanan Records Office

CERTIFIED TRUE XEROX COPY.

DATE:

3/24/07

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