

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERFECTO ALCANTARA Y CARIÑO ALIAS QUIRIN AND MAURO
MEDINA Y NINOBLA, ACCUSED, MAURO MEDINA Y NINOBLA,
DEFENDANT-APPELLANT.**

G.R. Nos. L-49693-94. December 29, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Two criminal cases were jointly tried by the Court of First Instance of La Union, Branch III: (1) for Forcible Abduction with Rape (Criminal Case No. A-285) against Perfecto ALCANTARA, alias Quirin, and MAURO MEDINA y Ninobla, the APPELLANT in this case; and (2) for Serious Illegal Detention against Perfecto ALCANTARA (Criminal Case No. A-286).

Originally, one Hipolito Abellera was included as an accused in the Forcible Abduction with Rape case. However, the charge against him was dismissed for insufficiency of evidence by the Municipal Court of Aringay, La Union, upon a motion to dismiss filed by the Chief of Police of the same municipality.[1]

The consolidated Decision of the Trial Court convicted ALCANTARA and APPELLANT of the crime of Forcible Abduction with Rape, but acquitted ALCANTARA of the crime of Serious Illegal Detention for failure of the prosecution to prove his guilt beyond reasonable doubt.

Only APPELLANT has appealed from the judgment of conviction, which imposed the penalty of two reclusion perpetuas on each of the two accused.

The testimonies of prosecution witnesses have established the following facts:

At around 8:00 o'clock in the evening of June 24, 1966, Paulino Mangaoang, a widower, (the Father) was in his house at Sta. Lucia, Aringay, La Union, packing his clothes in preparation for his trip to Manila. Josefina, his fifteen year old daughter, and the COMPLAINANT herein, was in front of the stove cooking arrozcaldo. Hipolito Abellera, accompanied by APPELLANT and ALCANTARA arrived. Abellera informed the Father that he could not go with the latter to Manila as agreed upon, because he was busy. They lingered a while on the Father's invitation that they have supper, which was almost ready.

While waiting, APPELLANT and ALCANTARA commented that COMPLAINANT was embraced by a man. The Father asked COMPLAINANT about the truth of the remark but was met with silence. Angered, the Father slapped her twice. Abellera held him. COMPLAINANT sat down and cried. APPELLANT threatened the father saying: "You do what you want and we will kill you!"[2] COMPLAINANT and her two brothers, Paulino, Jr. (13 years old) and Elpidio (9 years old), then left for their grandfather's house as was customary whenever their father went to Manila. APPELLANT and ALCANTARA left also, while Abellera held the father, who was struggling to be released. Abellera freed him and jumped down from the kitchen. The Father searched for his bolo but could not find it. He then followed to his father's house where he told his children to go, but his children were not there as

he had expected.

While the three children were walking to their grandfather's house, APPELLANT and ALCANTARA overtook them and held COMPLAINANT's hands. APPELLANT pointed a knife at her breast and warned her not to scream. Paulino, Jr. ran away. Elpidio clung to his sister's dress. Under the camachile tree, APPELLANT made indecent advances but she pushed him away. APPELLANT told ALCANTARA to go back to COMPLAINANT's house and get her trunk, while he stood guard. After a while, ALCANTARA came back carrying the trunk on his shoulder. They then proceeded towards the river. APPELLANT separated from them. ALCANTARA was with them as they went on a circuitous way to his house. On reaching ALCANTARA's hut around 9:00 o'clock that evening, APPELLANT was already there, leaning on a post partly hiding. Inside the one-room hut, where ALCANTARA, a widower and three of his minor children lived, ALCANTARA lighted a lamp and spread a mat, telling COMPLAINANT and Elpidio to lie down. He then blew out the light and went down.

COMPLAINANT was roused from her sleep by a heaviness on top of her. ALCANTARA was upon her, facing her while she was lying on her back. His breath smelled of liquor. She screamed but a dagger was pointed at her. APPELLANT was sitting on the trunk near her head, holding her hands upward. Her skirt was already drawn up. She noticed that she no longer had her panty on. ALCANTARA had carnal knowledge of her. She felt pain and blood oozed from her private part. APPELLANT told ALCANTARA to hurry. After a few minutes, she felt something come out and the world was whirling. APPELLANT and ALCANTARA exchanged positions. APPELLANT, too, abused her.[3] APPELLANT left the hut and told ALCANTARA to do as he pleases. ALCANTARA abused her again. She could not resist as she was not even strong enough to shout.[4] At the corner of the room she cried. The siren at the Municipal Hall sounded at 10:00 o'clock in the evening. Elpidio was a meter away and saw it all.[5] The moon was bright and its light came in through the window.[6]

APPELLANT, on his way home, passed the house of Tomas Mangaoang, COMPLAINANT's grandfather. The Father was there and saw APPELLANT but the Father's sister prevented him from going out. Instead, she asked APPELLANT where COMPLAINANT was. APPELLANT denied knowing COMPLAINANT. The Father went home and saw clothes scattered around and a trunk missing. He was then told by Paulino, Jr., that COMPLAINANT was dragged by APPELLANT and ALCANTARA. He proceeded to APPELLANT's house but he was not there. The Father did not know where to locate ALCANTARA's house.

The next morning, the Father confronted APPELLANT but the latter denied knowing COMPLAINANT. Meanwhile, early the same morning, ALCANTARA forcibly made COMPLAINANT ride a tricycle to the highway and from there they took a bus to Paratong, Agoo, La Union, to his aunt's house where he left her, telling his aunt that COMPLAINANT had run away and was looking for work.

In the meanwhile, the Father reported the matter to Sgt. Pedro Zarate, desk officer of the Aringay Police Force, who instructed Pat. Mariano Dacanay to look for APPELLANT and ALCANTARA. Both were interrogated and ALCANTARA was ordered to fetch COMPLAINANT from Paratong. Upon being reunited with her father, COMPLAINANT narrated how she had been ravished, and the next day, she went for a physical examination first at the Doña Gregoria Memorial Hospital but was referred instead to the Provincial Hospital in San Fernando, La Union due to "lack of facilities." Dr. Norma Boado examined her and came up with the following findings:

"Vulva - reddened.

Labia minora - reddened

Hymen - with laceration at 9 o'clock and 3 o'clock, fresh.

Vagina - Readily admits one finger and hardly admits two fingers.

Vaginal smear - Positive for spermatozoa."

Dr. Boado testified that the reddening of the vulva was caused by forcible contact with a hard object; that COMPLAINANT was a virgin as it appeared that the tear in the hymen had not yet healed; that there was smearing of blood; and that the vaginal canal was tight. The laceration indicated that the sexual act occurred between 24 to 48 hours before the examination. No other injuries were found on the person of COMPLAINANT.

For the defense, ALCANTARA, then 29 years old, widower, a farmer and resident of Sta. Lucia, Aringay, La Union, testified that around 6:00 o'clock in the evening of June 24, 1966 he was in a store drinking liquor with some friends. An hour later he proceeded to Manuel Gatchalian's house with APPELLANT and had some rounds of drink. The Father and Hipolito Abellera were there together. From there, they went to the Father's house. In the kitchen, COMPLAINANT was cooking. The Father and Hipolito were conversing, when suddenly the Father slapped his daughter and threw a gas lamp at her. Hipolito asked the Father why he slapped COMPLAINANT but the Father shouted at them: "Vulva of your mothers, all of you, if you don't get out of my house, I will kill you all!"[7] They scampered down the house. APPELLANT and Hipolito walked northward while he went towards the east. He did not see APPELLANT again that night.

About 100 meters from the Father's house, COMPLAINANT called him. She was following, carrying a trunk and holding the hand of her brother Elpidio. He waited for her. She pleaded that he allow her to stay in his house because her father would maltreat her if she went back, and should she go to her aunt's house, he would find her there and maltreat her just the same. He did not personally know COMPLAINANT, but was familiar with her as she usually passed his house on her way to school. He took COMPLAINANT and Elpidio to Florentina Nawe, his aunt, whose house was about 50 meters from his house. After conversing for a short time with Florentina, he went home at around 10:00 o'clock in the evening. He slept in his house throughout the night.

At 6:00 o'clock the next morning, Florentina sent her nine-year-old son Braulio to wake him up so he could accompany COMPLAINANT to Rufina Nawe's house in Paratong, Agoo, La Union. Rufina (his aunt) was in need of a housemaid and COMPLAINANT was willing to be one. ALCANTARA, Braulio and COMPLAINANT took the trip to Paratong. COMPLAINANT left her trunk at Florentina's house and sent Elpidio home, admonishing him not to tell their father where she was. ALCANTARA left COMPLAINANT in Rufina Nawe's care and, with Braulio, returned to Sta. Lucia.

At midday, while he was gathering coconuts, Pat. Dacanay inquired from him for COMPLAINANT's whereabouts and he told the patrolman where she was. He was then instructed to bring COMPLAINANT back. At 3:00 o'clock in the afternoon, he took COMPLAINANT back, despite the latter's insistence to stay with his aunt. Three days later, he was summoned to the Municipal Hall and investigated. He was arrested a few days later.

Florentina, Rufina and Braulio, all surnamed Nawe, corroborated ALCANTARA's testimony.

For his part, APPELLANT, 28 years old at the time of the incident, single, farmer and a resident of Sta. Lucia, Aringay, La Union, testified that he was with ALCANTARA in the early evening of June 24, 1966. Together they went to the house of Manuel Gatchalian. There, they drank liquor and conversed. Hipolito Abellera and the Father joined them. The latter thereafter invited them to his house. In the Father's house, they were seated at the kitchen. The Father heard from Hipolito that someone had embraced his daughter. The Father asked his daughter who was doing that but she did not reply. The Father slapped her. The Father then threatened them, so they left. APPELLANT left with Hipolito. The Father overtook them and asked where COMPLAINANT was but they replied that they did not know. They went with the Father to his sister's house, but COMPLAINANT was not there. They left the Father there and proceeded to Bernardo Medina's house. They passed the house of Filomena Dacanay and the latter inquired who they were. At around 10:00 o'clock in the evening they arrived at Bernardo's

house and APPELLANT asked that the chicken, which he had entrusted to Bernardo to care for, be cooked, as they had not eaten supper. Aurora, Bernardo's wife cooked the chicken which they ate at around 12:00 o'clock in the evening.

As it was already late in the evening, they decided to spend the night in Bernardo's house. They (APPELLANT and Hipolito) left for their respective homes at 6:00 o'clock in the morning. After breakfast, he went to the coconut plantation where he saw ALCANTARA gathering coconuts. Later in the day, Pat. Dacanay came by and asked them where COMPLAINANT was. ALCANTARA told him that he took her to his aunt's house in Paratong, Agoo, La Union. Three days later he was investigated. Although he denied the rape charge, two days after the investigation, he was detained.

To substantiate his testimony, Hipolito Abellera, Filomena Dacanay and Aurora Medina were presented.

After trial, and as previously mentioned, a judgment of conviction was rendered in the Forcible Abduction with Rape case, decreeing:

"WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. A-285, the Court finds each of accused Perfecto Alcantara y Carino alias Quirin and accused Mauro Medina y Ninobla guilty beyond reasonable doubt of two (2) Rape offenses and sentences each of them to suffer two (2) reclusion perpetua (life imprisonment) and pay their proportionate shares of the costs; x x x"[8]

Challenging that verdict, APPELLANT alleges:

- "1) The lower Court erred in not considering in favor of the appellant the exculpatory version of his co-accused Perfecto Alcantara and Hipolito Abellera.
- 2) The lower Court erred in fully giving credence to the complainant's implication of the appellant and completely ignoring the motives behind the inclusion of the appellant as one of the accused.
- 3) The lower Court erred in not ruling that the prosecution failed to prove beyond reasonable doubt the guilt of the appellant."

The evidence does not sustain the foregoing contentions.

1) While it may be true that Hipolito Abellera was dropped as a co-accused in the Forcible Abduction with Rape case, it by no means follows that APPELLANT should also be exculpated. Abellera's only involvement in the occurrence at the Mangaoang house was limited to embracing Paulino Mangaoang, Sr., COMPLAINANT's father, "for the purpose of preventing the latter from further beating Josefina Mangaoang". There was no other evidence directly linking him to the crime of Forcible Abduction with Rape.

In contrast, APPELLANT was positively identified by COMPLAINANT, Josefina Mangaoang, and her brother Elpidio, 9 years of age, who was with her at the time, as one of the two accused who dragged her into thick bushes on their way to her grandfather's house, tried to embrace her, only to be pushed by the latter, and subsequently took his turn in abusing her at ALCANTARA's house.[9]

Even conceding, as testified to by Hipolito Abellera, that he and APPELLANT slept at the house of Bernardo Medina in the evening of June 24, 1966 after partaking of a chicken dinner thereat, it would neither exculpate APPELLANT, as it has not been shown that he could not have been at the scene of the crime at the time of its commission. Bernardo Medina's house was only about one kilometer away from ALCANTARA's hut.

Similarly, ALCANTARA's testimony to the effect that he did not know where APPELLANT went after they had

come from the Mangaoang house and that APPELLANT was not in his house in the evening of June 24, 1966, cannot prevail over the positive identification made by COMPLAINANT herself and her brother Elpidio.

2) The defense theory that COMPLAINANT voluntarily ran away with ALCANTARA due to the cruelty of her father and that it was only to mollify her enraged father that she implicated APPELLANT, is hollow. For one thing, COMPLAINANT saw ALCANTARA for the first time that evening at their house. It is highly improbable that she would entrust her fate to a complete stranger. For another, she could not have been carrying a trunk as contended by ALCANTARA when she called him along the way to her grandfather's house because her father was still in their house when she and her brothers left and she could not have possibly carted away that trunk in his presence. Indeed, there is no plausible reason for COMPLAINANT to include APPELLANT if that were not the truth. The allegation that COMPLAINANT's family had quarreled with APPELLANT because of the latter's chickens, which strayed into and ate their crops, and that APPELLANT had spread unsavory rumors about the Father's having taken the wife of a "pensionado" are insufficient motives for implicating APPELLANT if he were really innocent of such an odious crime.

Where there is no evidence and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motives, the presumption is that they were not and their testimonies are entitled to full faith and credit.[10] Further, COMPLAINANT's father testified that APPELLANT's mother came to their house proposing that APPELLANT marry his daughter with the promise that they will support her studies but COMPLAINANT refused[11] an indication that in filing the complaint it was her sincere and unadulterated desire to seek justice.

COMPLAINANT's positive and categorical narration of her abduction and rape bears the earmarks of credibility. She had disclosed the names of her abusers soon after she was reunited with her father. The accused were interrogated soon thereafter and were detained. During her direct examination, when she described how she was raped, she cried unabashedly.[12] It is unthinkable that an unmarried teenager would endure the embarrassment and humiliation of a public disclosure that she had been ravished, allow an examination of her private parts and undergo the ordeal and expense of a Court proceeding, if such indeed were not true,[13] not to speak of the fact that COMPLAINANT's testimony is ably and amply supported by that of Elpidio Mangaoang and the medico-legal officer.

That COMPLAINANT did not avail herself of several opportunities to escape from her abductors, does not militate against her credibility. Escape was out of the question for she was guarded not only by ALCANTARA but also by his aunt, Rufina Nawe, who did not let her out of her sight. Aboard the tricycle on the way to the latter's place, ALCANTARA continued with his threats to kill if she made any false move.

COMPLAINANT was an innocent and docile barrio girl of 15 at the time of the incident and was even reluctant to admit the shame that had befallen her. As Dr. Boado, the examining physician had stated, COMPLAINANT initially denied the abuse on her person but that she succeeded in extracting that fact from COMPLAINANT only when there were no longer other people within hearing.[14]

COMPLAINANT herself testified that she did not right away tell her father what had happened in the presence of other people in the house of Pat. Dacanay but only related the whole incident to him when they left the house of Pat. Dacanay.[15]

Her docility was also evident when she kept silent when her father asked her whether a man had embraced her, nor did she utter a word when slapped and thrown a lamp by him. It should also be borne in mind that she was terrified into submission by the combined abuse of both accused, and the knife that each one took turns in wielding initially while on the way to her grandfather's house, and subsequently while in ALCANTARA's house as they were abusing her. Nor could she put up any effective resistance against the accused because each held her

hands upward over her head while the other took advantage of her. She screamed when she felt ALCANTARA on top of her, but the latter immediately poked a knife at her.

The absence of abrasions, scratches or contusions in the medical findings on COMPLAINANT's person do not negate the use of force and intimidation in the commission of rape. The lacerations in the hymen, the reddening and inflammation of COMPLAINANT's private parts confirm the use of force and violence. The lacerations on the hymen were still fresh when she was examined by the physician, who testified that they must have been inflicted within 24 to 48 hours previous.

In a crime of rape, force need not be irresistible, all that is necessary is the force used by the accused is sufficient to consummate his evil purpose.[16] Rape is likewise committed when intimidation is used on the victim and the latter submits herself against her will because of fear for her life and personal safety.[17]

3). APPELLANT's guilt has been proven beyond reasonable doubt. He held COMPLAINANT's hands upward over her head as ALCANTARA bestially took advantage of her. According to COMPLAINANT, he even hurried ALCANTARA during the latter's act stating "Quirin faster Quirin".[18] ALCANTARA also held COMPLAINANT's hands above her head as APPELLANT took his turn in ravishing her. The successive rape on COMPLAINANT was corroborated by her younger brother; Elpidio, who was then lying down about one meter away from her and who must have been presumed to have been asleep. Elpidio testified clearly, straightforwardly and without hesitation on what he had seen. A young boy of 9 years at the time could not have been merely coached to make those descriptive declarations.

Denial and alibi put up by APPELLANT cannot prevail over his positive identification as a co-principal. COMPLAINANT, Elpidio, and Paulino knew him and could easily identify him. They belonged to the same community of Sta. Lucia, Aringay, La Union. COMPLAINANT's house is half a kilometer from APPELLANT's and the latter used to go to her father's house and see her there although they did not talk to each other.[19] More significantly, before the incident complained of the malefactors were in COMPLAINANT's house and she saw them there. At the time the rape was committed, COMPLAINANT, referring to the two accused testified that: "I know they were the ones on top of me", and "I could recognize them because there is moon beam that passed through the window".[20] She was face to face with each of them for about 5 minutes alternately while they took turns in consummating their bestial desire.

The defense of alibi is totally futile from the fact that APPELLANT was positively identified by the victim.[21] That the incident happened in accused ALCANTARA's hut all the more shows that no other person could have had the opportunity to take advantage of the COMPLAINANT, except the two accused who were the only two men in the house[22], ALCANTARA being a widower. APPELLANT's alibi that he ate supper and slept in Bernardo Medina's house is weak since that house only one kilometer away from ALCANTARA's house and it was not physically impossible for APPELLANT to have been at the scene of the crime at the time of its commission.

Since the forcible abduction was used as a means of committing the two rapes, the offenses constitute the complex crime of Forcible Abduction with Rape, without any mitigating circumstance since intoxication was not proven, nor any aggravating circumstance, although none of these would really alter the nature of the penalty to be imposed pursuant to Article 48 of the Revised Penal Code. Rape committed by two or more persons, or with a deadly weapon, is punished by reclusion perpetua to death, while forcible abduction is punished by reclusion temporal. The penalty for Rape, as the more serious offense, should be imposed in its maximum period, meaning that the greater penalty, which is death, should be imposed.[23] For lack of the necessary votes, however, the penalty should be reduced to reclusion perpetua. APPELLANT should suffer two (2) reclusion perpetuas, as

imposed by the Trial Court, considering that there was a conspiracy or community of design between the two accused to perpetrate the crimes charged.

The Trial Court, however, overlooked the imposition of civil liability on APPELLANT, which is mandated by Art. 345(1) of the Revised Penal Code, and which we hereby fix at P12,000.00.[24]

WHEREFORE, the judgment of the lower Court is hereby affirmed, with the modification that appellant, Mauro Medina, should indemnify Josefina Mangaoang in the amount of P12,000.00.

One-half of the costs against accused-appellant.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] Exhibits "4" & "3", Original Record.

[2] T.s.n., March 21, 1968, p. 6.

[3] See t.s.n., December 6, 1967, pp. 15-17; t.s.n., December 20, 1967, pp. 3, 35-37.

[4] T.s.n., December 20, 1967, pp. 38 & 39.

[5] T.s.n., March 9, 1968, pp. 16 & 17.

[6] T.s.n., December 20, 1967, p. 33.

[7] T.s.n., May 16, 1972, p. 8.

[8] pp. 666 & 667, Original Record.

[9] T.s.n., December 6, 1967, pp. 35, 47.

[10] *People vs. Zurbito*, 115 SCRA 677 (1982).

[11] T.s.n., August 25, 1976, pp. 7 & 8.

[12] T.s.n., December 6, 1967, p. 16.

[13] *People vs. Garcines*, 57 SCRA 653 (1974); *People vs. Cawili*, 65 SCRA 24 (1975).

[14] T.s.n., February 27, 1967, p. 25.

[15] T.s.n., December 6, 1967, p. 21.

[16] *People vs. Eguac*, 80 SCRA 665 (1977).

[17] *People vs. Daniel*, 86 SCRA 511 (1978).

[18] T.s.n., December 20, 1967, p. 34 or 608.

[19] T.s.n., January 6, 1972, pp. 6 & 7.

[20] T.s.n., December 20, 1967, pp. 3 & 33.

[21] *People vs. Palapal*, 114 SCRA 783 (1982); *People vs. Sambili*, 117 SCRA 312 (1982).

[22] T.s.n., December 20, 1967, pp. 28 & 29.

[23] Articles 48, 63(1), 335 and 342, Revised Penal Code; *People vs. Babasa*, 97 SCRA 672, 682 (1980); *People vs. Jose*, 37 SCRA 450, 475 & 476 (1971).

[24] *People vs. Peña*, 80 SCRA 589 (1977); *People vs. Albino*, 121 SCRA 278 (1983).

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