

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ENRIQUE NOVALES Y SORIANO, ALIAS “ERIC”; RAMON MEDINA Y ROBLES, ALIAS “MONET” AND CESAR SAMSON ALIAS “BONG”; “BOOTS” & “BO”; ACCUSED.

G.R. No. L-47400. January 19, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review of the decision of the Court of First Instance of Rizal, Branch XXXI, in Criminal Case No. Q-3582, entitled "People of the Philippines vs. Enrique Novales, et al.," the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered, finding all the accused guilty, beyond reasonable doubt, of the crime of rape, and, therefore, sentences each of them to suffer the extreme penalty of DEATH by electrocution, in the manner prescribed by law, with the accessories of the law, and to pay the costs. They should, jointly and severally, pay Emerita Bilgera the amount of P20,000.00 by way of moral damage.

"Let the records of this case be forwarded to the Honorable Supreme Court for automatic review. All the accused are immediately ordered committed to jail, the bonds posted for their temporary liberty cancelled, and shall, in the meantime, remain in confinement at the National Penitentiary pending review by the Supreme Court. They should remain in said place until further order from this Court.

"SO ORDERED.

"Quezon City, Philippines, this 21st day of September, 1977.

"AUGUSTO L. VALENCIA
Judge"[1]

In an amended complaint subscribed and sworn to by Emerita Bilgera y Nudo, complainant, on April 2, 1974 before an assistant city fiscal of Quezon City, Enrique Novales, Ramon Medina and Cesar Samson were charged with the crime of forcible abduction with rape allegedly committed as follows:

"That on or about the 24th day of November, 1973, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with lewd designs, did then and there, wilfully, unlawfully and feloniously, by means of force and intimidation abduct the undersigned, by then and there forcibly boarding her to a Mercedes Benz car after which she was brought to a house located at No. 16 Banahaw St., this City, where said accused by means of force and intimidation have carnal knowledge of the undersigned, all against her will and without the consent of the undersigned.

"CONTRARY TO LAW."[2]

Upon being arraigned, the three accused entered pleas of not guilty to the charge.

The three accused assigns the following errors:

"ASSIGNMENT OF ERRORS

I

"THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT.

II

"THE LOWER COURT ERRED IN FINDING THAT THE COMPLAINANT WAS FORCIBLY ABDUCTED.

III

"THE LOWER COURT ERRED IN RULING THAT THE COMPLAINANT WAS A VICTIM OF RAPE.

IV

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED."[3]

According to the trial court, "As disclosed by the evidence, only Emerita Bilgera, complaining witness, testified about the use of brute force by all the accused in having carnal knowledge of her."[4]

The record also shows that only the complaining witness testified on her alleged abduction at the parking space of the Araneta Coliseum in Cubao, Quezon City on November 24, 1973 between 6:30 and 7:00 o'clock in the evening. Apparently she neither resisted nor made any outcry when the complainant was allegedly pushed by the

accused Cesar Samson and the accused Ramon Medina inside a parked Mercedes Benz car despite the presence of many people in the place at that time.

According to the trial court, from the evidence adduced by the prosecution, the following facts appear duly established:

"At between 6:30 to 7:00 o'clock in the evening of November 24, 1973, Emerita Bilgera, complaining witness, was on her way home from work at the Riverside Corporation as seamstress (sewing T-shirts). Leaving the office at about 5:30, she proceeded to Marikina where her companion, Aurora Ramos, lived. She was then bound for Project 7 at No. 80-H Juan Luna Street. She went to Cubao alighting in front of Quezon Theater facing the Araneta Coliseum, then proceeded to the Farmer's Market in order to get a bus for home. On her way to the Farmer's Market and while passing by a parked Mercedes Benz car on a parking space at the Araneta Coliseum, a man poked at her something like a fork about half foot long, with two fingers on both ends. This fork was a little bigger than the ordinary fork. The same was poked at her neck by Cesar Samson (Accused whom she pointed at while testifying.) Then she was pushed inside the Mercedes Benz car which speed away. It was Cesar Samson and Monet (she also pointed to Ramon Medina, another accused, at that time) who pushed her inside while Eric, accused, (Enrique Novales) drove the car. She was seated at the back part of the car between Cesar Samson and Ramon Medina. The car proceeded to Green Hills and on the way Boots (Cesar Samson) continued on poking the fork at her, while Ramon Medina was holding two filled but opened bottles of beer. Boots asked her name and where she was studying. She answered him. Ramon Medina also asked her name and where she was studying. She answered she was no longer studying but working. On reaching Green Hills, Ramon Medina forced her to drink beer which she did by force for about three times. Then the car stopped in front of a house. Monet (Ramon Medina) alighted then went up the house, but returned immediately saying that Boots' mother was not in the house. The Mercedes Benz car sped away towards the Tropical Hut at Ortigas Avenue then proceeded to Cubao. On the way they turned left near Bonanza Restaurant then proceeded to Banahaw street. The car stopped and Monet went down at No. 16 Banahaw Street, Cubao. Upon Monet's return, he and Cesar Samson forced her to get off the car. She refused saying that she preferred to stay inside but Cesar Samson held her hand and led her to the apartment No. 16 while his companions were behind them. On reaching the apartment, she saw two houseboys seated inside. Cesar Samson asked them where the owner of the house was. The boys answered that the owner was not there yet. Shortly thereafter, a man arrived who turned out to be Jose Bello who went directly upstairs followed by Cesar Samson, while Ramon Medina and Enrique Novales were seated besides her downstairs. Cesar Samson went down followed by Jose Bello who went directly outside the apartment. Then Cesar Samson again went in front of her still holding the fork saying he was Boots Florentin son of a wealthy family who could do whatever he wished. She became afraid as he continued to poke the fork at her neck. He said, 'I want to make love with you'. Taken aback, she shed tears and even fell on her knees begging him not to do what he was thinking and just treat her like a sister to him, if ever he has a sister. Cesar Samson, nevertheless, pulled her hands towards the room of the apartment upstairs. While already on the stairs she held on to the baluster, but Cesar Samson continued on pulling her up. Then he pulled her blouse which was torn. Again, he poked the fork on her neck, then counted and forced her to undress in front of him. She refused but he got hold of her T-shirt and pulled her towards the bed and insisted to make her strip. She refused, but he removed her blouse, skirt, shorts and panty. While doing this, she kicked him. After kicking him, he got hold of her hair then pulled her towards the bed and begun to abuse her. She bit his neck when he started to kiss her. He became mad and slapped her then tried to hold her neck and strangled her. She pleaded, but Cesar Samson said he would not hurt her if she would give in to him. He raised her legs and went on top of her and tried to insert his organ into hers but she avoided it by pushing him. However, she did not succeed as she was already feeling weak and dizzy. Cesar Samson succeeded in inserting his organ inside her organ after resisting him and fighting him for about 20 to 30 minutes. Cesar Samson remained on top of her for about 10 minutes. It was the first time she experienced having sexual intercourse with a man. After Cesar Samson went out, Ramon Medina came in and went on top of her, asking

if she still recognized him. She did not say a word as she was weak. Monet (Ramon Medina) succeeded in having sexual intercourse with her she being weak. Monet remained on top of her for about 5 minutes then became mad and spat on her saying she did not respond (walang gana), then left the room. After Monet had left, Eric (Enrique Novales) entered while she was lying on the floor. He put her on bed. She pleaded to him not to do anything to her. He did not say anything, then went on top of her and did what the others had done by inserting his organ into hers. She pleaded to him. He remained on top of her for about 5 minutes, then went out. After a short while a man, half naked, entered the room. This man was Jose Bello. She was sitting on bed then. He begun to caress her by holding her arms. She pleaded with him not to do what the others did as she was not a bad girl. Mr. Bello stopped, picked up her clothings and gave them to her, telling her to dress up. She dressed up, while Mr. Bello went out. Her blouse was torn when it was pulled by Cesar Samson. The garter of her panty became loose because it was pulled by Cesar Samson. At the time that Cesar Samson was having sexual intercourse with her, the fork was on the bed and while she was resisting and fighting him, she tried to get it but he threatened her with it saying he would kill her. After dressing up, Mr. Bello told her to go out of the bedroom. She did and went downstairs. The three accused were there in front of the stairs with Mr. Bello. Cesar Samson held her hands and they went out followed by Ramon Medina and Enrique Novales. They boarded the Mercedes Benz car driven by Enrique Novales. At that time Cesar Samson and Ramon Medina were seated at the back seat. Cesar Samson was still holding the fork poked at her neck, while Ramon Medina was holding two bottles of beer which he was then drinking. She was told not to report the matter to anybody, otherwise, 'You will be killed'. It was Cesar Samson who gave this threat, as well as Ramon Medina.

"From Banahaw street, she was taken to Hong Ning Restaurant at Cubao. Cesar Samson alighted from the car and forced her to come out. They went inside the restaurant. They sat by the table and Cesar Samson ordered food, while she cried. After about 5 minutes, Cesar Samson went to the comfort room and when the waiter had placed the food on the table, she asked him where the man who ordered the food was. When she was already alone, she thought of escaping as she did not also see anymore Enrique Novales and Ramon Medina. She went out and ran towards the bus stop and proceeded home, leaving the food ordered by Cesar Samson behind. On reaching home, she went to the comfort room to change her clothes and mull over whether she would tell her parents or not what happened to her. She decided to keep it for herself."[5]

As regards the evidence for the defense, the trial court said:

"From the evidence adduced, thru the uniform testimony of the three accused, the following facts appear duly established; at about 6:00 o'clock in the evening of November 24, 1973 the accused Cesar Samson, Ramon Medina and Enrique Novales, together with Jaime Chua, Boots Afafe and Johnny Hernandez, were in front of the National Book Store at Cubao, Quezon City. They were then intending to see a movie. They parked their car there but were not able to see the movie. While in front of the store, Cesar Samson decided to buy shoes at the Farmer's Market, but was not able to buy as his money was not enough. He went down and on his way he saw some people in front of "Lady L" shoes store. He became curious, went near the place and there he saw maniquin fashion models. While there, he happened to look at the girl who happened to look at him also and both of them smiled. The girl said, 'Don't those girls look funny?' He said, 'Yes, the girls look crazy'. Then he asked her name. She said, 'Mely', and she asked him his name and he answered: 'Boots'. They exchanged pleasantries and in the course of their conversation she said that she was killing time. She revealed she was working, no longer studying. He asked her to join them. She asked how many companions he had. He answered '6'. She asked him where they would go and he said, 'Anywhere you want.' On the way to the National Book Store, he saw his wife, his sister and his son. Mely asked him who the boy was. He said he was his son. Mely said, 'No wonder he looks like you.' Then Mely asked where the boy's mother was and Cesar Samson pointed at her and introduced her to his wife who ignored her. Then his wife and his sister proceeded to cross the street. He followed them. He told his wife to wait for a while as he would just see his friends but

his wife said, 'Kahit huwag na', but he insisted that he go first to his friends in front of the National Book Store. On reaching the place, he introduced Mely to his friends. Then he asked Monet or Ramon Medina to talk to Mely as he was going to tell Jaime and Boots that he was going home. The latter said, 'Why?' He said that he saw his wife who was mad. Then Jaime said, 'Huwag ka nang umuwi, wala naman tayong gagawing masasama'. So, he decided to stay with the group. They were seven, including the complainant. He asked, 'Saan tayo mamamasyal?' He asked Mely where 'are we going?' and Mely answered, 'Kahit saan ninyo gusto.' Monet suggested that they go to his cousin's place. Then Monet, Eric, Mely and he rode in the Mercedes Benz car owned by Enrique Novales, while Jaime Hernandez decided not to go anymore with them. They proceeded to Loyola Heights. He opened the door for Mely to enter then sat with her. They did not force her to enter the car. They just invited her. On reaching Monet's cousin's house they were told by the maid that Vincent was not there, so they proceeded to where Vincent was just about four blocks away. On reaching the place, Vincent and his cousin came out and he told them they had a girl with them and were looking for a place where to stay. He introduced Mely to Vincent. Mely just smiled. They were told that Vincent's place was not available and that Vincent cannot join them. They parted and boarded the car, then he asked Mely if she drinks and she said, 'Yes'. She even added that She was in the mood for drinking, so he opened the door of the car and bought beer in a store in front of Ateneo at Loyola Heights, after which they decided to go to Greenhills. On the way they drunk beer. At Greenhills, they went to the house of Sunny Florentin, but was informed that the latter was not there. It was Monet who went out of the car. They talked things over and decided to go to Charito Bello's place at Banahaw Street. Upon entering Greenhills, they were stopped by the security guard who asked them where they were going. They told the guard they were going to Sunny Florentin's place. At Banahaw Street, they went to Bello's place but on the way Mely asked them to buy chippy. On reaching Banahaw Street, they parked the car in front of the gate of Bello's place, then got out and opened the car's door for Mely to come out. Bello's place was an apartment. They knocked at the door and a boy answered. He inquired if Charito was there but was told that he was not. Eric, Monet and Mely were still behind him. On knowing that Charito Bello was not there, they agreed to wait. They asked the boy to let them in. While inside the apartment they talked and asked Mely if she wanted anything. She said, 'Nothing'. He asked Mely, if normally, she hangs around in the Farmer's Market and she said, 'Once in a while'. Later on, Gene Bello, brother of Charito came. He introduced Mely to him who asked, 'Is she your girl friend?' and he answered, 'Yes', then Mely smiled. Gene went up and Monet followed him. After about three minutes they went down. After a while he told Eric, Monet and Gene to go out of the apartment, then he and Mely remained at the groundfloor. After his companions had left the apartment, he and Mely started talking. She asked him if there was any telephone directory as she said she wanted to call someone who was expecting her to attend a party. She called up but the one she was calling was not there. Then she started eating the chippy crackers. He told her, 'Maybe you know why you are here for.' She said, 'Yes', but what do you want to happen, 'just like this?' He misinterpreted her, he thought she wanted to court her first but after about 1 to 15 minutes of talking he asked her, 'Come on lets go up.' She said, 'Ganon na lang ba?' He asked her, 'Let's go up and continue talking.' She stood up then they went up the second floor of the apartment, then turned to the right towards the room. While inside the room, she sat on the bed then he unbuttoned his shirt and sat also then put his arms around her shoulder. She took it off saying, 'Ano ba talaga ang gusto mo?' She asked, 'Anong hirap mong umintindi.' He said, 'Ano ba talaga ang gusto mo?' She said, 'Magkano ba talaga ang kaya mo?' He asked, 'What is the price?' She said, 'How much could you afford?' He said '50' and she smiled. He said again, '75' and she swung her head from left to right. He raised it up and said, '100'. She said '200'. He smiled. He said 'Dami dami mong sinabi doon din pala tayo mauwi.' She started taking off her blouse and unlocked her bra, pulled down her skirt, then lay down. He laid down beside her on bed. She was only wearing her panty, then they started petting each other. After a couple of minutes, she took off her panty, then he took off his pants and polo shirt. Then, they made love. He went on top of her, then started putting love marks on his neck. They did it for about 3 to 4 minutes. Then he sat on bed and when he started to go down to get cigarettes, she said 'Tay ka muna, saan ang bayad'. He said, 'You can get it from my companions.' He went down and saw Ramon Medina, Enrique Novales and Gene Bello. Monet said, 'Ano pare, okey ba?' and he said, 'Yes, who will be next?' Monet said, 'Ako na ang susunod', then, he pulled Monet and asked, 'May pera ba tayo?', then Eric Novales said, 'Magkano ba ang napagkasunduan ninyo?' He answered

'Dalawang daan, package deal.' Eric said, 'Okey lang pare, may pera ako', then Monet went up while he remained downstairs. After about 8 to 12 minutes, Monet went down and said, 'Ikaw naman Eric'. Eric asked, 'Is she alright?' Monet said, 'Ang bajo niya.' Then, Eric went up and after 10 to 12 minutes, he went down. Then Gene Bello asked them, 'Puede pa ako diyan, pare?' He said, 'If you want you can go upstairs.' Then Gene went upstairs for about 15 minutes and went down with the girl. Eric told him the girl does not want to accept P200.00 but P600.00. He said that he understood all the while that the P200.00 was for the three of them. When she was downstairs already, Mely said, 'Uuwi na ba tayo?', he said, 'Yes'. She said, 'Tay ka muna, I will go to the comfort room'. While inside the comfort room, he, Eric and Ramon Medina were talking how they could persuade her to accept P200.00 as she appeared irritated. He told Eric, who was holding the money, to give it to him and he would persuade her to accept it. After going out of the comfort room, she said, 'Come on let us go home', and when about to go out, the brother of Gene, Charito, came. He introduced Mely to Charito, then he said, 'Pare, pa alis na kami ihahatid na namin si Mely'. They proceeded to the car, while Charito and Gene were left behind. While walking towards the car, Mely was behind him. He opened the door of the Mercedes Benz car for Mely to enter and after her he followed then the car proceeded to Cubao Shopping area and stopped at the back door of Hong Ning restaurant facing Nation Theatre. He asked Mely Bilgera if she wants to eat and she said 'Yes'. When about to go down the car, she asked, 'What about Eric and Monet, are they not coming too?' He said, 'If they are still coming the money may not be enough to pay for the food and what they were supposed to pay her' so he and Mely only went down, proceeded to Hong Ning Restaurant while Enrique Novales and Ramon Medina just remained in the car and waited. He and Mely sat down and he told her, 'Kunin mo na ang perang ito dahil wala na kaming mailalabas', but she did not accept saying that she would not settle for less. He was giving P200.00 while she was asking for P600.00 at the rate of P200.00 each. She said this was what we agreed, but he said that was not what he understood. So, he said 'I really cannot do anything, Mely, that only was what we could produce as of now'. She said, 'Baka magsisi kayo'. Sensing that she would not really accept, he thought of getting away. He excused himself saying that he would go to the comfort room and since the waiter came, he told her to order the food, then he left and proceeded to the comfort room, then went out of the restaurant and saw the car of Eric. He boarded the car and told Eric the girl would not accept the money. Eric said, 'We might as well go home', then he gave him back the money. They went home. He alighted in front of his house, while Eric and Ramon Medina remained in the car. On entering the house he had an argument with his wife about Mely whom she saw with him at Cubao. He denied poking a fork at her saying he had no fork then."[6]

In analyzing the case, the trial court opined that: "The important question to be resolved is: whether or not the carnal interview was done with the use of force and intimidation, as claimed by the prosecution, or, with the victim's consent for a fee, as claimed by the defense."[7]

In resolving the question posed by the trial court it is important to determine whether or not the complaining witness was abducted forcibly. Anent this vital issue, the trial court observed: "The conflict in the evidence refers to the testimony of the complaining witness to the effect that she was made to ride in a Mercedes Benz by means of threats and bodily harm perpetrated by Cesar Samson who was all the time holding an unusually large fork poked at her neck."[8]

The trial court realized that "... in so far as the claim of threats is concerned, the same is dependent on which side appears to be credible."[9]

The trial court convicted the three accused of rape on the finding that "... the prosecution, thru the uncorroborated testimony of the offended girl, has shown that from the moment she was made to board a Mercedes Benz car in front of the National Book Store at the Araneta Coliseum up to the time she was brought inside a room of an apartment at Banahaw Street, Quezon City, Cesar Samson was all the time beside her holding the large fork, at times poking it at her neck."[10]

The trial court said that it "... has carefully observed the conduct and demeanor of the complaining witness while

testifying and has reached the conclusion that there appears no reason to doubt her version of the incident." [11]

It is thus seen that the trial court sentenced the three accused to "death by electrocution" only on the basis of the uncorroborated testimony of the complainant, Emerita Bilgera y Nudo.

It is, therefore, necessary to examine carefully the testimony of the complainant in order to determine whether the trial court was correct in giving credence to her version of the incident.

Anent the alleged forcibly abduction, the complainant declared on cross-examination thus:

"ATTY. BAYHON:

Now, Miss Bilgera, at the time when Cesar Samson pointed the fork at your neck as per your demonstration here last time, where was Enrique Novales?

A : He was inside the car.

Q : He was inside the car behind the wheel, is that right?

A : Yes, sir.

Q : What about Ramon Medina, was he also inside the car?

A : Yes, sir.

Q : After Cesar Samson poked the fork at your neck... I will withdraw the question. Did the fork touch the skin of your neck?

A : Yes, sir.

Q : Did you feel any pain?

A : None, sir.

Q : For how long did Cesar Samson poke that fork at your neck before you step inside the car?

A : It did not take long because I was immediately pushed towards the car.

Q : Who pushed you towards the car?

A : Cesar Samson.

Q : With what hand was he using in holding the fork?

A : I don't remember whether it was left or right hand that he used.

Q : You don't also remember with what hand did he use in pushing you inside the car?

A : Yes, sir.

Q : But do you remember whether he used two hands in pushing you inside the car?

A : I don't remember, sir.

Q : But of course you remember that when you were pushed inside the car by Cesar Samson he removed already the fork being poked at your neck, is that right?

A : Not yet, sir.

Q : From your demonstration here last time, you could have easily run and asked for help at the time when Cesar Samson poked the fork at your neck, will you please tell this Honorable Court why did you not make any attempt to run away from Cesar Samson and ask for help from the people around?

A : I was not able to run because it was not long after he poked the fork on my neck I was pushed by him inside the car.

Q : When you said you were pushed inside the car, did I understand from you that you were forcibly made to get inside the car?

A : Yes, sir.

Q : When you were pushed inside the car, did not your head or any part of your body bump on the door of the car?

A : No, sir.

Q : You did not make any attempt to resist from the pushing of Cesar Samson so that you can not be brought inside the car?

A : I was not able to do so because I was afraid and surprised.

Q : At that time these three accused were all strangers to you, is that right?

A : Yes, sir.

Q : At that time when you were pushed inside the car, was the engine of the car already on or not?

A : Yes, sir.

Q : You were seated where? Between Cesar Samson and Ramon Medina at the back, is that right?

A : Yes, sir.

Q : You mean to say Enrique Novales was the only one seated in front?

A : Yes, sir.

Q : Of course Enrique Novales maneuvered the car to get out from the parking space, do you remember that?

A : Yes, sir.

Q : Now during that period... I withdraw the question. How long did it take for Enrique Novales to get out from that parking space?

A : For a short time only, sir.

Q : Did you not make any attempt when you were inside the car to attract the people within the vicinity of the parking space of Araneta Coliseum?

A : No, sir.

Q : Why did you not?

A : I was taken a back and I was afraid because of that poking incident that happened.

Q : When you were inside the car and at the time when Enrique Novales was trying to maneuver the car to get out from the parking space, was the fork still poking at your neck?

A : Yes, sir.

Q : From that parking space at the Araneta Coliseum, is it not a fact, that from there, you proceeded to Katipunan Road at Loyola Heights and there, upon your request, one of the accused bought 2 bottles of beer so that the four of you can drink one half (1/2) of it?

A : No, sir.

Q : Are you sure of your answer as NO?

A : Yes, sir.

"COURT

But the fact is that, from Araneta Coliseum parking space you were taken to Katipunan Road, is it not?

A : I did not know what place is that they brought me.

"COURT

Go ahead proceed.

"ATTY. BAYHON:

Do you know where Ateneo University is?

A Yes, sir.

Q : Do you remember if it was somewhere in that area where you went?

A : No, sir.

Q : Now, is it not a fact that you went to Greenhills, you remember that?

A : Yes, sir. I was brought there.

Q : And you will remember that before going to Greenhills you passed somewhere else coming from the parking space, is that right?

A: I don't remember.

Q : Did you notice when you boarded the car at the Araneta Coliseum parking space whether there were already bottles of beer inside the car?

A : Yes, sir.

Q : Now, on the way to Greenhills, is it not a fact, that from your statement, the accused here asked you your name and whether you were studying, is that right?

A : Yes, sir.

Q : You also told them that you were already working, is that right?

A : Yes, sir.

Q : When they asked you your name, what did you answer?

A : My name is EMY.

Q : And that is really your nickname Emy, is that right?

A : Yes, sir.

Q : Why did you give them your nickname and not your full name as Emerita Bilgera when they were all strangers to you?

A : It is because I don't really know them that is why I gave them not my full name but my nickname.

Q : In other words when you were riding in the car from the parking space to the Greenhills, you exchanged pleasant things like your name, your nickname, your age?

A : No, sir.

Q : Do you remember if there were other conversation between you and the accused inside the car on your way to the Greenhills?

A : Nothing more, sir.

Q : From the Araneta Coliseum parking space and on the way to Greenhills, did you not make any attempt to invite the attention of the cars on the road that you were abducted inside the car?

A : I was not able to do so.

Q : You were not able to do so because Cesar Samson still poking the fork in your neck?

A : Yes, sir.

Q : Do I understand from you that all throughout the way from the parking space to the Greenhills, Cesar Samson poking or continue poking rather the fork on your neck?

A : Yes, sir.

Q : When you entered the Greenhills compound there is a security guard there, did you not make any action or move to invite the attention of the security guard for what is happening inside the car?

A : When the car passed by the place where the security guard was, the car was running in a fast way.

Q : Or at the high speed. Do we understand from you that Enrique Novales was driving the car, as he approached the security guard, he sped the car towards inside the compound of the Greenhills?

A : Yes, sir.

Q : He did not stop by the security guard, is it not?

A : Yes, sir.

Q : The car where you were riding is an old Mercedes Benz car if you noticed it?

A : Old.

Q : It was not air conditioned, is that right?

A : I think so.

Q : And the windows were open is that right?

A : The window near the driver is open.

Q : Did you notice whether the security guard blow his whistle or run after the car that speed inside the compound without stopping at the check point?

A : He did not."[12]

The foregoing testimony is not only unnatural but shows that the complainant was not laboring under any force or intimidation from the time she boarded the Mercedes Benz car at the parking space of the Araneta Coliseum until she was brought to Banahaw St., Quezon City.

The complainant testified on direct examination that she was pushed inside the Mercedes Benz car by Cesar Samson and Ramon Medina alias Monet.[13] On cross-examination she declared that only Cesar Samson pushed her inside the car because both Enrique Novales and Ramon Medina were already inside the car.[14]

It is indeed strange that if the three accused wanted to forcibly abduct the complainant, only Cesar Samson was assigned the task of forcing said complainant to board the car while Enrique Novales and Ramon Medina complacently waited inside. The situation is more consistent with the version of the defense that Cesar Samson had propositioned the complainant who agreed. Thus it was not necessary for Enrique Novales and Ramon Medina to help Cesar Samson make the complainant board the Mercedes Benz car.

That the complainant boarded the Mercedes Benz car of her own free will is corroborated by her testimony that while inside the car on the way to Green-hills, in answer to questions of the accused, she gave her nickname, Emy, and said that she was no longer studying but was already working.[15]

A woman who had been forced to board a car with a fork poked to her neck or head and in the act of being forcibly abducted will not give her nickname and answer questions on whether she was studying or not.

The conversation testified to by the complainant while inside the car is consistent with the version of the accused that she was not abducted.

It is a fact that at the time and place where the complainant was abducted there were many persons present. Security guards and policemen were within shouting distance. The explanation of the complainant that she neither resisted nor made an outcry is incredible. On cross-examination, she testified that it was only Cesar Samson who forced her to board the Mercedes Benz car. She could have easily made a run for it and cried out loud for help. That she did not shows that she was not abducted.

The testimony of the complainant Emerita Bilgera is not only incredible but is replete with glaring inconsistencies and contradictions. She has a tendency to exaggerate and prevaricate. According to her, she was abducted by the defendants while she was passing the parking space in front of the Araneta Coliseum. Cesar Samson poked a fork at her neck and thereafter she was pushed inside the car, on the back seat, by Samson and Medina. The car was then driven out very fast.[16]

It is surprising that complainant never made an outcry, nor struggled nor attempted to run away, nor asked help from the people around, nor attracted the attention of the people in the vicinity. Prosecution witness Benjamin Fortuna testified that the parking space in question is between the National Book Store and the Quezon Theatre and that the street fronting Quezon Theatre is General Roxas Street; that facing Quezon Theatre, the Farmer's Market is on the left side and on that side is General Araneta Street; that on November 24, 1973, the place was

heavily crowded, especially at 6:30 in the evening because it was Christmas Season; that General Roxas and General Araneta Streets are the turning point of jeepneys plying the Marikina and Murphy routes; that traffic was congested because of the jingle of the COD Department Store; that the Task Force of the Quezon City Police Department was fielded at the area because of rampant pickpocketers; that before one can drive out a parked vehicle therefrom, it takes time because one has to inch his way out, more so during Christmas on account of people shopping in the area; that from his experience, he believes that the slightest commotion that someone would make there would be readily noticed by the people.[17] He also testified that the National Book Store has security guards outside and inside the store who are maintained on a round-the-clock, 24 hour basis everyday; that beside the National Book Store is the headquarters of the Security Guard Department of the Araneta Coliseum; that the place where the alleged abduction took place is very near the Security Department of the Araneta Coliseum; that the post of the security guards of the National Book Store is in fact within viewing distance, and the slightest outcry from that distance will be heard by any of the security guards.[18]

Complainant Bilgera tried to cure this defect in her testimony by offering the lame explanation that she was threatened by a modified fork which was continuously poked upon her, and that she was forced by the defendants to take 2 white pills which made her dizzy. This explanation is not credible because she was not consistent as to what kind of weapon was used to threaten her. Evidence on record shows that in court she stated it was a modified fork.[19] To CIS doctor Desiderio Moraleda she said it was a knife.[20] Before the investigators of the Quezon City Police Department, she said it was a bladed weapon.[21]

Anent these inconsistencies, the Solicitor General surmised that the complainant must have been agitated and that the reports must have failed to faithfully indicate therein the information she gave. If the claim of the prosecution that the fork was ever present is true, then the type of instrument used to threaten her with would have been uppermost in her mind, and no amount of agitation would have made her forget. As regards the speculation that the reports must have failed to faithfully indicate the information she gave, suffice it to say that public officers are presumed to have performed their duties regularly.

It is also hard to believe that the defendants forced her to take two (2) pills. Her being forced to take pills is an important evidence of the prosecution considering that she made no effort to shout, nor resist nor attract attention at the time of her alleged abduction. Yet, the prosecution Fiscal, Cornelio Wasan, did not even try to elicit information about the alleged taking of the pills. She brought it out only during cross-examination when confronted with the fact that she never mentioned it to Dr. Moraleda who could have examined her for traces thereof.

The complainant did not ask the security guard at the Greenhills compound for help. Her explanation that Enrique Novales did not stop but drove the car at high speed by the security guard who did not even blow his whistle is highly incredible.[22]

The allegation of Bilgera that she was brought to the apartment in Banahaw Street against her will was categorically contradicted by Jose Bello, another prosecution witness, who testified in the following manner:[23]

"Q : You said that they were all seated, each and everyone of them is scattered in the sala?

A : Yes, sir.

Q : I would say that, as you enter the door you observed that they were talking to each other, the four of them?

A : Yes, sir.

Q : And, of course, the three being gentlemen and being a lady, they stood up when you came, nod their heads, to show sign of respect?

A : They were seated. They do not bother to stand, sir.

Q : And as you arrived, it was only Bong Samson who talked to you?

A : Yes, sir.

Q : He greeted you?

A : Yes, sir.

Q : What did he tell you?

A : 'This is my girl friend Melinda.'

Q : Melinda was standing, or sitting?

A : Sitting also, sir.

Q: And, of course, you being an acquaintance and courteous, when Bong Samson introduced to you Melinda as his girl friend you, of course, show sign of respect, say of greeting her or nodding your head is that correct?

A : Yes, sir.

Q : And she politely showed her greetings to you then by nodding her head also?

A : Yes, sir.

Q : As a matter of fact, she did not tell you that, No, I am not Melinda. 'I am Emerita Bilgera.' She did not tell you that way?

A : No, sir.

Q : And, as a matter of fact, you have known her as Melinda and it is only here in the courtroom that you have known her name as Emerita Bilgera, is that correct?

A : Yes, sir."

It is odd that the complainant did not tell Jose Bello that she was forcibly taken to the apartment.

The allegation of the complainant that she was forcibly pulled up the stairs of the apartment was, also contradicted by Jose Bello when he declared that Bilgera and Samson went upstairs with Samson holding the hands of the former. For clarification, the Court asked if the complainant was resisting, and Bello answered that she was not.[24]

At 16 Banahaw Street, the place where complainant was allegedly raped the complainant again had another opportunity to ask for help. The apartment was situated inside a compound. At the gate of the compound was a sari-sari store that was still opened at that time and attended to by a woman. After the gate is a two-storey house, the first floor of which, including the yard or patio thereof is a factory where four people were still working at the time.[25] Inside the apartment were two houseboys. A few minutes after the defendants and the complainant arrived, Jose Bello, the brother of the owner came in.[26] All of these people could have helped her. Even without her shouting, the mere sight of her struggling to be free and resisting the defendant-appellants would have been enough to attract the woman at the store, the four factory workers, the two houseboys or Jose Bello to suspect and to intervene. It is impossible to believe that the people just mentioned would have tolerated a crime to be committed in their presence and inside the compound.

From Banahaw Street, the defendants and the complainant Bilgera went to Hong Ning restaurant. Only Bilgera and Samson entered the restaurant. Inside, Bilgera had the chance again to seek the aid of the other customers, the waiters and employees of the restaurant. Instead, she allowed Samson to direct her to a table without hesitation and willingly waited for the food that they had ordered. When Samson excused himself to go to the comfort room, she did not escape. Contrary to the act of a woman recently abused, she waited for Samson to come back. She even asked a waiter to look for Samson at the comfort room. Only when the waiter informed her that there was no one inside the comfort room that she left the restaurant.

The complainant was also caught in a series of contradictions when asked about her movements on the night of Saturday, November 24, 1973 and on Sunday, November 25, 1973. First, she recounted that on Saturday night, after the alleged rape, she went home. She was not able to sleep but was only able to take a short nap, hence she woke up early. As soon as she woke up, she went to the house of her childhood friend in order to relate her story. She stayed there for a while.[27] Her second version was that she went to fetch Rosario and then they went home together to the house of Rosario Musngi. She slept and spent the night in the house of Rosario Musngi[28] and

stayed there the whole day of Sunday.[29] It turned out later that on Sunday, November 25, 1973, she went to work overtime at the Riverside Mills Corporation.[30]

In *People vs. Antonio Quiazon*[31] where the issues are similar to the issues in the instant case, the Supreme Court ruled:

"The accusation that appellant committed abduction with rape is thus devoid of any factual foundation. The teaching of applicable decisions is definitely to the contrary. Only by a deviation from what has been so long and so consistently held by this Court can the lower court decision finding appellant guilty be sustained. There would be no justification for such a move. It would be an affront to reason. It can truly be said that words have lost their meaning if the facts duly established can be characterized as constituting forcible abduction. The element of consent was always present. With complainant's complaisant attitude, not to say enthusiastic cooperation; coercion was definitely unnecessary. So the leading cases starting from *United States v. Santiago*, with the illustrious Justice Moreland as ponente, to *People v. Ilagan* would clearly indicate. The quantum of proof required to justify a conviction for this particular offense has not been met. As was pointed out by Justice Concepcion in *Ilagan*: 'Crimes against chastity by their very nature usually involve only two persons - the complainant and the offender. Seldom, if ever, is there an eyewitness to the commission of the offense. As a consequence, conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony. It is therefore for a good reason that courts examine with the greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity in the light of human nature and experience. Tested by these standards, we find valid reasons to reject Benilda Lejano's claim of having been forcibly abducted and raped.'[32]

The Supreme Court reiterated the foregoing doctrine in *People vs. Lopez* where it said:

"It is true that the testimony of a single witness may be sufficient to produce conviction if it appears to be trustworthy and reliable. In rape cases, the complainant's testimony is subject to a thorough scrutiny. The reason for this is that crimes against chastity, by their very nature, usually involve only two persons ? the complainant and the offender. As a consequence, conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony. Hence, the courts examine with the greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity in the light of human nature and experience."[33]

There are other inconsistencies in the testimony of the complainant which render her testimony more incredible.

In view of the foregoing, there are valid reasons to reject the testimony of Emerita Bilgera that the defendants forcibly abducted and raped her.

WHEREFORE, the decision under automatic review in Criminal Case No. Q-3582, entitled, "*People of the Philippines, Plaintiff-Appellee versus Enrique Novales, Ramon Medina, Cesar Samson, Defendants-Appellants*," is hereby reversed and the defendants Enrique Novales, Ramon Medina and Cesar Samson are ACQUITTED of the crime charged in the amended complaint, with costs de officio.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Aquino, J., in the result.

Melencio-Herrera, J., see dissenting opinion.

- [1] Rollo, p. 34.
- [2] Rollo, p. 5.
- [3] Brief for the defendants-appellants, pp. 11-12, Rollo, p. 138.
- [4] Ibid., p. 168.
- [5] Rollo, pp. 8-14.
- [6] Rollo, pp. 14-22.
- [7] Rollo, p. 22.
- [8] Rollo, p. 25.
- [9] Rollo, p. 30.
- [10] Rollo, p. 30.
- [11] Ibid.
- [12] T.S.N., pp. 3-20, September 23, 1974.
- [13] T.S.N., pp. 19-20, July 16, 1974.
- [14] T.S.N., pp. 3-4, September 23, 1974.
- [15] T.S.N., pp. 14-15, Ibid.
- [16] T.S.N., pp. 15-22, July 16, 1974.
- [17] T.S.N., pp. 44-48, May 8, 1974.
- [18] Ibid., pp. 63-74.
- [19] T.S.N., pp. 16-17, July 16, 1974.
- [20] T.S.N., p. 27, April 22, 1974.
- [21] T.S.N., p. 20, July 9, 1975.
- [22] T.S.N., pp. 17-18, Ibid.
- [23] T.S.N., pp. 44-47, May 15, 1974.
- [24] Ibid., pp. 50-51.
- [25] T.S.N., pp. 38, 41-42, May 15, 1974.
- [26] T.S.N., p. 11, October 23, 1974.
- [27] Ibid., pp. 41-43.
- [28] T.S.N., pp. 3, 6-7, December 16, 1974.
- [29] Ibid., p. 14.

[30] Ibid., pp. 16-19.

[31] 78 SCRA 513.

[32] People vs. Quiazon, 78 SCRA 513, 522-523.

[33] 87 SCRA 462, 470.

DISSENTING OPINION

MELENCIO-HERRERA, J.:

I am constrained to dissent.

The allegation of the accused that complainant consented to carnal relations with them for a fee, thereby implying that she was an unchaste woman, is negated by the following circumstances:

1. After accused Ramon Medina's turn with complainant, he got mad and spat at her saying "walang gana." [1]
2. Complainant declared that after Novales left the room, Jose Bello, who would have been the fourth man to ravish her, entered the room, half naked. She pleaded with him not to touch her. He relented and told her to dress up. [2]

This was corroborated by Jose Bello himself, brother of Charito Bello, a friend of the accused, who testified for the prosecution and declared among other things that when he came home between 9:00 and 10:00 P.M. on November 24, 1973, he found the three accused and complainant in the apartment he is renting at Banahaw St., Cubao; that he went out to inspect his pick-up and when he came back fifty (50) minutes later, he suspected something amiss because he heard the complainant crying upstairs; and that when he went up, he found complainant naked, sitting on the bed, crying. [3]

3) Dr. Desiderio Moraleda of the Medico Legal Office of the PC Crime Laboratory, who examined complainant on November 26, 1973, or two days after the incident, testified that the deep-healed laceration at 5:00 and 9:00 o'clock found on complainant, was a newly healed laceration, the earliest period of healing being three days, [4] thereby indicating that complainant was a virgin and was not a woman of loose morals before November 24, 1973, laceration of the hymen being recent.

4) The conduct of a woman immediately following the alleged assault is of utmost importance as tending to establish the truth or falsity of the charge. [5] In this case, complainant lost no time in confiding to her bosom friend, Rosario Musngi, her harrowing experience, something complainant would not have done if she had, in fact, sold herself for a fee, even if the fee fell allegedly short of what had been agreed upon. In turn, Rosario told her father, Antonio Musngi about it.

Further, the incident was brought to the attention of the authorities the day after its occurrence. Antonio Musngi declared that complainant stayed in their house in the evening of November 24, 1973; that the following morning, complainant confided to him her humiliating experience the night before; that she was haggard and appeared not to have slept at all; that he sent for her parents to inform them about the incident; and that all together they went to see the place where complainant was taken, after which they proceeded to Camp Crame to report. [6]

It may be pointed out also that the same Rosario Musngi, complainant's close friend, was killed at the Bermuda Motel in Mandaluyong on July 10, 1974. [7] The accused, Cesar Samson, was the principal suspect in that case,

although there was no evidence regarding the final outcome.

5) The circumstance that the place from where complainant was abducted was a beehive of activity so that all complainant would have had to do was to shout for help, does not necessarily follow considering that the accused, Cesar Samson, had poked at her neck something that felt like a "fork." Thereafter, when complainant was in the car driven by the accused, Eric Novales, she was seated all the time between the two accused, Cesar Samson and Ramon Medina, at the back seat of the car while they went from Cubao to Greenhills, then to Banahaw Street, Cubao. She was also made to take two white pills and to drink beer while in the car.[8] Aside from being fearful of her life, she was probably feeling dizzy. This would also explain her inability to shout for help as they went past the guard in Greenhills.

6) The offer of settlement of the case by appellants' parents in the amount of P400.00 each, as testified to by Aguido Bilgera, complainant's father,[9] may be considered an implied admission of guilt.[10] Complainant's parents, the accused's parents, their respective lawyers, all met at Max's Restaurant upon invitation of the accused's parents. Attorney William Baylon admitted that he, as Novales' and Medina's lawyer, Atty. Melchor (Samson's counsel), Atty. Dorojo (Complainant's former counsel), Mrs. Novales and Mrs. Samson all met with complainant's parents at Max's Restaurant, but denied that there was any offer of settlement. And yet, what would have been the purpose of the meeting if it were not in connection with an offer to compromise?

The foregoing circumstances not only point tellingly to the rape committed by the accused but also lend strong credence to the charge of forcible abduction. I vote, therefore, to affirm the judgment of conviction of the trial Court.

[1] t.s.n., July 22, 1974, p. 27.

[2] *ibid.*, pp. 31-33

[3] t.s.n., May 15, 1974, pp. 17, 18, 21-23.

[4] t.s.n., April 22, 1974, p. 41.

[5] *U.S. vs. Flores*, 26 Phil. 262 (1913).

[6] t.s.n., March 19, 1975, pp. 19, 20, 25, 26, 30, 32-35.

[7] t.s.n., March 19, 1975, p. 5.

[8] Exh. C, p. 155 - Record of Crim. Case No. 3582.

[9] t.s.n., July 29, 1975, p. 39.

[10] Section 24, Rule 130.

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