

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERTO SIMBRA AND SERGIO TOLIBAS, ACCUSED, SERGIO TOLIBAS, ACCUSED-APPELLANT.

G.R. No. L-39401. September 30, 1982

Ponente: RELOVA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/59c1c1a7cc58/>

RELOVA, J.:

Charged with rape committed according to the information, as follows:

"That in or about the evening of May 24, 1972, in Langihan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring, confederating together and mutually, helping one another by means of force, threats and intimidation, did then and there willfully, and forcibly feloniously and successively have carnal knowledge with the complainant, one Gresilda Gonzales, a girl of 16 years old."

Sergio Tolibas was found guilty and sentenced "to suffer the penalty of reclusion perpetua, with all the accessories of the law; to indemnify the offended party, Gresilda Gonzales, in the sum of TWELVE THOUSAND PESOS (P12 ,000.00), without subsidiary imprisonment in case of insolvency; and to pay the costs. In the service of his sentence, the accused shall be credited with the period of his preventive detention conformably to Article 29 of the Revised Penal Code, as amended by Rep. Act. 6127, it appearing that on 6 June 1972 he signed a voluntary agreement to abide by the same disciplinary rules imposed upon convicted prisoners."

Quoting from appellee's brief, the crime was committed as follows:

"At about 7:30 p.m. on May 24, 1972, complainant Gresilda Gonzales left her house in Langihan, Butuan City, to fetch water from the artesian well located in the public market. She carried a pail and a hose. About 36 meters away from her house, along an unlighted portion of the road leading to the public market, appellant and Berto (Roberto) Simbra, strongly smelling of 'tuba', accosted her. Berto Simbra grabbed her by the arms. She struck him with the hose she was holding and shouted for help. Appellant quickly covered her mouth with a handkerchief. Helping each other, appellant and Berto Simbra dragged her to the 'serin' (as spelled in appellant's Brief; also spelled 'siren' and 'seren' in the transcript of stenographic notes). The 'serin' is a pile of sawdust surrounded by breast-high grasses and big trees, near the public market. (pp. 48-53. 68-69. 71-75, November 22, 1972; pp. 6, 9-10, TSN, February 6, 1973)

"At the 'serin', Berto Simbra threw complainant to the ground and, with appellant holding her arms and covering her mouth, forcibly removed the men's pants and panties that she was wearing. Then he brought out his penis and went on top of her. She kicked and struggled vigorously but he nevertheless succeeded in inserting his penis into her vagina and having carnal knowledge of her. She felt pain and wanted to shout but she could not do so because appellant covered her mouth. After a while, Berto Simbra stood up and went to urinate. When he came back, he had another sexual intercourse with her. (pp. 53-56, 75-81, TSN, November 22, 1972.

"With Berto Simbra also holding complainant, appellant also had carnal knowledge of her although she

resisted vigorously and kicked him. He was able to do so three times. (pp. 56-57, 80-82, TSN, November 22, 1972)

"When Berto Simbra and appellant were finished, complainant noticed a wet substance and plenty of blood in her genitals. (pp. 4-5, TSN, December 11, 1972)

"Before leaving the 'serin', appellant and Berto Simbra instructed complainant not to reveal what happened on pain of being killed. Appellant emphasized the threat by pretending to choke her. (p. 57, TSN, November 22, 1972; p. 12, TSN, December 11, 1972)

" Berto Simbra and appellant brought complainant to the house of Ernanita Jusay, sister of appellant, which was about 250 meters distant from the 'serin'. Although her house was in the same community, complainant told Ernanita Jusay that she came from Buenavista because that was the instruction of appellant and Berto Simbra. Complainant stayed in the house of Ernanita Jusay until 9:00 p.m. of May 25, 1972 when her aunt, Alicia Pepito, who lived nearby, and Langihan policeman Domingo Macuno, Jr. fetched her. She could not leave until she was fetched because appellant and Berto Simbra were guarding her. (pp. 58-60, 81-86, TSN, November 22, 1972)

"Complainant was brought to Alicia Pepito's house, then to her house and finally to the police station where she was interrogated. She and her mother gave sworn statements (Exhi-bits C and 2) to the police. (pp. 19-22, 60-62, 86, TSN, November 22, 1972; pp. 6-7, TSN, December 11, 1972)

"Dr. Angelus R. Tupaz, Medico-Legal Officer of the Butuan City Police Department, examined complain-ant at 2:30 p.m. on May 27, 1972. He found still fresh lacerations of her hymen at 3:00 and 6:00 o'clock positions which he said were probably caused by sexual intercourse. He also found a slimy white substance at the cul-de-sac of Douglas of complainant's genitals. The substance turned out to be spermatozoa upon examination. The spermatozoa was about one (1) cc., indicating that it may have come from more than one man. (pp. 6-7, 11, TSN, November 22, 1972). He prepared a medical report containing his findings. (Exhibit A/Exhibit 1)

"After the incident, Berto Simbra absconded. He left his house at Langihan, Butuan City, and was nowhere to be found at the time of the trial. (p. 14, TSN, February 6, 1973) Thus, the trial was only against appellant."

Appellant, on the other hand, testified that about 8:30 in the evening of May 24, 1972, he and Berto Simbra went to the dance hall at the Emilia Compound in Butuan City to dance. They met Gresilda Gonzales, the sweet-heart of Simbra, and upon invitation of Simbra the three of them went to the "serin" (pile of sawdust) at about nine o'clock. In going to the "serin" they passed through a street where there were many people. Simbra and complainant were conversing with each other as they walked side by side, while he (appellant) was about twelve (12) feet behind them. Upon reaching the "serin," he (appellant) remained at a place about thirty-five meters away to watch for people who might come around. After a while he saw complainant taking off her pants and panties, spread them on the "serin" and then lay down on them. Berto Simbra went on top of her and they had sexual intercourse, twice within one hour. After Simbra was through, he approached appellant and told him to go to her as she was still lying down on the "serin". "He did go to where complainant was and asked her if he could also lie down with her. She consented and three times he had sexual intercourse with her.

About 12:00 midnight, the three of them (Simbra, complainant and appellant) went to the house of Ernanita Tolibas Jusay (appellant's elder sister). He introduced complainant to Ernanita as his sweetheart from Buenavista. However, Simbra told Ernanita that he and appellant had just had sexual intercourse with complainant. Appellant and complainant spent the night in that house while Simbra went home to his own house which was about 150 meters away. The following morning, complainant spent the whole day in Ernanita's house doing nothing except sat in the sala, ate and slept. At about 8:30 in the evening, complainant was fetched by her aunt and a policeman.

Thus, appellant admits that he had carnal knowledge with complainant but claims that he did so with her consent.

The testimony of appellant was substantially corroborated by his sister Ernanita Tolibas Jusay.

The issue in this case is whether appellant had sexual intercourse with complainant against the will of the latter and through the use of force and intimidation. Appellant claims that the court erred "in giving too much credence to the testimony of the offended party Gresilda Gonzales."

The above pretensions of appellant are not true. Complainant did not for a moment tolerate the indecent acts of appellant and Simbra. She was going to the artesian well at the public market in Langihan, Butuan City, to fetch water, when she was seized by Berto Simbra and appellant. Simbra held her arms and dragged her towards the "serin." Her mouth was covered with a handkerchief by appellant. She struggled and even kicked Berto Simbra and appellant. Upon reaching the "serin," Simbra threw complainant on the ground while appellant held her arms as Simbra forcibly took-off her pants and panties and had sexual intercourse with her, twice. Thereafter, Simbra also held complainant when appellant had sexual intercourse with her, thrice.

After she was raped, complainant was threatened by Simbra and appellant with death if she would reveal what happened to her. Appellant emphasized the threat by pretending to choke her.

Appellant contends that if violence was employed upon complainant, there would be abrasions and contusions on her body. While it is true that Dr. Tupaz found no injuries on her body, except the lacerations on her hymen, the fact is, the rapists did not really employ violence upon her but only used force by holding her arms, covering her mouth, dragging and throwing her to the ground and pinning her down. She was not boxed, beaten or injured in any way. The force coming as it did from two big men and applied on a 15-year old girl was enough to overcome whatever resistance there was, without necessity for violence. This explains the lack of contusions, hematoma, and other injuries on complainant's body, except the lacerations on her hymen.

Further, complainant denied the truth of the testimony of appellant that she was the girlfriend of Simbra. She has seen her rapists passing her house before the date of the incident but the fact is, she came to know their names at the Police Station only when she was investigated.

The version of the appellant is hard to believe. Complainant was not a woman of loose morals that after her alleged sweetheart had satisfied himself she consented to have sexual intercourse with appellant and with the blessings of Simbra. Even a woman of loose morals would not agree to allow two men to successively take advantage of her in the presence of the other. In the case of *People vs. Soriano*, 35 SCRA 633, this Court said:

"To begin with, their version is inherently incredible. Indeed, no woman would have consented to have sexual intercourse with two men-or three, according to Antonio Gallardo-in the presence of each other, unless she were a prostitute or as morally debased as one. Certainly, the record before Us contains no indication that Farmacita, a 14-year old, first-year high school student, can be so characterized. On the contrary, her testimony in court evinced the simplicity and candor peculiar to her youth. In fact, appellants could not even suggest any reason why Farmacita would falsely impute to them the commission of the crime charged."

Considering that appellant had sexual intercourse with complainant against her will by employing force and intimidation, the crime committed is rape through direct participation. And, when he aided Berto Simbra and made it possible for the latter to have carnal knowledge of complainant also against her will and through force and intimidation appellant committed another crime of rape through indispensable cooperation. Thus, appellant is guilty of two crimes of consummated rape.

WHEREFORE, the decision appealed from is **AFFIRMED** but modified in the sense that appellant Sergio Tolibas is hereby sentenced twice to the penalty of Reclusion Perpetua. With costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.