

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO DE LA CRUZ Y LABING-ISA, ERNESTO DE LOS SANTOS Y
DE LA CRUZ, AND ROSALINO DE LOS SANTOS Y RIVERA,
ACCUSED-APPELLA...**

G.R. No. L-35664. May 19, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The sole issue in this case is the credibility of witnesses especially Leticia Octavio y De Guzman who is the complainant. The trial judge stated the problem in the following words:

"The main question before the court is: Was Letty Octavio forcibly abducted and then raped on February 25, 1967 by Gregorio de la Cruz, who was assisted by Ernesto de los Santos and Rosalino de los Santos, or did Letty and Gregorio actually elope, in culmination of a love affair? On the answer to this question would hinge the conviction or acquittal of the accused in this case." (Expediente, p. 776.)

On February 22, 1968, a complaint was filed by Leticia Octavio y de Guzman with the now defunct Court of First Instance of Manila. It was docketed as Criminal Case No. 88854 and reads as follows:

"The undersigned accuses Gregorio dela Cruz y Labing-isa, Ernesto delos Santos y dela Cruz and Rosalino delos Santos y Rivera of the crime of forcible abduction with rape, committed as follows:

"That on or about the 25th day of February 1967, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, with lewd design, did then and there wilfully, unlawfully and feloniously abduct, take and carry the undersigned complainant, an unmarried girl, from the corner of P. Guevarra and Cavite Sts., Sta. Cruz, in said City, by means of force and violence, to wit: by then and there forcibly pushing her inside a jeep, by threatening to kill her with a gun, and by threatening to throw acid at her face, and thereafter bringing her to the house of accused Ernesto delos Santos y dela Cruz at Bo. Tuliahan, Sta. Quiteria, Caloocan City, and later to a house at Libis, Sta. Quiteria, Caloocan City, where the said accused Gregorio dela Cruz, by means of force and violence, have succeeded in having carnal knowledge of her against her will and without her consent." (Expediente, p. 1.)

After trial the court rendered the following judgment:

"WHEREFORE, the Court hereby finds the accused, Gregorio de la Cruz y Labingisa, guilty beyond reasonable doubt, as principal of the crime of forcible abduction with rape, as penalized under Articles 335 and 342, in connection with Article 48, Revised Penal Code, and appreciating in his favor the mitigating circumstance under Article 13, No. 10, Revised Penal Code, in that ours is a permissive society where everyone is exposed to all sorts of pornography day and night, hereby sentences the accused to suffer reclusion perpetua, with the accessory penalties of law and costs, and to support the offspring, if any.

"With respect to the co-accused, Ernesto de los Santos and Rosalino de los Santos, the Court hereby finds both of them guilty, beyond reasonable doubt, as accomplices of the crime of forcible abduction with rape, as

penalized under Articles 335 and 342, in connection with Articles 48 and 52, Revised Penal Code, and in the light of the Indeterminate Sentence Law, hereby sentences each of them to suffer an determinate penalty of not less than SIX (6) YEARS and ONE (1) DAY of prision mayor and not more than FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, and to pay costs.

"With respect to all the accused, they are likewise sentenced, jointly and severally, to indemnify Leticia Octavio, in the amount of P20,000.00 and to pay her moral damages, in the amount of P10,000.00. As to all the accused, let them be credited with preventive imprisonment pursuant to existing laws." (Expediente, pp. 789-790.)

The three accused appealed their sentences. Gregorio de la Cruz is represented in this appeal by his counsel de oficio, Atty. Basilio H. Alo. Ernesto and Rosalino de los Santos are represented in this appeal by their counsel de parte, Atty. Alejandro A. Fider.

The nature of the issue has produced two versions in respect of the facts of the case. Because they are so diametrically opposed, We reproduce them below.

The People's version:

"When the events in this case took place, the complainant, Leticia Octavio, was a student at the University of Manila. On February 25, 1967 at about 2:30 o'clock in the afternoon, while she was at the corner of P. Guevarra and Cavite Streets, Manila, waiting for a public conveyance to take her to school, a jeep stopped in front of her (tsn., pp. 6-7, May 19, 1969). Thereafter, Gregorio de la Cruz alighted from the vehicle and approaching her told her to go with him and not to shout or else he will throw acid on her face (tsn., p. 8, *ibid*). Almost at the same time, Ernesto de los Santos, a companion of Gregorio, likewise alighted and poking a gun at her told her not to shout or else he will kill her (tsn., p. 11, *ibid*). Overcome by fear, she boarded the jeep where she was made to sit in front between Gregorio de la Cruz, who drove the jeep, and Ernesto de los Santos (tsn., pp. 12-13). A third companion, Rosalino de los Santos, who was seated at the back again brusquely cautioned her to stay quiet (*ibid*). She was brought to Bo. Tullahan, Sta. Quiteria, Baesa, Caloocan City in the house of Ernesto de los Santos which was about 150 meters away from the main road (tsn., pp. 14-16, *ibid*). Upon arrival thereat, Gregorio de la Cruz held her by the hand and tried to bring her up the house but she resisted and Ernesto de los Santos threatened her with his ferocious dogs (tsn., p. 17, *ibid*). Again, she had no recourse but to obey her abductors. She was told to sit down on a sofa and Gregorio de la Cruz pointing a gun warned her not to ask help from anybody (tsn., p. 19, *ibid*). The abductors started drinking beer and again she was threatened with pointed broken bottles (tsn., p. 20, *ibid*). A short while afterwards, the three men went down and fired their firearms at some empty bottles as their targets (tsn., p. 21, *ibid*). Thereafter, they went back to the house and pulled Leticia behind an aparador and forced her to lie down (tsn., pp. 23-24, *ibid*). Ernesto de los Santos held her hands, Rosalino de los Santos her feet, while Gregorio de la Cruz pulled down her panty after which he ravished her (tsn., pp. 25-26, *ibid*). The feeble resistance she could muster was no match to the strength of her abductors and the only thing she could do was cry her heart out (tsn., p. 28, *ibid*). Later that evening, Gregorio de la Cruz again attempted to have sexual intercourse with her but he was not able to consummate it because he was not able to get an erection (tsn., p. 27, *ibid*).

"Much later, she was brought to the house of Quirino Labing-isa where she was kept until March 1, 1967 (tsn., pp. 25, 69, June 6, 1969). She was then transferred to the house of a sister of Gregorio de la Cruz where she was able to free herself from the clutches of her abductors on March 2, 1967 (tsn., p. 73, *ibid*). During her captivity, she was abused 6 to 7 times by Gregorio de la Cruz in the house of Quirino Labing-isa, and thrice more in the house of Gregorio's sister (tsn., pp. 68, 73, *ibid*).

"The following day after she had regained her freedom, or on March 3, 1967, Leticia reported the incident to the police authorities of Caloocan City and correspondingly filed her complaint (tsn., p. 59, May 19, 1969; Exhibit "UU", p.122, Folder of Exhibits). Because of the apparent display of disinterestedness on the part of

the police authorities of Caloocan City, the offended party was obliged to seek the aid of the National Bureau of Investigation where she filed her complaint on March 20, 1967 (tsn. p. 8, *ibid.*).\" (Brief, pp. 3-6.)

The version of Gregorio de la Cruz:

\"The following facts are not disputed:

\"The private complainant in this case, Leticia Octavio, is the daughter of Casiano Octavio (TSN p. 2, April 10, 1969). Mr. Octavio used to go to Isabela to bring lumber and sell it to lumber yards, after which he proceeds to his house in Angat, Bulacan, although he sometimes stays in the house at 2424 Pedro Guevara Street, Sta. Cruz, Manila (TSN, p. 14, Apr. 10, 1969). Leticia Octavio used to sell vegetables at the sidewalk in Balintawak market (TSN p. 72, Jan. 14, 1970; TSN p. 9, Sept. 10, 1971). On February 25, 1967, at around 2:30 p.m., Leticia Octavio went to the area near the junction of P. Guevara Street and Cavite Street to take a transportation (TSN p. 6-7, May 19, 1969; Exh. \"A\"). Shortly, she climbed into a passenger jeepney driven by appellant Gregorio de la Cruz (*ibid.*).

\"They went to the house of Quirino Labing-isa, staying there until March 1, 1967 (*Ibid.*, p. 34), and there, Gregorio la Cruz had sexual intercourse with her around seven times (TSN pp. 34-35, May 19, 1969). On February 27, 1967 she went with Gregorio, the latter's mother, uncle, and a policeman, to Q.C. Hall to secure a marriage license (TSN, p. 53, *ibid.*). On February 28, 1967, she went to school (p. 48, *ibid.*). On March 2, in the afternoon, she again went to school but this time did not return (*Ibid.* p. 57), and on March 3 she went to the Caloocan Police where she gave a statement (*Ibid.* p. 60; Exhibit \"11\"; Exhibit \"SS\"). On March 10, 1967 a complaint was filed with the NBI (TSN p. 19, Mar. 26, 1969), and the NBI filed the case with the City Fiscal's office after investigation (TSN p. 38, Mar. 26, 1969).

\"Leticia Octavio did not return to Gregorio on March 2, 1967, from school, but had proceeded to the house of Francisco Mallari together with one Dante Malipara (TSN p. 12, June 30, 1969), where she stayed for around ten days (*Ibid.*, p. 16). Following Leticia's first disappearance on February 25, 1967, her father had gotten word the next day, February 26, 1967, from Gavina Labing-isa, mother of Gregorio de la Cruz, that his daughter had eloped (TSN p. 5, June 25, 1969). Upon being informed thereof, Casiano Octavio signed a document giving parental advice (Exhs. \"1\" and \"1-A\") and, in effect, gave his go-signal to the marriage between Gregorio and Letty, which would have been celebrated at Knox Memorial Church on March 12, 1967 (TSN June 25, 1969, pp. 13, 17). Gregorio is a jeepney driver usually plying the Blumentritt-Baesa and Blumentritt-Balintawak routes in an AC jeepney, though there was actually no fixed route (TSN p. 2, Feb. 1, 1971; TSN p. 13, June 23, 1971).

\"The following facts are disputed or controverted:

\"According to the prosecution, on February 25, 1967 Gregorio de la Cruz together with Rosalino de los Santos and Ernesto de los Santos, threatened to throw acid on Leticia Octavio's face and to kill her with a gun, then they forced her into a waiting jeepney, and later she was brought to the house of Ernesto de los Santos, where accused-appellant Gregorio de la Cruz had sexual intercourse with her by force and against her will, with Ernesto de los Santos holding her two feet, Rosalino de los Santos holding her hands, and Gregorio de la Cruz, after pulling down her panty, inserting his penis into her private parts (TSN pp. 9-28, May 19, 1969).

\"The defense, however, claims that on February 25, 1967 Gregorio de la Cruz, who was the boy friend of Leticia Octavio, eloped with her after they had so agreed 3 days earlier, and that it was around 2:30 p.m. of February 25, 1967 when Leticia Octavio arrived at the gasoline station at Balintawak where he was waiting, and they together left, she bringing a 'balutan' and school supplies, and they proceeded to the 'Barrio Fiesta' restaurant where a receipt (Exhibit 9-J) was issued them for their food, and thereafter they motored to Sta. Quiteria, Caloocan, to the house of Ernesto de los Santos, where they ate chicken (TSN pp. 9-16, Mar. 31, 1971). Then they proceeded to the house of Quirino Labing-isa where both of them slept (*Ibid.*, p. 36). It was between 9 and 10 P.M. of February 25, 1967 when they arrived in Quirino Labing-isa's house, and they lodged

in a room belonging to an unmarried daughter of Quirino Labing-isa, where they made love, willingly and voluntarily (TSN pp. 21-27, June 21, 1971). They stayed there, while Gregorio de la Cruz's relatives tried to arrange the wedding rites, after learning of the elopement. Their lovemaking was repeated the next day (Ibid., p. 31). In fact, they averaged two times a night of sexual activity, while in the house of Quirino Labing-isa, and the last time they shared their love was on March 1, 1967 at the house of Virginia, a sister of Gregorio de la Cruz (TSN p. 25, July 7, 1971; *ibid.*, p. 33). Leticia Octavio thought that Gregorio was the son of a richman as he had been using different vehicles when courting her (TSN p. 19, Aug. 9, 1971). In fact, Mr. Octavio included Rosalino de los Santos and Ernesto de los Santos in the charge because he thought they were rich people (TSN p. 11, Oct. 6, 1971)." (Brief, pp. 11-14.)

The version of Ernesto and Rosalino de los Santos:

"This case arose out of a controversial affair between two young people, that of the complainant Leticia Octavio, a student and vendor and that of the principal accused Gregorio de la Cruz, usually plying the Blumentritt, Manila - Balintawak, Quezon City route. (t.s.n., p. 12, June 23, 1971).

"This affair started sometime during the month of November of the year 1965, and was the result of the frequent conveyance of the complainant's market goods from her place of residence at P. Guevara St., Manila to her market stall at Balintawak, Quezon City as well as conducting her to her own school, the University of Manila. (tsn., pp. 2-6, February 1, 1971). True to form, besides being ardent and consistent, the efforts of Gregorio de la Cruz was finally rewarded one day, while they were at the Luneta, when Leticia finally gave him hopes and accepted his protestations of love. (tsn. pp. 7 and 8, February 1, 1971). This of course was controverted by the complainant Leticia Octavio. At any rate, after sometime, including that trip to barrio Niogan, Angat, Bulacan in February, 1966, where the complaining witness stood as baptismal sponsor; where they had, including their friends and companions, a lot of souvenir photographs taken, to commemorate the occasion, (Exhibits 2, 2-B, 2-C, 3, 3-A, 3-B, 3-C, 4-A, 4-F, 5, 5-A, 5-B, 6, 6-A, 7, 7-A, 7-B, 7-C and 7-D); where they proceeded thereafter to Bustos Dam to continue their outing and merrymaking; where they met on the way home the accused-appellant Rosalino de los Santos, who even rode with them, (tsn. pp. 10-12, February 1, 1971); (tsn. pp. 3-16, February 3, 1971); where later on he (Gregorio) even took Leticia Octavio to Barrio Masambong, Quezon City, during a fiesta, (tsn. p. 7, March 31, 1971); the day came when they decided to do, what most lovers must necessarily do at times, to elope. The date set was February 25, 1967, the time was 2:00 o'clock in the afternoon, and the meeting wag at a gasoline station in Balintawak, Quezon City. Leticia arrived at the appointed place at half past two as arranged, with a paper bag and some books. Together, they rode in a jeepney brought by the principal accused Gregorio de la Cruz. (tsn. pp. 8-10, March 31, 1971). But as the complainant Leticia was hungry, so they went to Barrio Fiesta Restaurant before proceeding to Sta. Quiteria, precisely to see a councilman of the Barrio, the herein accused appellant Ernesto De los Santos. (tsn. pp. 12-15, March 31, 1971)

"As they entered the Baesa road going towards Sta. Quiteria, they have to move slowly as the roads are already bad, and along the way they saw Leandro Cruz, a retired Major in the armed forces with whom they exchanged usual greetings such as smiling and waving of the hands and the customary invitation to pass by his house, a beautiful custom still commonly practiced in a barrio such as this one. (tsn. pp. 15-16, March 31, 1971)

"On this same way, they passed by a house owned by Marciana de los Santos. There are numerous people and who seemed to be quite busy doing one thing or another, as there was a pre-nuptial (dulog) party going on, and one of those whom they saw was one of the herein-accused appellants, Rosalino de los Santos, who also invited them to drop by, but which they did not accept as they are already nearing the house of the councilman whom they had intended to see in the first place, and whose house, is now, just about 150 meters away. (t.s.n., pp. 6-9, May 14, 1971)

"When Gregorio de la Cruz and Leticia Octavio arrived at the place of Ernesto de los Santos, one of the accused-appellants, he was feeding his chickens together with a helper by the name of Jessie. (tsn. pp. 10-12,

Oct. 22, 1969). Upon the invitation of Ernesto, as a gesture of courtesy and hospitality, Gregorio and Leticia went up the house, but necessarily, he begged to be excused as he wanted to continue feeding his chickens. Before he himself went down the house, he noticed that the two were in a gay mood and as a matter of fact they were teasing each other. But he can not tell exactly what else Gregorio and Leticia did in the house after he went down (tsn. pp. 17, 25, 26, Oct. 22, 1969). When supper time came he had dinner prepared for all of them, although he noticed that his two guests had with them some pancit (noodles). (tsn., p. 16, Oct. 22, 1969) The herein-accused appellant Ernesto de los Santos learned later on that same occasion that Gregorio and Leticia had eloped and that the purpose of their visit was to get his advice, being as he is then, a councilman of their barrio. With what he knows, he told the couple to secure the necessary advice or consent of the woman's (Leticia's) parents, for he is afraid that her parents may not like the idea of elopement. (tsn. pp. 41, 42, Oct. 22, 1969) Leticia even assured him in reply, not to worry anymore as everything has already been done (tsn. p. 13, May 14, 1971) After supper, his two guests left. (tsn. p. 18, Oct. 22, 1969).

"Meantime, Gregorio de la Cruz and Leticia Octavio started to go to the house of Quirino Labing-isa on foot as he has asked somebody to return the jeep they have used to the owner. (tsn. pp. 20-21, May 14, 1971) Towards that direction they have again to pass the house of Marciana de los Santos and where they saw, once more, Major Leandro Cruz and the other accused-appellant Rosalino de la Cruz. (tsn. pp. 18, 19 and 20, May 14, 1971)

"Though they politely turned down the invitation extended, it is not surprising for Rosalino de los Santos to have insisted in his invitation that they join the pre-nuptial party which was then going on in the house of Marciana de los Santos, because he is in fact not a stranger to Leticia. Besides having been introduced previously, to be exact, it was when Gregorio de la Cruz brought Leticia Octavio to his house during the barrio fiesta of Baesa on May 22, 1966, (tsn. p. 8, September 10, 1971), besides having had the opportunity to see them twice in a vehicle they (Gregorio and Leticia) was at the time riding, first along the highway in Meycauayan, and the second time, along the highway in Guiguinto, Bulacan, during which time he even transferred to the Volkswagen car and rode with them until Leticia was brought to her house or bodega where there are many mangoes stored, in Blumentritt, and all these meetings happened before this afternoon of February 25, 1967. (tsn. pp. 11-15, September 10, 1971)

"Proceeding on their way to the house of Quirino Labing-isa, Leticia and Gregorio passed by the house of Lorenzo Buenaventura and Maria Labing-isa where they stopped for a while in the latter's store. (tsn. p. 23, May 14, 1971) They also dropped by the house of Maria Labing-isa, who even quipped that at last the elopement was accomplished. (tsn. p. 24, May 14, 1971) Before reaching their destination they have to pass by the house of Justice Julio Villamor, and many other houses, as this area is also quite thickly populated. (tsn. pp. 24-25, May 14, 1971)

"Quirino Labing-isa and his family were all in the house when the two, Leticia and Gregorio arrived. After extending the proper respects to them, like the kissing of their hands and the usual exchanges of regards and hellos, Quirino Labing-isa was not a bit surprised when informed by the two arrivals that they have eloped. Forthwith, he asked his unmarried daughter to yield her room to Leticia and Gregorio. (tsn. pp. 29-36, May 14, 1971) Leticia is not unknown to Quirino, for being a driver himself and one whose wife's business is selling fruits and vegetables at Blumentritt, he had opportunities in the past to buy in bulk from the father of Leticia, named Casiano Octavio, and whom he fondly calls Mang Saning, (tsn. p. 4, January 19, 1970), besides knowing also that Leticia sells by the sidewalk where her father keeps his bodega or storeroom. (tsn. p. 5, January 19, 1970) That evening, they (Gregorio and Leticia) consummated "what married people usually do", they had their sexual intercourse twice. (tsn. pp. 24 and 25, June 21, 1971)

"After breakfast in the morning of February 26, the mother of Gregorio de la Cruz came and after being informed of what had happened, all of them, including Leticia and Gregorio, discussed the preparations of how to go to Mang Saning or Octavio Casiano, the father of the complaining witness. It was Leticia herself who suggested that they should first pass by a good friend and neighbor of her father by the name of Mang Paeng

before going to their house to talk to her father. And so in the afternoon of that same day, Quirino Labing-isa, the mother of Gregorio, Gavina Labing-isa de la Cruz, one Evaresto and Miguela proceeded to see the father of Leticia in Manila. Among other things, the father of Leticia told this group that as he was leaving for Isabela, it was his desire that they rush the necessary papers for the marriage of his daughter Leticia to Gregorio. They even agreed on the date of the marriage and which was tentatively set on the twelfth day of the following month. (tsn, pp. 11-14, January 19, 1970)

"The following day, February 27, 1967, Monico Cleotas, being then on duty at the police headquarters and likewise a resident of Barrio Sta. Quiteria, was approached by Gregorio, Leticia, Quirino Labing-isa and Gavina, the mother of Gregorio and was requested for assistance in obtaining a marriage license from the City Hall. He readily acceded and all of them proceeded on foot to the Local Civil Registrar's Office at the Quezon City Hall, and after introducing them of course to the proper person who can attend to their needs, he left them. (tsn, pp. 5-15, January 17, 1972)

"The necessary papers, the application for marriage were properly accomplished and signed by both Leticia Octavio and Gregorio de la Cruz (Exhibits 10 and 10-A). (tsn., p. 55, January 19, 1970)

"On February 28, 1967, in the morning, Leticia told Gregorio that they are going to Torres Bugallon in order to collect from a friend, named Aling Lydia the sum of P130.00. (tsn., p. 37, May 19, 1969) Riding in a jeep driven by one Fermin Rivera, they proceeded to Torres Bugallon or Pugad Baboy to see Aling Lydia. Unfortunately she was not home and only her daughter was there, so they left and returned in the afternoon. Using the same means of transportation, Leticia was able to talk and collect the sum of money from Aling Lydia, after even introducing Gregorio as her future husband. They both left and separated from each other in Balintawak, Leticia going to her school and Gregorio, going back to the house of Quirino Labing-isa. (tsn., pp. 41-48, June 21, 1971) But the same evening while Leticia was in her school, the University of Manila, she met and talk to a classmate and friend Mabini Mariano. (tsn., p. 49, May 19, 1969) Up to that night they have been sleeping in the house of Quirino Labing-isa. (tsn., p. 25, July 7, 1971)

"The following day, March 1, 1967, Gregorio decided to bring Leticia to his own house. When Leticia saw how poor and small the 'bahay kubo' of Gregorio was, she bit her lips and bowed her head and refused even to go up the stairs. So Gregorio decided to bring her instead to the house of his sister where they stayed and slept that evening. But because he was tired and felt dizzy, they had only one sexual intercourse, unlike the usual more than once they have been doing in the past nights. (tsn., pp. 28-32, July 7, 1971)

"In the morning of March 2, Leticia, Gregorio, his uncle and his uncle's wife went to the Municipal Hall of Mandaluyong, Rizal for the purpose of getting married, but they went home still unmarried. (tsn., pp. 50-53, May 19, 1969) In the afternoon while Gregorio was taking his bath Leticia told Gregorio that she will go to school. She left unaccompanied by Gregorio and did not return anymore. (tsn., p. 57, May 19, 1969) She did not go straight home, however, but instead proceeded to the house of Estrellita Mallari, a friend and with whom she had stayed with, until the arrival of a lawyer which she herself requested, in the evening of the following day, March 3, 1967.

Her lawyer accompanied her when she went to the Caloocan Police Department to file her complaint and where her statement was taken (Exh. 11). (tsn, pp. 59-60, May 19, 1969) Dissatisfied with the investigation conducted by the said police department, she went to the National Bureau of Investigation on March 10, 1967 to file her charges against the accused in this case but her statement was only taken on March 20, 1967 when she was assisted by her counsel (Sentence, p. 4). The actual complaint in this case was first filed with the City Fiscal's Office of Caloocan City sometime on August 14, 1967, and docketed as I.S. No. 67-2658, but on September 18, 1967, father of the complainant, Casiano Octavio, requested the City Fiscal of Caloocan City for the dismissal of the same complaint. (Exhibits 12, 12-A, 12-B). Subsequently, on October 5, 1967, the complaint subject of the instant case was filed with the Manila City Fiscal's Office. It was investigated by Assistant Fiscal Carlos Galman

Cruz and on February 22, 1968 a complaint was filed with the court 'a quo' charging the appellants with crime of 'Forcible Abduction with Rape'. (Sentence, p. 1)

"To place the appellants within the purview of the aforesaid charges under the Revised Penal Code, the prosecution, through the testimonies of several witnesses, but principally and almost only, through the complainant herself when she testified in her own behalf, that her going with the principal accused herein was by means of force, violence and threat and not voluntary or pursuant to agreed elopement. (tsn., pp. 8-11, 20, 25-26, May 19, 1969; Sentence pp. 66-69). The appellants, on the other hand leaned heavily on the improbability and absence of such force, violence and threat. (tsn, May 14, 1971; tsn., pp. 10-26, September 10, 1971; tsn, pp. 13-18, October 22, 1969) And to avoid repeating the numerous details in the testimonies of several witnesses offered in evidence by both the prosecution and the defense, pertinent and relevant portions thereof will be reproduced and discussed in the Assignment of Errors following." (Brief, pp. 6-17.)

Counsel for Gregorio de la Cruz asserts that the trial court committed five errors, while counsel for Ernesto and Rosalino de los Santos alleges only two errors. Regardless of the number of errors assigned, the sole issue in this case as stated above is the credibility of witnesses. Obviously, the trial court tilted the balance in favor of the prosecution, hence the appeal by all of the accused.

In all too common situation such as this, We have guidelines which have been indelibly etched in our law books and so are well-known.

"It is a fundamental rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case." (People vs. Balili, L-38250, August 6, 1979; 92 SCRA 552, 560-561.) But also well-settled is the rule that the trial court's findings should not be sustained if it appears in the record that some fact or circumstance of weight and influence had been overlooked or the significance of which had been misinterpreted. (People vs. Arciaga, L-38179, June 16, 1980, 98 SCRA 1.) Moreover, in cases where the versions of the prosecution and the defense in a charge of abduction with rape are contradictory and depend on the credibility of witnesses, corroboration of material events must be supplied to overcome the presumption of innocence. (People vs. Arciaga, supra.)

The counsel de oficio of Gregorio de la Cruz submitted a comprehensive brief and so did the counsel for the two De los Santos. Upon the other hand, the People's brief is repetitious as to the facts but generalized in its arguments; it does not rebut point by point the arguments of the appellants.

Counsel de oficio for Gregorio de la Cruz discussed the first and fifth assignments of error jointly because they are said to be intimately related. They read:

"I. THE TRIAL COURT ERRED IN ACCEPTING THE THEORY OF THE PROSECUTION, AND AT THE SAME TIME, TOTALLY DISREGARDING THE DEFENSE THEORY, DESPITE THE FACT THAT CERTAIN UNDISPUTED EVIDENCE POINTS TO THE VERACITY IN THE THEORY OF THE DEFENSE, AND TO THE LACK THEREOF ON THE PART OF THE PROSECUTION THEORY.

"V. THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GREGORIO DE LA CRUZ GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL, OF THE CRIME OF FORCIBLE ABDUCTION WITH RAPE, AND IN NOT ACQUITTING ACCUSED-APPELLANT, DESPITE THE PRESENCE OF FACTS AND CIRCUMSTANCES THAT CAST SERIOUS DOUBT ON THE PROSECUTIONS THEORY."

Under these assignments of error, appellant Gregorio points to several facts and circumstances to show the

weakness and lack of credibility of the prosecution's evidence among them, to wit:

1. Leticia claims that she was kicked, slapped, manhandled and sexually abused. She was allegedly abducted on February 25, 1967, and raped repeatedly but when she was examined on March 5, 1967 by Dr. Ricardo G. Ibarrola of the NBI he found the following:

"1. No evident sign of extra-genital physical injury noted.

"2. Hymen is intact, however, its orifice is big (3.4 cm. in diameter) as to allow penetration of an average adult Filipino penis in erection without producing hymenal laceration. Moreover, there are medical evidences present, consistent with multiple sexual intercourses with man as alleged." (Exh. VV.)

During the hearing held on August 11, 1969, Dr. Ibarrola testified on direct examination:

"ATTY. BONGCO [Private prosecutor]

Q

Aside from the general physical condition of the witness, what other examination, if any, did you conduct on her?

A

I examined her body for any evidence of violence and I did not find any injuries, and when I proceeded to the examination of her private organ, she was no longer a physical virgin. However, her hymen was still intact but distensible to a certain degree, meaning that it may have possibly allowed the penetration of a male organ without producing any laceration of the hymen, because of the elasticity, and there were also medical findings that she must have experienced at least ten times of sexual intercourse with man as she alleged." (TSN, pp. 14-15.)

Accordingly, Gregorio asks: "Why was not a single scratch, bruise, abrasion, or contusion discovered?" (Brief, p. 25.) And the People's answer is not responsive: "We cannot agree. As stated by the offended party, the appellants, all full grown men, employed force upon her by pulling her behind an aparador as she was holding on to the window grill and subsequently held her hands and feet. In spite of the bitter struggle waged by her to ward off the efforts of appellants to rape her, the superior force employed on her by appellants rendered the same utterly futile and useless." (Brief, pp. 19-20.)

2. Leticia said that at about 2:30 p.m. on February 25, 1967, while she was waiting for a public carrier at the corner of P. Guevara and Cavite streets on her way to school, Gregorio stopped his jeep in front of her and told her to board the vehicle otherwise he would throw acid on her face. Almost simultaneously, Ernesto de los Santos poked a gun at her and told her not to shout or else he would kill her.

But Gregorio observes: "However, we must remember that Gregorio de la Cruz was plying the very transportation route which Leticia Octavio would have taken. Just to make her get inside the passenger jeepney would not have required threatening her with acid, and pointing a gun at her in the plain view of the public. She would have gotten in anyway, for she was waiting for public transportation. With more reason would she have boarded voluntarily, since she already knew Gregorio de la Cruz beforehand, having been, in fact, together with him at a party at Angat, Bulacan, where she had been a godmother at baptismal rites. There was thus no conceivable need of pointing a gun or threatening her with acid just to make her get inside the jeep." (Brief, pp. 25-26.) And the People makes no comment whatsoever on the observation.

3. Gregorio asks: "If Leticia Octavio really was forced to submit to the desires of Gregorio de la Cruz by force, why is it that there was no torn clothing whatsoever submitted as evidence in the case, as would have been most logical if Leticia Octavio had indeed been forced to undress. She would have used every ounce of feminine strength to prevent her clothes from being peeled off. These would have been, in the process, torn in the natural course of events. Failure to adduce said evidence militates against an inference of guilt." (Brief, p. 26.) And the People's reply is: ". . . this was because she was told to wear men's underwear after she was raped for the first time on February 25, 1967 (tsn., p. 25, July 28, 1969). Furthermore, it should be borne in mind that they were always on the move during the five (5) days that she was held captive, first in the house of Ernesto de los Santos, then to the residence of Quirino Labing-isa, and finally in the house of Gregorio's sister." (Brief, pp. 17-18.)

However, this is what happened according to Leticia when she was recalled to the witness seat on July 28, 1969: [She was first brought to the house of Ernesto de los Santos in Bo. Tullahan, Caloocan City, where she was allegedly raped. From Ernesto's house she was transferred to the house of Quirino Labing-isa.]

"WITNESS: [Leticia]:

A

After coming from the house of Erning, they told me to wear men's underwear.

COURT:

Q You answer the question. Did you change your panty?

A

They removed my panty, and when we went to the house of Quirino Labing-isa, I was wearing only a camisita and a palda." (TSN, pp. 25-26.)

Assuming that she wore men's underwear, her outer garments were nonetheless suited to her sex. Why were they not produced? We note that when Leticia testified she referred to Ernesto de los Santos and Rosalino de los Santos not as strangers but familiarly and repeatedly as "Erning" and "Saling." (See TSN, May 19, 1968.) We note also that she repeatedly said Gregorio "invited" (Niyaya po niya ako), not forced her to go to the house of his uncle Quirino Labing-isa. (TSN, May 19, 1968, pp. 31-32.)

4. Leticia was supposedly held captive from February 25 to March 2, 1967, and yet she went to school twice during that period.

She testified as follows:

"q

[ATTY. BONGCO]: In the afternoon of the said date, February 28, 1967, do you recall any particular incident that also happened?

a Yes, when I was on my way to school.

q Where did you go?

a To U.M. (University of Manila.)

q

Who was your companion, if any, when you went to school?

a Fermin, sir.

q Who else?

a Gregorio de la Cruz.

q

Do you mean to say that you were allowed to go to school by Gregorio de la Cruz?

a He allowed me but he was with me.

q

Now, in school, was there any particular incident that happened?

a He was always guarding me.

COURT

q

Where was Gregorio de la Cruz when you were inside the classroom?

a At the door of the school, Your Honor.

COURT

Proceed.

ATTY. BONGCO

q

Were you able to talk with anybody in school about your situation?

a Yes, sir.

q With whom did you talk to in school?

a With my friend, Mabini Mariano.

q

What was the substance of your conversation with Mabini Mariano?

a I related what happened to me.

q What was the reaction of Mabini Mariano?

a

He said that inasmuch as it is already there, I should give my consent, but I did not want.

q How long did you stay in school?

a Until 4:30.

q What happened at 4:30?

a

We went back to his house." (TSN, May 19, 1969, pp. 47-49.)

.....

"ATTY. BONGCO

q

In the afternoon of March 2, 1967, at around 3:00 o'clock, do you remember any unusual incident that happened?

a Yes, sir.

q What was that unusual incident about?

a When I told Gregorio de la Cruz that I will go to school.

q Did Gregorio de la Cruz accompany you then?

a No, sir.

q What happened after you left for school unaccompanied?

a I did not return.

q Where did you go?

a To the house of my friend.

q What is the name of your friend?

a Estrellita Mallari.

q Were you able to see her?

a No, sir.

q Whom did you see in her house instead?

a The father.

q

What is the name of the father of Estrellita Mallari, if you know?

a Francisco.

q Were you able to talk with Mr. Francisco Mallari?

a Yes, sir.

q And what did you tell him?

a I told him that I will stay with them, sir.

q

Aside from telling him that you would stay in their house, what else did you tell him if any?

a

I related to them what Gregorio de la Cruz did to me and if possible, to hide me because Gregorio de la Cruz is looking for me.

q

Upon arrival in the house of Mr. Francisco Mallari, did you take any particular action regarding your case?

a

I asked them to look for a lawyer in order to tell the lawyer what they did to me." (Ibid, pp. 56-59.)

Leticia's testimony raises interesting questions. Among them are: Why was she allowed to go to school during her captivity? Why was she allowed to go to school alone on March 2, 1967? Why did she go to the Mallari house instead going home directly? The People's brief does not answer these questions.

5. During her captivity, Leticia collected a debt of P130.00 from a certain Aling Lydia without meeting her. Leticia's testimony on this point is revealing:

"q [ATTY BONGCO]

Now, on February 28, 1967 in the morning, do you remember any particular incident that happened?

a

I told Gregorio de la Cruz that we are going to Torres Bugallon in order to collect from a friend the sum of P130.00.

q What was your real intention in going to Torres Bugallon?

ATTY. ALVAREZ

I object to the question, Your Honor. The witness said she intended to go there to collect money in the amount of P130.00.

ATTY. BONGCO

That was what she told Gregorio de la Cruz. My question is, what was her real intention in going to Torres Bugallon, Your Honor.

ATTY. ALVAREZ

That is leading the witness already, Your Honor.

ATTY. BONGCO

That is not a leading question. My question is, what was her real intention in telling Gregorio de la Cruz to collect the one hundred thirty (P130.00) pesos in Torres Bugallon from a friend.

ATTY. ALVAREZ

It is explicit that she told Gregorio de la Cruz to go to Torres Bugallon to collect the P130 from a friend. What more does the prosecution wants her to say?

COURT

Sustained.

ATTY. BONGCO

q From whom was the amount of P130.00 incurred?

a From Aling Lydia.

q

Now, were you able to go to Aling Lydia at Torres Bugallon on said date to collect the amount of one hundred thirty (P130.00) pesos?

a Yes, sir.

q

Who were your companions in going to the house of Aling Lydia in Torres Bugallon?

a Fermin.

q Who else?

a A certain stout man with curly hair, I do not know his name.

q

All in all how many were you when you went to the house of Aling Lydia?

a

Three including Gregorio de la Cruz, that is four, including myself, sir.

q

Aside from collecting the amount of one hundred thirty (P130.00) pesos from Aling Lydia, was there anything

else that happened at Torres Bugallon, Miss Octavio?

a No more, sir.

q

Did you have any conversation with Aling Lydia at Torres Bugallon?

a Yes, sir.

q What did you tell her?

a

I told Aling Lydia to tell my parents that I did not go with the men voluntarily. I was only kidnapped by them.

COURT

q What do you mean by "them"?

a The three of them, Your Honor.

COURT

Proceed.

ATTY. BONGCO

q To whom did you particularly tell those words?

ATTY. ALVAREZ

That's already answered, Your Honor. She said, 'To Aling Lydia.'

COURT

Sustained.

ATTY. BONGCO

q

Who were the persons that you saw in the house of Aling Lydia in the barrio of Torres Bugallon?

a Her daughter, sir.

q What is the name of her daughter?

a Erling.

q Do you know the full name of Erling?

a Erlinda Sabino, sir.

q Did you have any conversation with Erlinda Sabino?

a

I was asking her help, but she could not do anything. So, I told her to tell my parents to help me.

q What was the answer of Erlinda Sabino to your request?

a She told me that she will tell her mother, sir.

q Who is her mother?

a Aling Lydia.

q

By the way, when Erlinda Sabino told you that she will tell that to her mother, Aling Lydia, where was Aling Lydia then, if you know?

a She was not there.

q

But if I recall right, you mentioned a while ago that you talked with Aling Lydia on that particular day?

ATTY. SAYO

He is cross-examining his own witness already, Your Honor. Why do you have to cross-examine her?

COURT

The witness may answer.

WITNESS

Will you kindly read the question?

STENOGRAPHER (reading)

'q

But if I recall right, you mentioned a while ago that you talked with Aling Lydia on that particular day?'

WITNESS

a To the daughter of Aling Lydia, sir.

COURT

q You mean you did not talk to Aling Lydia?

a No, Your Honor.

q But you testified that you talked to Aling Lydia?

a To the daughter only, Your Honor.

ATTY. BONGCO

May I request that the testimony regarding the conversation with Aling Lydia be read, Your Honor?

STENOGRAPHER (reading)

'q

Did you have any conversation with Aling Lydia at Torres Bugallon?

'a Yes, sir.

'q What did you tell her?

'a

I told Aling Lydia to tell my parents that I did not go with the men voluntarily. I was only kidnapped by them.

COURT

'q What do you mean by them?

'a The three of them, Your Honor.

COURT

Continue.

ATTY. BONGCO

q

Now, will you kindly explain your previous statement to the effect that you met Aling Lydia on that particular day?

ATTY. SAYO

There is nothing to explain, Your Honor.

ATTY. BONGCO

The complainant might just be confused, Your Honor.

ATTY. SAYO

She is very intelligent. She is a university student, Your Honor.

ATTY. ALVAREZ

The answer was very explicit, Your Honor. The witness answered the question in a very simple manner and the

questions were so simple, so there is nothing to be confused, Your Honor.

COURT

In the interest of justice, and in the interest of finding out the truth, were you or were you not able to talk with Aling Lydia?

a I talked with the daughter, Your Honor.

q So, you mean to say that you were not able to talk with Lydia?

a No, Your Honor. She was not there.

COURT

Proceed.

ATTY. BONGCO

q

How long did you stay in the house of Lydia at Torres Bugallon?

a Half an hour, sir.

q

When you were talking with Erlinda Sabino, where was Gregorio de la Cruz?

a He was standing in front of the store, sir.

q How far was he from you and Erlinda Sabino?

a

From there up to the door [the parties agreed that the distance would be twelve (12) meters]

q

Among the companions that you have, who was the nearest to you when you were talking with Erlinda Sabino?

ATTY. ALVAREZ

No basis, Your Honor. There is no basis that they were talking.

COURT

Sustained.

ATTY. BONGCO

q

Now, when you were able to collect the one hundred thirty (P130.00) pesos, what happened to the money?
a Gregorio de la Cruz took the money from me.

COURT

q Who gave you the money?

a

The daughter of Aling Lydia." (TSN, May 19, 1969, pp. 36-47.)

Again, the Peoples brief is silent about this point.

6. Leticia had contact with the police and other officials during her captivity but she made no attempt to seek their help. She testified as follows:

"ATTY. BONGCO

q

Now, on March 2, 1967, at around 9:00 o'clock in the morning, do you remember any particular incident that happened?

a Yes, sir.

q What was that unusual incident?

a They took me to the Mandaluyong Municipal building.

q

Who were the persons who took you to the Mandaluyong Municipal building?

a

The uncle of Gregorio de la Cruz, the wife, Fermin, Gregorio de la Cruz and the compadre of the mayor.

COURT

q Mayor of what?

a Of Mandaluyong, Your Honor.

COURT

Proceed.

ATTY. BONGCO (continuing)

q

What was the purpose of bringing you to the municipal building of the municipality of Mandaluyong?

a To be married by the mayor, sir.

q

Now, were you able to reach the municipal building of Mandaluyong?

a Yes, sir.

q What happened in the municipal building of Mandaluyong?

a

The compadre of the mayor went inside the room, and talked with the Mayor, sir.

q After that talk, what happened?

a

He presented me to the Mayor, but I saw the mayor shaking his head (umiiling).

q How long did you stay in the Mandaluyong municipal building?

a Abut an hour, sir.

q

A while ago you said that you were brought to the Mandaluyong municipal building to be married. Did the mayor solemnize the marriage?

a

No, sir. He does not want to marry us. He did not want to solemnize the marriage.

q

Did you sign any paper when you were in the Mandaluyong Municipal Building?

a No, sir.

q

Was that the only instance when Gregorio de la Cruz and his companions ever brought you to a municipal building for purposes of marriage?

a

They took me to the Quezon City Hall to get a marriage contract.

q

Do you remember the particular date when you were brought to the Quezon City Hall?

a February 27th.

q What year?

a 1967.

q

Who brought you to the Quezon City Hall to secure the marriage contract?

a A policeman, his uncle, his mother and father.

.....

q

Did you subsequently learn the name of the policeman who accompanied you to the Quezon City Hall?

a No, sir.

q In Quezon City Hall, what happened?

a They made me sign a paper.

q Did you know what was the contents of that paper?

a I did not read the same.

q Did you sign the paper voluntarily?

a

No, sir. They were forcing me to sign the paper and according to them, if I refuse to sign, they will throw acid on my face.

COURT

q What do you mean by they?

a

Gregorio de la Cruz only, and according to him, Your Honor, I should not put to shame the policeman. He told me these things before leaving the house.

q Now, how long did you stay in Quezon City Hall?

a

A short time only, Your Honor." (TSN, May 19, 1969, pp. 50-56.)

The People's brief is silent on this point.

7. Leticia testified that at the house of Ernesto de los Santos she was brought behind an aparador where she was raped while her hands were held by Ernesto de los Santos (Erning to her) and her feet by Rosalino de los Santos (Saling to her). And the appellant asks: "Knowing the Filipino mind and temper, can it be believed that a Filipino male, who, as Gregorio later proved himself, had sincerely wished and had taken overt steps to marry Leticia Octavio, would make love with his future bride in the presence of two other male persons? He would not have been able to live he ignominy throughout his life, of having been a spectacle to two of hi friends. And the marriage would be doomed from the start. The couple would be a laughing stock during their earthly days to their friends and persons who may come to know of their first intimate contact. Can such be credibly accepted in the light of the Filipino male's traditional jealousy for his future spouse to the utter exclusion of all the rest, even from stolen glances?" (Brief, pp. 28-29.) He also asks: "Is it possible for a person to be holding a woman's feet, while

another male places himself on top of the woman, who would be, all the while, kicking and resisting?" (Brief, pp. 31.) And the People has no answers.

Leticia's testimony on how she was raped differs materially from her written statement dated March 4, 1967, to wit:

"5) T—

Sino naman ang tao o mga taong gumawa saiyo ng bagay na ipinagsusumbong mo dito?

S—

Si GREGORIO DELA CRUZ po na taga Sta Quiteria, Caloocan City at dalawang lalakeng pawang hindi ko kilala.

6) T—

Paano mo namang nakilala itong si GREGORIO DELA CRUZ?

S— Pagkat isa po siyang lumiligaw sa akin.

7) T—

Gaano na katagal ang inyong pagkikilala nitong si GREGORIO DE LA CRUZ?

S—

Mayroon na pong humigit kumulang sa isang taon buhat ngayon.

8) T—

Sa lalong malinaw at saiyoung sariling pangungusap ay mangyari lamang na sabihin mo dito ang buod ng pangyayari saiyoung sinasabing pagkidnap at paghalay saiyoung pagkababae?

S—

Gaya nga po ng oras at araw na nabangit, samantalang ako ay papasok sa aking eskuelahan sa University of Manila at kasalakuyang naghihintay ng masasakyan sa may canto ng P. Guevarra at Cavite sa Sta Cruz, Maynila at nagulat na lamang ako ng huminto sa tapat ko ang isang jeep na pampasaheros at bigla na lamang bumababa itong si GREGORIO sabay lapit sa akin at ang sabay sabing 'PAGKA HINDI KA SUMAMA MA SA KIN AY PA PATAYIN KITA AT BUBUSAN KITA NG AKSIDO SA MUKHA', kung kayat napilitan akong sumakay sa gawing unahan ng jeep na siya rin ang nagmamaneho at ang isa niyang kasama ay nasa tabi ko at ang isa naman ay nasa gawing likod. Na, sa aking takot ay wala akong nagawa at ako ay dinala sa isang bahay sa Sta. Quiteria, na nang malaon ay napagalaman kong kanila pala ang nasabing bahay. Nang dumating kami sa nasabing bahay ay umalis na ang dalawa niyang kasama at ako naman ay kanyang inakyat sa bahay at ipinasok sa kanilang pinaka 'cuarto' at pinilit niya akong inihiga subalit nanlalaban ako at sa katagalan ay naalis din niya ang aking pantie at nakuha niya ang kanyang gusto sa aking pagkababae. At buhat nga noon at sa loob ng limang (5) araw ay nagagawa na niya ang kanyang nais sa pamamagitan ng pagtutok ng baril, pananakot sa kabila ng aking walang patid na pagtutol, pagmamakaawa at panlalaban. At ang bagay na iyon ay hindi ko na mabilang pagkat para na akong wala sa sarili dahil sa sakit na aking nadadama kung ako ay kanyang pinagsasamantalahan maging sa kanilang bahay sa dalawang bahay na hindi ko alam kung kanino." (Exhibit

SS, italics supplied.)

It should be noted also that she did not know the two companions of Gregorio (dalawang lalakeng pawang hindi ko kilala) and yet during her testimony, as stated above, she repeatedly and familiarly mentioned Erning (Ernesto de los Santos) and Saling (Rosalino de los Santos) as the companions of Gregorio.

The People would brush aside the inconsistencies and contradictions in the testimony of Leticia as mere details. But obviously they are not for they refer to important matters which materially affect her credibility.

Upon the other hand, Gregorio had evidence to support his claim that Leticia agreed to elope with him after he had courted her with the knowledge of her father.

Item: In Leticia's statement, supra, she said that Gregorio "siyang lumiligaw sa akin" . . . "humigit kumulang sa isang taon . . ."

Item: Exhibit 13 is a picture of Leticia with the inscription: "Yoyong, just a simple remembrance from me." (Expediente, p. 572.)

Item: Exhibits 2, 4, 5 and 7 are pictures showing Leticia and Gregorio. (Expediente, pp. 562, 564, 565 and 567.)

Item: Exhibit 1 is an advice to Leticia to marry Gregorio signed by her parents Casiano Octavio and Segunda de Guzman. (Expediente, p. 561.)

Item: Exhibit 10 is an application for license to contract marriage with Gregorio signed by Leticia. (Expediente, p. 577.)

Item: Corroborating the story of Gregorio that Leticia went with him voluntarily were witnesses which included Quirino Labing-isa and Gavina Labing-isa. It is true that these persons are related to Gregorio and could be partial in his favor. However, there was also Major Leandro Cruz (retired) who testified that a jeep driven by Gregorio with Leticia seated beside him passed in front of his house on February 25, 1967. Leticia was smiling and "It seems that there was nothing wrong, nothing happened in so far as I am concerned, they were happy, sir." (TSN, January 14, 1970, p. 13.) And in the afternoon of the same day, he again saw Leticia and Gregorio "At the dulog party. I think that is a dulugan. That is a contract before the marriage -- a party before the marriage." (Ibid, pp. 14-15.) The party was for a certain Marciana, not Leticia.

The foregoing show that the facts and circumstances bolster the presumption of innocence in favor of Gregorio; they dilute the People's evidence against him so that it cannot be said that his guilt has been proved beyond reasonable doubt. In this light, it would be a redundant exercise to discuss the other errors assigned by him as well as those assigned by Ernesto and Rosalino de los Santos.

One last word: Leticia's claim that she was raped by Gregorio is uncorroborated by any other witness. There can of course be a conviction for rape absent direct evidence save that of the victim provided that her story is corroborated by circumstances, e.g. torn garments, physical injuries, etc. In this case, Leticia's story is not only unsupported by circumstantial evidence, it is attended by contradictions and improbabilities which negate her claim.

WHEREFORE, the judgment convicting the appellants is hereby set aside and they are hereby acquitted of the charge against them. Gregorio de la Cruz who is detained shall be released immediately. No costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, De Castro and Escolin, JJ., concur.

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