

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLAUDIO BULAONG AND FONSO LAURECIO, ACCUSED-APPELLANTS.

G.R. No. L-37836. July 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Claudio Bulaong appealed from the decision dated September 28, 1973 of the Court of First Instance of South Cotabato, General Santos City Branch I, convicting him of eight complex crimes of forcible abduction with rape, sentencing him to eight penalties of reclusion perpetua and ordering him to pay the victim, Delena Segapo, a total indemnity (including attorney's fees) of P130,000 (Criminal Case No. 559).

In that same decision, Alfonso Laurecio was convicted as an accomplice and sentenced to an indeterminate penalty of four years, two months and one day of prision correccional as minimum to ten years and one day of prision mayor as maximum and to pay the same indemnity to Delena Segapo.

In this Court's resolution of February 1, 1979, Laurecio's petition to withdraw his appeal was granted (p. 183, Rollo).

In the afternoon of December 5, 1972, Delena Segapo, 14, and her sister, Nena, 8 (both Bilaans), left their house at Barrio Landan, Polomolok, South Cotabato, to perform an errand for their father. After walking for about forty minutes, they boarded a passenger jeepney and arrived in the public market of General Santos City at around six o'clock in the evening.

Their destination was Barrio Kiblat, Malungon, South Cotabato where they were going to collect an account from a person named Tamigo. But as there was no more jeepney going to Malungon at that hour, the sisters decided to take a tricycle to convey them to the house of Pedro Mula, their relative residing at Laurel Street in that city.

Before the two girls could ride in a tricycle, Claudio Bulaong, a 35-year-old married man with five children, appeared at the market place. He was well-known to the two sisters because, as an only son, he administered his family lands in Barrio Landan where many Bilaans resided. Bulaong alighted from his jeep, pointed his gun at the two sisters, held Delena's neck and forced her and her sister to board his jeep.

He conducted them to the New Bay View Hotel in the city where Bulaong forced them to enter Room 304. He was still holding his gun with one hand and with his other hand, he held Delena's arm. He threatened to kill the two sisters if they would escape and refuse to enter the hotel room.

After they had entered the room, Bulaong locked the door. He removed Delena's jeans and panties and pushed her to one of the beds. He undressed. When Delena, was on the bed, he stripped her of her blouse and bra and placed himself on top of her.

She resisted, spitting at him and kicking and scratching him. She was crying. Her sister, Nena, was also in tears, a helpless spectator of the ravishment being committed against Delena. Bulaong spread Delena's legs, inserted his

penis into her vagina and made push-and-pull movements. He succeeded in having sexual congress with her.

After satisfying his lust, Bulaong went out of the room. He took the precaution of locking it to prevent the two sisters from escaping. He obtained food from the restaurant on the ground floor. He reentered the room with the food. Delena refused to eat.

Bulaong had sexual intercourse with Delena eight times in the hotel. She suffered pain in her genital organ. It was bleeding. At about six o'clock in the afternoon of the following day, December 6, Bulaong and the two sisters left the hotel. He brought them in his jeep to his parents' bungalow in Barrio Landan which was then unoccupied. They were locked in a room, Fonso Laurecio, a houseboy armed with a gun, guarded them. Bulaong had sexual intercourse with Delena in that place.

On December 31, 1972, while Bulaong and Delena were taking lunch, the eight-year-old Nena (who had already been detained for twenty-six days) was able to escape by passing through the ceiling and holding on to the pipe which led to the ground. She did not take the road. She traversed the savanna with cogon grass and followed the creek leading to her house.

Nena recounted the outrage to her mother, Maria Malid, and later to her father, Dalama Segapo, when he arrived on January 2, 1973 from Malungon. Dalama reported the incident to Lieutenant Torcuator of the city police department who, instead of taking direct action, advised Dalama to complain to the barrio captain who in turn told Dalama to ask Rudy Ante, a barrio councilor, to accompany him to Bulaong's house.

On January 6, 1973, Dalama and Ante repaired to Bulaong's house. Dalama asked Bulaong to deliver to him his daughter, Delena. Laurecio, armed with a gun, brought Delena to her father. Dalama took her home.

Two days later, or on January 8, the city health officer examined Delena and found that there were recent multiple lacerations in her hymen which admitted two fingers. He concluded that she was no longer a virgin and that she was the victim of "recent sexual intercourse" (Exh. A).

A Constabulary investigator took the statements of Dalama and his two daughters. On January 9, 1973, a complaint for forcible abduction with rape, signed by Delena and Dalama, was filed in the city court against Bulaong as principal and Laurecio as an accomplice. At past four o'clock in the afternoon of that day, the city judge interrogated Delena. The examination was reduced to writing in the form of searching questions and answers. The next day the city judge conducted a similar examination of Nena and Dalama.

A warrant was issued for the arrest of Bulaong and Laurecio. No bail was recommended. Bulaong and Laurecio surrendered voluntarily on January 10 and 12, respectively (pp. 31 and 46, Record). They waived the preliminary investigation. On January 23, 1973, the city fiscal filed in the Court of First Instance against Bulaong and Laurecio an information for forcible abduction with rape. The two accused entered a plea of not guilty.

After trial, the lower court rendered the judgment of conviction already stated. In this appeal, Bulaong contends through his counsel de oficio that the lower court did not acquire jurisdiction over the case because the information filed by the city fiscal is fatally defective for not containing the verification required in Form 24 of the Appendix to the Rules of Court.

That contention has no merit. The forms prescribed in the Rules of Court "serve as mere illustrations". Jurisdiction over the crime charged in this case is conferred by law, not by the complaint or information which is merely the means by which jurisdiction is invoked or which gives the court the occasion for exercising its jurisdiction. (*Valdepeñas vs. People*, 123 Phil. 734.)

In this case, the complaint for abduction with rape against Bulaong was filed in the city court by the offended girl

and her father. That complaint was sworn to before the city judge (Exh. B). It was the basis of the preliminary examination. The judge examined the witnesses under oath. The examination was reduced to writing in the form of searching questions and answers. On the basis of that examination, a warrant of arrest was issued.

The accused waived in writing the second stage of the preliminary investigation. In such a case, the fiscal is not called upon to conduct another preliminary investigation (*People vs. Pervez*, 110 Phil. 214).

He could file an information on the basis of the preliminary investigation conducted by the inferior court because the prosecution of the offense is under his direction and control. He could not have certified that he held a preliminary investigation because the preliminary examination was actually conducted by the city court and the second stage of the preliminary investigation was waived by the accused.

In a case, like the instant case, involving crimes against chastity, the prosecution may be conducted by the fiscal on the basis of the complaint filed in the inferior court. There is no need to file an information. (*People vs. Imas*, 64 Phil. 419; *People vs. Varela*, 64 Phil. 1066; *People vs. Roa*, 60 Phil. 1013; *U. S. vs. Garcia*, 27 Phil. 254; *People vs. Zurbano*, L-32673, February 22, 1971, 37 SCRA 565.)

Hence, the other contention of the accused that the information should have been signed by the offended girl is wrong. Article 344 of the Revised Penal Code, reproduced in section 4, Rule 110 of the Rules of Court, does not require that the offended girl in a crime against chastity should sign the information filed by the fiscal (*People vs. Cerena*, 106 Phil. 570).

The accused contends that the information dated January 22, 1973, which was filed on the following day, January 23, is void because it was "received and filed on January 9, 1973" and, consequently, the case against the accused was "railroaded".

That contention is baseless and preposterous. The information was filed on January 23, not on January 9. Evidently, counsel de oficio is mistaken. He did not examine the record carefully.

Another baseless contention of counsel de oficio, which shows his failure to peruse the record with due care, is that it is not alleged in the information that the forcible abduction with rape was committed with lewd design. The incontestable fact is that in both complaint and information "lewd design" is explicitly averred.

Counsel de oficio's fifth assignment of error is that the trial court erred in not finding that the victim's father and accused Bulaong entered into a compromise. Counsel then argues that, because of such a compromise, Bulaong is not guilty.

The argument is feeble and flimsy. The testimonies quoted by counsel show that the victim's father pretended to agree to a dowry of one carabao and two thousand pesos just to be able to secure the release of his daughter who was held in captivity by Bulaong. There is no showing that Bulaong was pardoned by the victim and her father. It is the appropriate pardon that extinguishes criminal liability for a crime against chastity.

The other assignments of error of counsel de oficio involve the issue of whether the crime of forcible abduction with rape was proven beyond reasonable doubt. The resolution of that issue requires an examination of Bulaong's evidence.

Bulaong, who finished the third year high school, set up the defense that Delena was his mistress, who with her parents' consent, lived with him. He did not deny that he cohabited with Delena in his father's house at Barrio Landan from December 6, 1972 to January 6, 1973 (896 tsn).

He was infatuated with Delena. He told her that he wanted her to be his second wife. He planned to ask his wife to consent that Delena would be his mistress. He testified that it was customary among the Bilaans to have a second

wife.

When Bulaong allegedly told Delena that he loved her, she replied that she had liked him for a long time already (782). (However, on cross-examination, Bulaong said that he never told Delena that he loved her, 855.)

About the end of October, 1972, he informed Dalama that he wanted Delena to be his second wife. Dalama said that he should talk with Delena. Bulaong and Delena allegedly became sweethearts on November 16, 1972 while they were in the house of Palaguyan Lakim, Dalama's neighbor. On that occasion Bulaong kissed Delena several times while they were seated on the floor and he touched her private parts (883). Maria Segapo saw Bulaong kissing Delena (857).

On November 21, 1972, Nena Segapo told Bulaong that Delena wanted to talk with him. He went to Delena's house and stayed there from ten in the morning up to one o'clock in the afternoon. They allegedly agreed to have an assignation in General Santos City. She borrowed from Bulaong one hundred pesos to be used in buying a dress for her sister Nena (783-4). (On cross-examination, Bulaong testified that it was Dalama who borrowed one hundred pesos from him, 856).

Nena was to participate as a second princess in the barrio fiesta to be held on November 24. (Bulaong's daughter was the first princess.) Nena's dress would be made by Bulaong's wife who was operating a dress shop in the city. Nena and Delena went to the city in the afternoon of November 21. Bulaong followed later. He waited for them near the theater on Pioneer Street, where he met Moreno Delfin, his friend.

When the sisters arrived, Bulaong and Delfin brought them to Satea's restaurant located on the ground floor of the New Bay View Hotel where they took a merienda. After they had finished eating, Bulaong directed Delfin to take the girls to Room 304 of the hotel.

Bulaong allegedly stayed with the two girls in Room 304. Nena slept in one bed. Bulaong and Delena had sexual intercourse twice in the other bed. He discovered that she was not a virgin. She allegedly confessed that she had sexual relations with four men, namely, Roberto Daniel, her cousins Kamad and Nonoy and her uncle (911-913).

He told Delena that he could not take her as his second wife but if she behaved, he would support any offspring that they might beget. They checked out of the hotel in the morning.

Bulaong went to the office of the family corporation, Bulaong Enterprises. He took breakfast in his mother's house in the city. He did not offer any breakfast to the two girls. He later saw them near the public market seated in a jeepney bound for Barrio Landan. They were sitting beside his mother who was also going to Landan (803).

According to Bulaong, he met Delena at the dance on the coronation night, November 24, 1972 in Barrio Landan. He asked her to dance with him but she allegedly refused because his wife was present.

They met on November 28 or December 28, near the creek behind the sheller of the Bulaong family and had sexual intercourse on the ground (809-10, 870).

On December 6, 1972, Delena was allegedly brought to Bulaong in his father's house in Barrio Landan by Rudy Ante, a barrio councilor. Delena asked for a dowry. Bulaong denied the request. At Ante's behest, Fonso Laurecio, the family houseboy (a Bilaan, 917), fetched Dalama, the father of Delena.

Dalama allegedly asked Bulaong to give a dowry (sungod) consisting of two thousand pesos cash and a carabao. Bulaong also denied the request. Dalama was infuriated. He wanted to kill his daughter.

Dalama left the place. Ante, Maria Segapo, Delena, Elon (Maria's brother) and Lakim, a relative of Delena, remained with Bulaong. They allegedly agreed to entrust Delena to Bulaong because, if she went home, she

would be killed by Dalama. Delena said that she would stay with Bulaong wherever he would go because she loved him (816-7). They had sexual intercourse on December 6 (892).

Bulaong testified that four days later Delena went home because her father was no longer angry. Bulaong talked with her parents. Dalama told Bulaong not to abandon Delena and to help the Segapo family.

Bulaong and Delena and their companions left DaLama's house at nine o'clock in the evening. Dalama went with them because Bulaong was going to give him sardines. After Dalama received the sardines and salmon, he did not insist anymore on the dowry (822).

Bulaong said that Delena did not stay all the time with him in his father's house in Barrio Landan: "just come and go". Nena sometimes slept with Delena in that house (835). Delena would stay for sometime, then leave and go home and then return to Bulaong's house. At that time his parents were allegedly in Manila, having gone there at the end of November and returned before January 10, 1973 when Bulaong was arrested (881). His wife stayed in her dress shop in the city.

Bulaong testified that on Christmas day and New Year's day he was in the house of his father-in-law in the city (835-6).

Delena left Bulaong on January 7, 1973 because Bulaong told her to return to her father's house before his parents' arrival. He gave her ten pesos (838-40). After Bulaong discovered that Delena was not a virgin, he lost interest in making her his second wife (873).

The trial court characterized the foregoing version of Bulaong as improbable, incredible and contrary to human experience, a veritable "fairy tale".

Delena, her father Dalama and her sister Nena returned to the witness stand to rebut Bulaong's testimony. Delena denied that she had lost her virginity by having had sexual intercourse with a certain Daniel and with her two cousins and her uncle. She did not know Daniel. She did not have sexual congress with her two cousins and her uncle because, as she said: "I am not an animal" (1042).

Nonoy, whose full name is Reynaldo Dueñas, testified that as Delena's first cousin, he treated her as a sister. He denied having had sexual intercourse with Delena.

One serious discrepancy in Bulaong's evidence shows its untrustworthiness and fabricated character. Mildred Arenó, a defense witness, admitted, when asked to testify as a rebuttal witness for the prosecution, that according to the school register (Exh. 2 or F), which was prepared by her as the Grade two teacher of Nena Segapo, the latter was present in class on November 21, 1972 (1005).

Yet, according to Bulaong and his witness Moreno Delfin, Nena was with Delena in the afternoon of November 21, 1972 when Bulaong and Delena allegedly had an assignation in the New Bay View Hotel and that the sisters returned to their residence on the following day. That testimony of Bulaong, which is the core of his defense in this case, is false as shown in the school register (Exh. 2) and as rebutted by his own witness, Mildred Arenó.

It should be borne in mind that Delena and the members of her family are Bilaans or non-Christians and, as such, are ethnically, socially and economically inferior to Bulaong and his family, one of the two richest families in Barrio Landan. This circumstance serves to explain why it took Dalama a long time to recover custody of Delena from Bulaong and why the two girls were easily cowed and frightened into submission by Bulaong.

We agree with the trial court's evaluation of the evidence and with its conclusion that Bulaong's guilt was proven beyond reasonable doubt. The following observations and conclusions of the trial court are well-taken:

"One need not stretch his imagination to conclude that this strange story of a love affair, followed by a demand of a dowry by the parents accompanying their daughter, dismissed outright by the man, with the woman choosing to remain in the house of her lover, a married man, still smiling and professing to be in love with him, stayed willingly with him as a wife for about a month and thereafter filing a case of forcible abduction with rape against him, is very unusual and improbable, contrary as it is to human experience, to deserve any modicum of credence (*People vs. Alto*, 26 SCRA 342, 357). The reasons are:

"1. It was vigorously denied by Delena, Nena and Dalama Segapo in their rebuttal testimonies and directly opposed to their story narrated in the direct evidence whereby in spite of their being native Bila-ans, their tender age (with respect to Delena and Nena Segapo) and his illiteracy (with respect to Dalama Segapo), they stuck to their versions notwithstanding the long and searching cross-examinations of two defense attorneys. Bereft of artificiality and hesitancy, usually detected in one who testifies a concocted story, they were frank and straightforward in answering questions, x x x.

"xxx xxx xxx.

"3. Defendant having been publicly known to be a married man in Landan, Polomolok, South Cotabato, with five children, some of whom were studying in Landan Elementary School (were transferred to North Elementary School at General Santos City after the present incident) to Flora Manansala, also known in the locality as a dressmaker, as in fact Nena Segapo herself with Delena had her dress sewed by her immediately before their barrio fiesta on November 24, 1972, aside from the couple having a house of their own in Landan, it will be very difficult to believe that Delena, with her beauty, youth, and elementary education, would allow herself to be rightly called his sweetheart, knowing very well that he will not be in a position to marry her, even under Bila-an traditions. That her parents would give aid and comfort to such an illicit relationship is impossible. For our judicial records are replete with incidents of killings by Bila-ans to protect the honor and integrity of their women.

"4. Throughout his testimony, both in the direct and in the cross, nay, even in answers to questions of the court, defendant vehemently denied having expressed his love and promise of marriage to Delena Segapo, as all the time, he had been conscious that he had promised the same love and fulfilled it in that grand wedding of May 1, 1960 with Flora Manansala. All that he admitted was his statement to Delena's father that he wanted her to be his second wife and his statements to Delena that he liked her. That is not courtship. Love begets love and there can be no sweethearts where one does not confess to be in love.

"5. That they had agreed to have a date and sleep as man and wife in the New Bay View Hotel on November 21, 1972 can easily be dismissed as an outright lie, considering his admission of the presence of Nena Segapo, an eight-year old sister of Delena. Experience has taught us that sweethearts bent on satisfying their lusts, as we are made to believe in this case, would have avoided the presence of strangers, more especially a close relative of the girl (in this case a sister of the victim). The third party will make it a crowd.

"6. No comfort can be had of the registry book for guests of the New Bay View Hotel showing that on November 21, 1972, Claudio Bulaong checked in at the hotel in the evening and checked out in the following morning, to corroborate his story. On its face, said entry belied the claim that Claudio Bulaong was with somebody as he appeared to be alone in Room 304.

"Secondly, the exhibition of a very wonderful memory of Carlos Ma, in charge of the hotel, remembering Claudio Bulaong to be with Delena Segapo and her sister on November 21, 1972 in checking in and checking out, considering that that was the first time that they were his guests who never returned, at the same time forgetting all his recent guests, made the plot of a date very unbelievable.

"Thirdly, this documentary evidence of the defense is contradicted by its other evidence, that is, the class record of Grade II pupils identified by Mrs. Mildred Arenos which shows that on November 21 and 22, 1972, Nena Segapo was present in her classes for said days (See Exh. 2-B, J-1, school register in connection with

hotel register, p. 114, marked as Exhibit 8-B).

"7. The demand initiated by Maria and Delena Segapo as mother and daughter accompanied by barrio councilman Rudy Ante in the morning of December 6, 1972 for a dowry of P2,000.00 and a carabao is rather extraordinary, there having been no proposal of marriage previous to said date by Claudio Bulaong who in the first place could not have done so. For a dowry is only demandable after there is a proposal of marriage by a man to the parents of the woman.

"8. Claudio Bulaong outrightly dismissed the demand of a dowry by Dalama Segapo. In such a setting, we cannot understand why this conversation commenced at eight o'clock in the morning lasted until about three o'clock in the afternoon when Dalama Segapo left and until four o'clock when his wife left, the parties not being served with lunch and merely made to content themselves with soft drinks and biscuits. And to make this Court believe that in spite of the refusal of Claudio Bulaong to pay the dowry in the presence of Delena, she was still happy and smiling, telling her parents that she would not leave his house because she loved him, thus she voluntarily and consciously lived with him as man and wife until January 6, 1973 is futile.

"That is beyond the realm of realities. It is a fairy tale when taken with the very serious case of forcible abduction with rape commenced soon after her liberation in the court below. Inherently improbable, it was in itself a lie, pure and simple, when we take into account his accusation of Delena after his alleged first carnal knowledge of her on November 21, 1972, in the New Bay View Hotel that she was not a virgin and the latter freely confessed about the four men in her life, some of whom were her own relatives.

"Such a very unkind charge of the defendant is controverted by the medical findings of Dr. Jose Alvarado, who examined Delena on January 8, 1973, aside from being denied by Delena herself and rebuttal witness, Reynaldo Dueñas. It succeeded only, if it did succeed at all, in adding insult to a very painful injury. x x x The story of the defendant should not have been dignified by an exhaustive dissertation. For like an ostrich which hid its head into the sand, its body was fully exposed to public view. It is only because we are faced with a crime involving a capital punishment that we have chosen to do so.

"Neither is his denial of the use of a gun and of their own Toyota jeep convincing. To buttress his testimony, his own affidavit subscribed and sworn to before Notary Public Gregorio Daproza, Jr. on April 12, 1972 was offered as evidencing the transfer of his gun to his brother-in-law, Charlie Dimalanta (Exh. 11). This affidavit is self-serving and could have been executed by him at any time with an antedated date before aforesaid notary public because an examination of the records of this Court will show that Atty. Gregorio Daproza, Jr. as a notary public has not submitted any notarial report from February 16, 1971 (See Record, p. 105).

"And as the only son of Eusebio Bulaong, his claim that at the time he was not using their Toyota jeep does not ring true, taking (into account) the mentality of Filipino parents who have so many children but with only one son. That he was the administrator of a vast agricultural land in the distant barrio of Landan, Polomolok, South Cotabato and at the time, his parents were in Manila, its veracity is nil.

"As the principal and basic evidence upon which the defense rests its case fails, all evidence intended to support or corroborate must likewise fail (See *People vs. Marcos*, 70 Phil. 468, 478-479). It is only for more enlightenment that we will attempt to take them one by one, demanded by the gravity of the offense involved.

"As stated at the outset, a retinue of public school and barrio officials were marshalled in an effort to destroy, if not minimize, the credibility of the People's witnesses, brought to Court by the mother of the accused, in their own Toyota jeep (used in the commission of the crime), some of whom were billeted in the New Bay View Hotel like Barrio Captain Venancio Dianga and Barrio Councilman Rudy Ante, evidently showing how the defendant has been a customer of said hotel in a city riddled with hotels (See pp. 156, 166, Hotel Register, Exh. 1).

"Armed with school register and her pupil's test papers, Mrs. Mildred Areno declared that for the school days

in December, 1972, Nena Segapo, her grade two pupil, was absent only thrice, these were on December 11, 14 and 18. In short, it was impossible for her to be with Delena from December 5 to December 31 when she escaped from the defendant's clutches. Unfortunately, we have these observations:

"1. Not a civil service eligible and teaching in a barrio school built in a place controlled by the Bulaong family, her impartiality is debatable. Her hold on her job was at the whims and caprices of the powers that be that soon after she finished testifying in this case, she was rewarded with a transfer to a school in her residence in Spring Camp, Polomolok, South Cotabato;

"2. The school register itself and its pages are very clean, written in perfection, without any erasure and uniformly by one ballpen which she used from September until she testified on March 6, 1973, but with a filler, as correctly observed by the public prosecutor, not even used one-millionth (Exhibits 2-C). Considering further that she has to travel everyday from her residence to the school and return on public conveyances along a dusty road during sunny days and muddy during rainy season, its neatness is quite surprising. It appears to be accomplished in a day. It is not so with the Class Records (Exh. D);

"3. This school register does not bear the signature of any public school official or any official mark when issued or inspected that it can be changed at will at anytime by its possessor. Indeed, it can be bought at anytime in any store dealing with school supplies. Given to her by Mr. Mauro Espe, their head teacher, in her testimony on March 6, 1973, it was bought by her in a store by her declaration in the cross on March 7, 1973. Which is which? Only God knows. Far more important is the fact that all documentary evidence submitted by the District Office of said school to this Court from the Landan Elementary School, to support the school register, were of the same category - no signature of its receipt and the date thereof (See Exhs. 1 to 7). To our knowledge, such is not the regular procedure in dealing with official records. This can either be a case of negligence or mass intercalations. In either, it cannot deserve official integrity;

"4. As a faithful record of attendance of her pupils including hers, it did not show her absence when in court awaiting for her turn to testify. Not only that. Nena Segapo appears to be present on November 21 and 22, 1972 when she was supposed to be with Delena in the afternoon of November 21 and was seen by Claudio Bulaong in the parking place in General Santos City about nine o'clock in the morning of November 22. The \$64 question is, whom to believe?

"5. Picturing the defense counsel to be prophets, she said that she was not interviewed by anyone of them nor by any relative of the defendants as equally neither had she shown them the school register and the test papers of her pupils saved by her and brought to Court. Having in mind the seriousness of the offenses involved, the affluent client defended and the experience of the principal counsel, such a blind request for the issuance of a subpoena and subpoena duces tecum is beyond comprehension (See, Record, pp. 56, 62);

"6. Of the 30 pupils she had in Grade II, she presented 46 test papers, 16 of which belong to Nena Segapo, while her classmates Mercy Ante, Rebecca Julie, Ana Gulada, Roberto Palate, Antonia Villalon and Merlyn Tel have 9, 8, 8, 7, 4, and 2, respectively (Exhibits 1 to 1-O, 3 to 3-Z). Her reason that Nena was a bright and a model pupil that she preserved her test papers as samples was a contradiction to her subsequent testimony that Nena was always absent and a liar. Apart from the tearful denial of Nena that those test papers in December were not her own, one need not use a magnifying glass to decipher that the handwriting of Nena when she signed her affidavit and those on the test papers denied by her is an ocean of difference, the latter being evidently written by one who is not a Grade II pupil in a barrio school. Besides, the grades on the test papers before December, 1972 will speak for themselves. She cannot be a model pupil. (Exhs. 1-90%; 1-A-85%; 1-B-75%; 1-C-90%; 1-D-95% & 1-E-95%).

"Granting in gratia argumenti that the testimony of Nena Segapo is seriously impeached, which we are far from believing that it was, the rule in this jurisdiction is well-settled that in crimes of rape the sole testimony of the offended parties is sufficient to sustain a conviction. (U. S. vs. Ramos, 1 Phil. 81; People vs. Dazo, 58 Phil. 421; People vs. Macaya, et al., G. R. No. L-925, February 27, 1970; People vs. Ganal, et al., G. R. No. L-1990,

March 15, 1950, cited in *People vs. Selfaison*, supra, p. 243).

"Mauro Espe, teacher in charge of Landan Elementary School, brought to Court Form 137-B, the school register of Delena Segapo, where she appears to be born on September 21, 1955 (Exhs. 5, 5-A). Its purpose is to contradict the testimony of Delena and her father, Dalama, that she was 14 years old at the time of the incident for she was born on November 10, 1958. There being no showing that this entry was furnished either by Delena Segapo or by her father, Dalama Segapo, it is worthless for impeachment purposes. Mauro Espe, whom we noticed to have taken a very unusual interest in defending the accused, especially after Rebecca Julie, 9 years old, one of the five (5) grade two pupils of the Landan Elementary School, testified on July 2, 1973 that she and four (4) of her classmates were brought by Mr. Espe to the house of Atty. Mirabueno and thereafter to this Court as sur-rebuttal witnesses, exaggerated his memory by declaring that during the enrollment of Delena on August 3, 1964, he heard and still remembers that Dalama Segapo was the one who furnished aforesaid date of birth to Mr. Decano, the enrolling teacher.

"He failed though to tell us the date when Martial Law was declared by the President. That enrollment was almost 9 years ago when he testified on March 7, 1973 while the declaration of Martial Law was less than a year. At any rate, the entries in Exhibit 5 will speak for themselves. It could not have been furnished by Dalama Segapo whose name appears there as Dalaman Segapo and whose wife, Maria Malid (Record, p. 10), was identified as Maria Dilion.

"That the date of birth of Delena was simply placed there by the school teacher to comply with the school age, an effort to increase the enrollment in this school, is possible. Dalama Segapo, being an illiterate Bila-an, could not tell us the days of the week and months of the year when he testified in Court. At any rate, whether Delena Segapo was 14 years old as she appears to the Court while testifying or 17 years old, is an immaterial issue, having in mind the complex crime charged.

"Francisco Mandar, district supervisor of Polomolok, South Cotabato, identified B.P.S. Form No. 3 which is the principal's report of enrollment and attendance of all the schools in his district, one of which is Landan Elementary School. It appears that the subpoena calls for him to bring Form 2 which is the record of pupils' attendance prepared by the classroom teacher. Instead he brought this Form No. 3. As a piece of evidence, Exhibit 6 is worthless as it did not show the specific attendance of Nena Segapo in her classes as a grade two pupil. The same can be said of Form No. 2 identified by Mr. Adronico Sotelo, principal teacher of Polomolok Central School. Mr. Sotelo categorically stated that he was not the one who personally received Form No. 2 as it was received by a clerk under the office of the district supervisor (Exh. 7). No such signature of the receiving clerk appears on the face of the document and the same could have been submitted by Mrs. Mildred Areno even after this case was commenced.

"Venancio Dianga, barrio captain of Landan, asserted that on December 5, 1972, Dalama Segapo went to his house asking his help in getting a dowry from Claudio Bulaong because his daughter and Claudio Bulaong were often going together. He refused because he had a misunderstanding with Claudio Bulaong and that existed until he testified on April 2, 1973. And to bolster that cause, he wanted to make us believe that while he took the Toyota jeep of Claudio Bulaong in going to General Santos City in order to testify in this case, this was done because he requested the mother of Claudio Bulaong to take that jeep and it was not otherwise.

"To us, he is a rehearsed witness, if not biased, and was not telling the truth. Elected as such barrio captain from 1968 until 1973 with the help or at least with the acquiescence of this controlling family in Landan, his claim for having a quarrel is shallow. It appears that when this case was called in the first week of March 1973 and the second week of April 1973, he checked in at Room 202 with Mrs. Dianga and thence in Room 208, with his departure in both not specified (See pp. 156, 166, hotel register, Exhibit 8).

"As supposed protector of his people, being a barrio captain, he collected from the landowners P5.00 each for accomplishing their sworn statements of the current and fair market value of their properties in compliance with Presidential Decree No. 76, earning as much as P1,000.00. We are unaware if there is any law which

allows him, even as a barrio captain, to make such collection, considering that he is only a first year high school. A public official with such a corrupt mind is not worthy of credence. While vigorously maintaining that the date was December 5, 1972 and not January 6, 1973 as testified to by Dalama Segapo, his memory for dates is very treacherous.

"He could not even tell us the dates when all his eight children were born and his claim for a serious altercation with the defendant is directly opposed to his admission that before he testified, he conversed with Claudio Bulaong.

"The testimony of Juan Barieses, Jr., public school teacher of Alegria Elementary School, is so harmless as to deserve the cross-examination of the prosecuting Fiscal.

"Rudy Ante, a barrio councilor of Landan, Polomolok, South Cotabato, declared that on December 6, 1972, Maria Segapo and her daughter Delena went to his house with Delena complaining to him that the accused had carnal knowledge of her in the hotel and asked his help for a settlement. He accompanied her to the house of Eusebio Bulaong and there met Claudio Bulaong informing him about the complaint of Maria and Delena. Upon his suggestion, defendant asked him to call for Dalama Segapo, and he obliged. Thus, at about eight o'clock in the morning of December 6, 1972, Dalama Segapo, his wife, Maria, daughter, Delena with one named Bong, Ilong, Ading (accused) and himself were in the house of Eusebio Bulaong. He opened the conversation by telling Claudio Bulaong that the parents of Delena were willing to 'enter into an amicable settlement' if defendant would pay them P2,000.00 and one carabao.

"The indictree outrightly refused because he could not afford that amount and went to the extent of even warning Dalama as follows: 'If you are a father you should not sell your daughter for that price'. He tried to convince Claudio Bulaong to settle but he failed, so he left the house at about 4:00 o'clock in the morning with Gorio Lakim and Maria Segapo, leaving Delena in the house who told them that she did not like to go home anymore because she wanted to stay with Ading as she was afraid because her father was mad.

"Like Venancio Dianga, he is a Bila-an barrio official who owed his election to the defendant. Testifying on April 3, 1973, he checked in with Venancio Dianga as early as April 1, 1973 and the hotel register did not state when did he check out of Room 217. Until April 4, no one occupied Room 217. Taking cue from what happened to witness Venancio Dianga, he came to Court ready to tell us the respective dates of birth of his children. He was already a defense witness before the trial, executing an affidavit on January 24, 1973 (Exh. G).

"He never talked about Claudio Bulaong marrying Delena as he emphasized that he was the one who tried to settle the case by convincing Claudio Bulaong to pay P2,000.00 and one carabao (See Exh. G-1). In other words, except for the date, that is, January 6, 1973 instead of December 5, 1972, and the fact that Delena was in the house of Eusebio until she left their house on January 6, 1973 upon regaining her freedom, the testimony of Rudy Ante in a way confirmed that of Dalama Segapo and Delena Segapo as to what happened in the afternoon of January 6, 1973. We leave him, as all other matters were already discussed by us with regards to the testimony of the defendant Bulaong himself.

"The testimony of Carlos Ma that Claudio Bulaong checked in at the hotel only on November 21, 1972 and he had never returned thereto, especially during the whole month of December 1972 has been sufficiently alluded by us. But if more is needed, he admitted that he allowed customers who are his friends from General Santos City under a short-time basis, two or four days, to stay in their hotel, without registering their names.

"This practice is a matter of public knowledge. That this can happen to defendant considering their being publicly known in General Santos City as members of the rich family is very much reasonable. Then, a scrutiny of the hotel register readily shows that from December 5, in the afternoon up to December 6, in the afternoon, Room 304, an air-conditioned room, was not occupied by anybody (See pp. 101--102, hotel register, Exh. 8). This is confirmatory of an actual occupation by a close friend of Carlos Ma, now entangled

for ravishing a young Bila-an and whose witnesses were billeted in their own hotel as a loyal customer.

"Moreno Delfin, a close friend of Claudio, both being childhood playmates and children of original settlers, was very evasive, exhibiting a demeanor of one who was made to narrate a rehearsed testimony. He was very positive that it was only on June 2, 1973, when he met the defendant in the city jail, that he was requested to testify regarding the incidents on November 21, 1972, these were, their meeting at the Pioneer Theater, their taking a tricycle to the Satea House with Delena and Nena, their eating in the aforesaid restaurant and his conducting the two girls to Room 304 after he was given by the accused the key of the room.

"That is the only date he remembers and he failed to tell us of all the other dates directly involving his family as the dates when his brothers were incarcerated at the city jail as well as their release and the dates he visited them. We dis-miss him with those observations.

"Alfonso Laurecio, like Benito, has been the faithful servant of Eusebio Bulaong, father of the defendant, and was made to take care of the house while his master was in the City of Manila from the later part of November, 1972 to the early part of January, 1973. He denied having guarded, with the use of a shotgun, Delena Segapo and Nena Segapo as the former stayed in the house of his master voluntarily and slept with Claudio in one of the rooms from December 6, 1972 up to January 6, 1973, while Nena was a frequent visitor.

"Defended by a counsel de parte, engaged by the Bulaongs, he admitted that there was in fact a shotgun in the house of Eusebio Bulaong, locked in one of the rooms, and that Delena was in that house from December 6, 1972 up to January 6, 1973. His denial on other points cannot be at par with the positive testimonies of Nena Segapo, Delena Segapo and Dalama Segapo, absent of any important motive shown convincingly for these witnesses to testify falsely against him and Claudio Bulaong in prosecuting so serious a crime as forcible abduction with rape.

"Taken as a whole and with due fidelity to the constitutional mandate that all accused shall be presumed innocent until the contrary is proved, we regret to conclude that in the case at bar, the People's evidence has complied with the statutory requirement of proof beyond reasonable doubt."

The trial court found that Bulaong committed the eight complex crimes of forcible abduction with rape, aggravated by the use of a motor vehicle and mitigated by voluntary surrender to the authorities.

Although the imposable penalty is death, the trial court imposed eight reclusion perpetuas out of compassion for Bulaong because he is a married man with five minor children.

The trial court erred in imposing eight reclusion perpetuas. Bulaong committed the continuing complex offense of forcible abduction with rape (People vs. Manguiat and Sanqui, 51 Phil. 406; People vs. Pineda, 56 Phil. 688).

As the rape was committed with the use of a deadly weapon, and the crime is complex, the death penalty should be imposed. However, for lack of necessary votes, the same is commuted to reclusion perpetua.

WHEREFORE, the lower court's judgment is modified. Bulaong is sentenced to reclusion perpetua and to pay an indemnity to the offended girl in the sum of fifty thousand pesos. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Makasiar, J., the trial court's decision should be affirmed in its entirety.

Abad Santos, J., see dissenting opinion.

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Dissenting Opinion

ABAD SANTOS, J.:

I dissent. My mind cannot rest easy that the appellant committed the crime of abduction with rape and I base my doubts on the following:

1. The alleged abduction is said to have taken place at the public market of General Santos City at 6:00 p.m. on December 5, 1972. I take notice of the fact that at that time of the day many persons are still in public markets and yet neither Delena nor Nena shouted for help.

2. Similarly the two sisters did not cry for help when the appellant allegedly brought them to the New Bay View Hotel and forced them to enter Room 304 while holding his gun.

The appellant could not have pre-registered at the hotel for his meeting with the girls was casual if we are to believe the evidence for the prosecution. Hence he must have registered when he arrived with the two girls. At that time the two girls had the opportunity to cry for help but they remained silent.

3. When the group left the hotel in General Santos City for Barrio Landan the following day on board the appellant's jeep, it is inconceivable that the girls had no opportunity to cry for help during the long ride. But they did not.

4. The two girls were allegedly detained by the appellant from December 5 to 31, 1972, until Nena Segapo was able to escape on the latter date. I find it equally inconceivable that neither of the two could have escaped during that long period if there was a will to do so.

5. Delena and Nena left the family home on December 5, 1972, and it was only on December 31, 1972, after Nena was supposed to have escaped from the appellant's bungalow when she returned home to tell her mother what happened. And yet the parents did nothing to locate the two girls of tender age who failed to return home over a long period. As to Delena, it was only on January 6, 1973, when her father was said to have gone to the appellant's house to ask for her return. The relaxed and nonchalant attitude of the parents is incredible. As a parent I would have gotten excited and moved heaven and earth so to speak in order to locate a missing child. In fact the loss of only a dog is sufficient to cause me concern. But the Segapo parents appeared unconcerned and unaffected.

6. The appellant is supposed to have used a gun when he committed the crime imputed to him. Where is the gun? It was never presented during the trial. On the contrary, Exhibit 11 shows that the appellant had transferred his Smith and Wesson .22 caliber revolver to Charlie B. Dimalanta on April 12, 1972. Exhibit 11 was executed ante litis motam and deserves credence. Moreover, on December 5, 1972, the Martial Law regime was relatively new and it is a fact that during the early days of martial law the people were very obedient to its strictures one of which was the prohibition against the carrying of firearms even if licensed outside one's residence.

7. Judge Pedro Samson C. Animas who convicted the appellant describes him thus:

"x x x a rich man's son whose parents acquired and owned valuable properties not only in General Santos City, but also in Landan, Polomolok, South Cotabato, where the family has a vast agricultural land, a corn sheller

and two residential houses (one for his parents and another for him). Defendant as the only son, before his incarceration, had been administering these properties in Landan, populated mostly by Bila-ans. Awed and revered by the constituents, if not feared, no public function moved in this remote place without the nod of this oligarch. Schools were opened, roads were constructed and all public improvements were materialized upon their proddings. For such status of wealth amounted to control during the aegis of the old Society, determinative of the result of any election, national and local, nay, even for barrio officials."

I wonder if the good judge did not get carried away by his rhetoric. Before us the appellant is represented by a counsel de oficio, not de parte, and the tragedy of it is that the appellant's counsel does not appear to possess the requisite competence to handle the serious charge if we judge him on the basis of statements made in the main opinion, thus:

"The accused contends that the information dated January 22, 1973, which was filed on the following day, January 23, is void because it was 'received and filed on January 9, 1973' and, consequently, the case against the accused was 'railroaded'.

"That contention is baseless and preposterous. The information was filed on January 23, not on January 9. Evidently, counsel de oficio is mistaken. He did not examine the record carefully.

"Another baseless contention of counsel de oficio, which shows his failure to peruse the record with due care, is that it is not alleged in the information that the forcible abduction with rape was committed with lewd design. The incontestable fact is that in both complaint and information 'lewd design' is explicitly averred.

"Counsel de oficio's fifth assignment of error is that the trial court erred in not finding that the victim's father and accused Bulaong entered into a compromise. Counsel then argues that, because of such a compromise, Bulaong is not guilty.

"The argument is feeble and flimsy. The testimonies quoted by counsel show that the victim's father pretended to agree to a dowry of one carabao and two thousand pesos just to be able to secure the release of his daughter who was held in captivity by Bulaong. There is no showing that Bulaong was pardoned by the victim and her father. It is the appropriate pardon that extinguishes criminal liability for a crime against chastity."

I am not bothered by the fact that in the decision dated September 28, 1973, the trial court found Alfonso Laurecio guilty as an accomplice and sentenced him to an indeterminate penalty of 4 years, 2 months and 1 day of prison correccional as minimum and 10 years and 1 day of prison mayor as maximum, and that on February 1, 1979, he was allowed to withdraw his appeal. Did Alfonso Laurecio admit guilt thereby and by inference should we consider the appellant guilty also because there can be no accomplice without a principal? Not necessarily. For if Laurecio had not withdrawn his appeal, its resolution would have to be linked to the resolution or the principal's appeal which is time consuming. But by withdrawing his appeal as he did, he immediately became eligible for parole and having served as a member of the Board of Pardons and Parole for over eight years (not to mention being its ex-officio chairman for a like period), I will hazard the statement that he has long been released on parole.

In view of the foregoing, I vote to acquit on reasonable doubt.

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