

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHARD CAMARCE, ACCUSED-APPELLANT.

G.R. No. L-47806. March 25, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Danilo Espineli, Reynaldo Villeta, and Richard Camarce were charged with the crime of forcible abduction with rape in a complaint filed with the court a quo on March 15, 1976. The complaint alleged:

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"That on or about March 18, 1975, in the Municipality of Silang, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, acting jointly and mutually helping one another, with lewd design, and by means of force, violence and intimidation, did, then and there, wilfully, unlawfully and feloniously, snatch and abduct undersigned complainant by forcibly putting, placing and loading her inside a tricycle and afterwards take, carry and drag her in a hut at Manalo, Dasmariñas Cavite where the accused, Danilo Espineli, with the aid and help of the other accused and taking advantage of their superior strength ravish, abuse and have carnal knowledge of the undersigned complainant Marita Ancanan against her will and consent and to her damage and prejudice."

Danilo Espineli and Reynaldo Villeta remained at large during the trial of the case. Richard Camarce who voluntarily surrendered was tried and on January 6, 1977 was convicted and sentenced ". . . to suffer reclusion perpetua, to indemnify the offended party Marita Ancanan in the amount of P10,000.00 as moral damages, and to pay one-third of the costs." (p. 110, Original Record).

The People's version of the incident is as follows:

"At about 11:30 a.m. on March 18, 1975 while Marita Ancanan was walking along J. Rizal Street, Silang, Cavite, on her way home from the Infant Jesus Academy, a tricycle stopped beside her. Driving the tricycle at that time was Reynaldo Villeta and seated inside the cab of the tricycle was appellant Richard Camarce (t.s.n., pp. 2-5, May 10, 1976).

"Appellant offered to take Marita home on the tricycle. When she refused, the tricycle followed her as she walked on for about seven (7) meters. Appellant then told her to get in the tricycle as her mother was in the hospital. When she refused the offer again, appellant got off the tricycle, held Marita's right hand with his right hand, wound his left arm around her back and covered her mouth with his left hand. He dragged her into the cab of the tricycle and as soon as she was inside the tricycle, immediately instructed Villeta to drive away. Marita struggled and fought Camarce but her resistance was futile because he was stronger than she. As the tricycle sped to Barrio Sabutan, Silang, Cavite, appellant held Marita around her waist with his left hand, with his right hand over her mouth (t.s.n., pp. 5-6, May 10, 1976).

"At Barrio Sabutan, the tricycle in which Marita had been abducted stopped at waiting shed. Waiting at that shed was one Wilfredo Piol who whistled as the tricycle approached. At the sound of the whistle, Danilo Espineli appeared. Appellant stepped out of the cab of the tricycle and Espineli replaced him thereat. Appellant

then rode behind Villeta on the motorcycle (of the tricycle). Espineli also held Marita at her waist with one of his hands over her mouth. As the tricycle sped on, Espineli told Marita that he, who had been courting her, had lost all hope in winning her love and had no choice but to abduct her. (t.s.n., pp. 6-9, May 10, 1976). Meanwhile, appellant told Villeta to drive faster.

"Somewhere in Barrio Manalo (the Municipality in which it is located is not stated in the transcript), the tricycle stopped and Marita was dragged by appellant Espineli, and Villeta out of the tricycle and into a hut. She was forced to write a note that she went voluntarily with Espineli, and thereafter she was confined in an elevated room inside the hut (t.s.n., pp. 9-11, May 10, 1976).

"When Marita Ancanan was abducted at J. Rizal St., she had just come from her school, the Infant Jesus Academy at Silang Cavite. Two of her classmates, Marina Destura and Fidela Amadure, who were walking behind her at a distance of about twelve (12) meters away, saw Marita as she was forcibly dragged by appellant into the cab of the tricycle which was driven by Reynaldo Villeta. Marina and Fidela reported the incident to the mother of Marita, Gregoria Ancanan. That afternoon, Gregoria Ancanan reported the abduction of her daughter to the Silang, Cavite, Police Headquarters (t.s.n., pp. 2-13, July 16, 1976; pp. 2-9, April 7, 1976).

"At nighttime on March 18, 1975, Danilo Espineli brought Marita Ancanan some food at the elevated room of the hut where she had been confined from the beginning. He offered them to her three times. She refused to eat the food for as many times as they were offered to her. Espineli suddenly embraced her and kissed her on her face, neck and different parts of the body. Because she shouted and resisted him, he went down and talked to his companions. In a short while, he returned to the elevated room of the hut already naked from the waist up, and made advances to Marita again. Because of her stubborn resistance, Espineli summoned appellant and Villeta, Villeta held Marita at her hands which were stretched out, while appellant held her legs, which were also stretched out. By that time, Espineli was already totally naked. Despite her resistance, he opened her blouse and exposed her breasts by tearing her 'sando'. Then he raised her skirt and also tore her panty. He held her breasts and kissed her at the mouth and the different parts of her body. While she was being mashed and kissed, Marita heard appellant say: 'Tirahan mo naman kami.' Eventually, Espineli placed himself on top of her. Notwithstanding her resistance, he was able to insert his organ into hers. The penetration was very painful to Marita. As Espineli moved his organ up and down inside her organ, she struggled and begged him to stop by saying: 'Tama na, Tama na.' (t.s.n., pp. 11-18, May 10, 1976; p. 20, June 10, 1976).

"In time, Marita felt something come out of Espineli's organ, after which he removed his organ out of hers. He left the elevated portion of the hut shortly, and appellant and Villeta followed after him. On the same night, Espineli abused Marita again. The second time she was not able to offer as strong a resistance as she had the first time, because she was in a state of shock and her private part and abdomen were in pain. Espineli abused her without the aid of appellant and Villeta (t.s.n., pp. 18-20, May 10, 1976).

"At about midnight, the mother of Danilo Espineli came to the hut where Marita was kept. Afterwards, Marita was taken to the house of Danilo Espineli at Biga, Silang, Cavite, where she was again made to write a note at the dictation of Danilo. In that note, she stated that she went on her own free will with Danilo Espineli. Appellant and Villeta also went to Danilo's house. In the same house, Marita changed her blouse and skirt with a fresh set furnished by his mother (t.s.n., pp. 20-25, May 10, 1976).

"In the morning of March 19, 1975 Marita was taken to the house of Danilo Espineli's grandmother. Thereat, she told Marita that she (the grandmother) would die if Marita did not marry Danilo. Marita also overheard conversation that she could not be returned to her parents if she did not consent to marry Danilo. Faced with no other alternative, Marita agreed to marry Danilo. A 'pamanhikan' was thereafter arranged by the barrio captain of Biga, Silang, with the parents of Marita (t.s.n., pp. 26-28, May 10, 1976).

"At about 8:00 p.m. on March 19, 1975, Marita was taken to her house by Danilo Espineli, his parents and relatives and the barrio captain of Silang, Cavite, who had arranged the 'pamanhikan' earlier. Once there, however, Marita retired into a room and never came out of it while Danilo Espineli and his party were around.

All she could say to her parents then, in the midst of tears, was that she did not voluntarily go with Danilo and that she would not marry him. In view of this development, Marita's father told Danilo Espineli and his party to go home (t.s.n., pp. 28-29, May 10, 1976).

"Later in the evening of March 19, 1975, Marita's mother and relatives brought her to a certain Dr. Caparaz for her to undergo physical examination. After the physical examination, Dr. Caparaz told her relatives that she had been abused. When they asked her to confirm the doctor's statement, Marita nodded her head to signify that she had been abused (t.s.n., pp. 29-30, May 10, 1976).

"On March 21, 1975, Marita was taken to Camp Crame at Quezon City, for another physical examination. She was there examined by Captain Desiderio A. Moraleda, M.D., OIC, Medico-Legal Jr., PC Crame Laboratory. Captain Moraleda issued the following Medico-Legal Report (Exhibit C):

"BRIEF HISTORY

"Subject alleges that about 1130H 18 Mar 75 Danilo Espineli brought her to Barrio Manalo, Dasmariñas, Cavite, where she was detained and sexually abused until 2000H 19 Mar 75 when Danilo accompanied her home.

"FINDINGS:

"GENERAL AND EXTRAGENITAL:

"Fairly developed nourished and coherent female subject. Breasts are hemispherical with pale brown areolla and nipples from which no secretion could be pressed out. Abdomen is flat and tight. There was no external signs of recent application of any form of trauma.

"GENITAL:

"There is moderate growth of pubic hair, Labia majora are full convex and slightly gapping with the pale brown labia minora presenting in between. On separating the same are disclosed a congested posterior commissure and an elastic, fleshytype hymen with deep, healed lacerations at 3 and 8 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with slightly shallowed rugosities. Cervix is normal in size, color and consistency.

"Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

"REMARKS:

"Subject is in non-virgin state physically." (pp. 80-81, Appellant's Brief).

The defense version of the same incident narrates the participation of the accused-appellant differently:

"On March 18, 1975 at 6:00 o'clock in the morning, accused-appellant Richard Camarce started driving said tricycle, which Eduardo Villanueva asked him to drive as an extra driver, in the town of Silang, Cavite (T.s.n., Hearing of September 7, 1976, p. 3, Richard Camarce). At about 11:30 o'clock in the morning of that date, March 18, 1975, while the accused-appellant Richard Camarce was then at the southern direction of the town plaza of Silang, Cavite driving his tricycle and waiting for passengers, he was stopped by his co-accused Reynaldo Villeta who told him that he was borrowing it to ride a passenger. The accused-appellant lent the tricycle to his co-accused Reynaldo Villeta who then took the driver's seat and drove the tricycle, with the accused-appellant Richard Camarce seated behind his co-accused Reynaldo Villeta. At the town plaza of Silang, Cavite, co-accused Reynaldo Villeta stopped the tricycle and then waited for a short while until they saw complainant Marita Ancanan coming out from Infant Jesus Academy after the dismissal of classes, together with three (3) other companions, Irma Alegro, Josefina Alegro and Sylvia Purificacion (T.s.n.,

Hearing of September 7, 1976, pp. 5, 6, 7, Richard Camarce).

"The complainant Marita Ancanan, Sylvia Purification, Irma Alegro and Josefina Alegro were classmates and belonged to Third Year, mixed Class-M Section of the Infant Jesus Academy, Silang, Cavite. March 18, 1975 was the last day of their examinations and they finished their examinations at 11:30 in the morning of that day. Thereafter, the four of them took a walk and left the campus supposedly for the market as it was a market day at Silang, Cavite. They proceeded to cross J. Rizal St., which is at the town plaza of Silang, Cavite towards the western direction abreast with each other and holding hands. Very near them was a police outpost along J. Rizal St. in front of the Municipal Building of Silang, Cavite with a policeman also nearby and with many people in the vicinity (T.s.n., Hearing of July 10, 1976, pp. 4-10, Sylvia Purification). Before crossing, they let the vehicles pass by until the vehicles were stopped by the policeman near the police outpost (T.s.n., Hearing of July 21, 1976, p. 4, Irma Alegro). Said policeman was identified as Patrolman Danilo Espineli (T.s.n., Hearing of September 7, 1976, p. 9, Richard Camarce).

"Then, the co-accused Reynaldo Villeta, with accused-appellant Richard Camarce started the tricycle to run and proceeded in front of the Kiamzon store at the corner of V. Toledo St. and J. Rizal St., Silang, Cavite and called complainant Marita Ancanan (T.s.n., Hearing of September 7, 1975) p. 7, Richard Camarce). When the tricycle driven by co-accused Reynaldo Villeta stopped, complainant Marita Ancanan approached the driver, co-accused Reynaldo Villeta, and talk to him for about five minutes. After they talked with each other, Reynaldo Villeta turned the tricycle around and Marita Ancanan voluntarily boarded the tricycle. (T.s.n., Hearing of September 7, 1975, p. 8, Richard Camarce). The three companions of complainant Marita Ancanan were left at a distance of about 3 meters away from complainant Marita Ancanan and waited for the latter. Complainant Marita Ancanan, after talking to the driver, co-accused Reynaldo Villeta, was about to run away but the tricycle turned around to the eastern direction and the driver, co-accused Reynaldo Villeta, told complainant Marita Ancanan 'Kung gusto mo, ihahatid ka na namin.' After a while, complainant Marita Ancanan voluntarily boarded said tricycle. From the time that the tricycle stopped until complainant Marita Ancanan voluntarily boarded the tricycle, accused-appellant Richard Camarce remained at the rear of the driver, co-accused Reynaldo Villeta: Thereafter, the tricycle sped away going towards the northern direction along J. Rizal St., Silang, Cavite (T.s.n., Hearing of July 16, 1976, pp. 13-15, Sylvia Purification).

"After travelling some distance, the tricycle stopped near the corner of Bayakal and J. Rizal Sts., Bo. Sabutan, Silang, Cavite, where there was a waiting shed. Accused-appellant saw there Wilfredo Piol was near the waiting shed and Danilo Espineli at the southern portion of the waiting shed. Danilo Espineli then boarded on the treicycle seated himself beside Marita Ancanan, after which Reynaldo Villeta drove the tricycle towards. (T.s.n., Hearing of September 7, 1976, pp. 9-11, Richard Camarce).

"Before the tricycle arrived at said corner of Bayakal and J. Rizal Sts., Bo. Sabutan, Silang Cavite, at or about 12:00 o'clock noon of that day, March 18, 1975, Wilfredo Piol, a graduating high school student at Infant Jesus Academy, Silang, Cavite, was already there at said waiting shed waiting for transportation to go to school. While Wilfredo Piol was at the waiting shed, somebody he knew, who turned out to be co-accused Danilo Espineli, arrived at the waiting shed and told him that he was going to elope with Marita Ancanan, saying in Tagalog: 'Willy, magtatanan ako ngayon.' After saying thus, co-accused Danilo Espineli left Wilfredo Piol who remembered that Danilo Espineli had been courting Marita Ancanan since two years ago. Soon after, Wilfredo Piol saw a tricycle arrived in the place which was driven by co-accused Reynaldo Villeta, with accused-appellant Richard Camarce seated behind him and with complainant Marita Ancanan on board. Wilfredo Piol, upon seeing complainant Marita Ancanan, nodded at her because she was known to him. In response, complainant Marita Ancanan smiled at him. Whereupon, co-accused Danilo Espineli boarded the tricycle and seated himself beside complainant Marita Ancanan. And then, the tricycle sped towards the eastern direction along Bayakal St., Bo. Sabutan, Silang, Cavite. (T.s.n., Hearing of July 26, 1976, pp. 4-9, Wilfredo Piol).

"Along the way, the driver, co-accused Reynaldo Villeta, told co-accused Danilo Espineli and complainant

Marita Ancanan that they get married. Then they finally reached a certain hut on a farm or 'bukid' at Bo. Sabutan, Silang, Cavite. Accused-appellant Richard Camarce alighted from the tricycle and look at the hut. With the three, complainant Marita Ancanan, co-accused Danilo Espineli and co-accused Reynaldo Villeta, going towards the hut, accused-appellant Richard Camarce started the tricycle and drove the same towards the poblacion, Silang, Cavite. When accused-appellant Richard Camarce was not yet far from said hut, about 60 meters away, a passenger, Minda Lacamfuenga boarded his tricycle, and he noticed that there was a house in the vicinity where said passenger boarded his tricycle. They proceeded towards the poblacion of Silang, Cavite and when they reached the house of Kapitan Eddie Set along the way, Luzviminda Lacamfuenga alighted from the tricycle. (T.s.n., Hearing of September 7, 1976, pp. 12-13, Richard Camarce).

"Before noon of March 18, 1975, Luzviminda Lacamfuenga was in her house at Bo. Sabutan, Silang, Cavite because there was a barrio fiesta in that place and she was invited by the tenants of her house to a sort of a picnic. While she was there at the house, Luzviminda Lacamfuenga saw a tricycle passed by at a distance of fifteen (15) meters away and there were persons on board said tricycle going towards the adjoining land owned by a certain Pasyo Handog who had a hut about 40 meters away from the house. There were no other houses or neighbors in the vicinity. After having eaten her lunch, the only tricycle that passed by earlier passed by again with only the driver of the tricycle, accused-appellant Richard Camarce. Luzviminda Lacamfuenga boarded said tricycle supposedly for home at J. Rizal St., Silang, Cavite but on the way, however, she dropped at the residence of Kapitan Eddie Set. After she alighted, the tricycle proceeded towards the poblacion of Silang, Cavite (T.s.n., Hearing of August 4, 1976, pp. 2-8, Luzviminda Lacamfuenga).

"Accused-appellant Richard Camarce then drove the tricycle towards his home at J. Rizal St., Sabutan, Silang, Cavite and ate his lunch at home. He rested for a while and then drove his tricycle again to pick passengers in the town streets. (T.s.n., Hearing of September 7, 1976, p. 14, Richard Camarce).

"Wilfredo Piol, who earlier saw the elopement of co-accused Danilo Espineli and complainant Marita Ancanan at about noon of March 18, 1975 at the corner of Bayakal St. and J. Rizal St., Sabutan, Silang, Cavite, later boarded a tricycle bound for school at Infant Jesus Academy, Silang Cavite to attend to a rehearsal for graduation exercise starting at 1:00 o'clock in the afternoon of that day. Upon reaching the school, he proceeded to the office to read a newspaper. Before 1:00 o'clock in the afternoon of that day, Miss Concepcion Reyes, teacher at the Infant Jesus Academy and class adviser of complainant Marita Ancanan, arrived in the office. He talked to Miss Concepcion Reyes and informed her that her student, complainant Marita Ancanan eloped but Miss Concepcion Reyes thought that he was merely joking her and she left (T.s.n., Hearing of July 26, 1976, pp. 10-12; 25, Wilfredo Piol).

"Miss Concepcion Reyes, upon being informed by Wilfredo Piol that one of her students, complainant Marita Ancanan, eloped, immediately thereafter asked her students who were friends of complainant Marita Ancanan, particularly Marina Destura who was there, if they knew anything about the news of complainant Marita Ancanan's elopement. Not knowing what it was all about, some of the students, including Marina Destura, volunteered to go to the house of complainant Marita Ancanan to ascertain what happened. (T.s.n., Hearing of August 2, 1976, pp. 8-10, Concepcion Reyes).

"At around 1:00 in the afternoon of March 18, 1975, Sylvia Purificacion, Irma Alegro and Josefina Alegro returned to their school class and joined in the discussion among their classmates and class adviser Miss Concepcion Reyes regarding the elopement or disappearance of complainant Marita Ancanan. Miss Concepcion Reyes sent one of their classmates Carolina Layaban to the house of complainant Marita Ancanan to clarify the matter at around 1:15 o'clock in the afternoon. When Carolina Layaban returned to the class at around 1:30 o'clock in the afternoon, Carolina Layaban informed them that complainant Marita Ancanan did not go home and that her mother was always crying. Sylvia Purificacion related to the class the matter which she, Irma Alegro and Josefina Alegro earlier witnessed regarding the voluntary boarding of complainant Marita Ancanan on the tricycle (T.s.n., Hearing of July 20, 1976, pp. 38-39, Sylvia Purificacion). Miss Concepcion Reyes remarked that complainant Marita Ancanan did not know what she did because she was

confused on account of the examination (T.s.n., Hearing of July 16, 1976, pp. 16-19, Sylvia Purificacion). And Marina Destura, who earlier volunteered to go to the house of complainant Marita Ancanan, returned also to class from the house of complainant Marita Ancanan and informed Miss Concepcion Reyes that complainant Marita Ancanan was not in her house (T.s.n., Hearing of August 2, 1976, p. 11, Concepcion Reyes).

"At about 1:30 o'clock in the afternoon of March 18, 1975, Marta Espineli, mother of co-accused Danilo Espineli, was fetched by somebody in a certain creek where she was washing clothes and was informed that there was a policeman and two (2) women in her house at Biga, Silang, Cavite. She met them at her house and they turned out to be the mother of complainant Marita Ancanan, a certain aunt of said complainant and a certain policeman named Anacay. The mother of complainant Marita Ancanan asked Marta Espineli where her son Danilo was. Marta Espineli replied that she did not know where he was because in the morning she washed clothes and her son also left the house. The mother of complainant Marita Ancanan told Marta Espineli that they were looking for her son Danilo Espineli because her daughter, complainant Marita Ancanan eloped with her son. Patrolman Anacay told also Marta Espineli that it was her son who took the girl. Marta Espineli told them, that she did not know anything about them and that she did not know the present whereabouts of her son and her husband Jose Espineli whom they were asking also. And then they left and boarded a tricycle (T.s.n., Hearing of August 20, 1970, pp. 3-6, Marta Espineli).

"At about 2:00 o'clock in the afternoon of March 18, 1975, Pat. Hermenegildo M. Linaja, who was then assigned as Desk Officer at Silang, Cavite Police Headquarters, received a report regarding the alleged abduction of one Marita Ancanan from one Mrs. Gloria Ancanan, who later identified herself as Gregoria Ancanan, which report was entered in the police blotter (EXHIBIT '7'. p. 94, Record), as follows:

"(3) 18 1400H - Mrs. Gloria Ancanan, married and resident of B. San Vicente this Municipality reported to this Station that at about 1130 H this date her daughter named Marita Ancanan y Reyes, 16 yrs. old, Infant Jesus Academy student was forcibly taken and carried away by one (1) Danilo Espineli of Bo. Biga, this Municipality with one (1) Reynaldo Villeta of Bo. Sabutan, this Municipality also' (Exhibit '7-A', p. 94, Record).

"At around 4:00 o'clock to 4:30 o'clock in the afternoon Miss Concepcion Reyes and some of her student went to the house of complainant Marita Ancanan. Miss Concepcion Reyes found the father of complainant Marita Ancanan was gone and the mother was confused and crying. She talked briefly with the mother of complainant Marita Ancanan who told her that said Marita Ancanan was missing. At the moment when somebody came to talk to the mother, Fidela Amadure, also one of her high school students, arrived at the house and told Miss Concepcion Reyes that said Marita Ancanan was missing and they talked about things not related particularly about the questions that were given in the test. Fidela Amadure seemed more concerned in the test questions than said Marita Ancanan (T.s.n., Hearing of August 2, 1976, pp. 11-13; 14; 20, Concepcion Reyes). Marina Destura also arrived in the house of complainant Marita Ancanan and inquired from the group whether it was really true that said Marita Ancanan eloped. Sylvia Purificacion, who was among the group, again informed them that she, together with Irma Alegro and Josefina Alegro, really saw earlier complainant Marita Ancanan voluntarily boarded the tricycle which went towards the northern direction, but no one seemed to believe her. While the group was still in the house, Climico Bayakal, a student also, arrived in the house and told them that somebody informed him that said Marita Ancanan was brought by Danilo Espineli at Barrio Malabag, Silang, Cavite (T.s.n., Hearing of July 16, 1976, pp. 22-24, Sylvia Purificacion).

"Later in the afternoon, of the same day, acting on an information that co-accused Danilo Espineli and Reynaldo Villeta brought complainant Marita Ancanan to Barrio Malabag, Silang, Cavite, he proceeded to said place to follow up said report (T.s.n., Hearing of July 20, 1976, pp. 41-46, Hermenegildo M. Linaja).

"At about 5:30 o'clock in the afternoon of the same day, March 18, 1975, the mother of complainant Marita

Ancanan, a certain aunt of said complainant and Patrolman Anacay returned aboard an owner type jeep to the house of Marta Espineli at Biga, Silang, Cavite, and with them were the father of said complainant and some other companions. Upon their arrival, Jose Espineli, the father of co-accused Danilo Espineli, also arrived aboard a motorcycle. Jose Espineli had not yet alighted from the motorcycle when the father of complainant Marita Ancanan approached Jose Espineli with a raised bolo. One by the name of Aling Sabina pacified the father of complainant Marita Ancanan and led him away towards the jeep with the assistance of Patrolman Anacay. Aling Sabina and Jose Espineli talked with each other, after which the group of the parents of complainant Marita Ancanan left. (T.s.n., Hearing of August 20, 1976, pp. 6-9, Marta Espineli).

"At about 7:00 o'clock in the evening of March 18, 1975, accused-appellant Richard Camarce, after driving throughout the whole afternoon, return the tricycle to the owner, Roman Domingo, at the latter's garage. However, before he returned said tricycle, Eduardo Villanueva joined and accompanied accused-appellant Richard Camarce at about 6:00 o'clock in the evening of the same day in picking passengers (T.s.n., Hearing of September 7, 1976, pp. 15-16, Richard Camarce; T.s.n., Hearing of August 6, 1976, p. 6, Eduardo Villanueva). Thereafter, accused-appellant Richard Camarce went home and ate his dinner. After taking his supper, accused-appellant Richard Camarce went out and proceeded to the house of co-accused Reynaldo Villeta whose house is about 70 meters away to verify whether the latter went home. The parents of said Reynaldo Villeta had not yet arrived. Then accused-appellant Richard Camarce returned to his house and later slept that night. (T.s.n., Hearing of September 7, 1976, pp. 15-16, Richard Camarce).

"Later, in the evening of March 18, 1975, Marta Espineli's comadre, a certain Dudang, whose house is about thirty (30) meters away, fetched Marta Espineli at the latter's house at Biga, Silang, Cavite and informed the latter that co-accused Danilo Espineli and complainant Marita Ancanan were at her said comadre's house. Marta Espineli and her husband, Jose Espineli, went over to the house of their comadre Dudang. Marta Espineli saw complainant Marita Ancanan perspiring and her clothes wet with perspiration. Marta Espineli brought complainant Marita Ancanan a dress, bra and panty but complainant Marita Ancanan took off and changed only her white and blue uniform (EXHIBITS '9' and 9-A., white blouse and blue skirt) that she was wearing and did not change her panty and underwear. Complainant's uniform, together with the bra and panty which Marta Espineli brought her but complainant did not wear, were given to Marta Espineli by her comadre Dudang. Marta Espineli then put the uniform inside a cabinet or 'aparador' at their house. Jose Espineli talked to the children and thereafter co-accused Danilo Espineli and complainant Marita Ancanan went home to the house of co-accused Danilo Espineli. Jose Espineli and Marta Espineli then decided to consult their Barrio Captain Ponciano Saputil for advice (T.s.n., Hearing of August 20, 1976).

"Later in the morning of March 19, 1978, Jose Espineli and the Barrio Captain Ponciano Saputil went to the house of complainant Marita Ancanan to make arrangement for bringing home complainant Marita Ancanan and co-accused Danilo Espineli. Marta Espineli cooked in the same morning, and co-accused Danilo Espineli and complainant Marita Ancanan went to the house of said Danilo's grandmother also at Biga, Silang, Cavite but quite far from their house. (T.s.n., Hearing of August 20, 1976, pp. 17-19, Marta Espineli). When the two were about to leave for the grandmother's house, Marta Espineli asked them why did they elope when that can be done in a nice way (T.s.n., Hearing of August 30, 1976, p. 17, Marta Espineli). Co-accused Danilo Espineli grew up in his grandmother's house and he and complainant Marita Ancanan stayed there the whole day (T.s.n., Hearing of August 30, 1976, p. 18, Marta Espineli). At about 8:00 o'clock in the morning of March 19, 1975, after arranging first the things in the house, Marta Espineli followed her son Danilo and complainant Marita Ancanan at the house of the grandmother of said Danilo. When she arrived at the house of Danilo's grandmother, she learned from Barrio Captain Ponciano Saputil who arrived in the house that the children can be brought home to the house of complainant Marita Ancanan. The parents of co-accused Danilo Espineli prepared foods and different things to

be brought to the parents of the girl because that is the custom in their place . . . (T.s.n., Hearing of August 20, 1976, pp. 19, 20, Marta Espineli).

"At around 2:00 o'clock in the afternoon of March 19, 1975, accused-appellant Richard Camarce went to the house of co-accused Danilo Espineli at Biga, Silang, Cavite in order to verify also whether said co-accused Danilo Espineli and complainant Marita Ancanan went home to their place. He talked to the father of Danilo, Jose Espineli, who informed him that his son Danilo and complainant Marita Ancanan were at the house of Danilo's grandmother also at Biga, Silang, Cavite. Then accused-appellant Richard Camarce went to the house of the grandmother of Danilo and he saw there complainant Marita Ancanan inside the house and co-accused Danilo Espineli outside. He approached co-accused Danilo Espineli and they talked with each other. He asked said co-accused Danilo Espineli whether they were going to return complainant Marita Ancanan for 'pamanhikan' and said Danilo Espineli replied that they were going to ask for the hand in marriage of complainant Marita Ancanan in the night of the same day, March 19, 1975 . . . (T.s.n., Hearing of September 7, 1976, pp. 17-18, Richard Camarce).

"Meanwhile, at around 1:00 o'clock in the afternoon of March 19, 1975, Milan Bartolome and Marina Destura, both classmates of Sylvia Purificacion, arrived in the house of Sylvia Purificacion at San Agustin, Dasmariñas, Cavite and informed the latter that the Mayor of Silang, Cavite would like to talk to the latter. The Mayor would like to know from Sylvia Purificacion what really transpired. And so at 2:30 o'clock in the afternoon, Sylvia arrived at the house of complainant Marita Ancanan but the Mayor did not arrive. They met in the house a middle-aged man who told them that in case Sylvia Purificacion will be asked by the Mayor, she should inform him that complainant Marina Ancanan was forcibly taken to the tricycle by the driver. Marina Destura and Milan Bartolome did not say anything. Sylvia Purificacion commented that she will think of whether she was going to tell that because that was not really what happened. They stayed there for about 45 minutes and then they left for home (T.s.n., Hearing of July 16, 1976, pp. 24-26, Sylvia Purificacion).

"At more or less 7:00 o'clock in the evening of March 19, 1975, Sabutan Barrio Captain Ponciano Saputil, the parents of co-accused Danilo Espineli, Jose and Marta Espineli, and several other companions brought home co-accused Danilo Espineli and complainant Marita Ancanan to the parents of complainant Marita Ancanan to ask for the hand of the girl as previously arranged by Sabutan Barrio Captain Ponciano Saputil. When they reached the house of the parents of complainant Marita Ancanan and while still at the gate, the sister of complainant Marita Ancanan grabbed complainant Marita Ancanan away from co-accused Danilo Espineli. Seeing this, Marta Espineli pushed his son, co-accused Danilo Espineli, so that he will follow complainant Marita Ancanan in going upstairs to the house. Marita Espineli accompanied her son, co-accused Danilo Espineli, in following them and went upstairs to the house where the sister of the complainant Marita Ancanan led the latter inside a room. However, complainant Marita Ancanan did not come out anymore and the parents of co-accused Danilo Espineli were told that complainant Marita Ancanan was already sleeping because she was tired and that they better leave complainant Marita Ancanan and return the following day (T.s.n., Hearing of August 20, 1976, pp. 20-22, Marta Espineli).

"At around 8:00 o'clock in the evening of said day, March 19, 1975, when the 'pamanhikan' was in progress inside the house of the parents of complainant Marita Ancanan, accused-appellant Richard Camarce was there in the 'pamanhikan' on board the jeep in front of the house for a while. Before the 'pamanhikan' ended, accused-appellant Richard Camarce went home (T.s.n., Hearing of September 7, 1976, p. 19, Richard Camarce)."

The accused-appellant raised the following assignments of errors in this appeal:

I

"THE LOWER COURT ERRED IN NOT FINDING THE TESTIMONY OF THE COMPLAINANT TO BE UNTRUE AND HER STORY IMPROBABLE.

II

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE DEFENSE DESERVES SERIOUS CONSIDERATION.

III

"THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED ON THE BASIS OF WEAK, INCONSISTENT, INHERENTLY IMPROBABLE AND UNCONVINCING EVIDENCE OF THE PROSECUTION.

IV

"THE LOWER COURT ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY TO THE COMPLAINANT THE AMOUNT OF P10,000.00 AS MORAL DAMAGES AND TO PAY ONE-THIRD OF THE COSTS.

V

"THE LOWER COURT ERRED IN NOT DISMISSING THE CASE OF THE ACCUSED-APPELLANT AS A YOUTHFUL OFFENDER PURSUANT TO THE PROVISIONS OF PRESIDENTIAL DECREE NO. 603 DESPITE THE FAVORABLE RECOMMENDATION OF THE NATIONAL TRAINING SCHOOL FOR BOYS (VICENTE MADRIGAL REHABILITATION CENTER), DEPARTMENT OF SOCIAL SERVICES AND DEVELOPMENT FOR THE DISMISSAL OF THE CASE AND DISCHARGED OF THE ACCUSED-APPELLANT, THEREBY COMMITTING A GRAVE ABUSE OF DISCRETION.

VI

"THE LOWER COURT ERRED IN HOLDING IN ABEYANCE THE TRANSMITTAL OF THE RECORDS OF THE CASE IS THE HONORABLE SUPREME COURT UNTIL AFTER THE JUDGMENT OF CONVICTION SHALL HAVE BEEN PRONOUNCED WHEN THE ACCUSED-APPELLANT ATTAINS THE AGE OF MAJORITY UPON ITS REASONING THAT THERE IS AS YET NO JUDGMENT TO APPEAL FROM."

The first four (4) assigned errors center around the issue of credibility of witnesses. The main thrust of the appeal is based on the appellant's theory that the evidence on record is not sufficient to overthrow his constitutional right to be presumed innocent (Article IV, Section 19, Constitution).

After a careful and thorough study of the records, we are assailed by reasonable doubts on whether the accused-appellant really participated in the crime of forcible abduction with rape as defined by the Revised Penal Code.

A significant evidence on record is the testimony of Concepcion Reyes, teacher of the four alleged eyewitnesses to the incident.

Concepcion Reyes testified on the following material points: About lunch time (past 12:00 o'clock) of March 18, 1975, she was in the Infant Jesus Academy, Silang, Cavite where she was then a teacher. Wilfredo Piol one of her students approached her and informed her that one of her students, Marita Ancanan eloped. Upon further inquiry, Piol told Miss Reyes that he witnessed the elopement. The teacher then asked Marina Destura, who was a friend of Marita Ancanan whether or not she knew about Marita's elopement. Marina Destura volunteered to look for Marita as she did not know anything about Marita Ancanan's elopement. After sometime, Marina Destura

returned and informed Miss Reyes that Marita Ancanan "is not in her house". At about 4:00 o'clock of the same day, Miss Reyes together with some students proceeded to Marita Ancanan's house. Only Marita Ancanan's sister was at home. While in the house of Marita Ancanan, Fidela Amadure, one of her students and a classmate of Marita arrived. Fidela Amadure, after informing Miss Reyes that Marita Ancanan was missing asked the teacher about the questions given by her in a test. In fact, according to Miss Reyes, Fidela Amadure was more interested in the test questions than what had happened to Marita Ancanan (T.S.N., August 2, 1976, pp. 425-441). This is significant because Amadure and Destura were supposed to be right behind Ancanan when she was abducted. These two prosecution witnesses testified that the incident happened in the heart of the town, in front of the church and that there were about eight other classmates or co-students with them at the time. Although she was a defense witness, Miss Reyes was at times trying to lean towards the prosecution's theory of forcible abduction prompting the defense counsel to call her a hostile witness. After an exhaustive direct as well as cross examination including questions propounded by the Court a quo, one gathers that her testimony 1) corroborates a defense witness' (Wilfredo Piol) testimony that complainant Marita Ancanan was not forcibly abducted as alleged, and 2) impugns Marina Destura's and Fidela Amadure's respective testimonies that Richard Camarce forcibly dragged Ancanan into a waiting tricycle at about 11:30 o'clock in the morning of March 18, 1975 along J. Rizal St. which is within the commercial area of Silang, Cavite.

The revelations of Miss Reyes weaken the forcible abduction theory of the prosecution and consequently enhance the defense theory that complainant Marita Ancanan voluntarily boarded the tricycle with accused Reynaldo Villeta and accused-appellant Richard Camarce. Furthermore, the testimony of Miss Reyes strengthens that of Wilfredo Piol regarding Marita Ancanan's and Danilo Espineli's elopement, a conclusion he deduced from the acts of Marita Ancanan upon arrival at the waiting shed together with two of the accused in a tricycle.

We give credence to Miss Reyes' testimony because she appeared to be a disinterested and truthful witness.

We also take note of the fact that in the police blotter of the municipality of Silang, Cavite on the report of Gregoria Ancanan, mother of Marita and who also testified as a prosecution witness, the following appears:

.....

"(3) 181400 H — Mrs. Gloria Ancanan, married and a resident of Bo. San Vicente this Municipality, reported to this Station that at about 1130 H this date her daughter named Marita Ancanan y Reyes, 16 yrs. old, Infant Jesus Academy student was forcibly taken and carried away by one (1) Danilo Espineli, of Bo. Biga, this Municipality with one (1) Reynaldo Villeta of Bo. Sabutan, this Municipality also." (Exh. "7", p. 94, Original Records)

.....

According to Mrs. Gregoria Ancanan, she reported to the police authorities the forcible abduction of her daughter Marita on the basis of information given to her by the alleged eyewitnesses, Marita's classmates — Marina Destura and Fidela Amadure. (T.S.N., July 15, 1976, p. 302). It must be noted that these two classmates positively identified Richard Camarce, who admittedly was known to them, as the one who dragged Marita Ancanan to the waiting tricycle driven by accused Reynaldo Villeta. And yet, it is not explained why the name of Richard Camarce as one of the abductors was not included in the police blotter. This omission creates some doubts in our mind as regards the weight to be given to Marina Destura's and Fidela Amadure's testimonies.

Apart from the forcible abduction aspect, the rape charge was also not proven beyond reasonable doubt. In the recent case of *People v. Gabiana*, G.R. No. L-39716, September 30, 1982, we restated the rule in prosecutions for rape as follows:

.....

"3. In prosecutions for rape, the chances are that only two parties can testify as to the occurrence. The testimony of each, in all likelihood being diametrically opposite as to what really happened, has to be subjected to the most rigid scrutiny. In this case, with complainant admittedly having been inflicted a severe blow on her forehead, rendering her unconscious, there could be no direct testimony as to the alleged sexual abuse. Necessarily the evidence had to be circumstantial. As indicated in the preceding paragraph one could hardly be dogmatic as to the fact of sexual intercourse having taken place. Even if it were so, there are at least two other circumstances which, if carefully appraised, lead to the conclusion that the guilt of the accused has not been proved and reasonable doubt. The first was the absence of any positive statement that she was raped right after the alleged incident when her state of natural indignation would have prompted her to do so. . . ." (Italics supplied).

The records show that complainant Marita Ancanan never mentioned nor even insinuated the fact of rape to the persons she saw from the time she was brought to Danilo Espineli's house by the latter's mother who at midnight allegedly appeared at the hut where she was taken up to the time she was brought to her parents' home on the night of March 19, 1975 by, among others, Espineli's parents and a barangay captain. In between these incidents, she testified that when she, together with Espineli, his mother, and others, reached Espineli's home, she was made to write down from a page of the diary of Danilo's father that she voluntarily went with Espineli, that she was left alone to sleep in a room, that the following morning, she was taken to the house of Danilo's grandmother where she stayed until about 8:00 o'clock in the evening of March 19, 1975, when she was taken by Danilo, his parents and the barangay captain to her parents' home for the traditional "pamanhikan." She stated that she only consented to the marriage in order that she could be taken home, since earlier on that day she overheard Danilo's relatives talking about her not to be taken home unless she consented to the marriage. Her testimony on what transpired as soon as she arrived in her parents' home runs as follows:

"FISCAL MANALASTAS:

"Q. When you arrived in your house, what happened next?

"A.

When I arrived home, in view of the fact that they cannot talk to me, they asked the relatives, the parents of Danilo Espineli and the barrio captain to proceed home.

.....

"FISCAL MANALASTAS:

"Q.

When the group of Espineli returned home and you were left in your house, what happened next?

"A.

After they have left and when it was about 12:00 o'clock midnight, my mother and my relatives brought me to Dr. Caparaz.

"Q. Why did they bring you to Dr. Caparaz?

"A. For medical check-up or examination.

"FISCAL MANALASTAS:

"Q.

Why were you examined? Did you inform your parents about the incident that took place on March 18, 1975?

"A.

I did not inform them exactly. What I just told them, I did not voluntarily go with Danilo Espineli.

"Q. Do you have a medical certificate issued by Dr. Caparaz?

"A. Yes, sir." (T.S.N., May 10, 1976, pp. 145-146)

CROSS EXAMINATION

"ATTY. MADLANSACAY:

"Q.

Is it not true that on March 19, 1975 at about midnight, you were previously examined by Dr. Caparaz?

"A. Yes, sir.

"Q.

What did you feel when you were examined by Dr. Caparaz? Was it painful?

"A. Very painful, sir.

"Q.

And because of that experience, you refused to submit yourself again to a medical examination at Camp Crame?

"A. No, sir.

"Q.

What was the reason why you first refused to submit yourself to a medical examination at Camp Crame?

"A.

Because of what happened to me. My vagina or private organ was still painful.

"Q.

Did you voluntarily submit yourself to medical examination to Dr. Caparaz on March 19, 1975 at about midnight?

"A. No, sir.

"Q.

Do you mean to tell to this Honorable Court that you were forced to submit to such medical examination by Dr. Caparaz?

"A. Because of the fact that my private organ was very painful.

"ATTY. MADLANSACAY:

"Q. Who forced you to have such a medical examination?

"A. My parents, sir.

"Q. Did you tell your parents that you were feeling bad?

"A.

No, sir, because at that time, I am not in a position to talk. I cannot talk.

"Q.

So, you knew at that time of that medical examination by Dr. Caparaz that your private organ was very painful, is it not?

"A. Yes, sir.

"Q. You did not tell that to your parents?

"A. No, sir. I did not tell.

"Q.

As a matter of fact, you did not tell even to your parents about your hideous experience?

"A. Yes, sir. I did not inform my parents.

"Q.

So, you kept to yourself all alone until March 26, 1975, what really happened to you?

"A. Yes, sir.

"Q.

So, before March 26, 1975, nobody knew about what really happened to you?

"A.

The only thing that my parents knew was I did not voluntarily go with Danilo Espineli. (T.S.N., June 3, 1976, pp. 176-177)

"COURT:

"Q.

Were you present when Dr. Caparaz informed your parents that you were raped?

"A. No, your Honor. Because only of the medical certificate.

"COURT:

"Q. Did you tell Dr. Caparaz that you were raped?

"A. No, your Honor.

"Q. What did you tell Dr. Caparaz before he examined you?

"A. None, your Honor.

"COURT:

"Q.

You did not even tell Dr. Caparaz the reason why you wanted yourself to be examined?

"A.

None, your Honor, because what I was thinking was that it was painful. My private organ was painful.

"COURT:

So what you mean to say now is that your parents learned that you were raped only because they saw the report of Dr. Caparaz?

"A. Yes, your Honor.

"COURT:

Did your parents confront you with the results of that medical, of that physical examination performed by Dr. Caparaz and ask you to confirm the fact that you were really raped?

"A. Yes, your Honor.

"COURT:

When was that?

"A.

Yes, your Honor. On the same night of March 19, 1975, they asked me, they inquired and I just nodded.

"COURT:

Does that mean that you were unable to talk and that is the reason why you just nodded?

"A. Yes, your Honor.

"Q.

So, your parents and all the rest did not know that you were abducted and abused?

"A.

No, sir. What my parents knew only was that I was abducted at Silang.

"Q.

And it was only March 26, 1975, that your parents and the rest of your group came to know about what really happened to you?

"A. No, sir.

"Q. What do you mean?

"A.

When I was brought home, my classmates saw me. That was the reason why the news spread in our place in Bo. Canario.

"Q. When you were brought home, when was that?

"A. On March 19, sir.

"Q. What time?

"A. Eight o'clock in the morning.

"Q.

So your classmates, what did your classmates know when you were brought home?

"A. They knew that I was abducted.

"Q. But not raped?

"A.

Yes, sir, because they were the ones who saw me. Because they did not follow me up to the hut.

"COURT:

So, actually, when was the first time that your parents knew that you were raped?

"A. When I was brought to Dr. Caparaz.

"COURT:

"Q. Who told your parents?

"A. The doctor, your Honor.

"COURT:

Were you present when Dr. Caparaz informed your parents that you were raped?

"A. No, your Honor. Because only of the medical certificate.

"COURT:

Did you tell Dr. Caparaz that you were raped?

"A. No, your Honor.

"COURT:

What did you tell Dr. Caparaz before he examined you?

"A. None, your Honor.

"COURT:

You did not even tell Dr. Caparaz the reason why you wanted yourself to be examined?

"A.

None, your Honor, because what I was thinking was that it was painful. My private organ was painful.

"COURT:

So what you mean to say now is that your parents learned that you were raped only because they saw the report of Dr. Caparaz?

"A. Yes, your Honor.

"COURT:

Did your parents confront you with the results of that medical, of that physical examination performed by Dr. Caparaz and ask you to confirm the fact that you were really raped?

"A. Yes, your Honor.

"COURT:

What was that?

"A.

Yes, your Honor. On the same night of March 19, they asked me, they inquired and I just nodded.

"COURT:

Does that mean that you were unable to talk and that is the reason why you just nodded?

"A. Yes, your Honor.

"COURT:

What was the reaction of your parents after they saw your nod in answer to their question if you were really raped?

"A.

My parents asked Danilo Espineli and his relatives to go home to Biga.

"COURT:

You mean to say that after you came from the clinic of Dr. Caparaz, Danilo Espineli and his relatives were at your residence?

"A.

No, your Honor. My parents asked or told to Danilo Espineli and his relatives to go home prior for my being examined medically by Dr. Caparaz.

"COURT:

You did not answer the question of the Court. Your parents asked if you were really raped, is that correct?

"A. Yes, your Honor.

"COURT:

And by way of answering that question, you nodded your head?

"A. Yes, your Honor.

"COURT:

After you nodded your head by way of answer to the question of whether it is true that you were really raped, what was the reaction of your parents?

"A.

They decided that they are going to file a complaint against Danilo Espineli.

"COURT:

Were they shocked or surprised?

"A.

Yes, your Honor." (T.S.N., June 3, 1976, pp. 178, 179, 180, 181-182; Italics supplied).

The fact that Marita Ancanan did not immediately tell her parents that she was raped during the period she was supposed to have been forcibly abducted and kept secret the crime from her own parents at a time when there was no threat to her life or those of her parents raises doubts on the credibility of her testimony regarding the alleged rape.

The testimony of the complainant's mother also indicates that she was uncertain whether there was forcible abduction with rape or merely sexual intercourse arising from elopement:

"ATTY. MADLANSACAY:

"Q.

Now, when your daughter was brought to your house on March 19 at 8:00 o'clock in the evening, were you able to talk to her?

"A.

At first, we were able to talk to her, but later on, she cried and cried.

"Q. What did she tell you?

"A. That she refused to be married to Danilo Espineli.

"Q. That was all that she said to you?

"A. Yes, sir.

"Q.

You did not do anything during that night of March 19, 1975?

"A. We have. We brought her to Dr. Caparaz.

"Q.

Did you talk to Marita Ancanan before you brought her to Dr. Caparaz?

"A.

We were not able to talk to her because she always cry (sic) and cry (sic).

"Q.

So you did not know anything from Marita Ancanan about what happened?

"A. Only that she refused to be married.

"Q.

And when you were at the hospital of Dr. Caparaz, you did not talk to her?

"A. No, sir.

"Q. Why did you bring her to Dr. Caparaz?

"A.

So that she will be examined physically by Dr. Caparaz, to determine whether there was a relationship, that she was used by Danilo Espineli. (TSN., July 15, 1976, pp. 305-306) [Italics Supplied]

Moreover, the prosecution did not offer as evidence the medical certificate or the results of the medical examination conducted by the aforesaid Dr. Caparaz only a day after the incident. This circumstance on the non-presentation could be interpreted to mean that the medical examination of Dr. Caparaz, if presented in court, would be adverse to the prosecution.

The testimony of Dr. Desiderio Moraleda, PC medico legal officer at Camp Caramo, Quezon City is inconclusive regarding the rape charge.

Dr. Moraleda's medical examination does not indicate any injury on any part of Marita's body and shows that the lacerations found in her vagina were old healed lacerations which could have occurred not less than fourteen (14) days before the examination. The failure to introduce Dr. Caparaz' findings is incomprehensible because Ancanan described her ordeal as follows:

"ATTY. MADLANSACAY:

"Q.

And according to you, Danilo Espineli grabbed your breast, as if a beast, is it not?

"A. Yes, sir.

"Q.

And how long did it take Danilo Espineli to grab and take hold of your breast like a beast?

"WITNESS:

"A. Maybe two (2) to four (4) minutes, sir.

"ATTY. MADLANSACAY:

"Q. And I presume that you were hurt very much?

"A. Yes, sir.

"Q. And I presume also that your wrist hurt very much?

"A. Yes, sir.

"Q. And the shins of your feet were also hurt? is it not?

"A. Yes, sir.

"Q. Because you struggled fiercely and determinedly?

"A. Yes, sir.

"Q. And how long did your struggle last?

"A. For quite a long time, sir.

"Q. And could it be around thirty (30) minutes?

"A. More or less, sir.

"Q.

And you were fighting back the advances of Danilo, is it not?

"A. Yes, sir. (T.S.N., June 10, 1976, pp. 225-2256).

There should have been indications of some injuries in the medical report of Dr. Caparaz.

Moreover, Marita Ancanan gave conflicting testimony as to when she was raped by the accused. At one instance, she declared that she was raped by Danilo Espineli with the help of the other two accused at about 2:00 o'clock in the afternoon of March 18, 1975. At another instance, she declared that she was raped for the first time at nighttime inside the nipa hut, where she was brought after the first carnal intercourse. The foregoing circumstances, which appear on record tend to create doubts regarding the rape story of complainant Marita Ancanan.

There are other circumstances such as the six months delay in filing the verified complaint and another six months delay before its filing with the lower court. Even assuming efforts to locate the missing co-accused, the delay is significant when taken with the circumstances outlined earlier. There is also the improbability that a young man like Espineli would take thirty minutes consummating the sex act on a high school girl he had been courting for two or three years inspite of the fact that thirty minutes had already been consumed by the girl's determined efforts to prevent the sexual intercourse by fighting him off.

Then there is the matter of the rape being committed in the manner described by the complainant in a narrow portion of the small nipa hut where three persons holding her down would find no place to position themselves.

We find the first four assignments of errors meritorious. There is no need to pass upon the fifth and sixth assignments of errors.

WHEREFORE, the judgment of conviction reversed and set aside and the appellant is hereby ACQUITTED on grounds of reasonable doubt. The appellant's immediate release is ordered unless there is a valid and just cause for his continuing to be deprived of his liberty other than his conviction in this case for forcible abduction with rape.

SO ORDERED.

Plana and Relova, JJ., concur.

Melencio-Herrera, J., I concur in the verdict of acquittal and in the concurring opinion of Mr. Justice Vasquez.

Vasquez, J., concurs in separate opinion.

Teehankee (Chairman), J., took no part.

CONCURRING OPINION**VASQUEZ, J.:**

I agree with the acquittal of appellant Richard Camarce mainly because there appears to be no clear evidence that he knowingly conspired with Danilo Espineli and Reynaldo Villeta in forcibly abducting Marita Ancanan in order to be sexually abused by Espineli. To my mind, the alleged rape committed by Espineli on Marita is not decisive of the culpability of appellant. With respect to the appellant, there must be proof beyond reasonable doubt that he knew of a plot to abduct Marita in order that Espineli could satisfy his lust upon her even without her consent.

It is undenied that Espineli was a suitor of Marita for about two or three years. Whatever participation the appellant agreed to perform in the incident must have been at the instance or request of Espineli. The appellant did not derive any personal benefit from his act. He was not shown to have made advances or perform lascivious acts against Marita, much less have sexual intercourse with her. It is unusual for three young men to abduct a girl with lewd intent to desist from partaking of the result of their joint effort for which they all stand to assume an equal risk of punishment.

Under the facts appearing, it is not improbable that the appellant, at the request of Espineli and to show that he is the kind of friend who could be relied upon, agreed to cooperate in what could have been represented as an elopement of Espineli and Marita. The timing was highly propitious for such an intention, it being right after the termination of the final examinations of Marita in her school. As pointed out in the main opinion, a forcible abduction in the center of commercial activity, in broad daylight, and in the presence of several witnesses, including classmates of Marita, would not square easily with plain common sense.

If Danilo indeed raped Marita, the appellant may not be held responsible for such an act unless it could be shown that he shared such intent when he agreed to participate in the taking of Marita. To repeat, I find the record to be wanting in this regard.

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