

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO LOR, ALFREDO RUIZ AND DOMINGO RUIZ, ACCUSED-APPELLANTS.

G.R. Nos. L-47440-42. September 12, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an appeal from the joint decision of the Court of First Instance of Leyte (Branch VIII) in three rape cases under the following titles and captions: Criminal Case No. B-495, People of the Philippines vs. Leonardo Lor; Criminal Case No. B-496, People of the Philippines vs. Alfredo Ruiz; and Criminal Case No. B-497, People of the Philippines vs. Domingo Ruiz.

"The three accused, Leonardo Lor y Villamor, alias 'Ronnie', 23 years old, driver and resident of Barrio Concepcion, Hilongos, Leyte; Alfredo Ruiz y Baer, alias 'Fredo', 26 years old, laborer and resident of Bo. Concepcion, Hilongos, Leyte; and Domingo Ruiz, alias 'Ngoy', 24 years old, single, student and resident of Bo. Concepcion, Hilongos, Leyte, are all charged of (sic) the crime of Rape according to the Information filed by First Assistant Provincial Fiscal Marcial B. Estela dated October 29, 1975, respectively as follows:

I N F O R M A T I O N

'The undersigned Assistant Provincial Fiscal accuses Leonardo Lor alias Ronnie of the crime of rape, committed as follows:

'That on or about the 23rd day of August, 1975, in the municipality of Hilongos, province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force, threats and intimidation, and taking advantage of superior strength and nighttime, and by means of motor vehicle (2/26/76 mbe) did then and there willfully, unlawfully and feloniously have sexual intercourse with one Juanita Lamadura, 14 years of age, much against her will and consent.

'Contrary to Article 335, Revised Penal Code.

'Baybay, Leyte, October 29, 1975.

's/t/MARCIAL B. ESTELA
1st Assistant Provincial Fiscal.'

I N F O R M A T I O N

'The undersigned Assistant Provincial Fiscal accuses Alfredo Ruiz alias Fredo of the crime of rape, committed as follows:

'That on or about the 23rd day of August, 1975, in the municipality of Hilongos, province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force, threats and intimidation, and taking advantage of superior strength and nighttime, and by means of motor vehicle (2/26/76 mbe) did then and there willfully, unlawfully and feloniously have sexual intercourse with one Concepcion Lor, 23 years of age, much against her will and consent.

'Contrary to Article 335, Revised Penal Code.

'Baybay, Leyte, October 29, 1975.

's/t/MARCIAL B. ESTELA
1st Assistant Provincial Fiscal.'

I N F O R M A T I O N

'The undersigned Assistant Provincial Fiscal accuses Domingo Ruiz O Enggoy of the crime of rape, committed as follows:

'That on or about the 23rd day of August, 1975, in the Municipality of Hilongos, province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force, threats and intimidation, and taking advantage of superior strength and nighttime, and by means of motor vehicle (2/26/76 mbe) did then and there willfully, unlawfully and feloniously have sexual intercourse with one Victoria Erit, 18 years of age, much against her will and consent.

'Contrary to Article 335, Revised Penal Code.

'Baybay, Leyte, October 29, 1975.

's/t/MARCIAL B. ESTELA
1st Assistant Provincial Fiscal.'

"The three accused were arraigned on February 19, 1976, and all pleaded not guilty to the charge. On February 26, 1976, the manifestation of the prosecuting Fiscal to insert in the information of the three criminal cases the phrase originally found in the amended complaint stating 'and by means of motor vehicle' after the word 'nighttime', without any objection from the defense counsels, was granted by the Court. On March 11, 1976, the three accused were again re-arraigned on the amended complaint without objection from the defense counsels and all of the three accused again pleaded not guilty.

"The prosecution and the defense agreed that the three criminal cases be tried jointly" (pp. 65-68, rec.).

On August 31, 1977, after both parties had presented their evidence, the lower court promulgated judgment, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered finding the accused Leonardo Lor y Villamor, alias 'Ronnie', in Criminal Case No. B-495; Alfredo Ruiz y Baer, alias 'Fredo', in Criminal Case No. B-496; and Domingo Ruiz y Baer, alias 'Enggoy', in Criminal Case No. B-497, guilty beyond reasonable doubt of the crime of rape as provided for in Article 335 of the Revised Penal Code, and hereby sentences each one of said three (3) accused the penalty of RECLUSION PERPETUA, and for Leonardo Lor to pay Juanita Lamadura; for Alfredo Ruiz to pay Concepcion Lor; and for Domingo Ruiz to pay Victoria Erit, the sum of P6,000.00 each as indemnity for damages, and to pay the costs.

"SO ORDERED" (p. 211, rec.).

On the same day, the defense filed its notice of appeal (p. 23, rec.) from the above decision.

On January 16, 1979, the accused-appellants, through counsel, filed their Brief with this Court. On March 29, 1979, the People filed its Brief.

On September 17, 1981, during the pendency of this appeal, this Court granted (p. 317, rec.) the withdrawal of appeal dated August 15, 1981 (p. 315, rec.) filed by Alfredo Ruiz and Domingo Ruiz.

Thus, this appeal reviews only the conviction of appellant Leonardo Lor.

WE note that under date of November 4, 1981, the three plaintiffs, Concepcion Lor, Victoria Erit and Juanita Lamadura, filed a joint motion to withdraw complaint in favor of Leonardo Lor (p. 319, rec.). The motion was accompanied by a copy of the affidavits executed by Juanita Lamadura and Concepcion Lor exempting Leonardo Lor from any participation in the commission of the crime charged (pp. 320 & 322, rec.).

Juanita Lamadura affixed her fingerprint on the motion to withdraw complaint and on her own affidavit. WE note, however, that both documents were written in English. Juanita Lamadura has no educational attainment at all, and does not know how to read and write (p. 17, Appellee's Brief, p. 296, rec.). WE find no showing that the documents aforesated were read and explained to her in a language or dialect she under-stood prior to her affixing of her fingerprint thereon. WE find said documents suspect.

"The offenses of seduction, abduction, rape, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be" (Article 344, Revised Penal Code).

Granting that the aforementioned documents filed by Juanita Lamadura operate as a pardon, the same do not bar US from deciding the present appeal. The pardon that operates to divest the court of jurisdiction to continue hearing a case involving a private offense is one that is given before the institution of the criminal prosecution (People vs. Infante, et al., No. 36270, August 31, 1932, 57 Phil. 138), and not that which is given, as in the present case, during the pendency of the appeal thereon.

"Paragraph 3 of the legal provision above-quoted prohibits a prosecution for seduction, abduction, rape or acts of lasciviousness, except upon a complaint made by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. It does not prohibit the continuance of a prosecution if the offended party pardons the offender after the dismissal of said cause. The only act that according to article 344 extinguishes the penal action and the penalty that may have been imposed is the marriage between the offender and the offended party" (People vs. Miranda, No. 38171, October 6, 1932, 57 Phil. 274).

Thus, WE resolve to review Leonardo Lor's appeal on the merits.

The appellee's Brief describes the factual setting for the People thus:

"xxx xxx xxx

"x x x complainants Victoria Erit, Concepcion Lor and Juanita Lamadura who are all working as housemaids in the poblacion of Hilongos, Leyte, went to Barrio Concepcion, Hilongos, Leyte, which is seven (7) kilometers away, to see a drama on August 23, 1975, shown to the public in connection with the celebration of its barrio fiesta' (pp. 46-47, 64, 58, 107, 120, tsn, March 18, 1976; p. 15, tsn, April 2, 1972; Exhi-bit 'B' in Criminal Case No. B-496). 'After the showing of the drama at about 11:00 o'clock that evening, each of the girls, who were not companions in coming to Barrio Concepcion, looked for a motorcab to take them back to the Poblacion of Hilongos. It was at this time that the three girls came to the motorcab driven by Leonardo Lor with two male passengers whom the girls did not know at that time and who happened to be Alfredo Ruiz and Domingo Ruiz' (pp. 47-48, 107-108, 120-121, tsn, March 18, 1976; p. 16, tsn, August 2, 1976; Exhibit 'B' in Criminal Case No. B-496). 'The driver, Leonardo Lor, allowed the three girls to board the motorcab after informing them that he was taking passengers to the poblacion. Juanita Lamadura got inside the motorcab and occupied a seat by the side of Leonardo Lor. Concepcion Lor stayed at the vacant seat on the front where Alfredo Ruiz was already seated. Victoria Erit occupied the vacant seat at the back where Domingo Ruiz was already seated' (pp. 48, 107, 109, 121-122, tsn, March 18, 1976; pp. 16-17, 19-20, tsn, April 2, 1976; Exhibit 'B' in Criminal Case No. B-496).

'When they were all seated, Leonardo Lor drove the motorcab towards the Poblacion of Hilongos but upon reaching the crossing to Barrio Proteccion of Hilongos, Leyte, he diverted the motorcab towards Barrio Proteccion of Hilongos. Barrio Proteccion is about three (3) kilometers from Barrio Concepcion' (pp. 48, 109, 122-123, tsn, March 18, 1976; pp. 12, 20, tsn, April 2, 1976; Exhibit 'B' in Criminal Case No. B-496). 'When the girls noticed that they were proceeding in a different direction, Victoria Erit asked Leonardo Lor where they were going. Leonardo Lor answered that he was proceeding to the river because he would drop the P.C. soldier who was one of the passengers, at the same time pointing to Alfredo Ruiz. Juanita Lamadura also asked Leonardo Lor what road they were taking because the road is not the one leading to the Poblacion. Leonardo Lor told her that there was a P.C. soldier whom he would like to drop at Barrio Proteccion. Concepcion Lor was angry with Leonardo Lor but Leonardo Lor told Concepcion Lor that the P.C. was to get off at Barrio Proteccion' (pp. 48-49, 109, 121-122, tsn, March 18, 1976; pp. 12, 20, tsn, April 2, 1976; Exhibit 'B' in Criminal Case No. B-496).

'When the motorcab reached the Salog River in Barrio Proteccion, Leonardo Lor parked the motorcab by the side of the river along the dried river bed. Then, Alfredo Ruiz, whom Leonardo Lor pointed to as the P.C., alighted first and pulled Concepcion Lor from the motorcab. Victoria Erit was pulled from the motorcab by Domingo Ruiz, the brother of the alleged P.C., Alfredo Ruiz. Then Juanita Lamadura was pulled by Leonardo Lor and dragged away from the motorcab' (pp. 49-50, 54-55, 85-86, 103, 109-111, 125-126, tsn, March 18, 1976; pp. 19-20, tsn, April 2, 1976; Exhibit 'B' of Criminal Case No. B-496) "' [pp. 5-8, Appellee's Brief; p. 296, rec.].

Said Brief then continues with a narration of Juanita Lamadura's plight as follows:

"After reaching a remote place, Leonardo Lor mashed the breast of Juanita Lamadura and held her. Juanita Lamadura struggled until she was able to run a distance of about six (6) arms length, but she was over-taken by Leonardo Lor. After catching up with her, Leonardo boxed her stomach. She did not fall on the first blow. It was the second blow that caused her to fall. She lost consciousness' (pp. 111-112, 126-127, tsn, March 18, 1976; pp. 3-5, tsn, April 2, 1976). 'When she regained consciousness, she had no more panties. She felt pain all over her body and pain inside her genital organ. She found her genital organ bleeding. She suffered pain in her genital organ because Leonardo Lor mounted on her. When she re-gained consciousness, she found Leonardo Lor standing where she was lying down. She found her panties on the place where she fell' (pp. 112-113, 117, tsn, March 18, 1976; pp. 5-6, 9, tsn, April 2, 1976). 'She put on her panties and she started crying on the place where she fell. Then she went back to the motorcab (pp. 112-113, tsn, March 18, 1976; pp. 6, 10, tsn, April 2, 1976)'" [p. 8, Brief for the Appellee; p. 296, rec.].

"xxx xxx xxx

"Juanita Lamadura reported the incident to her landlord by the name of Lando Urgel. She told her landlord that one of the men took advantage of her. Upon advise by her Landlord she reported the incident to the police department of Hilongos' (pp. 115-166, tsn, March 18, 1976; p. 14, tsn, April 2, 1976)" [pp. 12-13, Appellee's Brief; p. 296, rec.].

"xxx xxx xxx

"After reporting the matter to the police authorities, the three complainants reported to Dr. Antonia Ladion, a resident physician of the Hilongos General Hospital for examination. Dr. Ladion examined Juanita Lamadura, Concepcion Lor and Victoria Erit on August 26 and 27, 1975' (pp. 7, 9-10, 18-19, 22, tsn, March 11, 1976; pp. 25-26, tsn, April 2, 1976). 'The examination she conducted on Juanita Lamadura on August 26, 1975 was only an external physical examination because the three girls refused to have an internal examination on this date' (pp. 27-28, 35-36, tsn, March 11, 1976; pp. 81, 83, tsn, March 18, 1976). 'The findings in her physical examination on Juanita Lamadura on August 26, 1975 is shown in a Medical Certificate which she issued now marked as Exhibit '1' for Criminal Case No. B-495. Her findings show that she did not find any marks such as blue marks, no contusions, and no external wounds on her body' (pp. 10-11, 26, 27, tsn, March 11,

1976). 'It is possible that since Juanita Lamadura came to the physical examination three (3) days later some marks could no longer be seen' (p. 18, tsn, March 11, 1976).

'In the internal examination she made on Juanita Lamadura on August 27, 1975, she issued a medical certificate which is Exhibit 'A' in Criminal Case No. B-495. Her findings are that she found lacerations of the hymen at 11:00 o'clock and 1:00 o'clock. These lacerations were already healed. The scars were fresh scars. The examination shows negative for the presence of spermatozoa' (pp. 11-14, 18, 30-31, tsn, March 11, 1976) [pp. 14-15, Appellee's Brief; p. 296, rec.].

"xxx xxx xxx

'Juanita Lamadura is a 15 year old girl who comes from Barrio Tagnate, Hilongos, Leyte which is around ten (10) kilometers from Barrio Concepcion. Barrio Tagnate is not accessible by motor vehicle since it is a mountainous area. The means of transportation is by carabao or horse riding. She has no educational attainment at all and she does not know how to read and write' (pp. 63, 105--106, tsn, March 18, 1976) [pp. 16-17, Appellee's Brief; p. 296, rec.].

"xxx xxx xxx"

From the appellee's Brief, WE observe two things.

First, there were no positive signs of physical violence nor traces of the alleged rape on the body of Juanita Lamadura.

After the assault, Juanita Lamadura underwent two physical examinations. On August 26, 1975, three (3) days after the assault, Dr. Antonia Ladion conducted an external physical examination on Juanita because the latter refused to have an internal examination on that date. The examination showed no pertinent findings of marks of violence. On August 27, 1975, Juanita agreed to an internal examination. The examination showed negative for the presence of spermatozoa. Only healed lacerations were found with the observation that the scars were fresh.

Nonetheless, WE note that the absence of any marks of violence on the body of the victim does not negate the commission of rape (*People vs. Balbuena, et al.*, G.R. Nos. L-44859-60, April 27, 1984). The same can be explained by the fact that the external physical examination was conducted on the victim three days after the assault. The marks could have healed by then. During the period of three days after the sexual assault, she must have urinated and thereby expelled all the spermatozoa.

The important consideration in the crime of rape is not the emission of the male semen but the penetration of the male penis into the female genital organ (p. 34, Appellee's Brief citing *People vs. Jose*, 37 SCRA 450, *People vs. Selfaison*, 1 SCRA 235, *People vs. Hernandez*, 49 Phil. 980, *People vs. Llamas*, 3 C.A. Rep. 232).

Second, having been dragged away from the rest of her companions before the alleged assault on her chastity was made, Juanita Lamadura's testimony is the only available evidence on the assault itself. This, however, does not preclude conviction for the offense charged. After all, her testimony (*supra*) is credible and sufficient to warrant a conviction. It is a rule consistently adhered to that the lone testimony of the victim in the prosecution for rape, if credible, is sufficient to sustain a verdict of conviction, the rationale being that, owing to the nature of the offense, the only evidence that can oftentimes be adduced to establish the guilt of the accused is the offended party's testimony (*People vs. Ramos*, G.R. No. 50450, March 16, 1984; *People vs. Selfaison*, 110 Phil. 889; *People vs. Macaya, et al.*, 85 Phil. 540).

WE note that at the time of the taking of her testimony, Juanita Lamadura was only 15 years old (p. 105, tsn, March 18, 1976). She was unlettered. It is inconceivable how she could have concocted a story of rape with such convincing details unless she had been the victim of such a detestable assault.

Juanita Lamadura is a simple provincial lass doing the menial tasks of a housemaid. Her own provincial sentiments proscribe exposing herself to the shame and humiliation of being publicly known as a rape victim, unless she in fact was. She braved the consequences of such exposure.

"In weighing the testimony of the complainant in an accusation for rape, the rule often applied by the courts is that the testimony of the victim, whose chastity has not been questioned, is generally accorded credence because such offended party would not have fabricated facts that could bring shame and dishonor on her. Nor would she disclose her humiliating experience at a public trial, and thus give rise to gossip and slander, unless her motive was to bring to justice the person who grievously wronged her" (People vs. Balbuena, supra; People vs. Pimentel, No. L-38423, November 25, 1982, 118 SCRA 695).

"It is unthinkable that an unmarried teenager, a high school student, would endure the shame and humiliation of being publicly known that she had been ravished, allow an examination of her private parts and undergo the trouble and expense of court proceedings if her motive was not to bring to justice the person who had grievously wronged her" (People vs. Vidal, et al., G.R. Nos. L-48876-78, January 30, 1984; People vs. Garcines, G.R. No. L-32321, June 28, 1974, 57 SCRA 653; People vs. Savellano, L-31227, May 31, 1974, 57 SCRA 320; People vs. Canastre, 82 Phil. 480).

It is true that while rape is an abominable crime, it is an accusation easy to make, hard to prove, and still harder to defend by the person accused (People vs. Olalia, G.R. No. L-50669, March 12, 1984; People vs. Reyes, Nos. L-36874-76, September 30, 1974, 60 SCRA 126), so that such charge, based on the lone and uncorroborated testimony of the victim, must be regarded with utmost caution and examined with the greatest care. To warrant conviction, the testimony of the victim must be clear and free from serious contradictions, and her sincerity and candor, free from suspicions (People vs. Olalia, supra; People vs. Lacuna, et al., No. L-38463, December 29, 1978, 87 SCRA 364).

Indeed, during her external physical examination, she refused an examination of her private parts because according to her nothing happened. She testified and signed an affidavit wherein she declared that the accused did everything to her except one thing (p. 4, Appellant's Brief). She filed a complaint for acts of lasciviousness, but then later changed the charge to one of rape (Ibid., pp. 2-7). Nonetheless, these enumerated facts do not deviate from her sincerity and candor and the veracity of her accusation for rape. Her conservative and provincial values put her on guard. She was equally ashamed and afraid for her life (Ibid., p. 25). Only her sense of justice overwhelmed her hesitation.

Against the appellee's version, Leonardo Lor (23 years old, at the time his testimony was taken, single, and a resident of Barrio Concepcion, Hilongos, Leyte [tsn, p. 226]) claims that he was not with Juanita Lamadura at the time of the alleged rape. Accordingly, he remained in the motor cab with Concepcion Lor while the two other complainants went in pairs with his two other companions. He maintains that he stayed behind with Concepcion Lor and did nothing but talk with Concepcion through the two hours or so that they stayed by the river bank.

Appellant's version defies belief. The three complainants, including Juanita Lamadura herself, positively identified Leonardo Lor as the one who dragged Juanita to a secluded area where he took advantage of her.

It is undisputed that the three victims did not know any of the accused; and neither did they (the victims) know one another (Ibid., p. 35). Considering that all the three victims reside in the province, their outlook provincial and conservative, it is hardly natural for them to have easily acquiesced to go with the three accused separately and to separate secluded areas.

On the other hand, as correctly observed by the lower court (p. 156, rec.), the three accused knew one another and were friends. If Leonardo did not participate in the commission of any criminal design, but admittedly was only

present when his two companions were perpetrating their own criminal designs, how is it that he did not show any effort to prevent the crime against two of the complainants taking place a short distance away from him. That he was an active participant in a criminal design is borne by the fact that he was driving the motor cab on which the other accused and the three victims rode. He directed the course of the trip. He actively represented one of his companions as a P.C. soldier. He conferred with the two other accused before taking the three victims in his motor cab. He participated in the deception that culminated in his own forcible defloration of the helpless Juanita Lamadura.

The information filed against Leonardo Lor alleges as aggravating circumstances nighttime, use of motor vehicle and taking advantage or abuse of superior strength.

The general rule is that the aggravating circumstance must have been purposely sought by the offender to facilitate the commission of the offense.

There is no showing that the offender, Leonardo Lor, purposely and deliberately sought nighttime to perpetrate and facilitate the commission of his criminal design (People vs. Coderes, Nos. L-32509, April 27, 1981, 104 SCRA 255; People vs. Apduhan, Jr., No. L-19491, August 30, 1968, 24 SCRA 798; People vs. Condemena, No. L-22426, May 26, 1968, 23 SCRA 910).

WE find that the use of motor vehicle was deliberately sought to facilitate the commission of the crime. Leonardo Lor did not immediately take the victims into the motor cab when the latter hailed it. Instead, he conferred with his two male companions, the present co-accused. It was only after their brief conference that Leonardo Lor agreed to take the victims in the motor cab. At this time, the criminal design of all the three accused to sexually assault the three girls, began to be evident. Henceforth, Leonardo Lor was to take the three girls in the motor cab; and unknown to said victims, he was to take them and his co-accused to a secluded place by the river bank; there, he and his co-accused were to drag their respective partners to separate places to consummate the rape. Clearly, said motor cab was used to facilitate the commission of the rape and aggravated the crime (People vs. Famador, No. L-36553, March 30, 1982, 113 SCRA 310; People vs. Ong, et al., No. L-37908, October 23, 1981, 108 SCRA 267).

For superior strength to aggravate a crime, it must be clearly shown that there was deliberate intent to take advantage of the same (People vs. Bello, No. L-18792, February 28, 1964, 10 SCRA 298). There must also be notorious inequality of forces between the victim and the aggressor (People vs. Cabiling, No. L-38091, December 17, 1976, 74 SCRA 285). No such showing appears in the present case. The fact that the victim was only 14 years old at the time of the assault while the aggressor was 23 years of age does not reflect notoriety of inequalities in strength. In People vs. Parayno (No. L-24804, July 5, 1968, 24 SCRA 3), abuse of superior strength was not considered despite the fact that the accused was 61 years old while the victim was only 9 years old.

While the aggravating circumstance of craft or fraud (Paragraph 14, Article 14, Revised Penal Code) was not alleged in the information, there is evidence that the same was employed to facilitate the commission of the crime. To convince the victim that the change of route during the trip was a necessity, Leonardo Lor told the victims that they had to drop a P.C. soldier-passenger somewhere near the river bank.

Fraud, which constitutes deceit and manifested by insidious words and machinations, is illustrated in the case of the offended party's stepfather who, taking advantage of the absence of her mother, took the young girl away and told her she was to be taken to the house of her godmother, but instead she was taken to another house where she was raped (People vs. de Leon, No. 26867, August 10, 1927, 50 Phil. 539). Similarly, there is also deceit or fraud where accused "lured a minor girl to go with him and look for her sister Liza who was allegedly waiting for the offended girl somewhere at Junquera Street"; but instead, accused upon reaching said destination, dragged the girl

to a secluded area and there raped her (People vs. Famador, 173 SCRA 310).

There is craft, which is cunning or trickery, where accused pretended to buy a pig from his victims, and then thereafter, taking advantage of his victims' goodwill, stabbed one of them, then robbed the other (People vs. Lobetania, No. L-56973, August 30, 1982, 116 SCRA 297). Craft was also present where "accused Revotoc asked permission from his employer allegedly to go home to Pangasinan at 4:00 p.m. on the day the offense was committed. He even borrowed P50.00 from his employer. He brought with him his clothes placed in a travelling bag. At 10:00 p.m. of the same day, he went back to the store with his co-accused. He knocked at the door and when asked who he was he mentioned his name. To place the victims off-guard and to gain entrance at that unholy hour, he pretended that he was going back to the store because he failed to take a ride to Pangasinan. By reason of his pre-tension, the unsuspecting Chinese opened the door to welcome him. Thereafter, Revotoc and de Vera entered the place, and with Diaz standing guard, they per-petrated the crime. The aggravating circumstance of craft is therefore present" (People vs. Revotoc, No. L-37425, July 25, 1981, 106 SCRA 22).

Finally, the nearest house to the river bank, site of the crime, was about 300 to 450 meters away. This qualifies the place as uninhabited. A place where there are no people or any number of houses within a perimeter of less than 200 meters is uninhabited (Fundamentals of Criminal Law Review by Gregorio, p. 66, citing Decision Supreme Court of Spain, July 9, 1894). The fact that Leonardo Lor, together with his co-accused deliberately brought the three victims to the said river bank, is proof that said uninhabited place was purposely sought for the commission of the crime charged. While uninhabited place is not aggravating when there is no showing that accused selected the place of commission of the crime (People vs. Capillas, No. L-27177, October 23, 1981, 108 SCRA 173), said aggravating circumstance is present in the instant case, where there was a deliberate selection of an isolated place for the perpetration of the crime (People vs. Ong, No. L-37908, October 23, 1981, 108 SCRA 267).

WHEREFORE, FINDING LEONARDO LOR (IN CRIMINAL CASE NO. B-495) GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE AGGRAVATED BY FRAUD OR CRAFT, THE USE OF MOTOR VEHICLE, AND UNINHABITED PLACE, HE IS HEREBY SENTENCED TO RECLUSION PERPETUA, AND ORDERED TO INDEMNIFY JUANITA LAMADURA IN THE SUM OF THIRTY THOUSAND (P30,000.00) PESOS, WITHOUT SUBSIDIARY IMPRISONMENT IN CASE OF INSOLVENCY. HE IS HEREBY FURTHER ORDERED TO ACKNOWLEDGE AND SUPPORT THE CHILD SHOULD THE OFFENDED PARTY HAVE GIVE BIRTH TO ONE BY REASON OF THE OFFENSE, AND TO PAY THE COSTS.

SO ORDERED.

Abad Santos, Escolin, and Cuevas, JJ., concur.

Aquino, J., in the result.

Concepcion, Jr., and Guerrero, JJ., on leave.

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