

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN LACUNA Y FRANCISCO AND JOHN DOE, ACCUSED,
BENJAMIN LACUNA Y FRANCISCO, ACCUSED-APPELLANT.**

G.R. No. L-38463. December 29, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the decision of the Court of First Instance of Rizal, Branch XXII, convicting Benjamin Lacuna y Francisco of Forcible Abduction with Rape, and sentencing him to life imprisonment with costs (Criminal Case No. 784).

The prosecution's evidence is principally based on the testimony of the complaining witness, Emily Beltran, married but estranged from her husband since 1969, and living with her parents at 2958 A. Bautista St., Punta, Sta. Ana, Manila. At the time of the incident, she was a high school student at the Jose Rizal College in Mandaluyong, Rizal. She testified that in the evening of March 13, 1970, she was at the canteen of the said school when appellant Benjamin Lacuna, her classmate in some subjects and a suitor she rejected, attempted to take her out but she refused. Due to this incident she decided to go home early. At about 8:00 p.m., she and another companion, Joseph Pascual, were about to go home when appellant who was outside the gate called her. She approached appellant and as she got near him, he pointed a gun at her and pulled her into a waiting taxicab while Joseph Pascual was taken into another taxicab by the companions of appellant. Inside the taxicab she was told to bow down so that she may not be seen by the people outside.

Complainant further testified that they proceeded to Sta. Ana, Manila and went inside a house where they joined about ten men who were drinking beer. In that house Emily was able to talk to a woman. She told the woman that if she and Joseph would be allowed to leave they would not file any complaint. The woman, however, told her that she could not persuade or prevail over the appellant. About an hour later, appellant and his companions took her and Joseph to a hut about sixty (60) meters away from the house. Inside the hut, appellant kissed her and fondled the different parts of her body while outside the hut appellant's companions stood guard over Joseph Pascual. At past midnight, she was taken to another house somewhere in Sta. Ana where she was kept inside a room. During the daytime of March 14, 1970, nothing happened but when night came, appellant forced her to lie down with him. Appellant took hold of her two hands with his right hand and removed her "pantilets". Then he forcibly tore away her panties. She tried to resist but appellant threatened her that if she will create any scandal he would get her children and kill them. Claiming that she was weak from hunger and fatigue, she did not struggle very hard with appellant who succeeded in having sexual intercourse with her. An hour later, as she was no longer capable of offering resistance, appellant repeated the same act. She was alone inside the room the next morning when she woke up but the door was guarded. In the evening of March 15, 1970, appellant, with his gun tucked inside his front waistline, took her to his brother's house in Sta. Ana to ask for money. Then he brought her back to the same house where they last came from. At about 10:00 p.m. appellant again forced her to lie down with him and succeeded in satisfying his sexual desire.

She further declared that in the morning of March 17, 1970, appellant took her to his father's house where she was told to call her housemates through the telephone to inform them that she voluntarily went with him. She obeyed due to her desire to go home. Then she was told to call her sister-in-law, Lourdes Beltran, whom she requested to come and fetch her. After she talked to Lourdes Beltran she was brought to a house of appellant's other brother where Lourdes went to get her. They proceeded to her residence. After the two had taken their lunch, they went to the NBI to file a complaint. At the NBI, she was investigated and her statement reduced in writing (Exhibit "C"). She was also subjected to medico-legal examinations (Exhibits "A" and "B").

Lourdes Beltran, complainant's sister-in-law, testified that she received a phone call at her residence in San Juan, Rizal from Emily who was crying and begging to be fetched. As they were conversing, somebody intruded and introduced himself as Benjamin Lacuna. The man told her to go to an address at Leyva Street, Sta. Ana, Manila, alone and without reporting the matter to anybody, especially the police, if she wanted to see her sister-in-law. She was instructed to tell her name to a man who will in turn accompany her to the place where Emily could be found. Following the instructions, she went to the given address where she met an old man who asked for her name. She identified herself as Lulu. When the man was certain that she was alone, he led her to an apartment house. As they entered the place she saw several persons inside and someone asked her if she was Lulu. When she answered affirmatively, she was accompanied upstairs to a room where a man stood by the door. Appellant opened the door and she saw Emily sitting on a bed crying. She embraced her and Emily requested that she be taken home by her. When they went downstairs, a man told them that they could go home but were advised not to report the matter to the police nor take any action against them as Benjamin Lacuna is a nephew of Councilor Danny Lacuna. They left and proceeded to the house of Emily.

Gil Mortera, Jr., a patrolman-investigator of the Mandaluyong Police Department, declared that while on duty in the evening of March 14, 1970, Joseph Pascual accompanied by Jose Almirante, father of Emily, and one Josefina, appeared before him. Mr. Almirante reported that his daughter was missing and Joseph Pascual is one of the witnesses who saw appellant abducting his daughter. He took the statement of Joseph Pascual in the form of questions and answers (Exhibit "D"). After taking the statements of Joseph Pascual and Josefina, he advised them to come back the next morning. The following day, Mr. Almirante informed him that Joseph Pascual could not be located anymore.

He further declared that Exhibit "D" is a xerox copy of the statement of Joseph Pascual and that the signature appearing thereon was that of the latter.

Dr. Ernesto G. Brion, physician and Assistant Director for Legal Medicine of the National Bureau of Investigation, testified on the findings and conclusions stated in the Living Case Report No. MI-70-179 (Exhibit "A") referring to the general physical and genital examinations and Laboratory Report No. S-70-182 (Exhibit "B") as to the vaginal smear that was conducted on the person of Emily Beltran. He identified the signatures appearing on Exhibit "A" aside from his own as that of Dr. Del Rosario, one of the medico-legal officers of the NBI, as well as that of Mercedita A. Mojica, a medical technician of the NBI, appearing in Exhibit "B". He also affirmed that the examinations were taken under his supervision.

Upon the other hand, appellant claims that Emily went with him and committed sexual acts with him voluntarily. According to him, he invited Emily and some of his friends at the Jose Rizal College to a drinking and snack party at Sta. Ana, Manila, on March 13, 1970, after class hours. Hiring two taxicabs, Emily, Enrique Borja and himself rode in one of them, while Joseph Pascual, Frank Cawas and Freddie Borja took the other one. They went to the house of Emiliano Padua at the corner of Havana and Syquia Streets in Sta. Ana, Manila. They ordered some bottles of beer and they, including Emily, drank. The drinking lasted up to 11:30 in the evening. When their companions left, Emily and himself went to a small hut which was about thirty (30) meters away from the corner

of Havana and Syquia Streets. Inside the hut, they kissed each other and made love for about thirty minutes but did not copulate. They then went to his uncle's house in Baclaran where they stayed and slept in the sala. After taking their breakfast, they left his uncle's house at about 5:30 in the morning and proceeded to the house of his friend Honesto Sablan at Sta. Ana, Manila, where they stayed for three days up to March 16. In the said house, they had three sexual contacts, one in the evening of March 14, another at noon of March 15 and still another at noon of March 16. Then they went to Manny Rivera's place at Boni Avenue, Mandaluyong, Rizal where they slept till the morning of March 17. In the morning of March 17, they went to his compadre's house at Pasong Tamo, Makati, Rizal, but finding that his compadre had transferred to another place, they went to his father's house at 2528 Leyva Street, Sta. Ana, Manila. His father advised them to part ways as they were both married. He heeded his father's advice but Emily did not like the idea. When Emily refused to leave, his father went to the house of his (appellant's) cousin Amparo Diaz. Later, Amparo Diaz arrived with Lt. Sotero Eusebio. Lt. Eusebio, who stayed for about thirty minutes, talked to Emily and to appellant and advised them to separate. After Lt. Eusebio left, Emily decided to go home and called her sister-in-law, Lourdes Beltran. Before Emily left, she threatened him that something will happen.

Appellant further declared that he did not have a gun and that he and Emily were lovers. In fact, he had taken her, on three occasions previous to March 13, 1970, to the Bermuda Hotel at Shaw Boulevard in Mandaluyong, Rizal where they had sexual relations.

Miguel Francisco, a resident of Bagong Ilog, Baclaran, Parañaque, Rizal and appellant's uncle, testified that one early morning in March, 1970, between 1:00 and 1:30 o'clock, his nephew (appellant) came with a young lady and requested that they be allowed to spend the night in his house. Knowing that his nephew is a married man he refused and even rebuked him for bringing a woman to his house. He told the girl that his nephew is already a married man and advised her to return home but the girl told him that she and his nephew had an understanding with each other and she could not go home. When they pleaded to stay, as it was already past midnight, he allowed them to sleep in the sala of his house. In the morning, after taking their breakfast, they left.

Sotero Eusebio who was already a captain of the Manila Metropolitan Police when he testified, stated that way back in March, 1970, one Amparo Diaz asked him to intervene on the matter concerning Benjamin Lacuna and Emily Beltran. He went to the house of Lacuna and there he saw appellant and Emily with whom he had a conversation. Appellant told him that Emily was his girl friend. He verified this from Emily and she answered in the affirmative. He further asked Emily if she had any complaint to make and she answered in the negative. He then advised Emily to go home and stay away from appellant who is a married man.

Honesto Sablan, Jr., a close friend of appellant, declared that he is living with his in-laws at 2442 Havana St., Sta. Ana, Manila. On March 14, 1970, appellant and Emily came to their house and stayed for about four days. During the stay of the two in their house they embraced each other as lovers and were happy. Sometimes Emily went downstairs to watch the cooking of chitcharon. During their stay Emily never complained of anything nor asked any member of his household to report to police authorities that something wrong was being done to her. On one occasion, she asked him to withdraw P29.00 from her deposits in the Banco Filipino at Mandaluyong Branch. He was able to make the withdrawal and gave the money to Emily.

The charge against appellant is forcible abduction with rape. Appellant does not deny having had sexual intercourse with the offended party but claims that she went and did the acts with him voluntarily. The issue, therefore, is one of credibility. In a rape case, the uncorroborated testimony of the offended party may be sufficient under certain circumstances to warrant conviction. But for this rule to obtain, the lone testimony of the woman victim must be clear and free from any serious contradiction, her story must be impeccable and must ring throughout or bear the stamp of absolute truth and candor.[1] In any event, the testimony of the alleged injured

woman should not be received with precipitate credulity. It is imperative that such testimony should be scrutinized with the greatest caution; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion.[2]

We have carefully scrutinized the record and We find the prosecution's evidence to be insufficient to sustain a conviction for rape. It failed to prove the presence of force or intimidation. Complainant's testimony is far from convincing that she was sexually abused. She testified as follows:

"ATTY. CARREON:

In what portion of the house were you brought?

A Inside a room.

Q What happened to you inside or what was done to you inside, while inside that room?

A Nothing, except that when it was already night time, he forced me to lie down.

Q When you said he, to whom do you refer to?

A Benjamin Lacuna.

Q How did the accused Benjamin Lacuna force you to lie down?

A He pulled me by my hands and he was forcing me to lie down.

Q Will you please demonstrate how he pulled you by the hand and how he tried to force you to lie down?

A He was squatting on the floor, then he pulled me down.

Q After pulling you down, what did he do?

A He took hold of my two hands and he was removing my pantilet.

Q How did he take hold of your two hands?

A He took hold of my two hands with his right hand. I could no longer resist him because I had not eaten and my stomach was aching.

Q How were your hands placed at the time he was holding them by his right hand?

A My hands were closed like this (witness indicating with her two hands closed).

Q When you said he tried to remove your pantilet, was he successful?

A Yes, sir.

Q After removing your pantilet, what did the accused do next?

A My panty.

Q What did he do with your panty?

A He pulled my panty.

Q What happened to your panty by the way?

A It was torn.

Q What did you do while he was in the process of removing your pantilet or your panty?

A I was trying to resist, but I could not overcome him.

Q And while he was doing this, did he tell you anything?

A Yes, sir, he was threatening me not to make any scandal, otherwise he would get my children and kill them.

Q After he was able to remove your panty, what did he do?

A He was forcing his penis into my private part.

Q What did you do?

A I could no longer fight him back. He was threatening me and I was already tired then.

Q Was he successful in his attempts?

A Yes, sir.

Q After he was able to succeed in having sexual intercourse with you, what happened next?

A After one hour, he repeated the same act. Afterwards, he let me go to sleep. The next day when I woke up I found myself alone in the room.

Q When he repeated the same act for the second time on that day, what did you do?

A I would want to resist but I was no longer capable of doing it.

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Q What happened in his brother's house?

A He again brought me to a taxi and we went back to the house where we last came from.

Q What happened inside that house?

A In the evening, at about 10:00 o'clock, he repeated what he did to me before. He forced me to lie down.

Q Was he successful?

A Yes, sir."^[3] (Italics supplied).

It must be noted from the foregoing testimony that complainant did not offer any resistance or shout for help against the alleged sexual assaults. She merely tried to resist. Since complainant did not offer any resistance or vocal protestation, there can be no basis or support for a conviction for rape.^[4] If there was any resistance, it was alleged in general terms which likewise cannot suffice to sustain a conviction.^[5] Where the offense charged is rape through force, the element of voluntariness must be lacking. If there is an indication of willingness, even if half-hearted, the complaint must be dismissed.^[6] Even the documentary evidence of the prosecution does not prove beyond reasonable doubt that the crime charged was committed. Living Case Report No. MI-70-179 (Exhibit "A") states that "no extra genital physical injury is noted on the body of the subject at the time of examination". Dr. Ernesto G. Brion affirmed in his testimony that the absence of bruises or scratches on any part of the body of the subject is an indication that physical violence was not used on her.^[7] Complainant cannot claim that she was morally intimidated as her testimony does not reveal that she was coerced or cowed with a gun or any other kind of deadly weapon when the alleged sexual acts were perpetrated. To our mind, her claim that appellant threatened to get her children and kill them if she created any scandal is not enough to cause great fear on her part, considering that appellant could not have had an easy access to her parents' home where her children were staying.

Another circumstance leading to the conclusion that the carnal relations between appellant and the complainant were voluntary is that the supposed rapes took place in the home of the parents-in-law of appellant's friend. If complainant had offered any resistance, someone in the household would surely have noticed it and the normal reaction of a person is to prevent the desecration of his home especially by a mere friend of a son-in-law.

According to the trial court, the testimony of defense witness Honesto Sablan, declaring that he was asked by complainant to withdraw money for her from the bank, only proved that she was not free, otherwise, she would have gone to the bank and done the withdrawing herself. To Us, her request on Sablan to withdraw money for her is an indication that she was in her right mind and nothing happened against her will.

With respect to the charge of forcible abduction, We find inconsistencies in the testimony of the complainant that lead Us to doubt that she was taken to a waiting taxicab against her will by the appellant. She stated that on March 13, 1970, appellant created some commotion by attempting to take her out of the school canteen. Due to that incident, she decided to go home early. Inferred from her statements, she must have suspected that appellant might do some untoward acts against her and, as she averred, her decision to leave her classes earlier for home was to avoid or get away from appellant. Yet when the latter called her, instead of fleeing, she approached him. She also stated that as she approached appellant, he pointed a gun at her but when she was asked what kind of a gun it was, she answered, "I do not know, sir."^[8]

Furthermore, if appellant really forcibly abducted complainant, We deem it to be contrary to human behaviour for him to take her to a house to join several persons having a drinking and snack party.

According to the Solicitor General, Exhibit "D" bolsters the finding of the trial court that appellant forcibly abducted the complainant. Exhibit "D" is a xerox copy of the statement of Joseph Pascual, in the form of questions and answers, given to Pat. Gil Mortera of the Mandaluyong Police Department, recounting how appellant took the complainant to a waiting taxicab. But Joseph Pascual was not presented at the trial to confirm the contents of his statement. Therefore, Exhibit "D" cannot be considered as corroborative evidence because it is hearsay. Appellant never had the chance to confront and cross examine the witness against him. Pursuant to subsection (f), Section 1 of Rule 115 of the Rules of Court, where "the testimony of a witness for the prosecution had previously been taken down by question and answer in the presence of the defendant or his attorney, the defense having had an opportunity to cross examine the witness, the testimony or deposition of the latter maybe read, upon satisfactory proof to the court that he is dead or incapacitated to testify, or cannot, with due diligence, be found in the Philippines." In the instant case, there is no proof of compliance with the requisites of the rule.

Crimes against chastity, by their very nature, usually involve only two persons – the complainant and the offender. Seldom, if ever, is there an eyewitness to the commission of the offense. As a consequence, conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony. It is, therefore, for a good reason that the courts must examine with the greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity in the light of human nature and experience.[9]

We find that the evidence for the prosecution does not prove beyond reasonable doubt that the appellant is guilty as charged. On the other hand, the evidence for the defense raises serious questions as to the veracity and credibility of complainant's allegations.

WHEREFORE, the judgment appealed from is reversed and appellant Benjamin Lacuna y Francisco is hereby ACQUITTED of forcible abduction with rape with costs de oficio.

The immediate release from custody of Benjamin Lacuna y Francisco is hereby ordered, unless held for some other lawful cause.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] People v. Dazo, et al., No. 37310, Sept. 19, 1933, 58 Phil. 420; People v. Nebres, 58 Phil. 903; People v. Ariarte, No. 40786, Aug. 10, 1934, 60 Phil. 326; People v. Delfinado, No. 43292, Aug. 3, 1935, 61 Phil. 694.

[2] People v. Fausto, No. 29191, Aug. 14, 1928, 51 Phil. 852; U.S. v. Flores, No. 9014, Dec. 11, 1913, 26 Phil. 262.

[3] TSN, August 10, 1972, pp. 14-23.

[4] People v. Castro, L-33175, Aug. 19, 1974, 58 SCRA 473.

[5] People v. Ching Suy Siong, L-6174, February 28, 1955.

[6] People v. Joven, L-36022, May 22, 1975, 64 SCRA 126.

[7] TSN, July 20, 1972, p. 30.

[8] TSN, August. 10, 1972, p. 7.

[9] People v. Ilagan, L-36560, May 28, 1975, 64 SCRA 170.

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