

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME JOSE Y GOMEZ, ET AL., DEFENDANTS. JAIME JOSE Y GOMEZ, BASILIO PINEDA, JR., ALIAS "BOY", EDGARDO AQUINO Y PAYUMO AND ...

G.R. No. L-28232. February 06, 1971

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PER CURIAM:

The amended complaint filed in this case in the court below, reads as follows:

"The undersigned complainant accuses JAIME JOSE Y GOMEZ, BASILIO PINEDA, JR. alias "BOY", EDUARDO AQUINO Y PAYUMO alias "EDDIE" and ROGELIO CAÑAL Y SEVILLA alias "ROGER", as principals, WONG LAY PUENG, SILVERIO GUANZON Y ROMERO and JESSIE GUION Y ENVOLTARIO as accomplices, of the crime of Forcible Abduction with rape, committed as follows:

"That on or about the 26th day of June, 1967, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named principal accused, conspiring together, confederating with and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously, with lewd design, forcibly abduct the undersigned complainant against her will, and did, then and there take her, pursuant to their common criminal design, to the Swanky Hotel in Pasay City, where each of the four (4) accused, by means of force and intimidation, and with the use of a deadly weapon, have carnal knowledge of the undersigned complainant against her will, to her damage and prejudice in such amount as may be awarded to her under the provisions of the civil code.

"That WONG LAY PUENG, SILVERIO GUANZON y ROMERO, and JESSIE GUION y ENVOLTARIO, without taking a direct part in the execution of the offense either by forcing, inducing the principal accused to execute, or cooperating in its execution by an indispensable act, did, then and there cooperate in the execution of the offense by previous or simultaneous acts, that is, by cooperating, aiding, abetting and permitting the principal accused in sequestering the undersigned complainant in one of the rooms of the Swanky Hotel then under the control of the accused Wong Lay Pueng, Silverio Guanzon y Romero and Jessie Guion y Envoltario, thus supplying material and moral aid in the consummation of the offense.

"That the aforesited offense has been attended by the following aggravating circumstances:

1. Use of a motor vehicle.
2. Night time sought purposely to facilitate the commission of the crime and to make its discovery difficult;
3. Abuse of superior strength;
4. That means were employed or circumstances brought about which added ignominy to the natural effects of the act; and
5. That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for the commission.

"CONTRARY TO LAW."

Upon arraignment, Basilio Pineda, Jr. pleaded guilty to the charge imputed in the above-quoted amended complaint; however, in an order dated July 11, 1967, the court reserved judgment "until such time as the prosecution shall have concluded presenting all of its evidence to prove the aggravating circumstances listed in the complaint." Upon the other hand, the rest of the defendants went to trial on their respective pleas of not guilty. After hearing on the merits, the court below rendered its decision on October 2, 1967, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Jaime Jose, Rogelio Cañal, Eduardo Aquino and Basilio Pineda, Jr. guilty beyond reasonable doubt of the crime of forcible abduction with rape as described under Art. 335 of the Revised Penal Code, as amended, and hereby sentences each of them to the death penalty to be executed at a date to be set and in the manner provided for by law; and each to indemnify the complainant in the amount of ten thousand pesos. On the ground that the prosecution has failed to establish a prima facie case against the accomplices Wong Lay Pueng, Silverio Guanzon y Romero, and Jessie Guion y Envoltario, the Motion to Dismiss filed for and in their behalf is hereby granted, and the case dismissed against the aforementioned accused.

"Insofar as the car used in the abduction of the victim which Jaime Jose identified by pointing to it from the window of the courtroom and pictures of which were submitted and marked as Exhibits "M" and "M-1", and which Jaime Jose in his testimony admitted belonged to him, pursuant to Art. 45 of the Revised Penal Code, which requires the confiscation and forfeiture of the proceeds or instruments of the crime, the Court hereby orders its confiscation."

This case is now before us by virtue of the appeal interposed by Basilio Pineda, Jr., Edgardo Aquino, and Jaime Jose, and for automatic review as regards Rogelio Cañal. However, for practical purposes all of them shall hereafter be referred to as appellants.

The complainant, Magdalena "Maggie" de la Riva, was, at the time of the incident, 25 years old and single; she graduated from high school in 1958 at Maryknoll College and finished the secretarial course in 1960 at St. Theresa's College. Movie actress by profession, she was receiving P8,000.00 per picture. It was part of her work to perform in radio broadcasts and television shows, where she was paid P800.00 per month in permanent shows, P300.00 per month in live promotional shows, and from P100.00 to P200.00 per appearance as guest in other shows.

So it was that at about 4:30 o'clock in the morning of June 26, 1967, Miss De la Riva, homeward bound from the ABS Studio on Roxas Blvd., Pasay City, was driving her bantam car accompanied by her maid Helen Calderon, who was also at the front seat. Her house was at No. 48, 12th Street, New Manila, Quezon City. She was already near her destination when a Pontiac two-door convertible car with four men aboard (later identified as the four appellants) came abreast of her car and tried to bump it. She stepped on her brakes to avoid a collision, and then pressed on the gas and swerved her car to the left, at which moment she was already in front of her house gate; but because the driver of the other car (Basilio Pineda, Jr.) also accelerated his speed, the two cars almost collided for the second time. This prompted Miss De la Riva, who was justifiably annoyed, to ask: "Ano ba?" Forthwith, Pineda stopped the car which he was driving, jumped out of it and rushed towards her.

The girl became so frightened at this turn of events that she tooted the horn of her car continuously. Undaunted, Pineda opened the door of Miss De la Riva's car and grabbed the lady's left arm. The girl held on tenaciously to her car's steering wheel and, together with her maid, started to scream. Her strength, however, proved no match to that of Pineda, who succeeded in pulling her out of her car. Seeing her mistress' predicament, the maid jumped out of the car and took hold of Miss De la Riva's right arm in an effort to free her from Pineda's grip. The latter,

however, was able to drag Miss De la Riva toward the Pontiac convertible car, whose motor was all the while running.

When Miss De la Riva, who was being pulled by Pineda, was very near the Pontiac car, the three men inside started to assist their friend: one of them held her by the neck, while the two others held her arms and legs. All three were now pulling Miss De la Riva inside the car. Before she was completely in, appellant Pineda jumped unto the driver's seat and sped away in the direction of Broadway Street. The maid was left behind.

The complainant was made to sit between Jaime Jose and Edgardo Aquino at the back seat; Basilio Pineda, Jr. was at the wheel, while Rogelio Cañal was seated beside him. Miss De la Riva entreated the appellants' to release her; but all she got in response were jeers, abusive and impolite language, and threats that the appellants would finish her with their Thompson and throw acid at her face if she did not keep quiet. In the meantime, the two men seated on each side of Miss De la Riva started to get busy with her body: Jose put one arm around the complainant and forced his lips upon hers, while Aquino placed his arms on her thighs and lifted her skirt. The girl tried to resist them. She continuously implored her captors to release her, telling them that she was the only breadwinner in the family and that her mother was alone at home and needed her company because her father was already dead. Upon learning of the demise of Miss De la Riva's father, Aquino remarked that the situation was much better than he thought since no one could take revenge against them. By now Miss De la Riva was beginning to realize the futility of her pleas. She made the sign of the cross and started to pray. The appellants became angry and cursed her. Every now and then Aquino would stand up and talk in whispers with Pineda, after which the two would exchange knowing glances with Cañal and Jose.

The car reached a dead-end street. Pineda turned the car around and headed towards Victoria Street. Then the car proceeded to Araneta Avenue, Sta. Mesa Street, Shaw Boulevard, thence to Epifanio de los Santos Avenue. When the car reached Makati, Aquino took a handkerchief from his pocket and, with the help of Jose, blindfolded Miss De la Riva. The latter was told not to shout or else she would be stabbed or shot with a Thompson. Not long after, the car came to a stop at the Swanky Hotel in Pasay City. The blindfolded lady was led out of the car to one of the rooms on the second floor of the hotel.

Inside the room Miss De la Riva was made to sit on a bed. Her blindfold was removed. She saw Pineda and Aquino standing in front of her, and Jose and Cañal sitting beside her, all of them smiling meaningfully. Pineda told the complainant: "Magburlesque ka para sa amin." The other three expressed their approval and ordered Miss De la Riva to disrobe. The complainant ignored the command. One of the appellants suggested putting off the light so that the complainant would not be ashamed. The idea, however, was rejected by the others, who said that it would be more pleasurable for them if the light was on. Miss De la Riva was told to remove her stockings, in order, according to them, to make the proceedings more exciting. Reluctantly, she did as directed, but so slowly did she proceed with the assigned task that the appellants cursed her and threatened her again with the Thompson and the acid. They started pushing Miss De la Riva around. One of them pulled down the zipper of her dress; another unhooked her brassiere. She held on tightly to her dress to prevent it from being pulled down, but her efforts were in vain: her dress, together with her brassiere, fell on the floor.

The complainant was now completely naked before the four men, who were kneeling in front of her and feasting their eyes on her private parts. This ordeal lasted for about ten minutes, during which the complainant, in all her nakedness, was asked twice or thrice to turn around. Then Pineda picked up her clothes and left the room with his other companions. The complainant tried to look for a blanket with which to cover herself, but she could not find one.

Very soon, Jose reentered the room and began undressing himself. Miss De la Riva, who was sitting on the bed

trying to cover her bareness with her hands, implored him to ask his friends to release her. Instead of answering her, he pushed her backward and pinned her down on the bed. Miss De la Riva and Jose struggled against each other; and because the complainant was putting up stiff resistance, Jose cursed her and hit her several times on the stomach and other parts of the body. The complainant crossed her legs tightly, but her attacker was able to force them open. Jose succeeded in having carnal knowledge of the complainant. He then left the room.

The other three took their turns. Aquino entered the room next. A struggle ensued between him and Miss De la Riva, during which he hit her on different parts of the body. Like Jose, Aquino succeeded in abusing the complainant. The girl was now in a state of shock. Aquino called the others into the room. They poured water on her face and slapped her to revive her. Afterwards, three of the accused left the room, leaving Pineda and the complainant. After some struggle during which Pineda hit her, the former succeeded in forcing his carnal desire on the latter. When the complainant went into a state of shock for the second time, the three other men went into the room, again poured water on the complainant's face and slapped her several times. The complainant heard them say that they had to revive her so she would know what was happening. Jose, Aquino and Pineda then left the room. It was now appellant Cañal's turn. There was a struggle between him and Miss De la Riva. Like the other three appellants before him, he hit the complainant on different parts of the body and succeeded in forcing his carnal lust on her.

Mention must be made of the fact that while each of the four appellants was struggling with the complainant, the other three were outside the room, just behind the door, threatening the complainant with acid and telling her to give in because she could not, after all, escape, what with their presence.

After the appellants had been through with the sexual carnage, they gave Miss De la Riva her clothes, told her to get dressed and put on her stockings, and to wash her face and comb her hair, to give the impression that nothing had happened to her. They told her to tell her mother that she was mistaken by a group of men for a hostess, and that when the group found out that she was a movie actress, she was released without being harmed. She was warned not to inform the police; for if she did and they were apprehended, they would simply post bail and later hunt her up and disfigure her face with acid. The appellants then blindfolded Miss De la Riva again and led her down from the hotel room. Because she was stumbling, she had to be carried into the car. Inside the car, appellant Jose held her head down on his lap, and kept it in that position during the trip, to prevent her from being seen by others.

Meanwhile, the four appellants were discussing the question of where to drop Miss De la Riva. They finally decided on a spot in front of the Free Press Building not far from Epifanio de los Santos Avenue near Channel 5 to make it appear, according to them, that the complainant had just come from the studio. Pineda asked Jose to alight and call a taxicab, but to choose one which did not come from a well-known company. Jose did as requested, letting several taxicabs pass by before flagging a UBL taxicab. After they warned again Miss De la Riva not to inform anyone of what had happened to her, appellant Cañal accompanied her to the taxicab. The time was a little past 6:00 o'clock. When Miss De la Riva was already inside the cab and alone with the driver, Miguel F. Campos, she broke down and cried. She kept asking the driver if a car was following them; and each time the driver answered her in the negative.

It was 6:30 o'clock - or some two hours after the abduction - when Miss De la Riva reached home. Her mother, her brother-in-law Ben Suba, as well as several PC officers, policemen and reporters, were at the house. Upon seeing her mother, the complainant ran toward her and said, "Mommy, Mommy, I have been raped. All four of them raped me." The mother brought her daughter upstairs. Upon her mother's instruction, the complainant immediately took a bath and a douche. The older woman also instructed her daughter to douche herself two or three times daily with a strong solution to prevent infection and pregnancy. The family doctor, who was

afterwards summoned, treated the complainant for external physical injuries. The doctor was not, however, told about the sexual assaults. Neither was Pat. Pablo Pascual, the police officer who had been sent by the desk officer, Sgt. Dimla, to the De la Riva residence when the latter received from a mobile patrol a report of the snatching. When Miss De la Riva arrived home from her harrowing experience, Pat. Pascual attempted to question her, but Ben Suba requested him to postpone the interrogation until she could be ready for it. At that time, mother and daughter were still undecided on what to do.

On the afternoon of June 28, 1967, the complainant's family gathered to discuss what steps, if any, should be taken. After some agonizing moments, a decision was reached: the authorities had to be informed. Thus, early on the morning of June 29, 1967, or on the fourth day after the incident, Miss De la Riva, accompanied by her lawyer, Atty. Regina O. Benitez, and by some members of the family, went to the Quezon City Police Department Headquarters, filed a complaint and executed a statement (Exh. "B") wherein she narrated the incident and gave descriptions of the four men who abused her. In the afternoon of the same day, the complainant submitted herself to a medico-internal examination by Dr. Ernesto Brion, NBI Chief Medico-Legal Officer.

During the physical examination of the complainant by Dr. Brion on June 29, 1967, Pat. Pascual was also at the NBI office. There he received a telephone call from the police headquarters to the effect that one of the suspects had been apprehended. That evening, the complainant and Pat. Pascual proceeded to the headquarters where Miss De la Riva identified appellant Jaime Jose from among a group of persons inside the Office of the Chief of Police of Quezon City as one of the four men who abducted and raped her. She executed another statement (Exh. "B-1") wherein she made a formal identification of Jose and related the role played by him.

At about 9:00 o'clock of the same evening, appellant Jose executed a statement (Exh. "I") before Pat. Marcos G. Viñas. In his statement, which was duly sworn, Jose admitted that he knew about, and was involved in, the June 26 incident. He named the other three appellants as his companions. Jose stated, among other things, that upon the initiative of Pineda, he and the other three waited for Miss De la Riva to come out of the ABS Studio; that his group gave chase to the complainant's car; that it was Pineda who blindfolded her; and that only Pineda and Aquino criminally assaulted the complainant.

After Exh. "I" was executed by Jose, an informant furnished Pat. Viñas with a picture of appellant Edgardo Aquino. The picture was shown to Miss De la Riva, who declared in her sworn statement (Exh. "B-3") that the man in the picture was one of her abductors and rapists. The same picture was shown to Jose, who, in another sworn statement (Exh. "I-1"), identified the man in the picture as appellant Aquino.

After the apprehension of Jose, the other three soon fell into the hands of the authorities: Pineda and Cañal on July 1, 1967, in Lipa City, and Aquino on July 5, 1967, in the province of Batangas. On the evening of July 1, 1967, Miss De la Riva pointed to Pineda and Cañal as among the four persons who abducted and raped her. She picked them out from among several persons in the Office of the Chief of Police of Quezon City. Later in the same evening, Miss De la Riva executed a sworn statement (Exh. "B-2") wherein she made the same identification of the two appellants from among a group of persons in the Office of the Chief of the Detective Bureau, adding that appellant Cañal had tatoo marks on his right hip. After the identification, one of the policemen took appellant Cañal downstairs and undressed him, and he saw, imprinted on the said appellant's right hip, the words "Bahala na Gang."

Appellant Cañal and Pineda executed and swore to separate statements on the day of their arrest. In his statement (Exh. "G"), appellant Cañal confirmed the information previously given by Jose that the four of them waited for Miss De la Riva to come down from the ABS Studio, and that they had planned to abduct and rape her. Appellant Cañal admitted that all four of them participated in the commission of the crime, but he would make it appear that

insofar as he was concerned the complainant yielded her body to him on condition that he would release her. Pineda executed a statement (Exh. "J") stating that he and his other three companions went to the ABS Studio, and that, on learning that Miss De la Riva was there, they made plans to wait for her and to follow her. He admitted that his group followed her car and snatched her and took her to the Swanky Hotel. He would make it appear, however, that the complainant voluntarily acceded to having sexual intercourse with him.

In his medical report (Exh. "K"), Dr. Brion noted the presence of multiple contusions and bruises on different parts of the complainant's body, as well as of genital injuries. On the witness stand the doctor was shown several photographs of the complainant taken in his presence and under his supervision. With the aid of the photographs and the medical report, the doctor explained to the court that he found contusions or bruises on the complainant's chest, shoulders, arms and forearms, right arm index finger, thighs, right knee and legs. He also declared that when he was examining her, Miss De la Riva complained of slight tenderness around the neck, on the abdominal wall and at the sites of the extra-genital physical injuries, and that on pressing the said injuries, he elicited a sigh of pain or tenderness on the part of the subject. The injuries, according to Dr. Brion, could have been caused by blows administered by a closed fist or by the palm of the hand, and could have been inflicted on the subject while she was being raped. It was the doctor's opinion that they could have been sustained on or about June 26, 1967. In connection with the genital examination, the doctor declared that he found injuries on the subject's genitalia which could have been produced by sexual intercourse committed on June 26, 1967. He said that he failed to find spermatozoa. He explained, however, that spermatozoa are not usually found in the vagina after the lapse of three days from the last intercourse, not to mention the possibility that the subject might have douched herself.

The three appellants who pleaded not guilty (Jose, Aquino and Cañal) took the witness stand. We quote hereunder the portions of the decision under review relative to the theory of the defense:

"Their story is that they and their co-accused Pineda had gone to the Ulog Cocktail Lounge somewhere in Mabini street in Manila, and there killed time from 9:30 in the evening of June 25 until closing time, which was about 3:30 in the early morning of the next day. At the cocktail lounge they had listened to the music while enjoying some drinks. Between them they had consumed a whole bottle of whisky, so much so that at least Aquino became drunk, according to his own testimony. They had been joined at their table by a certain Frankie whom they met only that night. Come time to go home, their new acquaintance asked to be dropped at his home in Cubao. The five men piled into the red-bodied, black topped two-door convertible Plymouth (Pontiac) car of Jaime Jose, and with Pineda at the wheel repaired to Cubao. After dislodging their new friend, Pineda steered the car to España Extension to bring Aquino to his home in Mayon Street. But somewhere in España Extension before the Rotonda a small car whizzed past them almost hitting them. They saw that the driver was a woman. Pineda gave chase and coming abreast of the small car he shouted, 'Putang ina mo, kamuntik na kaming mamatay'. The woman continued on her way. Now Pineda saying, 'let us teach her a lesson,' sped after her and when she swerved ostensibly to enter a gate, Pineda stopped his car behind hers, hurriedly got down, striding to the small car, opened the door and started dragging the girl out. Both Jose and Aquino confirm the presence of another woman inside the girl's car, who helped the girl struggle to get free from Pineda's grip; and that the struggle lasted about ten minutes before Pineda finally succeeded in pushing the girl into the red convertible. All the three accused insist they did nothing to aid Pineda; but they also admit that they did nothing to stop him.

"Now the defense contends that Pineda cruised around and around the area just to scare the girl who was in truth so scared that she begged them to let her be and return her to her home. She turned to Jose in appeal, but this one told her he could not do anything as the 'boss' was Pineda. Aquino heard her plead with Jose 'do you not have a sister yourself? but did not hear the other plea 'do you not have a mother?' Then Pineda stopped at the corner of the street where he had forcibly snatched the girl presumably to return her, but then suddenly changing his mind he said, 'why don't you do a strip tease for us. I'll pay you P1,000.00' and the girl taunted, 'are you kidding?'; that after a little while she consented to do the performance as long as it would not last too

long and provided the spectators were limited to the four of them.

"Pineda sped the car until they got to Swanky Hotel where he and Maggie alighted first, but not before Maggie had borrowed a handkerchief from one of them to cover her face as she went up the Hotel. The three followed, and when they saw the pair enter a room, they quickly caught up. All the three accused testify that as soon as they got into the room, Maggie de la Riva asked the boys to close the windows before she undressed in front of them. They themselves also removed their clothing. Two of them removed their pants retaining their briefs, while Boy Pineda and Cañal stripped to the skin 'because it was hot'. The three accused declared that they saw Boy Pineda hand P100.00 to Maggie and they heard him promise her that he would pay the balance of P900.00 later. Whereupon, the show which lasted about 10 minutes began with the naked girl walking back and forth the room about 4 to 5 times. This accomplished, all of them dressed up once more and the three accused Jaime Jose, Eduardo Aquino and Rogelio Cañal) left the room to wait in the car for Boy Pineda and Maggie de la Riva who were apparently still discussing the mode of payment of the balance. Three minutes later Maggie de la Riva and Boy Pineda joined them. Now, the question of how and where to drop Maggie came up and it is testified to by the accused that it was Maggie's idea that they should drop her near the ABS Studio so that it would appear as if she had just come from her work.

"Jaime Jose was picked by the police on the morning of June 29 along Buendia Avenue. Aquino testifies how, on June 29 Pineda went to him with a problem. He did not have the P900.00 with which to pay Maggie the balance of her 'show' and he was afraid that if he did not pay, Maggie would have her goons after him. He wanted Aquino to go with him to Lipa City where he had relatives and where he could help raise the money. Aquino readily obliged, and to make the company complete they invited Cañal to join them. They used another car of Jaime Jose, different from the one they had used the day before. At Lipa, Aquino detached himself from his companions and proceeded alone to the barrio allegedly to visit his relatives. In the meantime his two companions had remained in the City and had, according to Cañal, gone to live in a house very close to the municipal hall building. They later moved to another house where the PC and Quezon City police posse found and arrested them. Aquino was the last to be apprehended, when having read in the newspapers that he was wanted, he surrendered on July 5 to Mrs. Aurelia Leviste, wife of the governor of Batangas."

The striptease-act-for-a-fee story on which the defense theory is anchored, defies one's credulity and reason, and has failed utterly to counteract the evidence for the prosecution, particularly the complainant's testimony and Dr. Brion's medical report and testimony. We quote with approval the able dissertation of the trial judge on this point:

"As main defense in the charge of rape, the three accused advance the proposition that nothing happened in Swanky Hotel except a strip-tease exhibition which the complainant agreed to do for them for a fee of P1,000.00, P100.00 down and the balance to be paid 'later'. The flaw in this contention lies in its utter inverisimilitude. The Court cannot believe that any woman exists, even one habitually engaged in this kind of entertainment (which Maggie de la Riva has not been proven to be) who would consent (and as easily and promptly as defense claims) to do a performance, not even for all money in the world after the rough handling she experienced from these wolves in men's clothing who now hungered for a show. There is no fury to match a woman stirred to indignation. A woman's pride is far stronger than her yen for money, and her revenge much more keen. The Court cannot believe that after the rudeness and meanness of these men to her, Maggie would in so short an interval of time forget her indignation and so readily consent to satisfy their immoral curiosity about her. The woman in her would urge her to turn the men's hankering as a weapon of revenge by denying them their pleasure.

"Besides, the manner of payment offered for the performance is again something beyond even the wildest expectations. Assuming that the woman whom the accused had abducted was in this kind of trade and assuming that the price offered was to her satisfaction, what woman would be willing to perform first and be paid later? It is simply preposterous to believe that Maggie de la Riva should have consented to do a strip-tease act for a measly down-payment of P100.00 and the balance to be paid God knows when. Since when are expositions of the flesh paid on instalment basis? By the very precarious nature of their pitiful calling, women

who sell their attractions are usually very shrewd and it is to be expected that they would demand full payment before curtain call. How was Maggie to collect later when she did not even know who these men were, where they lived, whether they could be trusted with a promise to pay later (!) whether she would ever find them again? If there is anything that has struck the Court about the complainant, it is her courage, her intelligence and her alertness. Only a stupid woman, and a most stupid one at that, could have been persuaded to do what the defense wants this Court to believe Maggie de la Riva consented to do.

"Finally, it is odd that not one of these men should have mentioned this circumstance during their interviews with anyone, either the press, their police interrogator, the persons who negotiated their surrender (as in the case of Aquino) or even their counsel. One cannot escape the very strong suspicion that this story is a last ditch, desperate attempt to save the day for the accused. It truly underscores the hopelessness of their stand and projects all the more clearly their guilt.

"Then there is the incident of the men's stripping themselves. Why was there need for this? The Court realizes that in its desperate need of an explanation for Maggie's positive identification of Cañal as the man with a tatoo mark on his right buttock, the defense concocted the sickeningly indecent story that the four men removed their underclothing in the presence of a woman simply 'because it was hot'. What kind of men were these who were so devoid of any sense of decency that they thought nothing of adding insult to injury by not only inducing a woman to strip before them, but of forcing her to perform before a naked audience? And then they have the gall to argue that 'nothing' happened. For males of cold and phlegmatic blood and disposition it could be credible, but not for men of the torrid regions like ours where quick passions and hot tempers are the rule rather than the exception!

"All of these considerations set aside, notwithstanding, it is quite obvious that the version of the defense has not been able to explain away a very vital piece of evidence of the prosecution which, if unexplained, cannot but reduce any defense unavailing. The result of the physical (external and internal) examination conducted on the person of Maggie de la Riva in the afternoon of June 29, the pertinent findings of which are quoted earlier in this decision, establish beyond doubt that at the time that Maggie de la Riva was examined she bore on her body traces of physical and sexual assault.

"The only attempt to an explanation made by the defense is either one of the following: (1) the insinuation that when Maggie de la Riva and Boy Pineda were left behind in the hotel room the bruises and the sexual attack could have taken place then. But then, the defense itself says that these two persons rejoined the other three after three or four minutes! It is physically impossible, in such a short time, for Boy Pineda to have attacked the girl and inflicted on her all of these injuries; (2) it was suggested by the defense that Maggie de la Riva could have inflicted all of those injuries upon herself just to make out a case against the accused. The examining physician rules out this preposterous proposition, verily it does not take much stretch of the imagination to see how utterly impossible this would be, and for what purpose? Was P900.00 which she had failed to collect worth that much self-torture? And what about all the shame, embarrassment and publicity she would (as she eventually did) expose herself to? If she really had not been raped would she have gone thru all of these tribulations?

"A woman does not easily trump up rape charges for she has much more to lose in the notoriety the case will reap for her, her honor and that of her family, than in the redress she demands (Canastre, 82-480; Medina, C.A. 1943 O.G. 151; Medina y Puno, CA O.G. 338; CA 55 O.G. 7666; Galamiton, L-6302, August 25, 1954); (3) it could also be argued that the contusions and bruises could have been inflicted on Maggie during her struggle with Pineda when the latter pulled and pushed her into the red convertible car. The telltale injuries, however, discount this possibility, for the location in which many of the bruises and traumas were located (particularly on the inner portion of her thighs) could not have been caused by any struggle save by those of a woman trying to resist the brutal and bestial attack on her honor.

"In their Memorandum the accused contend that Maggie's sole and uncorroborated testimony should not be

rated any credence at all as against the concerted declaration of the three accused. In the first place, it is not correct to say that Maggie's declaration was uncorroborated -- she has for corroboration nothing less than the written extra-judicial statements of Jose and Cañal. But even assuming that Maggie stood alone in her statements, the cases cited by the accused in their Memorandum notwithstanding which the Court does not consider in point anyway, jurisprudence has confirmed the ruling that numbers is the least vital element in gauging the weight of evidence. What is more important is which of the declarations is the more credible, the more logical, the more reasonable, the more prone to be biased or polluted. (Ricarte 44 OG 2234; Damian CA-GR No. 25523, April 24, 1959). Besides, it should borne in mind that in the most detestable crime of rape in which a man is at his worst the testimony of the offended party most often is the only one available to prove directly its commission and that corroboration by other eyewitnesses would in certain cases place a serious doubt as to the probability of its commission, so that courts of justice are most often placed in a position of having to accept such uncorroborated testimony if the same is in other regards conclusive, logical and probable (Landicho, VIII ACR 530)."

We shall now consider the points raised by the appellants in their briefs.

1. Appellants Jose, Aquino and Cañal deny having had anything to do with the abduction of Miss De la Riva. They point to Pineda (who entered a plea of guilty) as the sole author thereof, but they generously contend that even as to him the act was purged of any taint of criminality by the complainant's subsequent consent to perform a striptease show for a fee, a circumstance which, it is claimed, negated the existence of the element of lewd design. This line of defense has evidently no leg to stand on. The evidence is clear and overwhelming that all the appellants participated in the forcible abduction. Miss De la Riva declared on the witness stand, as well as in her sworn statements, that they helped one another in dragging her into the car against her will; that she did not know them personally; that while inside the car, Jose and Aquino, between whom she was seated, toyed with her body, the former forcing his lips on hers, and the latter touching her thighs and raising her skirt; that meaningful and knowing glances were in the meanwhile being exchanged among the four; and that all of them later took turns in ravishing her at the Swanky Hotel. This testimony, whose evidentiary weight has not in the least been overthrown by the defense, more than suffices to establish the crimes charged in the amended complaint. In the light thereof, appellants' protestation that they were not motivated by lewd designs must be rejected as absolutely without factual basis.

2. The commission of rape by each of the appellants has, as held by the court below, likewise been clearly established. Jose, Aquino and Cañal contend that the absence of semen in the complainant's vagina disproves the fact of rape. The contention is untenable. Dr. Brion of the NBI, who testified as an expert, declared that semen is not usually found in the vagina after three days from the last intercourse, especially if the subject has douched herself within that period. In the present case, the examination was conducted on the fourth day after the incident, and the complainant had douched herself to avoid infection and pregnancy. Furthermore, the absence of spermatozoa does not disprove the consummation of rape, the important consideration being, not the emission of semen, but penetration (People vs. Hernandez, 49 Phil., 980). Aquino's suggestion that the abrasions on the cervix were caused by the tough tip of a noozle deliberately used by the complainant to strengthen her alleged fabricated tale of rape, is absurd, if not cruel. It is difficult to imagine that any sane woman, who is single and earning as much as Miss De la Riva did, would inflict injuries on her genital organ by puncturing the same with a sharply-pointed instrument in order to strike back at four strangers who allegedly would not pay her the sum of P900.00 due her for a striptease act. Besides, Dr. Brion testified that the insertion of such an instrument in the genital organ would not result in the kind of injuries he found in the mucosa of the cervix.

3. Other evidence and considerations exist which indubitably establish the commission of successive rapes by the four appellants. Upon Miss De la Riva's arrival at her house in the morning of June 26, 1967, she immediately

told her mother, "Mommy, Mommy, I have been raped. All four of them raped me." This utterance, which is part of the *res gestae*, commands strong probative value, considering that it was made by the complainant to her mother who, in cases of this nature, was the most logical person in whom a daughter would confide the truth. Aquino and Cañal would make capital of the fact that Miss De la Riva stated to the reporters on the morning of June 26, that she was not abused. Her statement to the press is understandable. At that time the complainant, who had not yet consulted her family on a matter which concerned her reputation as well as that of her family, and her career, was not then in a position to reveal publicly what had happened to her. This is one reason why the complainant did not immediately inform the authorities of the tragedy that befell her. Another reason is that she was threatened with disfigurement. And there were, of course, the traumas found by Dr. Brion on different parts of the complainant's body. Could they, too, have been self-inflicted? Or, as suggested, could they possibly have been inflicted by appellant Pineda alone, when the story given by the other three is that Pineda and the complainant were left in the hotel room for only three or four minutes, and that they came out to join them in what they would picture to be a cordial atmosphere, the complainant even allegedly suggesting that she be dropped on a spot where people would reasonably presume her to have come from a studio? Equally important is the complainant's public disclosure of her tragedy, which led to an examination of her private parts and lay her open to risks of future public ridicule and diminution of popularity and earnings as a movie actress.

4. Jose and Cañal seek the exclusion of their extrajudicial statements from the mass of evidence on the grounds that they were secured from them by force and intimidation, and that the incriminating details therein were supplied by the police investigators. We are not convinced that the statements were involuntarily given, or that the details recited therein were concocted by the authorities. The statements were given in the presence of several people and subscribed and sworn to before the City Fiscal of Quezon City, to whom neither of the aforesaid appellants intimated the use or inordinate methods by the police. They are replete with details which could hardly be known to the police; and although it is suggested that the authorities could have secured such details from their various informers, no evidence at all was presented to establish the truth of such allegation. While in their statements Jose and Cañal admitted having waited - together with the two other appellants - for Miss De la Riva at the ABS Studio, each of them attempted in the same statements to exculpate himself: appellant Jose stated that only Pineda and Aquino criminally abused the complainant; while appellant Cañal would make it appear that the complainant willingly allowed him to have sexual intercourse with her. Had the statements been prepared by the authorities, they would hardly have contained matters which were apparently designed to exculpate the affiants. It is significant, too, that the said two appellants did not see it fit to inform any of their friends or relatives of the alleged use of force and intimidation by the police. Dr. Mariano Nario of the Quezon City Police Department, who examined appellant Cañal after the latter made his statement, found no trace of injury on any part of the said appellant's body in spite of the claims that he was boxed on the stomach and that one of his arms was burned with a cigarette lighter. In the circumstances, and considering, further, that the police officers who took down their statements categorically denied on the witness stand that the two appellants were tortured, or that any detail in the statements was supplied by them or by anyone other than the affiants themselves, We see no reason to depart from the trial court's well-considered conclusion that the statements were voluntarily given. However, even disregarding the in-custody statements of Jose and Cañal, We find that the mass of evidence for the prosecution on record will suffice to secure the conviction of the two.

The admissibility of his extrajudicial statements is likewise being questioned by Jose on the other ground that he was not assisted by counsel during the custodial interrogations. He cites the decisions of the Supreme Court of the United States in *Messiah vs. U.S.* (377 U.S. 201), *Escobedo vs. Illinois* (378 U.S. 478) and *Miranda vs. Arizona* (384 U.S. 436).

The provision of the Constitution of the Philippines in point is Article III (Bill of Rights), Section 1, par. 17 of

which provides: "In all criminal prosecutions the accused shall x x x enjoy the right to be heard by himself and counsel x x x." While the said provision is identical to that in the Constitution of the United States, in this jurisdiction the term criminal prosecutions was interpreted by this Court, in *U.S. vs. Beecham*, 23 Phil., 258 (1912), in connection with a similar provision in the Philippine Bill of Rights (Section 5 of Act of Congress of July 1, 1902) to mean proceedings before the trial court from arraignment to rendition of the judgment. Implementing the said constitutional provision, We have provided in Section 1, Rule 115 of the Rules of Court that "In all criminal prosecutions the defendant shall be entitled x x x (b) to be present and defend in person and by attorney at every stage of the proceedings, that is, from the arraignment to the promulgation of the judgment." The only instances where an accused is entitled to counsel before arraignment, if he so requests, are during the second stage of the preliminary investigation (Rule 112, Section 11) and after the arrest (Rule 113, Section 18). The rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached thereto at the time of the adoption thereof should be considered. And even there the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above-cited cases.

5. Appellant Pineda claims that insofar as he is concerned there was a mistrial resulting in gross miscarriage of justice. He contends that because the charge against him and his co-appellants is a capital offense and the amended complaint cited aggravating circumstances, which, if proved, would raise the penalty to death, it was the duty of the court to insist on his presence during all stages of the trial. The contention is untenable. While a plea of guilty is mitigating, at the same time it constitutes an admission of all the material facts alleged in the information, including the aggravating circumstances, and it matters not that the offense is capital, for the admission (plea of guilty) covers both the crime and its attendant circumstances qualifying and/or aggravating the crime (*People vs. Boyles, et al.*, L-15308, May 29, 1964, citing *People vs. Ama*, L-14783, April 29 1961, and *People vs. Parete*, L-15515, April 29, 1961). Because of the aforesaid legal effect of Pineda's plea of guilty, it was not incumbent upon the trial court to receive his evidence, much less to require his presence in court. It would be different had appellant Pineda requested the court to allow him to prove mitigating circumstances, for then it would be the better part of discretion on the part of the trial court to grant his request. (Cf. *People vs. Arconado*, L-16175, February 28, 1962.) The case of *U.S. vs. Agcaoili* (31 Phil., 91), cited by Pineda, is not in point, for there this Court ordered a new trial because it found for a fact that the accused, who had pleaded guilty, "did not intend to admit that he committed the offense with the aggravating circumstances" mentioned in the information. We are not in a position to make a similar finding here. The transcript of the proceedings during the arraignment shows that Pineda's counsel, Atty. Lota, prefaced his client's plea of guilty with the statement that

"I have advised him (Pineda) about the technicalities in plain simple language of the contents of aggravating circumstances and apprised him of the penalty he would get, and we have given said accused time to think. After a while I consulted him - for three times - and his decision was still the same."

Three days after the arraignment, the same counsel stated in court that he had always been averse to Pineda's idea of pleading guilty, because "I know the circumstances called for the imposition of the maximum penalty considering the aggravating circumstances," but that he acceded to his client's wish only after the fiscal had stated that he would recommend to the court the imposition of life imprisonment on his client. To be sure, any such recommendation does not bind the Court. The situation here, therefore, is far different from that obtaining in *U.S. vs. Agcaoili*, *supra*.

6. Two of the appellants - Jose and Cañal - bewail the enormous publicity that attended the case from the start of investigation to the trial in spite of the said publicity, however, it appears that the court *quo* was able to give the appellants a fair hearing. For one thing, three of the seven (7) original accused were acquitted. For another thing,

Jose himself admits in his brief that the Trial Judge "had not been influenced by adverse and unfair comments of the press, unmindful of the rights of the accused to a presumption of innocence and to fair trial"

We are convinced that the herein four appellants have conspired together to commit the crimes imputed to them in the amended information quoted at the beginning of this decision. There is no doubt at all that the forcible abduction of the complainant from in front of her house in Quezon City, was a necessary if not indispensable means which enabled them to commit the various and successive acts of rape upon her person. It bears noting, however, that even while the first act of rape was being performed, the crime of forcible abduction had already been consummated, so that each of the three succeeding crimes of the same nature can not legally be considered as still connected with the abduction – in other words, they should be detached from, and considered independently of, that of forcible abduction and, therefore, the former can no longer be complexed with the latter.

What kind of rape was committed? Undoubtedly, it is that which is punishable by the penalty of reclusion perpetua to death, under Paragraph 3, Article 335, as amended by Republic Act No. 4111 which took effect on June 20, 1964, and which provides as follows:

"ART. 335. When and how rape committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation:

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death."

As regards, therefore, the complex crime of forcible abduction with rape, the first of the crimes committed, the latter is definitely the more serious; hence, pursuant to the provision of Art. 48 of the Revised Penal Code, the penalty prescribed shall be imposed in its maximum period. Consequently, the appellants should suffer the extreme penalty of death. In this regard, there is hardly any necessity to consider the attendance of aggravating circumstances, for the same would not alter the nature of the penalty to be imposed.

Nevertheless, to put matters in their proper perspective and for the purpose of determining the proper penalty to be imposed in each of the other three crimes of simple rape, it behooves Us to make a definite finding in this connection to the effect that the commission of said crimes was attended with the following aggravating circumstances: (a) nighttime, appellants having purposely sought such circumstance to facilitate the commission of these crimes; (b) abuse of superior strength, the crime having been committed by the four appellants in conspiracy with one another (Cf. *People vs. De Guzman, et al.*, 51 Phil., 105, 113); (c) ignominy, since the appellants in ordering the complainant to exhibit to them her complete nakedness for about ten minutes, before raping her, brought about a circumstance which tended to make the effects of the crime more humiliating; and (d) use of a motor vehicle. With respect to appellants Jose, Aquino and Cañal, none of these aggravating

circumstances has been offset by any mitigating circumstance. Appellant Pineda should, however, be credited with the mitigating circumstance of voluntary plea of guilty, a factor which does not in the least affect the nature of the proper penalties to be imposed, for the reason that there would still be three aggravating circumstances remaining. As a result, appellants should likewise be made to suffer the extreme penalty of death in each of these three simple crimes of rape. (Art. 63, par. 2, Revised Penal Code.)

In refusing to impose as many death penalties as there are offenses committed, the trial court applied by analogy Article 70 of the Revised Penal Code, which provides that "the maximum duration of all the penalties therein imposed upon the appellant shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon the appellant, which should not exceed forty years." The said court is of the opinion that since a man has only one life to pay for a wrong, the ends of justice would be served, and society and the victim would be vindicated just as well, if only one death penalty were imposed on each of the appellants.

We cannot agree with the trial court. Article 70 of the Revised Penal Code can only be taken into account in connection with the service of the sentence imposed, not in the imposition of the penalty (*People vs. Escares*, 55 Off. Gaz., 623). In holding that only one death penalty should be imposed because man has only one life, the trial court ignored the principle enunciated in the very case it cited, namely, *U.S. vs. Balaba*, 37 Phil., 260, where this Court, in affirming the judgment of the trial court, found the accused guilty of two murders and one homicide and imposed upon him two death sentences for the murders and a prison term for the homicide. In not applying the said principle, the court a quo said that the case of *Balaba* is different from the present case, for while in the former case the accused was found to have committed three distinct offenses, here only one offense is charged, even if complex. As We have explained earlier herein, four crimes were committed, charged and proved. There is, therefore, no substantial difference between the two cases insofar as the basic philosophy involved is concerned, for the fact remains that in the case of *Balaba* this Court did not hesitate to affirm the two death sentences imposed on the accused by the trial court. In *People vs. Peralta, et al.*, L-19060, October 29, 1968, in which this Court imposed on each of the six accused three death penalties for three distinct and separate crimes of murder, We said that "since it is the settled rule that once conspiracy is established, the act of one conspirator is attributable to all, then each conspirator must be held liable for each of the felonious acts committed as a result of the conspiracy, regardless of the nature and severity of the appropriate penalties prescribed by law." In the said case (which was promulgated after the decision of the court a quo had been handed down) We had occasion to discuss at length the legality and practicality of imposing multiple death penalties, thus:

"The imposition of multiple death penalties is decried by some as a useless formality, an exercise in futility. It is contended, undeniably enough that a death convict, like all mortals, has only one life to forfeit. And because of this physiological and biological attribute of man, it is reasoned that the imposition of multiple death penalties is impractical and futile because after the service of one capital penalty, the execution of the rest of the death penalties will naturally be rendered impossible. The foregoing opposition to the multiple imposition of death penalties suffers from four basic flaws: (1) it fails to consider the legality of imposing multiple capital penalties; (2) it fails to distinguish between imposition of penalty and service of sentence; (3) it ignores the fact that multiple death sentences could be served simultaneously; and (4) it overlooks the practical merits of imposing multiple death penalties.

"The imposition of a penalty and the service of a sentence are two distinct, though related, concepts. The imposition of the proper penalty or penalties is determined by the nature, gravity and number of offenses charged and proved, whereas service of sentence is determined by the severity and character of the penalty or penalties imposed. In the imposition of the proper penalty or penalties, the court does not concern itself with the possibility or practicality of the service of the sentence, since actual service is a contingency subject to varied factors like the successful escape of the convict, grant of executive clemency or natural death of the prisoner. All that go into the imposition of the proper penalty or penalties, to reiterate, are the nature, gravity

and number of the offenses charged and proved and the corresponding penalties prescribed by law.

"Multiple death penalties are not impossible to serve because they will have to be executed simultaneously. A cursory reading of article 70 will show that there are only two modes of serving two or more (multiple) penalties: simultaneously or successively. The first rule is that two or more penalties shall be served simultaneously if the nature of the penalties will so permit. In the case of multiple capital penalties, the nature of said penal sanctions does not only permit but actually necessitates simultaneous service.

"The imposition of multiple death penalties, far from being a useless formality, has practical importance. The sentencing of an accused to several capital penalties is an indelible badge of his extreme criminal perversity, which may not be accurately projected by the imposition of only one death sentence irrespective of the number of capital felonies for which he is liable. Showing thus the reprehensible character of the convict in its real dimensions, the possibility of a grant of executive clemency is justifiably reduced in no small measure. Hence, the imposition of multiple death penalties could effectively serve as a deterrent to an improvident grant of pardon or commutation. Faced with the utter delinquency of such a convict, the proper penitentiary authorities would exercise judicious restraint in recommending clemency or leniency in his behalf.

"Granting, however, that the Chief Executive, in the exercise of his constitutional power to pardon (one of the presidential prerogatives which is almost absolute) deems it proper to commute the multiple death penalties to multiple life imprisonments, then the practical effect is that the convict has to serve the maximum forty (40) years of multiple life sentences. If only one death penalty is imposed, and then is commuted to life imprisonment, the convict will have to serve a maximum of only thirty years corresponding to a single life sentence."

We are, therefore, of the opinion that in view of the existence of conspiracy among them and of our finding as regards the nature and number of the crimes committed, as well as of the presence of aggravating circumstances, four death penalties should be imposed in the premises.

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Before Us is a petition for intervention filed by Filipinas Investment & Finance Corporation asking for reversal of that portion of the judgment of the court below ordering the confiscation of the car used by the appellants in abducting the complainant. The aforesaid car is a 1965 two-door Pontiac sedan with Motor No. WT-222410, Serial No. 2376752110777, Plate No. H-33284, File No. 11584171, alleged by the intervenor to be in the custody of Major Ernesto San Diego of the Quezon City Police Department. The car is registered in the name of Mrs. Dolores Gomez.

On April 4, 1967, Mrs. Dolores Gomez, mother of appellant Jaime G. Jose, bought the car from the Malayan Motors Corporation and simultaneously executed a chattel mortgage thereon to secure payment of the purchase price of P13,200, which was stipulated to be payable in 24 monthly installments of P550 beginning May 4, 1967 up to April 4, 1969. The mortgage was duly registered with the Land Transportation Commission and inscribed in the Chattel Mortgage Registry. The mortgage lien was annotated on the motor registration certificate. On April 17, 1967, for value received and with notice to Mrs. Gomez, the Malayan Motors Corporation assigned its credit against Mrs. Gomez, as well as the chattel mortgage, to the intervenor. The assignment was duly registered with the Land Transportation Commission and annotated on the registration certificate.

Mrs. Gomez failed to pay any of the installments due, in view of which the intervenor filed on July 5, 1967, an action for replevin against her (Civil Case No. 69993, Court of First Instance of Manila) as a preliminary step to foreclosure of the chattel mortgage. On July 7, 1967, the court issued an order for the seizure of the car. The sheriff, however, could not enforce the writ of replevin because the car was not in Mrs. Gomez' possession, the same having been used by her son, appellant Jaime G. Jose, together with the other appellants in this case, in the

abduction of Miss De la Riva, as a result of which the car was seized by the Quezon City police and placed in the custody of Major San Diego, who refused to surrender it to the sheriff on the ground that it would be used as evidence in the trial of the criminal case.

During the pendency of that criminal case in the court below, or on July 26, 1967, the intervenor filed with the said court a petition for intervention. The said petition was not, however, acted upon. On October 2, 1967, the trial court rendered its judgment in the present case ordering the car's confiscation as an instrument of the crime. Although not notified of the said decision, the intervenor filed, on October 17, 1967, a motion for reconsideration of the order of confiscation; but the same was denied on October 31, 1967, on the ground that the trial court had lost jurisdiction over the case in view of the automatic elevation thereof to this Court. The intervenor then filed a petition for relief from judgment, but the same was also denied.

On February 5, 1968, judgment was rendered in the replevin case ordering Mrs. Gomez to deliver the car to the intervenor so that the chattel mortgage thereon could be foreclosed, or, in the alternative, to pay the intervenor the sum of P13,200 with interest thereon at 12% per annum from July 5, 1968, the premium bond, attorney's fees, and the costs of suit. The judgment became final and executory. Attempts to execute the judgment against the properties of Mrs. Gomez were unavailing; the writ of execution was returned by the sheriff unsatisfied. On July 26, 1968, the present petition for intervention was filed with this Court, which allowed the intervenor to file a brief. In his brief the Solicitor General contends, among others, that the court a quo having found that appellant Jose is the owner of the car, the order of confiscation is correct.

Considering that the car in question is registered in the name of Mrs. Dolores Gomez, who, in the absence of strong evidence to the contrary, must be considered as the lawful owner thereof; that the only basis of the court a quo in concluding that the said car belongs to appellant Jose were the latter's statements during the trial of the criminal case to that effect; that the said statements were not, however, intended to be, nor could constitute, a claim of ownership over the car adverse to his mother, but were made simply in answer to questions propounded in court for the sole purpose of establishing the identity of the defendant who furnished the car used by the appellants in the commission of the crime; that the chattel mortgage on the car and its assignment in favor of the intervenor were made several months before the date of the commission of the crimes charged, which circumstance forecloses the possibility of collusion to prevent the State from confiscating the car; that the final judgment in the replevin case can only be executed by delivering the possession of the car to the intervenor for foreclosure of the chattel mortgage; and that Article 45 of the Revised Penal Code bars the confiscation and forfeiture of an instrument or tool used in the commission of the crime if such "be the property of a third person not liable for the offense," it is the sense of this Court that the order of the court below for the confiscation of the car in question should be set aside and that the said car should be ordered delivered to the intervenor for foreclosure as decreed in the judgment of the Court of First Instance of Manila in the replevin case, Civil Case No. 69993.

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Before the actual promulgation of this decision, this Court received a formal manifestation on the part of the Solicitor General to the effect that Rogelio Cañal, one of the herein appellants, died in prison on December 28, 1970. As a result of this development, this case is hereby dismissed as to him alone, and only insofar as his criminal liability is concerned, with one-fourth (1/4) of the costs declared de oficio.

WHEREFORE, the judgment under review is hereby modified as follows: appellants Jaime G. Jose, Basilio Pineda, Jr., and Edgardo P. Aquino are pronounced guilty of the complex crime of forcible abduction with rape, and each and every one of them is likewise convicted of three (3) other crimes of rape. As a consequence thereof,

each of them is hereby sentenced to four (4) death penalties; all of them shall, jointly and severally, indemnify the complainant in the sum of P10,000.00 in each of the four crimes, or a total of P40,000; and each shall pay one-fourth (1/4) of the costs.

Insofar as the car used in the commission of the crime is concerned, the order of the court a quo for its confiscation is hereby set aside; and whoever is in custody thereof is hereby ordered to deliver its possession to intervenor Filipinas Investment & Finance Corporation in accordance with the judgment of the Court of First Instance of Manila in Civil Case No. 69993 thereof.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Villamor, and Makasiar, JJ., concur.

Teehankee and Barredo, JJ., did not take part.

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