

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADELINO BARDAJE, DEFENDANT-APPELLANT.

G.R. No. L-29271. August 29, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The accused ADELINO Bardaje in this case, after trial, has been convicted of Forcible Abduction with Rape, and sentenced to death. The case is before us on automatic review.

On December 20, 1965, MARCELINA Cuizon lodged the following complaint with the Court of First Instance of Samar against ADELINO and five (5) others namely, Lucio Malate, Pedro Odal, Adriano Odal, Silvino Odal and Fidel Ansuas (hereinafter called the FIVE OTHERS):

"The undersigned complainant, after having been duly sworn to according to law, accuses Adelino Bardaje, Lucio Malate, Pedro Odal, Adriano Odal, Silvino Odal and Fidel Ansuas of the crime of Rape, committed as follows:

That on or about the period from the 14th day to 17th day of December, 1965, in Bo. Lopig, Sta. Rita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating together and helping one another, with lewd design, by means of force and intimidation, and at nighttime, did then and there wilfully, unlawfully and feloniously drag one Marcelina Cuizon from the house of one Norma Fernandez and brought her to a far away place and once there, accused Adelino Bardaje, by means of force and intimidation forcibly had sexual intercourse with her several times while his co-accused were on guard.

Contrary to law." (Italics supplied).

ADELINO was arrested on December 17th, and it was on December 20th, when he signed the alleged confession, Exhibit "C", admitting having kidnapped and molested MARCELINA,[1] which was probably the basis for MARCELINA's complaint, presumably prepared with the help of the Fiscal. What has been noticed is that, in Exhibit "C", ADELINO had mentioned that, besides the FIVE OTHERS, a sixth, Domingo Odal, was with the group when MARCELINA was "kidnapped". There is no indication in the record as to why Domingo Odal was not included in MARCELINA's complaint as one of the accused.

The following day, December 21st, the Fiscal's office filed the following Information with the Court:

"The undersigned Assistant Provincial Fiscal accuses Adelino Bardaje, Lucio Malate, Pedro Odal, Adriano Odal, Silvino Odal and Fidel Ansuas of the crime of Rape with Illegal Detention, committed as follows:

That on or about the period from the 14th day to 17th day of December, 1965, in Bo. Crossing, Municipality of Sta. Rita, Province of Samar, Philippines and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating together and helping one another, with Lucio Malate, Pedro Odal, Adriano Odal, Silvino Odal and Fidel Ansuas, with lewd design, by means of force and intimidation, armed with bolos and at nighttime, did then and there wilfully, unlawfully and feloniously drag one Marcelino Cuizon, a minor

of 14 years old, from the house of one Norma Fernandez and brought her to a far away place and once there, accused Adelino Bardaje, by means of force and intimidation forcibly had sexual intercourse with her for several times while his co-accused were on guard.

That in the commission of the crime the aggravating circumstances that it was committed in an uninhabited place and with the aid of armed men, were present." (Italics supplied).

It will be noted that the complaint filed directly by MARCELINA with the Court was amended by the Fiscal in the Information. While MARCELINA charged ADELINO only with Rape, the Fiscal charged him with "Rape with Illegal Detention". MARCELINA merely alleged that she was dragged from the house of Norma Fernandez by means of force and intimidation and at nighttime. On the other hand, the Information added that the accused were "armed with bolos". The name of the barrio was also changed from Lopig to Crossing. Lastly, the Information included the allegation that the crime of Rape with Illegal Detention was committed with the "aggravating circumstances that it was committed in an uninhabited place and with the aid of armed men".

Of the six (6) persons accused, the FIVE OTHERS were never arrested, and only ADELINO stood trial. The period of the offense was from December 14th to 17th, with the complaint having been filed on December 20th, or barely three (3) days thereafter. With that time frame in mind, an analysis of the Information will show the assumption that only ADELINO was the principal culprit while the FIVE OTHERS were either principals by cooperation or accomplices. Thus, the clause "with" Lucio Malate, Pedro Odal, Mariano Odal, Silvino Odal and Fidel Ansuas" indicates that it was ADELINO who had dragged MARCELINA "with" the help of the FIVE OTHERS. Both the complaint and Information also indicated that ADELINO was the only one who committed the rape, while the FIVE OTHERS were merely accomplices.

On June 2, 1966, before the arraignment of ADELINO, the Information was amended to include the allegation that MARCELINA was detained and deprived of liberty for a period of three (3) days, which allegation could be taken into account in connection with Illegal Detention^[2] but not in connection with Forcible Abduction.^[3] Since according to Exhibit "C", MARCELINA was "kidnapped" at midnight of December 14th, and ADELINO was arrested in the morning of December 17th, or an interval of less than 72 hours, it could not be correctly pleaded that MARCELINA was deprived of liberty for three (3) days.^[4]

After the trial was concluded, ADELINO's lawyer submitted his Memorandum on July 26, 1967, in which he specifically argued that "the prosecution did not establish the elements of Rape and Illegal Detention as prescribed by Articles 335 and 267 of the Revised Penal Code." It was only in the Memorandum of the Fiscal, dated July 27, 1967, when the position was taken that the crime which should be imputed to ADELINO is Rape with Forcible Abduction. The prosecution's Memorandum stated:

"Although the information is for Rape with Illegal Detention instead of Rape with Forcible Abduction, yet from the body of the information it could be clearly gleaned that the elements of abduction are sufficiently alleged therein and hence the accused can be convicted thereunder (People vs. Emiliano Javete, CA 01956-57-CR April 7, 1964 (82-1965))."

The following day, July 28, 1967, the trial Court found ADELINO guilty of Forcible Abduction with Rape with the aggravating circumstances of dwelling and aid of armed men, and sentenced him to death.

The version of complainant MARCELINA Cuizon, 14 years of age, is that in December, 1965, she and her mother were living in the house of her aunt, Sofia Fernandez, at Barrio Crossing, Sta. Rita, Samar, where she worked as a beautician. At 7 o'clock in the evening of December 14, 1965 while she was then eating supper, ADELINO, whom she knew when they were "still small", and who was her classmate in Grade II (1960), accompanied by the FIVE OTHERS, entered the house and began drinking "sho hoc tong" which they brought

along. After the liquor had been fully consumed, Silvino Odal broke the kerosene lamp causing complete darkness. She then ran to the room where her mother was. MARCELINO, Pedro Odal, Fidel Ansuas, and Adriano Odal, followed her, tried to extricate her from her mother's embrace and dragged the two of them to the sala. Pedro Odal choked the mother's neck thereby loosening her hold on the daughter and the four males, two of whom were armed with bolos, forced her downstairs and by holding and dragging her, brought her to the mountain about two kilometers from Barrio Crossing. That was about 12 midnight. On the way, ADELINO slapped her rendering her unconscious. She regained consciousness in a hut, with ADELINO holding her hands, and removing her panty. She bit and kicked him. Despite her struggle, ADELINO succeeded in having sexual intercourse with her while his other companions stayed outside on guard.

Under cross-examination, MARCELINA declared that she did not know who owned the hut and that it was just a one-room affair where a woman and two small children lived; that she and Appellant slept in that same room as the woman, while the FIVE OTHERS slept near the kitchen.[5]

At about 8 o'clock the following morning, December 15, ADELINO and the FIVE OTHERS brought her to another mountain, 6 kilometers farther, arriving there past twelve o'clock noon at the house of one called Ceferino (also called Cipriano) who lived there with his family. She was kept in one room. Outside the room were Pedro Odal, Adriano Odal and Fidel Ansuas, still armed with bolos, drinking and guarding her. In the evening, ADELINO had another sexual intercourse with her even though she bit and kicked him and shouted for help which was to no avail as all present were relatives of ADELINO, with the latter calling Ceferino "Tatay". She curled the hair of Narita (daughter of Ceferino) the next day, because ADELINO threatened to kill her if she did not. Her curling paraphernalia was taken by Adriano Odal, upon ADELINO's instructions, from Norma Fernandez (her cousin) who gave the equipment as she (Norma) was also threatened. MARCELINA and her "captors" stayed in Ceferino's house for two days. In the morning of December 17, two soldiers with her father, Alejo Cuizon, arrived. The soldiers apprehended ADELINO while the FIVE OTHERS jumped down the window and fled. Upon seeing her father, she embraced him and cried. They all returned to Barrio Crossing. She and her mother, Maria Fernandez, then went to Catbalogan, where she filed a complaint at the Fiscal's Office on December 20, 1965 and submitted to a medical examination at the Samar Provincial Hospital.

When cross-examined, Complainant admitted that Ceferino, his wife and seven children were living in the same hut where she was taken the second time, which hut was about waist high from the ground, consisted of one room, 3 x 2 meters, a sala, 6 x 3 meters, and a kitchen. Between the room and the sala was a wall of split bamboos so that noise inside the room could be heard clearly from the other side.[6]

Dr. Vitus Hobayan, Jr., Resident Physician at the Samar Provincial Hospital, declared that he examined MARCELINA on December 20, 1965 and issued a Medical Certificate with the following findings:

- "1. No evidence of external injuries around the vulva or any part of the body.
2. Hymen not intact, presence of old healed laceration at 4, 7 12 o'clock.
3. Vagina easily admits to fingers.
4. Vaginal smear negative for spermatozoa"[7]

Explaining the "old healed laceration", the doctor stated that laceration may have been caused by possible sexual intercourse or other factors, and if it were intercourse, he estimated that it could have occurred "say, two weeks or one month" or possibly more.[8]

For his part, ADELINO, aged 18, admitted having had carnal knowledge of MARCELINA but denied having raped her. He claims that they eloped on December 14 to 17, 1965 as previously planned, they having been

sweethearts since November 12, 1964. As such, they used to date in Tacloban and "anything goes". MARCELINA's family used to have a house in Barrio Crossing but now MARCELINA just stays in the house of her aunt, Sofia, which is about five houses away from theirs. In the evening of December 14, 1965, while Sofia, MARCELINA's mother and others were eating, MARCELINA handed him a bag and beauty culture equipment through the window, went downstairs, after which the two of them walked to the mountains, to Ceferino Armada's house. Ceferino was a cousin of ADELINO's mother. He and MARCELINA slept in the bedroom with 18-year old Narita, Ceferino's daughter. While in that hut, food was brought to them by his sister, Nenita. MARCELINA curled Narita's hair the next day.

In the morning of December 17, 1965, Sgts. Terado and Gacelos, accompanied by MARCELINA's father, Alejo Cuizon, apprehended him for having kidnapped MARCELINA. The latter ran to him and embraced him and said she was to blame. Notwithstanding, he was boxed by the soldiers as instructed by MARCELINA's father and taken to Maulong PC Headquarters for questioning. During the investigation, he was boxed and kicked and was forced to sign a statement implicating the FIVE OTHERS as his companions even if untrue. He did not know who attested to his statement as one Sgt. Gacelos took the document elsewhere.

Ceferino Armada, 60 years of age, the owner of the hut where MARCELINA was allegedly forcibly brought the second time, corroborated that portion of ADELINO's testimony regarding their stay in his house adding that MARCELINA and ADELINO had told him that they had eloped; that MARCELINA even offered to curl his daughters' hair (Narita's and Concepcion's), and helped in house chores and in the threshing of palay, while ADELINO helped in carrying palay because it was rainy.

The trial Court found the prosecution's version of the incident more worthy of credence stating that Complainant had no improper motive to implicate ADELINO in such a detestable crime as Rape.

On the basis of the evidence, testimonial and documentary, we find that the guilt of ADELINO has not been established beyond reasonable doubt.

In crimes against chastity, the conviction or acquittal of an accused depends almost entirely on the credibility of a complainant's testimony since by the intrinsic nature of those crimes they usually involve only two persons - the complainant and the accused. The offended party's testimony, therefore, must be subjected to thorough scrutiny for a determination of its veracity beyond reasonable doubt.

In the instant case, we find MARCELINA's charge that she was forcibly abducted and afterwards raped by ADELINO in conspiracy with FIVE OTHERS highly dubious and inherently improbable.

To start with, according to the medical findings, "no evidence of external injuries was found around the vulva or any part of the body" of Complainant, a fact which is strange, indeed, considering that Complainant was allegedly "dragged", "slapped" into unconsciousness, "wrestled" with, and criminally abused. Physical evidence is of the highest order and speaks more eloquently than all witnesses put together. We are also faced with the medical finding of "old healed lacerations" in the hymen which, according to the testimony of the examining physician would have occurred two weeks or even one month before if said lacerations had been caused by sexual intercourse. This expert opinion bolsters the defense that MARCELINA and ADELINO had previous amorous relations at the same time that it casts serious doubts on the charge of intercourse by force and intimidation.

Secondly, by Complainant's own admission, the first hut she was taken to was a small one-room affair occupied by a woman and two small children. Her charge, therefore, that she was ravished in that same room is highly improbable and contrary to human experience.

Thirdly, from her own lips, Complainant testified that the second hut where she was taken, that of Ceferino

Armada, consisted of a small room separated from the sala by a wall of split bamboos. Further, that Ceferino with his wife and seven children all lived therein. It challenges human credulity that she could have been sexually abused with so many within hearing and seeing distance. It is unbelievable, too, that under those circumstances the FIVE OTHERS could have stood guard outside, armed with bolos and drinking, while ADELINO allegedly took advantage of her. If rape were, indeed, their malevolent intent, they would, in all probability, have taken turns in abusing her. That they did not, indicates that there was, indeed, some special relationship between MARCELINA and ADELINO. Furthermore, with people around, and the hut constructed as it was, it would have been an easy matter for MARCELINA to have shouted and cried for help. Surely, the old man Ceferino, his wife and/or his children could not have been insensible to her outcries notwithstanding their relationship to ADELINO. The aphorism still rings true that evidence to be believed must not only come from the mouth of a credible witness but must be credible in itself.

Additionally, Complainant admits that she even curled the hair of Narita, one of Ceferino's daughters, a fact inconsistent with her allegation of "captivity". That she was threatened with death if she did not accede to such an inconsequential request defies credulity. The likelihood is that, as the defense maintains, MARCELINA was not forcibly abducted but that she and ADELINO had, in fact, eloped and that she had brought her beauty culture paraphernalia with her, or, that she herself had sent for them from her cousin Norma Fernandez voluntarily and not under threat from ADELINO.

The totality of the foregoing circumstances count with such great weight and significance that they lend an aura of improbability and reasonable doubt to the allegation that MARCELINA had been "kidnapped" or "illegally detained" and that when she and ADELINO engaged in sexual intercourse, it was because of force or intimidation exercised upon her. They are circumstances that were overlooked by the trial Court and justify a reversal of its finding of guilt as an exception to the established rule that the findings of fact of a trial Judge based on the relative credibility of witnesses are entitled to great respect and will not be disturbed by appellate Courts.

This case also constitutes an exception to the general belief that a young girl would not expose herself to the ordeal of public trial if she were not motivated solely by a desire to have the culprit who had ravished and shamed her placed behind bars. As we view it, MARCELINA was confronted with a paradoxical situation as a daughter of relatively tender age, who could not shamefacedly admit to her parents that she had eloped and voluntarily submitted to sexual intercourse, since that elopement must have met with righteous indignation on the part of her parents. As a result, MARCELINA was faced with no other choice but to charge ADELINO with rape or incur the ire of her parents and social disrepute from a small community.

In respect of the alleged confession of ADELINO, suffice it to re-state that "an extrajudicial confession made by an accused shall not be sufficient ground for conviction unless corroborated by evidence of corpus delicti".^[9] Corpus delicti is proved when the evidence on record shows that the crime prosecuted had been committed. That proof has not been met in the case at bar, the evidence establishing more of an elopement rather than kidnapping or illegal detention or forcible abduction, and much less rape. Moreover, ADELINO, aged 18, was by himself when being investigated by soldiers,^[10] without benefit of counsel nor of anyone to advise him of his rights. Aside from his declaration that his confession was obtained through maltreatment and violence,^[11] it was also vitiated by a procedural irregularity testified to by no less than prosecution witness Sgt. Pedro Gacelos to the effect that he and ADELINO were ordered to get out from the Clerk of Court's room after he presented the statement to the Clerk of Court, Mr. Rojas.^[12] There is reason to believe, therefore, that the so-called confession was attested without ADELINO's presence so that the latter cannot be said to have duly subscribed and sworn to it.

It should also be noted that throughout the hearings before the trial Court, it was assumed that ADELINO was

being held responsible for the complex crime of Rape with Illegal Detention. While it is true that an accused can be punished for a crime described by the facts alleged in the Information despite a wrong designation of the crime in the preamble of the Information,[13] yet, in capital cases, it should be desirable that, whenever a discrepancy is noted between the designation of the crime made by the Fiscal and the crime described by the facts pleaded in his Information, the lower Court should call attention of the accused to the discrepancy, so that the accused may be fully apprised of the nature and cause of the accusation against him. This was not done in regards to ADELINO who all the time was under the impression that he was being tried for Rape with Illegal Detention, and not for Forcible Abduction with Rape. If ADELINO had known that he was being tried for Forcible Abduction with Rape, he may have changed the strategy or tactics of his defense. Not that it could be said he would have done so; but he should have been advised he had the right, and given the opportunity, to do so.

Again, one of the rights of an accused is "to have compulsory process issued to secure the attendance of witnesses on his behalf." [14] ADELINO had stated that, while MARCELINA was in the house of Ceferino Armada, she curled the hair of Narita, one of the latter's children, as well as the hair of other girls in the vicinity.

ADELINO wanted to have Narita testify on his behalf, and a subpoena had been issued to her. But instead of taking effective steps to have Narita brought to Court, the lower Court gave responsibility for Narita's attendance to the defense, expressly stating that, if the defense was not able to bring her to the Court, her testimony will be dispensed with. The record shows:

"ATTY. BOHOL

I appear as counsel for the accused. Up to now, Your Honor, the witnesses we have been expecting have not yet arrived. This representation, with the consent of the Clerk of Court have wired the Chief of Police of Sta. Rita, Samar to bring Ceferino Armada and Narita Armada tomorrow for the hearing, continuation of this case for those persons mentioned to testify, your Honor, for the accused. We pray, Your Honor, that we be given time to hear from the Chief of Police to bring those persons tomorrow, Your Honor.

COURT

What will be the nature of the testimonies of those witnesses."

x x x x x x x

"COURT

How about the other girl?

ATTY BOHOL

Narita Armada will substantially be corroborative, Your Honor.

COURT

Suppose the two witnesses do not arrive tomorrow, for which this case is set also?

ATTY. BOHOL

If we receive information and find that those witnesses could really not come for this case, Your Honor, I will be constrained to submit the case for decision based on the testimony of the accused. However, Your Honor, if it will be all right with the Honorable Court and we find that there is hope that within this week Ceferino Armada could come here, in view of the distance, I pray before the Honorable Court that we be given time within this week to present Ceferino Armada, and upon his failure, submit the case for decision.

COURT

The Court will not allow that anymore, anyway this case is set for tomorrow. The Court will grant the postponement today on condition that any witness not presented tomorrow will be considered waived. Afterall, as you have manifested, their testimonies will be corroborative.

x x x x x

"COURT

What I mean is that you should have taken the necessary precaution for the attendance of your witnesses today considering that there is a subpoena for the witnesses.

ORDER - for the reason that accused have no more witnesses to present today, the trial of this case is hereby postponed for tomorrow, July 26, 1967 at 8:30 A.M., with the warning that witnesses not presented during that day shall be considered waived."[15]

Considering that this case involved a prosecution for a capital offense, the lower Court acted precipitously in not having Narita brought to Court, by ordering her arrest if necessary. ADELINO was deprived of his right "to have compulsory process issued to secure the attendance of witnesses on his behalf."

Crucial questions should also have been asked by the trial Court of witnesses. MARCELINA testified before the lower Court on December 1, 1966. On December 12, 1966, Pedro Gacelos, the PC Sgt. who investigated the complaint against ADELINO, testified:

"Q. - Was that investigation of Marcelina Cuizon reduced to writing?

A. - Yes, Sir."[16]

It would have been advisable if the lower Court had right then and there asked for the production of the written statement of MARCELINA.

The medical report, Exhibit "B", implied that MARCELINA could have had sexual intercourse previous to December 14th. On the other hand, ADELINO had testified that he and MARCELINA used to go together to Tacloban, and while there several times, "we had sexual intercourse because she likes it."[17] Considering the possible infliction of the death penalty on ADELINO, the lower Court could have asked MARCELINA if she had had sexual intercourse prior to December 14th and, if so, if it was with ADELINO.

Further, there was possibility that ADELINO and MARCELINA had really been sweethearts. The lower Court could have asked MARCELINA if she realized that, charging ADELINO with Rape with Illegal Detention, the latter could be sentenced to death. If that had been explained to her clearly by the lower Court, she might then have admitted that she was neither raped nor "kidnapped" nor illegally detained.

MARCELINA could have been examined on the two matters mentioned above, with the Court excluding the public from the hearing under the provisions of Rule 119, Section 14. MARCELINA might have testified without feeling the pressure of her relatives or other persons, if such pressure had in fact existed.

It may not be amiss to state then that just as in pleas of guilty where a grave offense is charged trial Judges have been enjoined to refrain from accepting them with alacrity but to be extra solicitous in seeing to it that an accused fully understands the import of his plea, so also, in prosecutions for capital offenses, it behooves the trial Courts to exercise greater care in safeguarding the rights of an accused. The trial Judge should also take a more active role by means of searching questions in the examination of witnesses for the ascertainment of the truth and credibility of their testimonies so that any judgment of conviction imposing the supreme penalty may rest on firm and unequivocal grounds. The life and liberty of an individual demand no less.

WHEREFORE, upon reasonable doubt, the judgment appealed from, imposing the death penalty, is reversed and the appellant, Adelino Bardaje, acquitted of the crime with which he is charged. His immediate release is ordered unless he is held on other charges.

Costs de officio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., dissents.

Makasiar,[*] J., took no part.

[*] Justice Felix V. Makasiar inhibited himself as he was the Solicitor General during the pendency of this case.

[1] pp. 92-94, Original Record.

[2] See Art. 268, Revised Penal Code.

[3] Art. 342, *ibid.*

[4] Art. 13, Civil Code.

[5] t.s.n. Dec. 1, 1966, p. 24.

[6] t.s.n., Dec. 1, 1966, pp. 16-18.

[7] Exh. "B" p. 98, Records.

[8] t.s.n., April 13, 1967, p. 27.

[9] Section 3, Rule 133, Rules of Court.

[10] t.s.n., July 25, 1967, pp. 40-42

[11] t.s.n., *Ibid.*, pp. 43-45.

[12] t.s.n., July 26, 1967, pp. 9-10.

[13] *U.S. v. De Guzman*, 19 Phil. 350.

[14] Rule 115, Sec. 1-g.

[15] t.s.n., July 26, 1967, pp. 48-51.

[16] t.s.n., Dec. 12, 1966, p. 20.

[17] t.s.n., July 25, 1967, p. 35.

DISSENTING OPINION

AQUINO, J.:

I dissent. The following is a summary of the facts proven by the prosecution, as set forth in the brief filed by Solicitor General Felix Q. Antonio, Assistant Solicitor General Crispin V. Bautista and Solicitor Santiago M. Kapunan:

In the evening of December 14, 1965, Marcelina Quizon, a fourteen-year-old beautician was in the house of her aunt, Sofia Fernandez, located at Barrio Crossing, Santa Rita, Samar.

At seven-thirty on that evening, while Marcelina and her mother Maria Fernandez were taking supper, six persons, namely, Adelino Bardaje, Silvino Odal, Pedro Odal, Adriano Odal, Fidel Ansuas and Lucio Malate, all accused in this case, entered the house bringing with them some bottles of Sho Hoc Tong, a locally manufactured liquor.

Once inside the house, the accused began drinking the liquor. After consuming the liquor, Silvino Odal put out the light by breaking the kerosene lamp. Afraid of what the men would do, Marcelina and her mother went inside the bedroom but the accused followed them and grabbed Marcelina. While Marcelina was shouting for help, Maria laid aside the baby whom she was carrying and put her arms tightly around Marcelina in a desperate effort to protect her.

The accused dragged both mother and daughter into the sala. To take away Marcelina from her mother's tenacious grasp, Fidel Ansuas aimed his bolo at Maria, threatening to strike her, while Pedro Odal put his hands around her neck and squeezed it with such force that Maria became unconscious, thus releasing Marcelina from her protective embrace.

Then, the accused bodily carried Marcelina into the street and brought her to a hut in the mountain two kilometers away. On the way, Marcelina lost consciousness after a vigorous struggle to free herself from the accused and after Bardaje had slapped her violently.

When Marcelina regained consciousness, she found herself in a hut with Bardaje in the act of removing her underwear. She fought energetically to resist Bardaje's advances by biting and kicking him, but all to no avail because she was no match to his physical strength. Bardaje held her hands and consummated sexual intercourse with her.

On the following day, December 15, Bardaje and his five companions brought Marcelina to the house of one Cipriano where she was ravished two times. She was held captive in the house of Cipriano for two days until she was rescued by Constabulary soldiers Pedro Gacelos and Nemesio Tirador accompanied by her father.

Bardaje was taken to the Constabulary headquarters in Catbalogan where he was investigated. Bardaje admitted that he and his companions forcibly abducted Marcelina and brought her to a hut in the mountain where he raped her. His admission was reduced to writing and sworn to by him (Exh. C to C-3).

Marcelina was brought to the Samar Provincial Hospital where she underwent a medical examination.

Bardaje was the only one arrested and tried. The crime charged in the information is the complex crime of "rape with illegal detention".

There may be some reasonable doubt as to the commission of rape because of the finding that the victim was no longer a virgin when the incident took place, the absence of external injuries on the victim's body and the claim of Bardaje that he used to have sexual intercourse with the victim in Tacloban City.

But there is no doubt that Bardaje and his companions committed kidnapping and serious illegal detention of a

minor as well as of a "female", an offense penalized in article 267(4) of the Revised Penal Code with reclusion perpetua to death.

Republic Act No. 18 specifically made kidnapping of a minor and a woman a capital offense in order to deter the kidnapping of minors and women, a crime which was very rampant after liberation.

The victim might have been a girl, who, like many teenagers of today, does not safeguard her virtue or chastity and easily succumbs to the temptation of the flesh. (Time Magazine reports that at the Puerta del Sol in Madrid, Spain, there is a billboard on which is emblazoned Oscar Wilde's witticism: "Puedo resistir todo excepto la tentacion.")

Bardaje and his companions grievously and brazenly deprived the victim of her liberty by forcibly taking her against her will and the will of her mother and detaining her in a hut in the mountain. (See *People vs. Ablaza*, L-27352, October 31, 1969, 30 SCRA 173; *People vs. Tungala*, 102 Phil. 1161; *People vs. Ching Suy Siong and Mata*, 97 Phil. 989.)

The victim, being a minor, was still under parental authority. Her parents were entitled to her custody and to keep her in their company. They were obligated to take care of her and to see to it that her rights were respected.

Even a layman would deduce from the manner in which the victim was snatched and detained, that the accused committed an outrageous and wrongful act which should be drastically punished. To acquit them would be a miscarriage of justice.

I vote for the imposition of reclusion perpetua on the accused and the imposition of an indemnity of P10,000.

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