

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO “BEBE” CALUBAG, ACCUSED-APPELLANT.***G.R. No. L-38692. February 19, 1986*

Ponente: CUEVAS, J.

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Charged with and prosecuted for FORCIBLE ABDUCTION WITH RAPE[1] accused-appellant Carlito Calubag was, after trial, following a plea of not guilty upon arraignment, convicted and thereafter sentenced to reclusion perpetua; to indemnify the offended party in the amount of P2,000.00 as damages and attorney's fees in the amount of P500.00; to acknowledge and support the offspring of the offended party, Rodil Eso, in the amount of P100.00 a month; and to pay costs.

Assailing the said judgment of conviction, accused ventilated an appeal therefrom to this Court contending that the trial court was in error (1) in not making a thorough and careful study of the facts and evidence of the case; (2) in giving more weight and credence to the testimony of the complainant, Letty Lapad, while brushing aside the evidence for the accused; and (3) in finding the accused guilty beyond reasonable doubt of the crime charged, all of which boiled down to the main issue of whether or not appellant's guilt had been proven beyond reasonable doubt.

At about 6:00 o'clock in the evening of April 27, 1971, Letty Lapad (complainant), a seventeen-year old college sophomore student, was in front of the Oroquieta Public market waiting for a ride to her place in Barrio Talairon, Oroquieta City. After about 20 minutes, a motorcab driven by the accused passed by. She stopped the same and boarded it telling the accused-driver, whom she had known some months ago while working as a salesgirl in an establishment at the Oroquieta City market, to drive her home to Barrio Talairon. Upon reaching the vicinity of her place, she asked the accused to stop so she could alight. Accused, however, ignored her request and instead, accelerated the speed of his motorcab. She grappled with him and tried to get hold of the steering handle of the cab thereby grabbing the latter's hand in the process thus forcing the motorcab to swerve towards the right side of the street. The motorcab landed on a canal and was forcibly stopped. She then attempted to alight but was prevented by the appellant who succeeded in bringing her first, to Barrio Pines and finally to Barrio Buenavista, where accused-appellant, poking a balisong against her, forcibly made her to alight and later brought her inside the premises of a copra drier. She was later forcibly brought into a room in the said place and made to lie down on the floor. Her panty was forcibly removed while her mouth was covered and against all resistance offered by her, by kicking, scratching and boxing the appellant, the latter nevertheless succeeded in having sexual intercourse with her. The first took place just within the hour after they arrived at the said place. Early in the morning of the following day, appellant had another sexual intercourse with her which was likewise consummated despite her resistance.

Thereafter, that same morning of the following day, complainant pleaded to the appellant that she be brought to Aloran, Misamis Occidental where she was left and abandoned by the accused-appellant. In there, she looked for the house of her aunt Emiliana Arado, which she finally located and to whom she reported the ordeal she

underwent at the hands of the appellant. Emiliana lost no time in bringing her back to their place in Talairon. It was in there where they told complainant's father of the fate that had befallen her. Complainant was then brought by her father to the Provincial Hospital in Oroquieta City where she was examined by a resident physician therein, Dr. Emerico L. Conol, who issued a medical certificate of the examination made, containing the following findings and/or observations:

" - SUPERFICIAL SCRATCH, left shoulder

- RECENT LACERATION of hymen at 4:00 o'clock position.

Laboratory examination of specimen taken from the vaginal canal showed several sperm cells."

After the examination, complainant's group proceeded to the Office of the Chief of Police where they lodged a complaint against the herein appellant that led to the filing of a criminal charge for forcible abduction with rape resulting in the issuance of a warrant for the arrest of the accused. The said warrant could not, however, be served upon the accused who remained at large for a period of more than four months having left their place for Zamboanga City. He was finally arrested how-ever only on September 26, 1971, upon his return to their place.

Appellant denied having forcibly abducted com-plainant Letty Lapad. He claimed that complainant is his sweetheart whom he has courted for a couple of months before the incident in question. On the day the inci-dent occurred, they allegedly saw a movie, and since it was quite late when they went out of the moviehouse, complainant was already reluctant to go home. So he drove her to his parent's place in Barrio Buenavista where they spent the night and engaged in sexual act. He de-nied having forcibly removed the panty of the complaint, and stated that it was complainant who voluntarily removed the same and who even tempted him to engage in the carnal act.

There seem to be no controversy that sexual inter-course took place between appellant and the complainant. This is clear not only from the evidence of the prosecution,[2] but likewise from the very admission of the appellant himself.[3] The congruence on the subject un-der consideration, however, stops in there. For whereas, the prosecution claimed that the sexual act took place through, and was the product of violence and intimidation, perpetrated by the accused upon the complainant, the accused-appellant, on the other hand, insists that it was with mutual consent, complainant having voluntarily submitted herself to the commission of the act, they being sweethearts.

The trial court found the evidence of the prose-cution on this regard credible. We agree, since our review of the records failed to yield any circumstance of note and importance ignored by the court a quo, sufficient enough to overthrow its findings and conclusions.

The record also discloses that complainant was a mere young lass, about 17 years of age and a college sophomore student at the time the incident in question took place. There is absolutely no evidence showing that she leads a sophisticated city life. She is still unaffected by the western modernistic care-free way of life. She belongs to the lower echelon of society with below average means and leading a very simple life. It is true that she had worked as a salesgirl, but in a very decent establishment and for the purpose of augmenting the little income her family makes and to enable her to save a little just so she can resume her studies.... which is indeed very commendable. That notwithstanding, we find not even a dearth of evidence showing that she is a girl of loose moral character leading a life far beyond her means. And very noticeably, appellant made no imputation of that sort against her. It is therefore hardly probable that she will, and can much less fabricate matters, and thereby undergo the travails of a public trial, exposing herself to humiliation and embarrass-ment by unraveling nasty matters against her virginity, by lodging against the appellant so grave and serious a charge, if not true.[4]

Appellant's explanation for complainant's voluntarily engaging in the sexual act with him is that they were sweethearts having been engaged way back in March 1971, at a time when the latter was still working as a salesgirl in the store of certain Nidal at the Oroquieta Public Market. Aside from this half baked woven testi-mony, no evidence convincing enough was presented to corroborate his aforesaid story. Not even by his closest of friend or acquaintance who knew him and/or the com-plainant thus making his story a mere barren concoction.

But what appears more puzzling is the lack of any convincing and satisfactory reason as to why complainant would have gone to the extent of immediately filing a charge of forcible abduction with rape against him right after the sexual affront. Our review of the records failed to disclose nor unravel even by the slightest of hint, that complainant was merely framing the appellant to extract anything material from the latter or simply to settle a score with him. We therefore cannot help but conclude that complainant's version, though with minor inconsistencies on insignificant details, appeared authentic as correctly found by the trial court.[5]

Appellant's version that the bringing by him of complainant to his mother's place in Buenavista was not of his own liking but that of the latter who refused to go home for fear of being scolded by her parents it being already late in the evening, when they got out of the moviehouse, failed to persuade Us. Having worked as a salesgirl, complainant customarily goes home about that time on or about 8:00 o'clock in the evening or even later. Certainly, such an alibi of his is not reason enough for the complainant to be fearful of her parents and in not wanting to go home anymore such that she has precariously clung to the appellant irrespective of what may befall her. Indeed, appellant's story appeared too taxing upon one's credulity and hardly commands acceptance.

But what clinched the case for the prosecution is appellant's immediate disappearance from his place of residence. Right after the commission of the offense, he fled to Zamboanga City where he went hiding for a number of months thereby successfully eluding arrest, under the shallow pretext that he was summoned by his uncle. It was only sometime in October 1971 when the mighty arm of the law caught up with him upon his return to Oroquieta City. No doubt, his aforesaid acts betray his feigned innocence. He should have grabbed the opportunity of facing any investigation to present his plea that complainant voluntarily submitted herself and mutually consented to the sexual act in question. This, he utterly failed to do. Instead, he went to a far place to avoid the consequences of his nefarious act. Plight has consistently been ruled as a circumstance indicative of guilt.[6]

In convicting the accused-appellant, the court a quo ordered him to pay only P2,000.00 by way of damages. That amount should now be increased to P25,000.00 in line with our recent decisions on this point. The monthly support in the amount of P100.00, should likewise be increased to P300.00.

WHEREFORE, and except as thus MODIFIED, the judgment appealed from is hereby AFFIRMED, with costs against appellant.

SO ORDERED.

Concepcion, Jr., (Chairman), Abad Santos, Escolin, and Alampay, JJ., concur.

[1] Criminal Case No. 174-CFI, Dumaguete City.

[2] TSN, March 22, 1974, p. 85 - Suan.

[3] TSN, July 6, 1983, pp. 2 & 6, Macoy.

[4] People vs. Daing, 133 SCRA 448.

[5] People vs. Belarmino, 133 SCRA 472.

[6] People vs. Vengco, 127 SCRA 242.

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