

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERMILLO SORIANO AND ANTONIO GALLARDO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-29057. October 30, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal taken by defendants, Bermillo Soriano and Antonio Gallardo, from a decision of the Court of First Instance of Pangasinan, convicting them of the crime of rape and sentencing each to life imprisonment, to jointly and severally indemnify the offended party, Farmacita Tanigue, in the sum of P3,000.00, and to pay the costs.

It is not disputed that, on February 17, 1968, appellants herein had carnal knowledge of Farmacita Tanigue in a dark place, near a nipa swamp, in the barrio of Domalandan, municipality of Lingayen, province of Pangasinan. The only issue in this appeal is whether or not the act took place against the will of Farmacita, as testified to by her, or with her consent, as appellants would have us believe.

Farmacita Tanigue, the complaining witness, was, on the date above mentioned, 14 years of age. She and her two younger sisters lived separately from their mother. Since the death of Farmacita's father, about 8 years ago, she and her sisters had stayed with their grandmother, Maria Manuel, about 1 kilometer away from the scene of the occurrence, in order to go to which it was necessary to take a banca and cross a river.

Farmacita testified that, while she and her cousins, Marvini and Emma Panaligan, were viewing a singing contest in said barrio of Domalandan, on February 17, 1968, at about midnight, her schoolmate, appellant Bermillo Soriano, approached her and said: "come, your mother is sending for you." At first she took this as a joke, but, when he repeated the statement, she decided to heed Bermillo, who was then with his co-defendant, Antonio Gallardo. As Marvini and Emma Panaligan refused to accompany her, for they were enjoying the show, Farmacita headed, together with Bermillo Soriano and Antonio Gallardo, towards the river-bank, where, she understood, her mother was in a banca, waiting for her. Upon reaching, however, a dark place, beside a nipa swamp, near the river, about 50 meters away from the crowd watching the singing contest, Bermillo snatched her handkerchief and inserted it into her mouth. At about the same time, Antonio Gallardo held her two hands and forced her to lie down, whereupon Bermillo placed himself on top of her. As Farmacita resisted, Bermillo tore her panties and had carnal knowledge of her. Then, he exchanged places with Antonio Gallardo, and took hold of Farmacita's hands, as Antonio Gallardo abused her. What is more, Bermillo ravished her a second time, and so did Antonio Gallardo, in the order given.

As Bermillo and Antonio departed, immediately thereafter, Farmacita remained there for a while, too tired and weak to leave the place. When she regained enough strength, Farmacita went to the house of her aunt, Evangelista Rosario Panaligan, for lack of a banca to cross the river, in order to go to her grandmother's house, to which she went later the next morning. All the while, she was crying, but she would not disclose the reason therefor, despite questions propounded by her relatives, until the evening of February 19, 1968, when her uncle, Roque Rosario,

managed to make her talk and she revealed the outrage committed upon her by appellants herein. The matter was, accordingly, reported to the authorities the next day.

Upon the other hand, Bermillo Soriano testified that Farmacita had been his sweetheart since August 1967, although he did not intend to marry her; that, prior to the date of the occurrence, they had performed the sexual act in a moviehouse; that, after embracing each other and trying, in vain, to fornicate in a standing position, in the evening of February 17, 1968, he bade her to lie down on her back and then placed himself on top of her; that, at this juncture, Antonio Gallardo arrived, in view of which he (Bermillo) stood up; and that Antonio Gallardo then kissed Farmacita, fondled her breasts and had carnal knowledge of her, in his presence, with her consent. Gallardo further stated that, while he was satisfying his lust, one Gil Aquino came, whereupon he (Antonio) stood up and Gil copulated with her.

Antonio Gallardo's aunt, Primitiva dela Cruz, testified that she followed Bermillo Soriano and Farmacita Tanigue as they left the crowd gathered in the singing contest and then watched the couple, for about 10 minutes, as they embraced each other in a standing position, and, thereafter, Farmacita lay down on the ground and Bermillo placed himself on top of her.

As witnesses for the defense, Remedios Trinidad and Jesus Valencia would, also, have the Court believe that in the afternoon of February 18, 1968, Farmacita went to the store of the former, who asked her "what did you do last night?"; and, that, in reply thereto, Farmacita bade her to "keep quiet" because her mother was nearby.

Appellants' counsel maintains that His Honor, the trial Judge, has erred in believing the testimony of Farmacita Tanigue - who was partly corroborated by Dr. Zenaida M. Aquino, a resident physician of the Pangasinan General Hospital, who examined her therein, on February 21, 1968, and by Maria Manuel and Marvini Panaligan, grandmother and cousin, respectively, of Farmacita - and in finding the version of the defense unworthy of credence. The record, however, refutes appellants' pretense.

To begin with, their version is inherently incredible. Indeed, no woman would have consented to have sexual intercourse with two men - or three, according to Antonio Gallardo - in the presence of each other, unless she were a prostitute or as morally debased as one. Certainly, the record before Us contains no indication that Farmacita, a 14-year old, first-year high school student, can be so characterized. On the contrary, her testimony in court evinced the simplicity and candor peculiar to her youth. In fact, appellants could not even suggest any reason why Farmacita would falsely impute to them the commission of the crime charged.

Moreover, the theory of the prosecution has been fully borne out by the conduct of the parties subsequently to the occurrence. Thus, for instance, Farmacita was left alone at the scene thereof, immediately after appellants had satisfied their lust, thereby indicating their guilty conscience. Indeed, had she cooperated with them, appellants would have kept her company, at least for a while, even if only to show their appreciation. Again, Maria Manuel and Marvini Panaligan confirmed the fact that Farmacita had been crying incessantly, since the evening of the occurrence. Surely, she would not have reacted in this manner had she willingly yielded to appellants' wishes. Then, too, the prosecution has proven, and it has not been denied, that an offer had been made by appellants' mothers and reiterated four (4) times - once, in appellants' presence, in the courthouse - for either of them to marry Farmacita. Such offer - which was rejected - constitutes an implied admission of guilt.[1]

We do not believe that the presence of a crowd, about 50 meters away from the place where Farmacita was ravished, renders the theory of the prosecution incredible, inasmuch as the people were then engrossed watching a singing contest, and the scene of the occurrence was dark and beyond their view, there being nipa swamps nearby, apart from the fact that, being almost a child, Farmacita was forthwith prevented from screaming, owing to the handkerchief that Bermillo had managed to stuff into her mouth, and easily overpowered by him and

Antonio Gallardo, who were 19 and 21 years of age, respectively, and, hence, at the peak of their vigor.

Again, the testimonies of Primitiva de la Cruz, Remedios Trinidad and Jesus Valencia bear all the earmarks of artificiality. Thus, for instance, Primitiva declared that she followed Farmacita and Bermillo when they left the group watching the singing contest, because she suspected that the couple would do something foolish. When she found it difficult to explain why she did nothing to prevent them from misbehaving, she said that her only interest in the matter was her nephew, appellant Antonio Gallardo. However, he was not - she said - with said couple when the latter went to the nipa swamps. He joined them - pursuant to her and Bermillo - when Bermillo was already on top of Farmacita. Yet, Primitiva assured the Court, this was the time she left the place.

Similarly, the gist of the testimony of Remedios Trinidad and Jesus Valencia is that, the day following that of the occurrence, Remedios asked Farmacita: "What did you do last night?", and that, in reply, Farmacita bade her to "keep quiet" because her mother was nearby. Remedios admitted, however, that, at that time, she did not know, or had any inkling, that Farmacita had performed any act in particular, or that anything had happened to her, the night before. In other words, there was no reason whatsoever to ask the aforementioned question.

Upon a review of the record, We are satisfied that the lower court did not err in finding that appellants' guilt has been established beyond reasonable doubt.

It appearing that appellants had acted in conspiracy with each other and cooperated with one another in abusing Farmacita Tanigue, each is guilty, as principal, not only of the rape committed by him, but, also, of that committed by his co-defendant.[2] Although each one had twice ravished the complainant, We cannot convict appellants herein of four (4) rapes, for lack of the necessary allegations in the information, under which each should be, and is hereby, held guilty as principal, of one rape, by direct participation, and another rape, by cooperation and direct participation.[3]

Pursuant to Art. 335 of the Revised Penal Code, as amended by R. A. No. 4111, approved on June 20, 1964, the penalty for the crime of rape, when committed by two or more persons, shall be life imprisonment to death. In the case at bar, appellants Bermillo Soriano and Antonio Gallardo should each be sentenced twice, therefore, to the minimum of said penalty, or life imprisonment, for, although the offense was committed at nighttime, it does not appear that the same was sought purposely, or taken advantage of, or that it facilitated the commission of the offense.

So modified as to the penalty, the decision appealed from is, accordingly, affirmed, in all other respects, with costs against the appellants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Castro, Fernando, and Teehankee, JJ., concur.
Villamor, Barredo, and Makasiar, JJ., took no part.

[1] Section 24, Rule 130, Rules of Court.

[2] *People v. Villa*, 81 Phil. 193; *People v. Toledo*, 83 Phil. 777; *People v. Alfaro*, 91 Phil. 404.

[3] *U.S. v. Candelaria*, 2 Phil. 104; *U.S. v. Asilo*, 4 Phil. 175; *U.S. v. Casañas*, 5 Phil. 377; *U.S. v. Perez*, 13 Phil. 287; *U.S. v. Cueva*, 23 Phil. 553; *U.S. v. Javier and Caguicla*, 31 Phil. 235; *U.S. v. Valdez*, 40 Phil. 876; *People v. Castillo*, 76 Phil. 839; *People v. Villa*, supra; *People v. Perez @ Kid Perez*, 83 Phil. 314; *People v. Toledo*, supra; *People v. Margen*, 85 Phil. 839; *People v. Mostoles*, 85 Phil. 883; *People v. Alfaro*, supra.

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