

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NOLASCO FAMADOR, DEFENDANT-APPELLANT.***G.R. No. L-36553. March 30, 1982*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fdf45ec15f42/>**PER CURIAM:**

The appellant, Nolasco Famador, was accused in the Court of First Instance of Cebu of the complex crime of abduction with rape in an information which reads as follows:

That on or about the 24th day of March, 1971 at about 2:00 o'clock in the early morning thereof at Junquera Street, City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, with lewd designs and as necessary means to commit the crime of rape, did then and there willfully, unlawfully and feloniously take hold and grab the hand of one Julie Reyes and having hailed a taxicab in the meanwhile did then and there forcibly push into the taxicab said Julie Reyes against the latter's will and over her strong resistance, threatening her with death from a drawn revolver menacingly pointed at her should she make an outcry and once both were inside the taxicab, the accused directed the taxicab driver to proceed to the Normal School premises and after having reached the Cebu Normal School premises, at P. del Rosario Street, just across from the Santo Rosario Parish Church, the accused alighted there-at, dragging with him said Julie Reyes and against her will and over her strong protests and re-sistance, with the same menacing revolver pointed at her, Julie Reyes was forced towards the rear of the stage of the Cebu Normal School and there, by means of force and intimidation, brutally ravished and outrageously consummated carnal knowledge with said Julie Reyes.[1]

From the judgment convicting Famador of simple rape and imposing upon him, among others, the penalty of reclusion per-petua, he now appeals to this Court.

By the nature of the offense, only the offended party, Julie Reyes, is the eyewitness to the crime. The following is the gist of her testimony:

The defendant is a policeman of Cebu City, 44 years old, big and husky.[2] Julie Reyes was only 15 years old at the time of the alleged incident. The appellant and the offended party knew each other very well because they used to be neighbors in D. Jakosalem Street, Cebu City. They called each other by their nicknames, Julie calling the appellant "Dodong" and the latter calling the offended girl "Jul".[3] Julie knew the appellant to be a member of the police force of Cebu City.[4]

On March 24, 1971, at around 2:00 o'clock in the morning, fifteen-year old Julie Reyes was watching their store located inside the railway at D. Jakosalem Street, Cebu City.[5] After a while, she woke up her mother who was asleep inside the store and told the latter that she would just bring home her guitar.[6] On her way to their house at Don Pedro Cui Street in the same city, Julie saw the accused Nolasco Famador seated at the stairs of the house of one Papa Tinong. The accused accosted Julie and informed her that her sister was waiting for her somewhere in Junquera Street, and Julie asked the accused to wait as she would just return the guitar to their house.[7]

After returning the guitar to their house, Julie went back to the place where the accused was waiting, and together they went to the place where her sister was supposed to be waiting. Upon their arrival thereat, they did not find

her sister there, so she told the accused that she wanted to go home.[8] The accused, however, grabbed Julie's right hand and dragged her towards Junquera Street,[9] resulting in scratches and a contusion in her arm.[10] When they reached Junquera Street, the accused handcuffed her left hand and called a taxi-cab. When the taxicab arrived, the accused opened the door and forced Julie to get inside. The girl cried and refused to board the vehicle, but the accused pushed her so that she stumbled into the cab.[11] Julie did not, however, shout for help while she was being forced to get into the cab because of fear since the accused was then pointing his gun at her.[12] While they were inside the cab, the accused handcuffed both of her hands and threatened to kill her if she would shout.[13]

The taxicab sped away and later stopped at the Golden Wheat in front of the Sto. Rosario Church. There, the accused pulled Julie out and the taxicab left. The accused then forcibly brought Julie towards the Normal School grounds. Reaching the gate of the Normal School grounds in front of the Sto. Rosario Church, the accused dragged Julie inside and thence to the back of the stage of the Normal School. It was already past 2:00 o'clock in the morning then, and there were no other people around.[14] With only Julie's left hand still handcuffed, the accused held her two hands behind her back with his right hand, and with his other hand unlocked the hook and opened the zipper in front of her Bermuda pants (Exhibit C). Then he tried to pull off her pants, which she resisted by wiggling her legs, but he gradually managed to remove her pants.[15] Then, still holding Julie's hands behind her, the accused proceeded to remove her pantie (Exhibit D). Again, Julie struggled to prevent him from doing so by closing her thighs[16] and raising her legs about two feet high,[17] but the accused nonetheless managed to strip of her pantie. During all the time that he was removing Julie's pants and pantie, the accused had his pistol tucked on his waist.[18]

With Julie already stripped of her pants and pantie, the accused removed the handcuff from her left hand, placing it, together with her pants and pantie, on the ground on the right side near her feet,[19] and then, with his gun on the ground above her head, he started to undress himself, taking off his pants and brief, but leaving his polo shirt on.[20] Although she wanted to run, Julie could not do so because she was already naked, and besides, the accused had threatened to kill her with his gun.[21] The accused thereafter proceeded to open Julie's thighs wider, at the same time pulling her down, thus forcing her to lie down on the ground.[22] Then, kneeling in front of the girl, the accused inserted a finger of his left hand into her private part, and she "felt pain in my vagina and my body felt warm." [23] She struggled to prevent him from consummating his intention, but she was no match to his physical strength and size.[24] And so, after first probing the girl's organ with his left hand, the accused rammed his hardened penis into her vaginal orifice. While doing the sexual act, the accused warned Julie not to tell her mother about the incident or he would kill her. The sexual intercourse lasted for about ten to fifteen minutes. After the accused was done with her, Julie cried because she felt pain and she was afraid.[25] She knew that the accused was able to discharge his semen inside her organ because after he had pulled out his penis, she got a piece of paper and wiped her vagina with it, and she noticed that there were blood and semen on the piece of paper.[26]

The accused started to dress up while Julie continued wiping her vagina with the piece of paper because it was still bleeding.[27] Then, he gave her pants and pantie to her, and as she put them on,[28] he told her to wait because he was going to urinate behind a nearby blackboard. Once he had turned his back towards her, Julie began to run towards the gate of the Normal School fronting the City Central School, but finding it closed, she climbed the gate, got out, and went directly home.[29]

At about 7:00 o'clock in the evening of that same day, Julie went to her sister Liza, who was living with a friend at Don Pedro Cui Street, and she told her sister what the accused had done to her. Later, their mother also went to the house where Liza was staying, and the latter in turn told their mother what had happened to her sister Julie. Their mother then brought Julie home and there, she related to her mother what the accused had done to her.[30]

That same evening, Julie was brought by her mother to the Cebu City Hospital for physical examination.[31]

Dr. Florita Cavan, resident physician and medico-legal officer of the Cebu City Hospital, examined Julie Reyes on March 24, 1971 at 9:00 o'clock in the evening. Explaining her findings as incorporated in the medical certificate Exh. "A", Dr. Cavan declared that the girl had sustained fresh hymenal lacerations with hematoma at 3, 6, and 9 o'clock with the blood still fresh in the lacerated portions,[32] which could have been caused by any hard, blunt object, like an erect penis.[33] An examination of a vaginal smear from the girl's organ, which is routinary in suspected rape victims, was also conducted by the hospital's laboratory physician to determine the presence of spermatozoa thereat, but the result was nega-tive.[34] Dr. Cavan further declared that depending on the individual, the male sperm might stay in the vagina of a woman as long as 72 hours or, for some, in only a matter of hours.[35] Finally, Dr. Cavan also declared that the abrasion on the right forearm of the victim Julie Reyes was one inch long, superficial, and no longer bleeding at the time of examination.[36]

The defense is denial and an alibi briefly stated in the appellant's brief, as follows:

The accused - then a member of the Cebu Police Department and assigned with the Vice Squad - was not anywhere within the vicinity of the Normal School grounds, having retired as early as 7:00 o'clock in the evening of March 23, 1971, after his tour of duty with the Vice Squad. At 2:00 o'clock of the early hours of March 24, 1971, the accused was far and away at his residence at Talamban, fast asleep and dead to the world around him. (Tsn-June 19, 1972-p. 31; Tsn-July 10, 1972-pp. 5-6)[37]

The appellant correctly stated the issue as follows:

The issue is simply one of fact; whether or not the accused could have been the one who had sexual intercourse with the complainant and, secondarily, whether or not the sexual intercourse was one against the will of the complainant.[38]

There can be no doubt as to the identification by Julie of the appellant as the malefactor. The appellant and the offended party knew each other very well. They call each other by their nicknames. They used to be neighbors at D. Jakosalem Street, Cebu City for a long time.[39] The offended girl even knows the appellant's wife whom she calls Lydia.[40]

The appellant succeeded in abducting and raping the minor girl thru force, violence, threat, and intimidation. When the appellant and the offended girl were alone at Junquera Street and when she wanted to go home when her sister Liza was not there, the appellant grabbed her and handcuffed her left hand and pushed her into a taxicab all the while pointing his gun at her.[41] Once inside the taxicab, the appellant handcuffed both of her hands and threatened to kill her if she would shout.[42] Upon reaching the Normal School, the appellant dragged her to the back of the stage of the Normal School.[43] The appellant threatened to kill Julie if she would run.[44] When the defendant was doing the sexual act, he placed his gun above the head of Julie within his reach.[45] The offended girl continued resisting the bestial assault of the appellant. When the appellant was removing her Bermuda pant, she "struggled to free myself."[46] When the appellant was removing her panty, "she closed her thighs, (nagkipi-kipi)[47] and raised her legs about two feet high.[48] When the appellant was spreading apart her thighs, she "struggled."[49] When the appellant was about to insert his penis, she "kept on strugg-ling."[50]

Her resistance was of no avail because the accused was "big and husky"[51] and she was "weakened considering his size.[52]

Julie Reyes reported the incident to her sister Liza on March 24, 1971[53] and on the following day, March 25, 1971, the offended girl filed in the Fiscal's Office of Cebu City her sworn complaint.[54]

There was no motive of Julie Reyes and her parents to file a false accusation against the appellant. There was no misunderstanding between the appellant and Julie or her family. The appellant even used to send Julie for an errand.[55] The appellant himself, admitted during his testimony that he and the complainant's parents were in good terms and he did not have any grudge or misunderstanding with the complainant's father.[56]

In the absence of credible evidence to show any reason or motive why complainant should have testified falsely, the logical conclusion is that there was no improper motive on her part, and her testimony is worthy of full faith and credit. (People vs. Borbano, 76 Phil. 702; People vs. Valera, 5 SCRA 910; People vs. Gonzales, 76 Phil. 473.)

The filing of the complaint for abduction with rape was, therefore, impelled by no other purpose than to vindicate a grave offense committed against the minor girl and her family.

As to the credibility of Julie Reyes and her testimony, We quote with approval the following observation of the trial court:

It is noted that the complainant, a young unmarried girl who has nurtured a respect for the elder accused, her neighbor since her childhood and known by her to be a policeman, would not have the temerity to denounce the latter and submit herself to the inconvenience and embarrassment which a prosecution of this nature entails on her if the charges were not true.

The demeanor of complainant on the witness stand, her unwavering accusing finger firmly and positively pointed at the accused as the very person who ravished her, coupled with the fact that the accused failed to show any indication that the prosecution had ill-motive against him, convinces this Court to give the complainant full credit of her testimony.[57]

The evidence establishes the guilt of the appellant beyond reasonable doubt. The identification of the appellant by Julie as her assailant is beyond question. The defense of denial and alibi must necessarily fail.

No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. (People vs. Estrada, 22 SCRA 111; People vs. Briz, 104 Phil. 329.)

The crime committed is the complex crime of abduction with rape, not simple rape as erroneously held by the trial judge who believed that the "prosecution, however, failed to establish the existence of lewd or unchaste design on the part of the accused when he forcibly took the offended girl from Junquera Street;" and "hence, the accused cannot be held answer-able for the crime of abduction." [58]

When the appellant forcibly took away Julie for the purpose of raping her, as in fact he did rape her, lewd or unchaste designs existed since the commencement of the offense.[59]

In the instant case, the crime of rape was qualified with the use of a deadly weapon. The offense, thus, is punishable with the penalty of reclusion perpetua to death. Since the offense of abduction with rape is a complex crime, the penalty for the more serious offense should be imposed in the maximum period.

The commission of the offense is also aggravated by the following aggravating circumstances, namely: (1) nighttime, the appellant having purposely sought such circumstance to facilitate the commission of the crime; (2) abuse of his official position as a policeman, the appellant having used his official service revolver and police handcuffs in rendering his victim immobile and afraid; (3) the use of a motor vehicle, the appellant having abducted complainant by pushing her into a taxicab and bringing her to the place where he later raped her; (4) deceit, the appellant having lured the minor girl to go with him and look for her sister Liza who was allegedly waiting for the offended girl somewhere at Junquera Street .

WHEREFORE, the appellant is hereby convicted of the complex crime of forcible abduction with rape qualified by the use of a deadly weapon and attended by the aggravating circumstances indicated above and We hereby impose upon him the extreme penalty of death.

The other portions of the decision of the lower court are hereby affirmed.

Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur. Fernando, C.J., and Teehankee, J., no part. Aquino, J., the accused committed the complex crime of kidnapping and serious illegal detention with qualified rape. But, as he was charged with forcible abduction with rape, he should be convicted of that complex crime. Abad Santos, J., on official leave.

[1] pp. 25-27, Appellant's Brief.

[2] p. 11, tsn, 1-26-72.

[3] pp. 4-5, tsn, id.

[4] p. 4, tsn, id.

[5] pp. 4, 28, tsn, id.

[6] p. 29, tsn, Jan. 26, 1972.

[7] pp. 4, 28, tsn, id.

[8] p. 6, tsn, id.

[9] p. 6, tsn, id.

[10] p. 6, tsn, id.

[11] p. 6, tsn, id.

[12] p. 7, tsn, id.

[13] p. 7, tsn, Jan. 26, 1972.

[14] pp. 8-9, tsn, id.

[15] pp. 19-21, 26-27, tsn, Jan. 27, 1972.

[16] p. 14, tsn, id.

[17] p. 28, tsn, Jan. 27, 1972.

[18] p. 17, tsn, id.

[19] pp. 23-24, 29, tsn, Jan. 27, 1972.

[20] pp. 15-16, 20, tsn, Jan. 26, 1972.

[21] p. 15, tsn, id.; & p. 31, tsn, Jan. 27, 1972.

[22] p. 16, tsn, id.; & pp. 18-19, tsn, id.

[23] pp. 16-17, tsn, Jan. 26, 1972.

[24] p. 18, tsn, id.

- [25] pp. 18-19, tsn, id.
- [26] pp. 17-18, tsn, id.
- [27] pp. 40-41, tsn, Jan. 27, 1972.
- [28] p. 41, tsn, id.
- [29] p. 21, tsn, Jan. 26, 1972; pp. 32-33, 38, tsn, Jan. 27, 1972.
- [30] pp. 50-52, tsn, id.
- [31] p. 21, tsn, August 17, 1972.
- [32] pp. 1-7, 12, tsn, Jan. 26, 1972.
- [33] pp. 8-9, tsn, id.
- [34] pp. 7, 12-13, tsn, id.
- [35] pp. 7-8, tsn, id.
- [36] pp. 7, 12, tsn, id.
- [37] pp. 8-9, Appellant's Brief.
- [38] p. 9, Appellant's Brief.
- [39] pp. 4-5, tsn, 1-26-72.
- [40] p. 23, tsn, id.
- [41] pp. 6-7, tsn, id.
- [42] p. 7, tsn, id.
- [43] pp. 8-9, tsn, id.
- [44] p. 15, tsn, id; p. 31, tsn, Jan. 27, 1972.
- [45] pp. 15-16, tsn, Jan. 26, 1972; p. 19, tsn, id.
- [46] p. 12, tsn, id.
- [47] p.14, tsn, Jan. 26, 1972.
- [48] p. 28, tsn, Jan. 27, 1972.
- [49] p. 16, tsn, Jan. 26, 1972.
- [50] p. 18, tsn, id.
- [51] p. 11, tsn, id.
- [52] p. 18, tsn, id.
- [53] pp. 21-22, tsn, id.
- [54] Exh. "B", pp. 301-302, Record.
- [55] p. 23, tsn, Jan. 26, 1972.

[56] p p. 13, tsn, June 19, 1972.

[57] Decision, p. 290, Record.

[58] p. 43, Appellant's Brief.

[59] See *People vs. Castillo*, 76 Phil. 839.

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