

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO BASAS, NESTOR GREGORIO, ROGELIO CADAG AND GERARDO MAINGAT, DEFENDANTS-APPELLANTS.*G.R. Nos. L-48019-22. June 29, 1984*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ff3d2eb4f594/>**AQUINO, J.:**

Leonardo Basas, Nestor Gregorio, Rogelio Cadag and Gerardo Maingat appealed from the decision of the Court of First Instance of Manila, convicting them of rape and sentencing them to reclusion perpetua and to indemnify Gloria Badilla in the sum of P10,000 (Criminal Cases Nos. 26116-19). Maingat withdrew his appeal. (Resolution of November 10, 1980.)

The prosecution's evidence shows that at around seven-thirty in the evening of December 2, 1975 Gloria Badilla, 18 (Exh. F), a first year high school student, after alighting from a jeepney at Marcos Road, Barrio Magsaysay, Tondo, Manila, encountered Leonardo Basas, Nestor Gregorio, Rogelio Cadag and Gerardo Maingat.

Basas and Gregorio covered her mouth and dragged her to a vacant hut located in the Don Bosco School compound at the corner of Marcos and Don Bosco Roads (See sketch Exh. C). She struggled to free herself from the clutches of her captors. She hit them with her notebooks. Her efforts were in vain.

On reaching the hut, Basas and his companions removed her pink school uniform, consisting of a blouse and skirt (Exh. B), and her panty and brassiere. The four, helping each other, held her hands and feet, boxed her thighs, pulled her hair, and covered her mouth. She resisted and shouted for help. They forced her to lie down. They removed their clothes and took turns in sexually abusing her. While one was doing the act, she was being held by the others who touched her breasts.

A boy named Ruben Valle, who acted as lookout, warned Basas and his companions that Eugenio Villaruel and Graciano Montecillo were coming to the hut. ("May tao.") The four malefactors scampered and fled. Villaruel and Montecillo advised Gloria to put on her clothes. They brought her to Father Miguel, the rector of the Don Bosco School.

Gloria's parents were called. She and her parents, accompanied by Villaruel and Montecillo, went to the house of the barangay chairman to report the matter. By coincidence, Ruben and the four accused happened to be in the barangay chairman's house at that time because Ruben was being investigated in connection with a stone-throwing incident.

Then and there, Gloria on that same night of December 2, 1975 pointed to the four accused as her rapists. The barangay chairman entered the incident in his logbook (Exh. H). He brought Gloria, her parents and the two rescuers to the police precinct for investigation. It was already two o'clock in the morning when Gloria's statement was taken (Exh. E).

The next day Gloria was examined by Doctor Angelo S. Singian of the Manila police. He found that there was an

unsuccessful coitus on the preceding night because her hymen was "virginal with no laceration" although there was a "fresh contusion of the hymen in the 8 o'clock position with slight inflammation from the 6-9 o'clock position".

He certified that there was "hyperemia of the rest of the hymen and perihymeneal tissue" (dilation of the blood vessels) but the vagina was negative for sperm cells (Exh. A). Doctor Singian testified that there could have been penetration of the labia majora but not deep enough to lacerate the hymen.

The story of the four accused was that at the time the alleged rape was being committed they were "chasing each other" in the football field of the Don Bosco compound (near the hut, as shown in the sketch, Exh. C). They ran away because there was trouble: someone was caught throwing stones. They went to the barangay chairman's house. They found out that the boy, Ruben Valle, was the one who threw stones (p. 9, Appellants' Brief).

At that juncture, Gloria arrived at the barangay chairman's house. She fingered the four accused as the persons who abused her. The barangay captain took them to the police station where they were investigated. It may be noted that this version strengthens the case for the prosecution.

The trial court did not consider appellants' story as exculpatory. As already noted, it convicted the accused of one crime of rape although they were separately charged with rape in four informations.

Appellants Basas, Gregorio and Cadag contend in this appeal that the testimonies of Gloria and Ruben were incredible, that appellants were not positively identified and that their guilt was not proven beyond reasonable doubt.

These contentions cannot be sustained. There is no reason to doubt the credibility of Gloria and Ruben. The fact that the victim's hymen was not lacerated and that sperm cells were not found in her vagina can be explained. The accused were teenagers who had not much experience in sexual congress. They were too eager to have bodily contact with the victim. Their haste in performing the act coupled with the resistance of the victim prevented any ejaculation or orgasm.

But it is undeniable that their organs penetrated the vagina although the penetration did not break the hymen but only caused a contusion. The rape was consummated. (*People vs. Royeras*, L-31886, April 29, 1974, 56 SCRA 666).

"The rupturing of the hymen is not indispensable to a conviction of the consummated crime of rape; entry of the labia of the female organ without rupture or laceration is generally held to be sufficient" (Syllabus, *People vs. Hernandez*, 49 Phil. 980). There must be proof of some degree of entrance of the male organ within the labia of the pudendum. (*People vs. Rivers*, 147 Mich. 643).

"For as Lord Meadowbank said in a case in Scotland, 'Scientific and anatomical distinctions as to where the vagina commences are worthless in a case of rape; it is enough if the woman's body is entered; and it is not necessary to show to what extent penetration of the parts has taken place, whether it has gone past the hymen, into what is anatomically called the hymen, or even so far as to touch the hymen'" (*Stewart on Legal Medicine*, p. 137; *State vs. Johnson*, 91 Mo. 439, cited in *Hernandez* case).

The testimonies of Gloria and Ruben prove beyond reasonable doubt appellants' complicity in the rape. Their identification was made within two hours after the perpetration of the acts complained of. There is not a shadow of doubt as to their guilt.

The trial court erred in holding that there was only one rape. Apparently, it was appalled by the excessiveness of the penalty in case the accused were convicted of four rapes.

It is settled that in multiple rape each defendant is responsible, not only for the rape committed by him personally, but also for the rape committed by the others, because each one of them cooperated in the consummation of the rape committed by the others, by acts without which it could not have been accomplished (*People vs. Villa*, 81 Phil. 193, 197). Hence, four rapes were committed in this case.

The Solicitor General submits that as the four rapes were aggravated by nocturnity and abuse of superiority, four death penalties should be imposed on each defendant.

We hold that nocturnity is not aggravating. There is no clear evidence that it was purposely sought by the accused.

The ruling in *People vs. De Guzman and De la Cruz*, 51 Phil. 105, that in rape perpetrated by three persons abuse of superior strength is aggravating, is not applicable to this case because the circumstance that the rape was committed by two or more persons was already taken into account in fixing the penalty of reclusion perpetua to death for this kind of rape. (Art. 335, Revised Penal Code).

The death penalty is not imposable in this case. The parties and the trial court overlooked the fact that the three appellants are entitled to the privileged mitigating circumstance of minority. Cadag, Basas, and Gregorio were over 15 but below eighteen when the crime was committed, having been born on February 23, August 8 and December 10, 1959, respectively (Exh. G). Hence, their penalty must be lowered by one degree or to reclusion temporal (Art. 68, Revised Penal Code).

The minimum of the indeterminate penalty imposable on them must be taken from prision mayor medium and the maximum from reclusion temporal medium. As there were four rapes, four indeterminate penalties must be imposed on them, subject to the three-fold rule and the forty-year limit provided for in article 70 of the Revised Penal Code (*People vs. Sendaydiego*, L-33252, etc., January 20, 1978, 81 SCRA 120, 147).

WHEREFORE, the judgment of the trial court on the appellants Basas, Gregorio and Cadag is modified. They are each sentenced to four indeterminate penalties of nine years of prision mayor medium as minimum to fifteen years of reclusion temporal medium as maximum and to pay solidarily Gloria Badilla an indemnity of P20,000. Costs de oficio.

Nevertheless, considering the facts of the case and having in mind that under a strict enforcement of the law the total penalties might appear excessive, we bring this case to the attention of the President of the Philippines, through the Minister of Justice, for the purpose of reducing the penalties consistent with the ends of retributive justice and the manifest policy of the law to deter the commission of rape. SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, Abad Santos, Plana, Escolin, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Makasiar and Relova, JJ., no part.

Melencio-Herrera, J., on official leave.

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