

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL BORCE, ACCUSED-APPELLANT.

G.R. No. 124131. April 22, 1998

Ponente: VITUG, J.

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VITUG, J.:

Samuel Borce was convicted by the Regional Trial Court of Bangued, Abra, in a decision, promulgated on 23 October 1995, in the jointly-tried Criminal Case No. 1481 and Criminal Case No. 1482. The trial court there adjudged:

"WHEREFORE:

"In Criminal Case No. 1481 for Rape, the Court finds the accused guilty beyond reasonable doubt of two (2) counts of the crime of rape committed with the use of a deadly weapon aggravated by mutilation defined and penalized under Article 335 of the Revised Penal Code in relation to Section 11 of Republic Act No. 7659, and sentences him to suffer two death penalties.

"In Criminal Case No. 1482 for frustrated murder, the Court finds the accused guilty beyond reasonable doubt of the crime of frustrated murder defined and penalized under the provision of Article 248 in relation to Article 50 of the Revised Penal Code and hereby sentences him to suffer an indeterminate penalty of EIGHT (8) YEARS AND TWENTY (20) DAYS of prision mayor as minimum, to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of reclusion temporal as maximum.

"The accused is hereby ordered to indemnify the victim in the amount of P250,000.00 as actual, moral and exemplary damages, and to pay the costs of the proceedings."[1]

The penalty of death having been imposed on the accused by the court a quo, the records were elevated to this Court, in accordance with Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, for automatic review.

Samuel Borce, the accused-appellant, had been charged in two separate informations, to wit:

In Criminal Case No. 1481 for Rape:

"That on or about April 29, 1994, at around 8:30 o'clock in the morning, at the hill of the western part of Bariquir, Barangay San Antonio, Municipality of Bangued, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of deadly weapon, did then and there, wilfully, unlawfully and feloniously lie upon one REGINA BAGA and succeed in having carnal knowledge against her will and consent and this was repeated for the second time around, to the great damage and prejudice of the said offended party."[2]

In Criminal Case No. 1482 for Frustrated Murder:

"That on or about April 29, 1994, at around 8:30 o'clock in the morning, at the hill of the western part of Barangay San Antonio, Municipality of Bangued, Province of Abra, Philippines and within the jurisdiction of

this Honorable Court, the above-named accused, with intent to kill, with treachery, use of superior strength and evident premeditation, did then and there, wilfully, unlawfully and feloniously hack the face of one REGINA BAGA, inflicting multiple hack wounds on her face, thus the accused having performed all the acts of execution which would have produced the crime of Murder as a consequence but nevertheless did not produce it by reason of the timely medical attendance rendered to said victim which prevented her death." [3]

The accused, assisted by counsel, entered a plea of "not guilty" to the two charges.

The Solicitor General, closely paraphrasing the trial court in its decision, summed up the evidence for the prosecution; thus:

"Complainant Regina Baga is 45 years old, married, and whose husband works abroad as an overseas contract worker. She is thin and weighs not more than 100 pounds. She and appellant, Samuel Borce, are neighbors in Barangay San Antonio, Bangued, Abra (TSN., August 22, 1994, p. 3).

"On April 29, 1994, at about 8:30 o'clock in the morning, Regina took her bolo and ventured alone to gather firewood at Barikir, a forested area situated about one kilometer away from her house. (TSN, August 22, 1994, p. 4) While ascending a hilly portion of the forest, she noticed appellant behind her (p. 3). Without saying a word, appellant approached Regina, took hold of her right arm, twisted it and wrested away her bolo (p. 3). Appellant poked the tip of the bolo on Regina's neck and threatened to kill her (p. 10). At this point, appellant's bestial desires were aroused. Giving vent to it, he pinned complainant on the ground and forcibly removed her 'Cullots' and underpants. Regina unceasingly fought to resist his advances. Nonetheless, being stronger and heavier, appellant placed himself on top of Regina and after a protracted struggle succeeded in raping her. Thereafter, appellant dragged Regina away from the pathwalk and into the woods (p. 7). His lust not yet satiated, appellant raped Regina for the second time. When he was through, appellant dragged Regina farther into the forest. There, he executed his plan to kill and abandon Regina. However, Regina did not die. When she regained consciousness after being strangled by appellant, she noticed that her face was hacked (Ibid. p. 9). Terrified, she screamed for help but [no one] came.

"Meanwhile, Regina's son, Raymund, was worried that at a late hour his mother had not yet returned home (TSN, Sept. 26, 1994, p. 10). Fearing that something bad may have happened, he, together with his brother and sister, went to search for her in the woods. There, they found their mother lying on the ground and bleeding profusely on the face. Her brain tissues were exposed. When asked what had transpired, Regina told her son that she was raped and hacked by appellant. (ibid., p. 11). Immediately Raymund brought her mother to their house." [4]

Regina was brought to the Abra Provincial Hospital where she was promptly attended to. Her treatment in the hospital lasted for 16 days. The medical certificate,[5] dated 11 May 1994, disclosing the findings of attending physician Dr. Cynthia Cacho Viado on the injuries suffered by the victim, pertinently read:

"IE - Multiple old hymenal lacerations

Vagina admits two fingers with ease.

Cervix open 1-2 cm.

Uterus enlarged to three months size.

Adnexae (-)

Bleeding moderate.

"SPERM ID (-)

PT (-)

"x x x x x

"NOI - Hacking

POI - San Antonio, Bangued, Abra

TOI - 8:30 A.M.

DOI - 4-29-94

"Multiple hacking wound - face (Mid) portion."[6]

Samuel Borce denied the accusation. Presented at the witness stand by the defense were the accused himself, his mother Lydia Borce and one Dr. Herminio Venus. Highlighting the testimony of the defense witnesses, the Public Attorney's Office, acting as counsel for the accused, narrated its version of the case; thus:

"Accused Samuel Borce testified that on April 29, 1994, he went to get the firewood that he gathered and when he arrived in the place he saw Regina Baga gathering the firewood which he already gathered; then he prevented the victim from gathering the firewood. She tried to hack him with her bolo so that they grappled for possession of the bolo and while grappling, the bolo hit the head of Regina Baga after which the accused left her. He denied having raped Regina Baga. After grappling with the bolo, the accused went home and thereafter he went to see Regina Baga when he was informed that she was already dead and this was the time he was arrested and detained up to the present. When he was arrested by the police officers he was not informed of his human and constitutional rights.

"LYDIA BORCE testified that she is the mother of the accused. That on April 29, 1994, she said that she and her son went to gather firewoods and after gathering firewoods they went home and that he never raped the complainant. She admitted that she did not see Regina Baga stabbed the accused because she went home already. She only learned Regina Baga was hurt from the people who told her. She tried to go and help her but she was already brought to the hospital. She testified that when her son was brought to the police station he narrated that he accidentally hacked her (Regina Baga) when the latter attempted to steal his firewood. She also asked the accused if he raped Regina Baga and told her that he did not rape Regina Baga. Her son was detained up to the present. She stated that she was not able to do anything for her son because they are poor and have nothing to offer. She tried to ask the help of the Brgy. Captain but they did not pay attention to her. When asked by the Court Regina Baga alleged that when victim prevented her son to get the firewood gathered by her son she personally witnessed the incident in fact she tried to prevent her and not to steal the firewood, but Regina Baga did not heed her.

"DR. VENUS when asked by the court if there was rape committed against victim stated, thus: 'As to my findings there is no physical injuries.' He stated that the lacerations were old ones and when rape committed within three hours, the lacerations would have been fresh and not old. The victim was allegedly raped on April 29, 1994 so that on the same day she was examined. The doctor also admitted if there are no lacerations there is consent to the sexual intercourse. The doctor also admitted that moderate bleeding was due to menstrual period. When asked if there is spermatozoa, he answered in the negative. He stated that a spermatozoa has a lifetime of within 24 hours or for 2 days and if the spermatozoa were inside already in the vagina it will live for 17 days."[7]

The trial court, Hon. Benjamin A. Boñgolan presiding, was not persuaded by the theory put up by the defense in the face of the strong evidence submitted by the prosecution. The accused was convicted, as aforesaid, of the crimes charged.

In this appeal from the judgment finding him guilty, appellant Samuel Borce assigned two related errors allegedly committed by the court below; to wit:

“1. The trial court gravely erred in giving full weight and credence to the testimonies of the witnesses of the prosecution and in disregarding the theory of the defense.

“2. The trial court gravely erred in convicting accused-appellant Samuel Borce of double rape despite the fact that the results of the medical findings contradicted to the testimony of Regina Baga thereby showing that no rape was committed.”[8]

At the cost of being overly repetitious, the court, once again, must here echo the familiar doctrine that in the assessment and evaluation of contradictory asseverations of witnesses, it is with the trial court where the main responsibility, as well as its concomitant authoritativeness, really lies. The appellate court, absent cogent justifications that can warrant otherwise, would almost certainly defer to the findings and conclusions made thereon by the trial court. Several reasons have been advanced, nurtured by a host of jurisprudential holdings, that are all too compelling to be ignored. The trial judge is he who gets the opportunity to directly and intimately observe the witnesses and to determine, by their demeanor at the witness stand, the probative strength or weakness of that which they declare. The witnesses can reveal much more than what can ordinarily be reflected in and perceived from the transcripts that merely would contain the matter which is stated but not how it is said. Tell-tale marks of either honesty or fabrication, truth or concoction, reality or imagination, may eventuate from a meaningful pause or spontaneous ready reply, the angry or subdued denial, the forthright stare or the elusive eyes, the sudden pallor or the flush of face, and all that characterizes the deportment and peculiar outward behavior of witnesses when their response to both direct examination and cross examination is elicited. These signs, although available to the trial judge,[9] are, however, easily lost on the appellate court.

In rape cases particularly, the judge is often asked to arbitrate between the discordant and irreconcilable declaration of the victim and the denial of the accused. In the estimation of such conflicting versions, hardly can the appellate court assert a preponderant competence over that of the trial judge. It is true, of course, that an accusation for rape can be managed with facility, while the defense, upon the other hand, is invariably hard put to dispute the claim of rape. It is precisely for these reasons that a court does not merely take in stride the charge but gives a full and concentrated attention on, as well as great caution in, the assessment and evaluation of the victim's testimony.

With all the above considerations in mind, the Court itself has gone over the testimony of Regina. Here is how she has testified:

“FISCAL FLORES:

“Q Will you please state your name, age and other personal circumstances?

“A Regina Baga, 45 years old, married, a housekeeper and a resident of San Antonio, Bangued, Abra.

“Q Madam Witness, do you know a person by the name of Samuel Borce?

“A Yes, Sir.

“Q And will you tell the Court why you know Samuel Borce?

“A I know him because he is my neighbor in San Antonio, Sir.

“Q Where are you neighbors in one another?

“A In San Antonio, Bangued, Abra, Sir.

“Q If this neighbor of yours Samuel Borce is in court this morning, will you kindly point to him?

“INTERPRETER:

Witness pointed to accused Samuel Borce.

“FISCAL FLORES:

“Q Alright, on April 29, 1994 at around 8:30 o’clock in the morning, do you know where were you?

“A Yes, Sir.

“Q Where were you at that time?

“A I was in the forest, Sir.

“Q Where is that forest you are referring to located?

“A In Barikir, San Antonio, Sir?

“Q Will you tell the Court why you were on the forest on that particular morning of April 29, 1994?

“A I went to gather firewood, Sir.

“Q Do you have any companion when you went to the forest to gather firewood at that time?

“A None, Sir.

“Q Madam Witness, will you tell the Court the distance where you gathered firewood from your house?

“A It is less than 1 kilometer, Sir.

“Q While you were at the forest or hill to gather firewood on that particular hour at 8:30 o’clock in the morning, April 29, 1994, do you know if there was anything unusual happened to you?

“A Yes, Sir.

“Q Will you tell the Honorable Court what was that unusual incident happened to you?

“A On that particular morning when I went to gather firewood when I was ascending to the mountain I saw Samuel Borce behind me, Sir.

“Q And what happened next when you saw Samuel Borce behind your back?

“A He got holding of my hand holding a bolo and twisted it, Sir.

“Q And what happened when he twisted your arm and got the bolo?

“A After twisting my right arm and wrested the bolo from me afterwhich he let me down and removed my clothes and my panty and skirt, Sir.

“Q After removing your skirt and panty, what did he do next?

“A He raped me, Sir. He went on top of me and inserted his penis into my vagina.

“Q You said that he took the bolo from you, what did he do with the bolo after taking from you . . . I withdraw the question, your Honor.

“A You said he placed his private part into yours, what did you feel when he inserted his penis into your vagina?

“Q I felt something hot inside me, Sir.

“COURT:

“Q What was that hot if you know?

“A Maybe his semen coming from him, Sir.

“FISCAL FLORES:

“Q More or less how long did he stay on top of you?

“A About 3 minutes, Sir.

“Q How many times did he insert his penis into yours?

“A (No answer)

“COURT:

“Q Did he rape you?

“A He raped me twice, Sir.

“Q What do you mean by that?

“A After raping me for once he transferred me to another place then he again raped me, Sir.

“Q Where did he transfer you?

“A He transferred me to a place near the place where he first raped me, but that place is farther than the path, Sir.

“Q What is this path?

“A The path going to the mountain, Sir.

“Q And this is the path which you took in going to the mountain?

“A Yes, Sir.

“FISCAL FLORES:

“Q Now, you said that he also took the bolo that you were holding?

“COURT:

“Q What happened after raping you for the second time?

“A I struggled and I lost consciousness, Sir.

“FISCAL FLORES:

“Q After regaining your consciousness, what happened next?

“A Samuel Borce was not there anymore by my face is already wounded, Sir.

“Q Do you know what have caused the wound in your face?

“ATTY. BARBERO:

Objection, your Honor, she said she was unconscious.

“COURT:

May answer.

“A Yes, Sir.

“COURT:

“Q What was he used in wounding your face if you know?

“A He used my bolo, Sir.

“FISCAL FLORES:

“Q You said that the wound inflicted in your face was caused by the bolo he got from you, in what stage did he cause the wound in your face, before the first rape or after the first rape?

“A After the second rape, Sir.

“Q Actually, how did he wound you on that bolo he got from you?

“A He hacked me, Sir.

“Q Where?

“A He hacked me on my face, Sir. (Witness pointing to the scars on her face.)

“Q How many times did he hack you in your face?

“A He hacked me 3 times, Sir.”[10]

On cross-examination, the complainant repeated, in the same straightforward fashion, her direct testimony. Continuing, she went on to respond to further searching questions of counsel; thus:

“ON CROSS-EXAMINATION:

“ATTY. BARBERO:

“Q You said that the accused told you that he was going to kill you, in fact, he did not do that instead according to you he laid you down and raped you?

“COURT:

It is different.

“ATTY. BARBERO:

“Q When did he say that he will kill you?

“A When he already laid me down, Sir.

“Q By the way, Madam Witness, what is your educational attainment?

“A First Year high school, Sir.

“Q He did not kill you when he said that instead according to you he had a sexual intercourse with you, is it not?

“A Yes, Sir.

“Q And according to you before he had sexual intercourse with you, he took off your panty and palda?

“COURT:

You need not to repeat.

“ATTY. BARBERO:

That is what she said, your Honor.

“A Yes, Sir.

“ATTY. BARBERO:

“Q What first did he take off?

“A He removed first my skirt, Sir.

“Q What is the kind of your skirt that you were wearing at that time?

“A Cullotes, Sir.

“COURT:

What is this cullotes?

“ATTY. BARBERO:

It is a skirt but a pants and loose in the thighs, your Honor.

“Q How did he take that off, your pants when you were lying down and you said that he is already on top of you at that time?

“A He pulled it down, Sir.

“COURT:

“Q What was your position?

“A I was already lying down, Sir.

“ATTY. BARBERO:

“Q Isn’t a fact, Madam Witness, that you testified before this Court when you said that when he laid you down, he went on top of you?

“A Yes, Sir, after removing my cullottes and my panty.

“Q After he removed your cullottes, he then again removed your panty when you were lying down?

“A Yes, Sir.

“Q Naturally, in taking off your cullottes and your panty, he used his two hands, is it not?

“A He used both hands, Sir.

“Q And at that time that he was taking off your cullottes and panty both of his hands, you did not bother to kick him and then run away?

“A I tried to defend myself but he is stronger than me, Sir.

“Q However you have all the chances to defend yourself when he was removing your cullottes and panty, why did you not try to kick him and fight him to defend yourself?

“A I tried to fight back but he is stronger than me, Sir.

“Q You did not even try to bite his hands or scratch his face or his breast or whatever part of his body?

“A I cannot bite him because he pushed me down, Sir. (The witness making a gesture of both hands.)

“Q At the time he was pushing you down of both of his hands, he then make sexual intercourse with you, is it not?

“A Yes, Sir.

“Q So since you said both of his hand were being used in pushing you down, how did he able to insert his penis into your private part? Or how was he able to insert his penis into your vagina when both of his hands were pushing you down?

“A He went on top of me and insert his penis into my vagina, Sir.

“Q At the time that he went on top of you, you did not try to close your thighs but you spread it out?

“A Even if I tried to close my thighs, he was so much stronger than I, Sir.

“Q So that at the time that he was pushing you down according to you, both of his hands, you did not have any other recourse than to let him go so that you have no strength?

“A Yes, Sir, because he is stronger than I and I could not do anything.

“Q But during the time he was pushing you down with his two hands and then he did the act of sexual intercourse according to you?

“A Yes, Sir.

“Q And according to you he again transferred you to another place, is it not?

“A Yes, Sir.

“Q How far from the original place?

“A From here up to across the street, Sir.

“COURT:

Which the parties agreed to be simply 25 to 30 meters.

“ATTY. BARBERO:

30 meters, your Honor.

“Q When he transferred you, you followed him?

“A I followed him because he was dragging me, Sir.

“COURT:

“Q What was he pulling?

“A My hand, Sir.

“Q How about your panty and skirt?

“A He was holding them, Sir.

“ATTY. BARBERO:

“Q He was pulling only with one hand?

“A Yes, Sir.

“Q What hand, the right or left hand?

“A My right hand, Sir.

“Q And his left hand was holding your cullottes and your panty?

“A Yes, Sir.

“Q So that you did not try to pull away although it is only his one hand was holding you?

“A I was already weak, Sir.

“Q You are already weak with one sexual intercourse?

“A I was already weak because I was weakened with the experience and you can see my physical built, Sir.

“Q While he was pulling you to transfer to another place you did not even try to bite him or fight back while the other hand was holding your panty and cullottes?

“A Even if I am going to fight him back I am already weak and he is even stronger and bigger than me in built, Sir.

“Q Isn’t a fact that San Antonio is a stony land?

“A Even if San Antonio is stony, at that time I was not able to pick up stone and at that time he was dragging me, Sir.

“Q And you have your left hand to pick up a stone or pick up sand in order to grapple with him?

“A I was already overcome by fear, Sir.

“ATTY. BARBERO:

I think the correct translation for that, your Honor, is; ‘I don’t able to think that anymore.’

“COURT:

Put it on record.

“ATTY. BARBERO:

“Q And even you did not think for shouting even that you said that the place is near the road?

“A I screamed for help but nobody was there to help me, Sir.

“Q How about your husband, why did you not bring him to gather firewood?

“A He was not around, Sir.

“Q Where is your husband?

“A He is working abroad, Sir.

“Q How many years did he work there abroad?

“A He went abroad in October, Sir.

“Q October, what year?

“A October, 1993, Sir.

“COURT:

“Q Is he still abroad?

“A Yes, Sir.

“ATTY. BARBERO:

“Q So that at the time of the incident, your husband is not living with you for more than 6-months?

“A Yes, Sir.

“Q So at that time, it was you who was holding a bolo, is it not?

“FISCAL FLORES:

I think that is a vague question, your Honor.

“COURT:

Witness may answer.

“A Yes, Sir, because I was on my way to gather fireword.

“ATTY. BARBERO:

“Q In fact, it was even you who tried to hack the accused but he got hold on you, is it not?

“A No, Sir, he got hold of my hand right away.

“Q And that the time he got hold your hand and the bolo and it was wounded your face?

“A No, Sir, he pointed the bolo first on my neck.

“Q But your neck was not wounded?

“A Yes, Sir, he just rested the point of the bolo on my neck.

“COURT:

“Q So that the wound at the base of your neck it is not caused by the accused as you said later as the wound opened by the surgeon during your operation in order for breathing?

“A Yes, Sir.

“ATTY. BARBERO:

“Q You said that you were operated for a hack in your face, there was no showing, there is no stitches?

“A You can see three long scars on my forehead, Sir.

“Q That was the time when he moved the bolo on your face?

“COURT:

She said she was unconscious at that time.

“ATTY. BARBERO:

“Q You said that you are unconscious, however the accused did not do anything to you, he did not kill you and

did not stab you until you die?

“FISCAL FLORES:

If she was unconscious at that time, how was she able to know, your Honor?

“COURT:

Reform.

“ATTY. BARBERO:

“Q However, you did not sustain anymore wounds when you were unconscious the accused did not take the opportunity to kill you?

“FISCAL FLORES:

She was already unconscious, your Honor.

“COURT:

Sustained.

“ATTY. BARBERO:

“Q So that according to you the accused left you when you were unconscious?

“FISCAL FLORES:

Objection, your Honor, she was already unconscious.

“COURT:

What is the question?

“ATTY. BARBERO:

“Q So that according to you the accused left you when you were unconscious, that when she regained her consciousness, she found her face bleeding, your Honor?

“COURT:

May answer.

“A Yes, Sir.

“ATTY. BARBERO:

“Q And that was all that the accused did to you, he just left you?

“FISCAL FLORES:

The question is misleading, your Honor.

“COURT:

Reform.

“ATTY. BARBERO:

“Q In your statement found on page 6 of the record, question No. 4 and answer No. 4, you did not state that

you were transferred by the accused and he again raped you, which may I request that it be marked as Exhibit 1, your Honor?

“COURT:

Mark it Exhibit 1, question and answer No. 4, mark the original copy.

“ATTY. BARBERO:

It is found on page 5 of the record of the rape case so with the frustrated murder case, your Honor.

“COURT:

Anyway it is jointly tried.

“ATTY. BARBERO:

“Q You said that when he transferred you to another place, you have all the chances to pick up your cullotes and your panty, however you have never have the chance to pick up a stone and throw his hand?

“A There was no stone beside me, Sir.

“COURT:

“Q Is this place a thickly forested or sparsely?

“A That is a thickly forested place, Sir.

“ATTY. BARBERO:

“Q Isn't a fact, Madam Witness, that San Antonio there are no more forest and then that is being flooded everytime when there was a typhoon?

“A Some parts only, Sir.

“Q Did you not say a while ago that the first he first raped you was along the path and then he brought you farther along the road?

“COURT:

She did not say that. She was not raped beside the road.

“ATTY. BARBERO:

She said, your Honor, transferred me farther the road nearer the path.

“COURT:

Yes, nearer the path. May answer.

“A Yes, Sir.

“COURT:

“Q How far was it from the path?

“A It is about from here up to there, Sir, about half a meter.

“ATTY. BARBERO:

“Q And along that path there are stones and sands because the path is not asfalted, is it not?

“A There are no stones because the soil there was hard, Sir.

“Q You never have any conversation with him at the time, only the fact that he told you he is going to kill you, however he did not kill you but he raped you?

“A Yes, Sir.

“ATTY. BARBERO:

That’s all for the witness, your Honor.”[11]

The testimony of Regina Baga is plain and unswerving. The Court is amply convinced that the trial court could not have erred in giving credence to her testimony. Even an uncorroborated testimony of a single witness, if credible, is enough to warrant conviction. If the rule were otherwise, there rarely would be convictions in rape cases which almost invariably are committed with no eye-witnesses around to attest to their commission. Neither can alibi, verily a mere denial and basically self serving in nature, be held to prevail over positive and affirmative testimony. The rule is even strengthened where the complainant appears to have no nefarious motive to charge the accused wrongly. It would be unthinkable that Regina Baga, a frail woman, weighing barely 100 pounds, married, and 45 years of age at the time of the attack on her honor, would open herself and her family to public scrutiny and embarrassment, let alone send an innocent man possibly to the gallows, for no strong reason at all.

Already in the past, the Court has rejected the argument that the absence of sperm in the vaginal area is a good defense in a rape case. It may not be amiss to add that the medical certificate was issued by Dr. Viado only on 11 May 1994 or several days after the commission of the offense on 29 April 1994. Medical findings indicative of pressure on the genitalia, coupled with the testimony of the victim, have repeatedly been held to suffice.[12]

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 reads:

“ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

“1. By using force or intimidation;

“2. When the woman is deprived of reason or otherwise unconscious; and

“3. When the woman is under twelve years of age or is demented.

“The crime of rape shall be punished by reclusion perpetua.

“Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

“When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

“When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

“When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

“The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

“1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

- “2. When the victim is under the custody of the police or military authorities.
- “3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
- “4. When the victim is a religious or a child below seven (7) years old.
- “5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- “6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- “7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.”

In fine, relevant to the case at bar, when the crime of rape is committed “with the use of a deadly weapon,” the penalty prescribed is reclusion perpetua to death. The death penalty is imposed when by reason or on the occasion of rape, the victim has suffered “permanent physical mutilation.” In this regard, the Court a quo stated:

“It is therefore crystal clear to the mind of this Court that the two counts of rape were committed with the use of a deadly weapon, i.e., the bolo used by the accused in hacking, with the bestiality of an enraged beast, the victim with three strokes on her face all of which were fatal and nearly cost her life. This dastardly and heinous act was accompanied by unusual cruelty and savagery. The victim was left for dead; that she survived is, to the Court, the will of providence so she can identify to the strong arm of the law and to the unerring sword of justice, her attacker.

“In the advent of the reimposition of the death penalty under R.A. No. 7659, Sec. 11, this Court is mandated to impose the death penalty, considering that the victim sustained fatal wounds which left her permanently deformed with the three ugly scars across her face. Furthermore, the wounds were inflicted after she was ravished so that these were therefore unnecessary for the commission of rape, thus displaying the cruelty of the offender.”[13]

The imposition of the death penalty on accused-appellant by the trial court on each count of rape has been premised on the infliction of three scars on the victim’s face. The phrase “permanent physical mutilation” has not been defined in the law. Neither Article 335 of the Revised Penal Code, as so amended by Republic Act No. 7659, nor any of the chapters in Title Eleven, entitled “Crimes against Chastity,” provides any further clue on the meaning that should be given to the term. In Title Eight on “Crimes against Persons,”[14] the Code simply states in Article 262 thereof that -

“Art. 262. Mutilation. - The penalty of from reclusion temporal to reclusion perpetua shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

“Any other intentional mutilation shall be punished by prision mayor in its medium and maximum periods.”

No specific ascription having been given by the law to the word, “mutilation” must perforce be understood in its generic sense and ordinary usage. Webster[15] defines mutilation as cutting off or permanently destroying a limb or an essential part thereof. Black[16] defines the term, in its criminal law concept, as one that would deprive a person of the use of any of those limbs which may be useful to him in fight, the loss of which amounts to mayhem.

A thorough reading of the records of the case would fail to disclose that accused-appellant inflicted the wounds on the victim deliberately to maim her. It would, in fact, appear that the victim sustained the wounds only as a result of a clear attempt by appellant to kill her and cover-up his misdeeds. The injury thus borne by private complainant

should not be taken as a circumstance which would raise the penalty to death for the crime of rape but should instead rightly be taken up and absorbed in the crime of frustrated murder.

Accordingly, for each count of rape, there being neither mitigating nor aggravating circumstance alleged and proved in the commission thereof, the penalty, conformably with Article 63 of the Revised Penal Code, that should properly be imposed on accused-appellant in Criminal Case No. 1481 is reclusion perpetua.

Relative to Criminal Case No. 1482, Article 248 of the Revised Penal Code provides:

“ART. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

“1. With treachery, taking advantage or superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

“2. In consideration of a price, reward or promise.

“3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

“4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

“5. With evident premeditation.

“6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.”

When the crime is frustrated the penalty next lower in degree shall be imposed; hence, Article 50 of the same Code states:

“ART. 50. Penalty to be imposed upon principals of a frustrated crime. - The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.”

The prosecution has satisfactorily shown that accused-appellant did likewise commit the crime of frustrated murder. The wounds inflicted on the hapless victim could have resulted in her death had it not been for the timely medical treatment administered to her. On accused-appellant's contention that he has had no intention to kill the victim, the Court agrees with the Solicitor General in his observations that -

“(the) claim is completely belied by the nature and number of the wounds he inflicted on his victim. The medical examination of the victim reveals that the victim’s hack wounds were indeed fatal. Observedly, the hack wounds extended to the brain matter of Regina. The court a quo dismissed appellant’s defense as a ‘naive story.’ According to him, complainant tried to steal the firewood which appellant had gathered; that when appellant caught complainant in the act, she tried to hack him with her bolo; that in the struggle for possession of the bolo, complainant was accidentally wounded on the face. As correctly concluded by the court a quo, it befuddles the mind how complainant could have accidentally suffered three (3) deep hack wounds on her forehead and face when allegedly, in the course of the struggle, the sharp edge of the bolo faced the accused while its blunt edge faced the complainant. That the wounds inflicted were deep and fatal belies appellant’s claim that the blows were purely accidental.”[17]

On the award in lump sum of "P250,000.00 as actual, moral and exemplary damages" to the victim, the court a quo has acted inaptly. In order to sustain any award for such damages, each must be independently justified and

substantiated which is here unfortunately wanting. For one, exemplary damages are awarded in a criminal offense only when its commission is attended by an aggravating circumstance, a matter which has not been established. Consistent with prevailing jurisprudence,[18] however, the victim is entitled to an indemnity of P50,000.00 for each count of rape.

WHEREFORE, the decision of the Regional Trial Court of Bangued, Abra, in Criminal Case No. 1482, finding appellant SAMUEL BORCE guilty beyond reasonable doubt of the crime of frustrated murder and sentencing him accordingly, is AFFIRMED. The decision in Criminal Case No. 1481, finding the same appellant guilty beyond reasonable doubt of two counts of rape is AFFIRMED with the MODIFICATIONS, however, that the penalty imposed on accused-appellant for each count of rape is hereby reduced to reclusion perpetua, and appellant is ordered to pay, instead of the P250,000.00 damages awarded by the court a quo, an indemnity of P50,000.00 for each count of rape.

Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Records, pp. 176-177.

[2] Records of Crim. Case No. 1481, p. 1.

[3] Records of Crim. Case No. 1482, p. 1.

[4] Rollo, pp. 85-87.

[5] Exh. F, Records of Crim. Case No. 1481, p. 9.

[6] Rollo, p. 22.

[7] Rollo, pp. 43-44.

[8] Rollo, pp. 44-45.

[9] See *People vs. Villanueva*, 265 SCRA 216, citing cases; *People vs. Bernal*, 254 SCRA 659.

[10] TSN, 22 August 1994, pp. 3-8.

[11] *Ibid.*, pp. 21-34.

[12] *People vs. Peralta*, 251 SCRA 6.

[13] Rollo, p. 25.

[14] The crime of rape has been reclassified under the recently enacted Republic Act No. 8353 as a “Crime Against Persons.”

[15] Webster’s Third New International Dictionary.

[16] Black’s Law Dictionary, sixth ed., p. 1020, citing *People vs. Bullington*, 27 Cal. App. 2d 396, 80 P. 2d 1030, 1032.

[17] Rollo, pp. 90-91.

[18] People vs. Espinoza, 247 SCRA 66; People vs. Malunes, 247 SCRA 317.

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