

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO EGAN ALIAS AKIAO, ACCUSED-APPELLANT.*G.R. No. 139338. May 28, 2002*

Ponente: BELLOSILLO, J.

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The universal puff about love being free, doubtless a stale statement, remains a useful piece of legal advice yet for the roaming lothario, to stress that money in all its forms, the dowry included, is not the legitimate consideration for passion and affection which ordinarily spring from courtship and requited love, nor does it endow a license to subject the object of his affection to lewd desires, as the 36-year old Manobo would have now realized.

Lito Egan alias Akiao, thirty-six (36) years old, was an avid admirer of a twelve (12)-year old girl named Lenie T. Camad.[1] Since both the accused and Lenie were members of the Manobo indigenous cultural community in Mindanao and residents of Sitio Salaysay, Marilog, Davao City,[2] he had convenient access to courting her but his love was instantly and decidedly spurned.[3] Between despair and the impossibility of a passionate affair, his unreciprocated love would soon become the frailty of his distressed mind. He was convicted of forcible abduction with rape of Lenie and was meted the penalty of reclusion perpetua and was ordered to pay her the amounts of P30,000.00 for moral damages and P20,000.00 for exemplary damages.[4] The Decision was seasonably appealed to this Court.[5]

On 6 January 1997 Lenie and her cousin Jessica Silona[6] were fetching water at a deep well several meters from Lenie's house in Sitio Salaysay. At around 2:00 o'clock in the afternoon, the accused appeared from nowhere and forcibly dragged and pushed Lenie towards Sitio Dalag, Arakan, Cotabato.[7] He threatened to kill her if she resisted.[8] Before leaving the site of the deep well, he likewise terrorized Jessica by brandishing his hunting knife which forced the girl to scamper for safety.[9] About 5:00 o'clock that same afternoon, Jessica was able to report to Lenie's father, Palmones Camad, the abduction of his daughter.[10] Palmones immediately borrowed the horse of a neighbor and together with a friend proceeded to Sitio Dalag to look for Lenie.[11] They sought the help of the barangay captain of Sitio Dalag and then returned to Sitio Salaysay to rest for the night. For their part, the accused and Lenie stayed that same night in a house in Sitio Dalag.[12]

On 7 January 1997 accused Lito Egan forced Lenie to escort him to Sitio Sayawan, Miokan, Arakan, Cotabato, still threatening to kill her if she shouted or resisted,[13] and there stayed in the house of a sister of Lito.[14] It was in this place where under the cover of darkness and desolation he allegedly raped Lenie.[15] (She would however change her recollection of the alleged rape when she later testified that the crime had happened on 6 January 1997 at the house where they lodged in Sitio Dalag and that no other incidents of rape subsequently took place).[16] On the same day, Palmones Camad continued the search for his daughter in Miokan.[17] With the help of village elders, he was able to talk to Datu Salimbag Paguyan of Sitio Sayawan who confirmed that Lenie and Lito were seen in the sitio.[18] As Palmones was running out of daily provisions, he returned to Sitio Salaysay.[19] Thereafter, the mission to rescue Lenie was continued by the three (3) datos of Sitio Salaysay[20] who, like potentates of a sovereign kingdom, interceded in his behalf with the Datu of Sitio Sayawan for Lenie's

safe release.

For four (4) months[21] the datus attempted a customary settlement of the abduction in accordance with Manobo traditions.[22] It appears that the accused agreed to give two (2) horses to the family of Lenie in exchange for her hand in marriage.[23] Since the accused however reneged on his promise to give two (2) horses,[24] Palmones thus insisted on the unconditional return of his daughter to his custody.[25] Neither did the accused appear before the datus of Sitio Salaysay when he was asked to explain himself before them.[26] Since the amicable settlement was not realized, the accused forcibly relocated Lenie to Cabalantian, Kataotao, Bukidnon, where she was eventually rescued on 15 May 1997.[27]

Lenie lost no time in denouncing the accused and exposing to her village elders the disgrace that had befallen her.[28] She and her father also reported the crime at the police station in Lamundao, Marilog, Davao City.[29] She was turned over to the Balay Dangupan, a shelter house of the Department of Social Welfare and Development,[30] which helped her in obtaining a medico-legal examination[31] and executing the necessary affidavit-complaint against accused Lito Egan.[32]

On 12 August 1997 the Information for forcible abduction with rape was filed against the accused.[33] On 9 July 1998, after several warrants of arrest and attempts to arrest him, he was finally arrested at Arakan, Cotabato.[34] On 28 July 1998 he pleaded not guilty to the crime charged.[35]

When trial ensued, the accused tried to prove that he and Lenie had actually been living together under Manobo rites in the house of her father Palmones Camad since 2 September 1996 after giving dowry or, in the indigenous language, bagay[36] to Lenie's family consisting of one (1) horse, two (2) pigs, ten (10) sacks of palay and P2,000.00.[37] It was also his allegation that after the dowry had been offered and accepted, Palmones demanded one (1) wild horse from him, which forced him and Lenie, who he claimed voluntarily went with him, to depart on 1 January 1997 for Sitio Dalag, Arakan, Cotabato, to capture one.[38] They allegedly stayed in Sitio Dalag at the house of Lenie's aunt, Imbing Camad, until 7 January 1997 when it was evident that they could not find any horse there.[39] He further averred that they went to Sitio Sayawan, Miokan, Arakan, Cotabato, to seek the help of Datu Salimbag Paguyan who fortunately had one (1) wild horse in his stable.[40] The accused allegedly delivered the horse to heed Palmones' command but was again refused when Lenie's father increased the number of horses he was asking from one (1) to two (2).[41] The accused concluded that because he failed to deliver two (2) wild horses which Palmones required, the instant case was filed against him.[42] The accused finally posited that Lenie was aware of the entire situation as she in fact helped him do household chores during their tryst and that she could have shouted or complained to call people's attention while they were walking or when they stayed in populated communities such as Sitio Dalag and Sitio Sayawan, or that she could even have escaped to her father if she really wanted to do so.[43] To prove that he and Lenie were destined for marriage, accused presented a letter dated 4 February 1997 (Exh. "2") addressed to one Apo Boyilon Awe and written by Berting Bayaan purportedly detailing the delivery of two (2) horses to Palmones.[44]

On 5 May 1999 the trial court rejected the defenses of accused Lito Egan and convicted him of forcible abduction with rape;[45] hence, this appeal.

The only issue before us is the calibration of the competing evidence for the prosecution and the defense - verily, our resolution would hinge on whose version is more credible, more plausible and more trustworthy considering the circumstances surrounding the commission of the crime charged.

Accused-appellant Lito Egan was charged with forcible abduction with rape of twelve (12)-year old Lenie T. Camad. Although from the records it appears that Lenie was less than twelve (12) years old as shown by her birth certificate (Exh. "B") [46] when the abduction took place on 6 January 1997 and the alleged rape was perpetrated a

day after, the criminal liability of accused-appellant would nevertheless be confined only to the crime alleged in the Information. Hence, a judgment of conviction is proper only where the prosecution was able to prove the elements of the complex crime of forcible abduction with rape -

x x x x Article 342 of the Revised Penal Code defines and penalizes the crime of forcible abduction. The elements of forcible abduction are (a) that the person abducted is a woman, regardless of her age, civil status, or reputation; (b) that the abduction is against her will; and, (c) that the abduction is with lewd designs. On the other hand, Art. 335 of the same Code defines the crime of rape and provides for its penalty. The elements of rape pertinent to this case are: (a) that the offender had carnal knowledge of a woman; and, (b) that such act is accomplished by using force or intimidation.[47]

All the elements of forcible abduction were proved in this case. The victim, who is a young girl, was taken against her will as shown by the fact that at knife-point she was dragged and taken by accused-appellant to a place far from her abode. At her tender age, Lenie could not be expected to physically resist considering the fact that even her companion, Jessica Silona, had to run home to escape accused-appellant's wrath as he brandished a hunting knife. Fear gripped and paralyzed Lenie into helplessness as she was manhandled by accused-appellant who was armed and twenty-four (24) years her senior. What we held in *People v. Rapisora*[48] could be said in the case at bar -

Appellant would urge the Court to ignore the testimony of complainant for her alleged failure to call for help. In *People vs. Akhtar*, similarly involving the crime of forcible abduction with rape, the same contention was raised. This Court, rejecting the proposition made by the alleged offender, held that '[c]omplainant's failure to ask for help when she was abducted, or to escape from appellant's house during her detention, should not be construed as a manifestation of consent to the acts done by appellant. For her life was on the line. Against the armed threats and physical abuses of appellant, she had no defense. Moreover, at a time of grave peril, to shout could literally be to court disaster. Her silence was born out of fear for her safety, to say the least, not a sign of approval' x x x x This Court, in several cases, has observed that behavioral psychology would indicate that most people, confronted by unusual events, react dissimilarly to like situations. Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.

The evidence likewise shows that the taking of the young victim against her will was done *con miras deshonestas* or in furtherance of lewd and unchaste designs. The word lewd is defined as obscene, lustful, indecent, lascivious, lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on in a wanton manner.[49] Such lewd designs were established by the prurient and lustful acts which accused-appellant displayed towards the victim after she was abducted. This element may also be inferred from the fact that while Lenie was then a naive twelve (12)-year old, accused-appellant was thirty-six (36) years old and although unmarried was much wiser in the ways of the world than she.[50]

Given the straightforward and candid testimony of Lenie and her father Palmones as well as the absence of any motive to testify falsely against accused-appellant, the logical conclusion is that there was no improper motive on their part, and their respective testimonies as to facts proving forcible abduction are worthy of full faith and credit.[51] We generally sustain the factual findings of the trial court on account of its strategic access to circumstances decisive of the question of credibility as it saw and heard the witnesses themselves and observed their behavior and manner of testifying. In the instant case, there is no reason to depart from the rule since no fact or circumstance of weight and influence proving that accused-appellant had abducted Lenie against her will and with lewd designs has been overlooked or the significance of which has been misinterpreted by the court *a quo*. [52] Significantly, accused-appellant has not even challenged the unequivocal pronouncement of the trial

court that the complainant testified in a spontaneous and straightforward manner which thus leaves no doubt in the mind of this Court that she was telling the truth and that her declarations were positive, clear and convincing. The best that he could do to assail the conviction was, unfortunately, to state mere speculations of inconsistencies in the testimonies of the prosecution witnesses without however substantiating by specific examples such conjecture. We have no doubt that his studied silence on the evaluation of evidentiary matters unmistakably preserves the integrity of the decision of the trial court.

Accused-appellant would however insist that he and Lenie had been engaged under Manobo rituals to marry each other and that her companionship was willful and voluntary. Proof of this, he said, was the alleged dowry of one (1) horse, two (2) pigs, ten (10) sacks of palay, and P2,000.00, with two (2) wild horses forthcoming, he had given her father in exchange for her hand in marriage. In moving from one place to another to look for the horses which the old man Palmones had demanded, it was allegedly only his intention to realize his matrimonial aspiration with Lenie.

The testimony of the victim negated this contrived posture of accused-appellant which in reality is simply a variation of the sweetheart defense. If they were, surely, Lenie would not have jeopardized their relationship by accusing him of having held her against her will and molesting her and, on top of it all, by filing a criminal charge against him. If it had been so, Lenie could have easily told her father after the latter had successfully traced their whereabouts that nothing untoward had happened between her and the accused. Her normal reaction would have been to cover-up for the man she supposedly loved and with whom she had a passionate affair. But, on the contrary, Lenie lost no time in denouncing accused-appellant and exposing to her family and the authorities the disgrace that had befallen her. If they had indeed been lovers, Lenie's father would not have shown so much concern for her welfare and safety by searching for the couple for four (4) months, desperately wanting to rescue her from captivity and seeking the intervention of the *datus* in resolving the matter.

Neither was accused-appellant able to present any convincing evidence to substantiate his claim, like love letters, notes and other symbols of affection attesting to a consensual relationship.[53] In fact, none of the persons he and Lenie supposedly lived with during the period that he was allegedly looking for two (2) wild horses could corroborate his claim of engagement under the traditions of the Manobos. Imbing Camad was not summoned to testify and Datu Salimbag Paguyan who took the supposed couple under custody would even admit in his testimony that he knew nothing about the relationship between them.[54] Furthermore, Exh. "2," the letter which allegedly details the matrimonial offer of accused-appellant to Lenie, is inadmissible and otherwise barren of probative value. For one, the letter is hearsay being as it is an out-of-court statement of a person who did not testify; moreover, it was not authenticated during the trial by either its author or its recipient. Nor is it in any manner conclusive of any wedding plans prior to the abduction of Lenie on 6 January 1997, as Exh. "2" is explicitly dated 4 February 1997 and significantly coincides with the attempts of the several *datus* to rescue Lenie from the hands of accused-appellant. Indubitably, all that was done and said in the letter with reference to marrying the girl was clearly an afterthought.[55]

Verily it is evident that accused-appellant was a rejected suitor of Lenie with no hope of having her in marriage and whose persistent offers of love and marriage had been decidedly spurned. It was in the sleepy mid-afternoon of 6 January 1997 when he took the girl by force and at that time no marriage was proved to have been offered by accused-appellant much less considered by Lenie or her elders. The accused dragged the victim to walk with him and to proceed to unknown destinations by warning her of a present and grave danger to her life should she refuse. In the night which followed, he forcibly embraced, kissed, and handled her against her will. No protestation of noble intentions can obviate the conclusion that all these acts proved lewd designs.

To be sure, several acts of accused-appellant would betray his criminal intentions. For one he offered in evidence,

partly through Exh. "2" and to a degree by his testimony, the settlement which he together with Datu Salimbag Paguyan tried to broker with the family of Lenie to suppress the criminal act he had done. The putative agreement was for the accused to deliver a horse to Lenie's father to settle the matter amicably but the agreement did not push through. Since this offer of compromise was sponsored by accused-appellant himself, it clearly amounts to an implied admission of guilt which remains uncontested.[56] Moreover, if he were truly engaged to marry the victim he would not have eluded arrest for one (1) year and dodged several warrants for his arrest. The flight of accused-appellant indubitably proves an awareness of guilt and a consciousness that he had no tenable defense to the crime charged. [57]

Nonetheless even assuming that the accused and the complainant were engaged by virtue of the dowry he had offered, this fact alone would not negate the commission of forcible abduction. An indigenous ritual of betrothal, like any other love affair, does not justify forcibly banishing the beloved against her will with the intention of molesting her. It is likewise well-settled that the giving of money does not beget an unbridled license to subject the assumed fiancée to carnal desires. By asserting the existence of such relationship, the accused seeks to prove that the victim willingly participated in the act. But, as shown above, she certainly did not. Lenie was a Manobo with whom the accused ardently fell in love but was never her lover. The evidence clearly does not speak of consensual love but of criminal lust which could not be disguised by the so-called sweetheart defense or its variant as in the instant case. Finally, as held in *People v. Crisostomo*, [58] the intention to marry may constitute unchaste designs not by itself but by the concurring circumstances which may vitiate such an intention, as in the case of abduction of a minor with the latter's consent, in which the male knows that she cannot legally consent to the marriage and yet he elopes with her. In the case at bar, there is no denying the fact that Lenie was incapacitated to marry accused-appellant under Manobo or Christian rites since she was still a minor [59] thereby demonstrating the existence of lewd designs.

Coming now to the charge of rape, we rule that although the prosecution has proved that Lenie was sexually abused, the evidence proffered is inadequate to establish carnal knowledge. Indeed the victim could only guarantee that "[the accused] had his penis placed between my legs," the gist of which may refer to things both incriminatory or non-incriminatory of rape although equally perverse -

Q:

The following day, January 7, 1997, where did Lito Egan bring you?

A:

To a certain place called [Miokan] x x x x

Q:

During that night, that night when on the second day, where Lito Egan brought you? Where did you sleep?

A:

In a certain uninhabited house.

Q:

What did Lito Egan do to you if any?

A:

He removed my panty.

Q:

What else?

A:

Including my short pants.

Q:

After removing your short pants, what did Lito Egan do?

x x x

A:

He placed himself on top of me.

Q:

What happened when he placed himself on top of you?

A:

I kept on crying

Q:

You said, he placed himself on top of you, please tell us what exactly happened?

A:

He had his penis placed between my legs.

Q:

What did you feel because of that?

A:

I felt pain x x x x

Q:

What was your reaction when Lito Egan placed himself on top of you as well as his penis placed in your private parts?

[Defense Counsel]: The question is misleading. Complainant said, not on her private parts but only on her legs.

A:

I felt pain.

Q:

What did you do when at that time when he placed himself on top of you?

A:

I kept on moving my body.

Q:

And what was the result of your opposition?

A:

I felt great pain x x x x[60]

Sexual abuse cannot be equated with rape.[61] In the case at bar, there is no evidence of entrance or introduction of the male organ into the labia of the pudendum. Lenie's testimony did not establish that there was penetration by the sex organ of the accused or that he tried to penetrate her. The doctor who examined Lenie's vagina on 28 May 1997 would in fact admit upon questioning of the trial judge that "there was no interlabia contact." [62] The medico-legal report would then reflect our statement in *People v. Tayag*[63] "that considering the age of the victim and the condition of her hymen, there should be laceration if there was penetration by an adult male sex organ" when it reported that the hymen was still intact and impenetrable without causing the least hymenal injury. The medico-legal report concluded that there were no evident signs of extragenital physical injuries on the body of the subject at the time of the examination, and her hymen was intact with her orifice small (1.5 cms. in diameter) as to preclude complete penetration by an average-sized male organ in erection without causing hymenal injury.[64]

While it is true that Lenie subsequently testified that there was "intercourse" between her and the accused-appellant, her testimony cannot be accorded such credence as to outweigh her original declarations. For one, there is an irreconcilable contradiction between her two (2) testimonies as to the place and date of the alleged rape. While initially she declared that the alleged rape took place in Miokan on 7 January 1997 she thereafter changed this statement with the allegation that the rape occurred in Sitio Dalag on 6 January 1997. Significantly, the testimony that there was "intercourse" between her and accused-appellant was elicited through leading questions of the trial judge after Lenie had placed on record that accused-appellant after undressing and kissing her and touching her nipples did nothing more.

As we have held in *People v. Tayag*, [65] speculations and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt, and suspicion, no matter how strong, must not sway

judgment. Courts cannot function to supply missing links in the prosecution evidence which otherwise insufficiently proves carnal knowledge. "Criminal cases are decided not on the basis of the weakness of the defense but on the strength of the evidence mustered by the prosecution. This is founded on the presumption of innocence accorded to every accused." [66] In the case at bar, the ambivalent declarations of the victim are testaments to prosecutorial inadequacy. Thus instead of clarifying what she meant by "[the accused] had his penis placed between my legs," the prosecution would itself testify through misleading question that her answer meant that the accused-appellant placed his penis into her private part, to which defense counsel correctly objected and would thereafter leave such important matter hanging by the thread.

Even if we have to assume that Lenie's statement, "[the accused-appellant] had his penis placed between my legs," meant that the penis was "placed in her private part" as the prosecution inappropriately sought to introduce, the statement would still be speculative as to whether the penis of accused-appellant in reality entered the labial threshold of the female organ to accurately conclude that rape was committed. The ambiguity in the case at bar would in fact be even more uncertain than those we have come across and declared unanimously as insufficient to prove carnal knowledge. In *People v. Francisco* [67] we found the testimony of the victim that "(h)indi po sa butas pero sa aking pepe lang" to be inconclusive as it was "shrouded in ambiguity," and further declared -

The prosecution has the onus probandi of establishing the precise degree of culpability of the accused. It must demonstrate in sufficient detail the manner by which the crime was perpetrated. Certainly, the testimony of the victim to the effect that the accused repeatedly poked her vagina and that she felt pain as a consequence thereof, would not be enough to warrant the conclusion that a consummated rape had indeed been committed. The quantum of evidence in criminal cases requires more than that.

Prior to *Francisco*, we ruled in *People v. Tolentino* [68] that the testimony, "binundul-bundol ang kanyang ari," did not conclusively prove that rape was committed to the exclusion of other offenses and further held that "this testimony is subject to different interpretations and will not lead to the conclusion that [the accused's] intent was to have carnal knowledge of her." No consummated rape took place in *People v. Arce* [69] on account of the victim's claim that the accused "attempted to touch her vagina with his penis or 'idinidikit yung ari niya.'" In these cases where the victim herself, as Lenie in the instant case, failed to state for the record that there was insertion of the penis into her vagina, rape was deemed not to have been committed. Together with the absolutely non-incriminating medical certificate, which is the only corroborative evidence available, the likelihood for the consummation of rape in the instant case was nil. In *People v. Campuhan* [70] we held -

In cases of rape where there is a positive testimony and a medical certificate, both should in all respects complement each other; otherwise, to rely on the testimonial evidence alone, in utter disregard of the manifest variance in the medical certificate, would be productive of unwarranted or even mischievous results. It is necessary to carefully ascertain whether the penis of the accused in reality entered the labial threshold of the female organ to accurately conclude that rape was consummated. Failing in this, the thin line that separates attempted rape from consummated rape will significantly disappear.

Under the circumstances, the criminal liability of accused-appellant is only for forcible abduction under Art. 342 of The Revised Penal Code. The sexual abuse which accused-appellant forced upon Lenie constitutes the lewd design inherent in forcible abduction and is thus absorbed therein. The indecent molestation cannot form the other half of a complex crime [71] since the record does not show that the principal purpose of the accused was to commit any of the crimes against chastity and that her abduction would only be a necessary means to commit the same. [72] Surely it would not have been the case that accused-appellant would touch Lenie only once during her four (4)-month captivity, as she herself admitted, if his chief or primordial intention had been to lay with her. Instead, what we discern from the evidence is that the intent to seduce the girl forms part and parcel of her forcible abduction and shares equal importance with the other element of the crime which was to remove the

victim from her home or from whatever familiar place she may be and to take her to some other.[73] Stated otherwise, the intention of accused-appellant as the evidence shows was not only to seduce the victim but also to separate her from her family, especially from her father Palmones, clearly tell-tale signs of forcible abduction -

Both the civil and the common law authorities agree in the conclusion that the crime of abduction is one sumamente grave y odioso (highly serious and detestable). The penal law regarding abduction, says the supreme court of Spain, was intended to punish the offense against public morality and the insult to the family of the abducted girl. (Decisions of the supreme court of Spain of November 30, 1876; June 19, 1891; and June 15, 1895; U. S. vs. Bernabe [1912], 23 Phil., 154.) The abduction statutes, say the American authorities, were intended for the preservation of the peace of the home and the virtue of inexperienced females, and to save the members of the family from sorrow and disgrace. (People vs. Fowler [1891], 88 Cal., 136; State vs. Overstreet [1890], 43 Kan., 299; People vs. Bristol [1871], 23 Mich., 118; State vs. Chisenhall [1890], 106 N. C., 676; Rex vs. Pigot, 12 Modern 516, 88 Reprint, 1488.) The three elements in the crime punished by article 445 of the Penal Code are: (1) That the person abducted be a woman; (2) that the abduction must have been against the will of the woman; and (3) that the abduction must have been for lewd or unchaste designs. (5 Viada,Codigo Penal, 143; U. S. vs. Borromeo [1912], 23 Phil., 279)[74] (underscoring supplied).

Verily the single sexual abuse of Lenie although accused-appellant had other opportunities to do so was itself the external manifestation of his lewd design, and hence he could not be punished for it either separately or as part of a complex crime. The overt acts in the case at bar are clearly unlike the actus reus in a complex crime of forcible abduction with rape where the preparatory sexual advances upon the victim constitute the lewd designs which consummate the forcible abduction with the ensuing rape transpiring as another crime (although rape is itself the grossest manifestation of lewd designs) that may no longer be absorbed in but must be complexed with forcible abduction. As further illustrated by Prof. Luis B. Reyes –

The act of appellant in grabbing the victim while she was walking towards barrio San Agustin, and dragging her into the cornfields, some 40 meters away from the footpath, where by means of force he tried to have sexual intercourse with her but did not perform all the acts necessary to consummate such purpose, only constitutes abduction and not abduction complexed with attempted rape, because said appellant took away the victim for the purpose of corrupting her. In other words, the attempt to rape her is absorbed by the abduction, being the element of lewd design of the latter.[75]

In *People v. Tayag*[76] where there was insufficient evidence to prove carnal knowledge despite a charge of forcible abduction with rape, we convicted the accused only of forcible abduction -

Although the prosecution has proven that Lazel was sexually abused, the evidence proffered is inadequate to prove she was raped x x x x Accused-appellant is not, however, off the hook. The prosecution proved the crime of forcible abduction. It established that accused-appellant took Lazel against her will and with lewd designs. The word "lewd" is defined as obscene, lustful, indecent, lascivious, lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on in a wanton manner. The medico-legal finding and Lazel's testimony although insufficient to prove rape, buttress the conclusion that accused-appellant had lewd designs when he abducted Lazel. Article 342 of the Revised Penal Code defines and punishes forcible abduction x x x x IN VIEW WHEREOF, the decision convicting accused-appellant of forcible abduction with rape is modified. Accused-appellant is convicted for forcible abduction and is sentenced to suffer 12 years of prision mayor to 17 years and 4 months of reclusion temporal and to pay the victim P30,000.00 as moral damages. No costs.

Significantly, we cannot consider any aggravating circumstance since under Sec. 8 of Rule 110 of the Revised Rules of Criminal Procedure, effective 1 December 2000 but applicable to the instant case,[77] the complaint or information must not only state the designation of the offense given by statute and aver the acts or omissions constituting the offense, but also "specify its qualifying and aggravating circumstances." The Information against

accused-appellant does not specify any of the circumstances which would have aggravated the offense charged or its penalty.

In hindsight, one may say that the instant case is all about love extending beyond the realm of law and morality. The titillation which this abstraction brings forth, however, should not gloss over the fact that a young innocent girl was ruthlessly torn from the side of her family, overpowered by superior strength, her cries for help stifled, and rushed to an unknown house and there defiled. Certainly, there is something more to be endured by her than mere physical pain although that may not be inconsiderable. In justifying the penalty imposed upon such misguided act, even if it was done purportedly to soothe the indignity of an unrequited love, we said in *United States v. Borromeo*:^[78] "[W]hen such an occurrence ceases to be a reality to her and becomes a memory, if it ever does, she may derive no comfort, no pride, no satisfaction by recalling it. Shame, misery, mortification, are her lot. Nor can she, if she would, banish the dreadful occurrence from her thoughts. The story has spread like wildfire. Pitying looks, pointing fingers, and morbid stares remind her everywhere she goes of her terrible experience x x x x In the case of the girl, the effects are permanent and far-reaching. Time may lessen but can never annul her sufferings. Nor is she the only sufferer. Her whole family, to a lesser degree, shares in her humiliation."

WHEREFORE, the Decision of the court a quo convicting accused-appellant LITO EGAN alias Akiao of forcible abduction with rape is MODIFIED. Accused-appellant is instead declared guilty of Forcible Abduction only under Art. 342 of The Revised Penal Code and is sentenced to an indeterminate prison term ranging from six (6) years, two (2) months and ten (10) days of prison mayor minimum as minimum, to fourteen (14) years, eight (8) months and twenty (20) days of reclusion temporal medium as maximum. Accused-appellant is further ordered to pay moral damages in the amount of P30,000.00 and exemplary damages in the amount of P20,000.00 as fixed by the court a quo to be paid to private complainant Lenie T. Camad. Costs against accused-appellant.

SO ORDERED.

Mendoza, Quisumbing, De Leon, Jr., and Corona, JJ., concur.

[1] TSN, 5 October 1998, p. 9; TSN, 19 October 1998, pp. 11, 28.

[2] TSN, 31 August 1998, p. 7; TSN, 5 October 1998, p. 2.

[3] TSN, 19 October 1998, p. 28.

[4] Decision dated 5 April 1999 by Judge Renato A. Fuentes of RTC-Br. 17, Davao City, promulgated 5 May 1999; Original Record, p. 90.

[5] *Id.*, p. 93.

[6] TSN, 5 October 1998, p. 9.

[7] *Id.*, p. 3; TSN, 19 October 1998, p. 5.

[8] TSN, 19 October 1998, p. 4.

[9] TSN, 5 October 1998, p. 4.

[10] TSN, 31 August 1998, p. 17.

[11] *Id.*, p. 8.

[12] TSN, 19 October 1998, p. 5.

[13] Ibid.

[14] TSN, 8 December 1998, p. 4.

[15] TSN, 19 October 1998, pp. 6, 7; Decision of the RTC, pp. 2-3; Original Record, pp. 69-70.

[16] TSN, 19 October 1998, pp. 30-32.

[17] TSN, 31 August 1998, pp. 9-10.

[18] Id., p. 10.

[19] Ibid.

[20] They were Datu Ricardo Bangkas, Datu Ugalingan Tawan and Datu Liawin Tibayan; TSN, 5 October 1998, p. 18.

[21] TSN, 19 October 1998, p. 17.

[22] Id., p. 11.

[23] Id., p. 13; TSN, 5 October 1998, pp. 18, 22.

[24] TSN, 19 October 1998, p. 13.

[25] TSN, 5 October 1998, p. 19.

[26] TSN, 31 August 1998, p. 10.

[27] Id., p. 11.

[28] Id., p. 12; TSN, 5 October 1998, p. 27.

[29] TSN, 31 August 1998, p. 12.

[30] Ibid.

[31] Id, p. 3; Original Record, p. 36; Exh. A.

[32] Original Record, p. 3.

[33] Id., p. 1.

[34] Id., p. 10.

[35] Id., p. 15.

[36] TSN, 3 February 1999, p. 3.

[37] TSN, 1 December 1998, p. 4.

[38] Id., p. 5.

[39] Id., p. 7.

[40] Ibid.

[41] Ibid.

- [42] Ibid.
- [43] TSN, 8 December 1998, pp. 17-18.
- [44] Original Record, p. 57.
- [45] Id., p. 67.
- [46] According to the birth certificate, Lenie was born on 25 May 1985; id., p. 37
- [47] *People v. Sunpongco*, No. L-42665, 30 June 1988, 163 SCRA 222, 230.
- [48] *People v. Rapisora*, G.R. No. 138086, 25 January 2001.
- [49] *People v. Grefiel*, G.R. No. 77228, 13 November 1992, 215 SCRA 596, 607.
- [50] III R. Aquino, *The Revised Penal Code* 454 (1988).
- [51] *People v. Valera*, No. L-15662, 30 August 1962, 5 SCRA 910; *People v. Borbano*, 76 Phil. 702(1946); *People v. Gonzales*, 76 Phil. 473 (1946).
- [52] *People v. Cruz, Sr.*, G.R. No. 71462, 30 June 1987, 151 SCRA 609, citing other cases.
- [53] *People v. de la Torre*, G.R. No. 98431, 15 January 2002.
- [54] TSN, 8 December 1998, p. 11.
- [55] See *United States v. Borromeo*, 23 Phil. 279 (1912).
- [56] Revised Rules of Court, Rule 130, Sec. 27; *People v. Delovino*, G.R. Nos. 116132-33, 23 August 1995, 247 SCRA 637.
- [57] *People v. Tumala*, G.R. No. 122100, 20 January 1998, 284 SCRA 436; *People v. Sarellana*, G.R. Nos. 102056-57, 8 June 1994, 233 SCRA 31.
- [58] 46 Phil. 775 (1923).
- [59] TSN, 1 December 1998, pp. 3-4; TSN, 5 October 1998, pp. 23, 26.
- [60] TSN, 19 October 1998, pp. 7-8.
- [61] *People v. Tayag*, G.R. No. 132053, 31 March 2000, 329 SCRA 491.
- [62] TSN, 31 August 1998, p. 5.
- [63] See Note 61, p. 500.
- [64] Exh. A; Original Record, p. 36.
- [65] See Note 61.
- [66] Ibid.
- [67] G.R. Nos. 135201-02, 15 March 2001.
- [68] G.R. No. 130514, 17 June 1999, 308 SCRA 485, 493.
- [69] G.R. Nos. 139064-66, 6 September 2001.
- [70] G.R. No. 129433, 30 March 2000, 329 SCRA 270, 287.

[71] For example, forcible abduction with any of the crimes against chastity.

[72] *People v. Delovino*, see Note 56; but see *People v. Mejorada*, G.R. No. 102705, 30 July 1993, 224 SCRA 837 where we held that rape may absorb forcible abduction if the main objective was to rape the victim which may be shown by, as held in *United States v. De Vivar*, 29 Phil. 451 (1915), the short duration of the detention.

[73] *United States v. De Vivar*, 29 Phil. 451 (1915).

[74] *United States v. Ramirez*, 39 Phil. 738, 743-744 (1919).

[75] II L.B. Reyes, *The Revised Penal Code* 880 (1988), citing *People v. Magtabog*, 4 C.A. Rep. 802; III A. Padilla, *The Revised Penal Code* 498-499 (1972).

[76] See Note 61, pp. 498, 500.

[77] *People v. Sagarino*, G.R. Nos. 135356-58, 4 September 2001.

[78] See Note 55, pp. 290-291.

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