

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEFFREY GARCIA Y CARAGAY AND THREE JOHN DOES, ACCUSED.*G.R. No. 141125. February 28, 2002*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141125/>**PER CURIAM:**

This is an automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, of the decision of the Regional Trial Court of Baguio City, Branch 6, dated October 28, 1999, convicting accused-appellant Jeffrey Garcia y Caragay of Forcible Abduction with Rape and three counts of Rape, and sentencing him to death. [1]

The victim, Cleopatra Changlapon, was nineteen years old and a sophomore student of B.S. Physical Therapy at the Baguio Central University. On July 14, 1998, she left school at 6:30 p.m. to go home to Km. 3, La Trinidad, Benguet. As she was crossing Bonifacio Street, Baguio City, she saw a white van approaching so she stopped to let it pass. Suddenly, the van stopped in front of her. The rear door slid open and Cleopatra was pulled by the arms into the van. She struggled as the door closed and the van sped away. Something was sprayed on her face which made her eyes sting and feel dizzy. She shouted, then she felt a fist blow on her stomach and she fell unconscious. [2]

When Cleopatra came to, she was inside a room. She was totally undressed and was lying flat on her back on a bed. In the room with her were four men. One of them, who had Bombay features, was also totally naked while the other three were clad in briefs and smoking cigarettes. The Bombay-looking man lay on top of her. She tried to push him away but he held her left arm. Another man with long hair, whom she later identified as accused-appellant Jeffrey Garcia, burned her right chin with a lighted cigarette. Cleopatra fought back but accused-appellant held her right arm. While accused-appellant was seated on her right side and holding her, the Bombay-looking man proceeded to have sexual intercourse with her. She tried to kick him and close her legs, but two men were holding her feet. The two men boxed her thighs and burned her legs with cigarettes.[3]

After the Bombay-looking man finished having sexual intercourse with Cleopatra, accused-appellant took his turn and went on top of her. One of the men sat on her right leg and pinned it down, while another held her left leg. Cleopatra tried to punch accused-appellant with her right hand, but the Bombay-looking man held her right arm. Accused-appellant then had sexual intercourse with her while holding her left arm. [4]

The third man, whom Cleopatra noted had pimples on his face, went on top of her. The Bombay-looking man was still holding her right arm, while the man on top of her held her left arm. She tried to close her legs but someone hit her right thigh, which forced her to keep her legs apart. The third man with pimples succeeded in having carnal knowledge of her. [5]

The fourth man was next in raping Cleopatra. By that time, she was feeling helpless and was too tired to struggle. As the fourth man was having sexual intercourse with her, she saw the Bombay-looking man burning her panties with a lighted cigarette. She closed her eyes and heard the men laughing. After the fourth man finished raping her, he got up. She felt dizzy and her private parts were aching. She opened her eyes and tried to move, but

accused-appellant hit her on the abdomen. [6]

One of the men again sprayed something on Cleopatra's face which made her vision blurred. She heard somebody say that it was 1:30.[7] After that, she blacked out. When she regained consciousness, she was lying by the roadside somewhere between Tam-awan and Longlong. It was still dark. She already had her clothes on. She felt pain all over her body and was unable to move. A taxi passed by and picked her up. Although she was afraid to ride the taxi, she boarded it just to get home. The taxi brought her to her house.[8]

Her aunt, Rufina Angog, saw Cleopatra alight the taxi crying. She also noticed that Cleopatra's clothes were inverted and she smelled bad. She woke up Cleopatra's brothers and cousins.[9] They asked her what happened. Cleopatra just kept crying and was unable to talk. After some time, when she was able to regain her composure, she told them that she had been raped by four men. [10]

The following day, July 15, 1998, Cleopatra was brought to the Baguio City Police Station. After giving her statement to the police, she was brought to the Crime Laboratory of the Baguio City Police, where she was examined by Dr. Vladimir Villaseñor.

In his Medico-Legal Report, Dr. Villaseñor wrote the following findings:

FINDINGS:

General and Extra-genital:

Fairly nourished, fairly developed coherent female subject. Breasts are hemispherical with light brown areola and nipples from which no secretion could be pressed out. Abdomen is soft and flabby.

The following are the injuries noted:

- Second degree burns, mental region, measuring 1.3.1cm, 3cm from the anterior midline.
- Second degree burns, left supra-mammary region, measuring 1 x 1cm, 8cm from the anterior midline.
- Second degree burns, left supra-mammary region, measuring 0.6x0.6 cm, 8.5cm from the anterior midline.
- Second degree burns, left hypothenar region, measuring 1x0.5cm, 7cm from the posterior midline.
- Second degree burns, left middle 3[rd] of the left thigh, measuring 2x1cm, 13cm from the anterior midline.
- Second degree burns, middle 3[rd] of the right thigh, measuring 1x 1cm, 10cm from the anterior midline.
- Contusion, left mammary region, measuring 3x1cm, 5cm from the anterior midline.
- Contusion, right mammary region, measuring 1x1cm, 9cm from the anterior midline.
- Contusion, middle 3[rd] of the right arm, measuring 5x3cm, 3cm from the anterior midline.
- Contusion, middle 3[rd] of the right thigh, measuring 6x4cm, 3cm from the anterior midline.
- Hematoma, left zygomatic region, measuring 4x4cm 7cm from the anterior midline.

There is tenderness on the mammary region, both thighs and at the abdominal region.

Genital:

There is abundant growth of pubic hair. Labia majora are full convex, gaping, with the congested abraded labia minora presenting in between. On separating the same is disclosed a congested hymen with shallow fresh lacerations at 7, 8 and 9 o'clock and deep fresh laceration at 6 o'clock positions. External vaginal orifice

offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is congested with moderate amount of whitish secretion.

CONCLUSION:

Findings are compatible with recent loss of virginity.

Barring unforeseen complications, it is estimated that the above injuries will resolve in 14-15 days.

REMARKS:

Vaginal and peri-urethral smears are negative for gram (-) diplococci and POSITIVE for spermatozoa. [11]

The panties that Cleopatra was wearing was also submitted to the Crime Laboratory for examination. Dr. Villaseñor found cigarette burns and seminal stains, [12] as well as stains of blood on the panties. [13] The Medico-Legal Report states:

SPECIMEN SUBMITTED:

Specimen "A" - One (1) white printed panty with cigarette burns and with suspected seminal stains.

xxx xxx xxx.

FINDINGS:

Biochemical examination conducted on the above-mentioned specimen gave POSITIVE result to the test for the presence of seminal stains.

CONCLUSION:

Specimen "A" revealed the presence of seminal stains. [14]

On July 17, 1998, Cleopatra went back to the police station and gave a description of the four rapists to the cartographer. [15] She likewise executed another sworn statement to the police. [16]

Meanwhile, accused-appellant was arrested at 4:30 p.m. of July 17, 1998 in connection with another rape charge against him filed by a certain Gilda Mangyo.

The cartographic sketches were published in the Sun-Star newspaper. Police Officers Gilbert Bulalit and Archibald Diaz saw the sketches and noticed that one of the suspects depicted in the cartographic sketch bore a striking resemblance to accused-appellant, who was in their custody. [17] On July 26, 1998, Cleopatra was summoned to the police station to identify accused-appellant. She was brought to the upper floor of the police building and asked to look below on the basketball court of the city jail and see if any of the inmates looked familiar to her. [18] Cleopatra recognized accused-appellant among those watching the basketball game. [19]

PO1 Bulalit brought accused-appellant to the office upstairs. When Cleopatra saw accused-appellant face to face, she started to tremble and cry. Then she tried to attack him but she was restrained by the police officers. [20] On the same day, Cleopatra gave a supplemental statement to the police, confirming her identification of accused-appellant as one of her rapists.[21]

Inquest proceedings followed in due course. [22] On July 27, 1998, formal charges for forcible abduction with rape were brought against accused-appellant and three John Does, under an information which alleged:

That on or about the 14[th] day of July, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another,

did then and there willfully, unlawfully and feloniously, and by means of force and intimidation abduct CLEOPATRA CHANGLAPON, 19 years old, by dragging her inside a van and taking her to Tam-awan Village, Baguio City, against her will and with lewd design, and once inside a house, had carnal knowledge of her, also by means of force and intimidation and against her will.

CONTRARY TO LAW. [23]

The information was docketed as Criminal Case No. 15805-R of the Regional Trial Court of Baguio City, Branch 6. Accused-appellant was arraigned, wherein he entered a plea of not guilty. Trial ensued as against him, while the other three unidentified accused remained at large.

Accused-appellant testified that he spent the whole day of July 14, 1998 at the boarding house where his brother-in-law lived, located at No. 36 Torres Bugallon Street, Aurora Hills, Baguio City. His brother-in-law asked him to go there to take care of his nephew. That evening, while he was in the said house watching television, some of his friends came over to visit him. They brought a bottle of gin and began to have a drinking session. Accused-appellant did not join them because his stomach was upset. Accused-appellant's brother-in-law arrived a little before midnight, after which his guests left. [24] When asked about the charges of rape against him, he denied the same. [25]

Catherine Faith Madella was among those who visited accused-appellant in the evening of July 14, 1998. She came to know him through her friend, Joy Tabinas, who was a tenant at the said boarding house. Madella testified that she went to the boarding house on July 14, 1998 at 9:00 p.m. At 12:00 midnight, she went to the bedroom of Joy Tabinas and slept there. [26] Her testimony was corroborated by her boyfriend, Ronaldo T. Valdez, who also testified for the defense.[27]

Joy Tabinas likewise testified that on July 14, 1998, she was at the boarding house. She watched television with accused-appellant from 6:00 to 10:00 p.m. [28]

On October 28, 1999, the trial court rendered its decision convicting accused-appellant of one count of forcible abduction with rape and three counts of rape. The dispositive portion of the judgment reads:

WHEREFORE, the Court Finds the Accused Jeffrey Garcia guilty beyond reasonable doubt of the complex crime of Forcible Abduction with Rape and likewise of the three (3) crimes of rape in conspiracy with three (3) others whose identities and whereabouts are yet unknown as charged in the Information and hereby sentences him to the supreme penalty of DEATH in each of the 4 offenses aforementioned; to indemnify the offended party, Cleopatra Changlapon, the sum of One Hundred Forty Six Thousand, One Hundred Twenty Five Pesos and Seventy Five Centavos (P 146,125.75) as actual damages and Fifty Thousand Pesos as moral damages without subsidiary imprisonment in case of insolvency and to pay one fourth (1/4) of the costs.

The police authorities are directed to exert all efforts to identify and arrest the three other accused whose identities and whereabouts are yet unknown.

Meantime, pending their arrests, the case is Archived in respect to the three (3) other accused whose identities and whereabouts are yet unknown to be revived upon their arrest.

SO ORDERED. [29]

In his Brief, accused-appellant raises the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING HEREIN ACCUSED-APPELLANT JEFFREY GARCIA Y CARAGAY GUILTY BEYOND REASONABLE DOUBT FOR THE COMPLEX CRIME OF

FORCIBLE ABDUCTION WITH RAPE AND FOR THREE (3) COUNTS OF RAPE ALLEGEDLY COMMITTED IN CONSPIRACY WITH THREE (3) OTHERS WHOSE IDENTITIES AND WHEREABOUTS ARE STILL UNKNOWN.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING SCANT CONSIDERATION TO THE THEORY OF THE DEFENSE THAT ACCUSED-APPELLANT JEFFREY GARCIA Y CARAGAY IS ONLY A LOOK-ALIKE OF THE REAL CULPRIT.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT CLEOPATRA CHANGLAPON HAD POSITIVELY IDENTIFIED JEFFREY GARCIA Y CARAGAY AS ONE OF THOSE WHO ABDUCTED AND RAPED HER. [30]

Accused-appellant assails his conviction based on complainant's identification. According to him, the identification was improperly suggested by the police. We are not persuaded. Based on our own review of the records of this case, we find that complainant was neither influenced nor induced by the police to point to accused-appellant as one of her molesters. On the contrary, the transcripts convincingly show that complainant was left to freely study the faces of the thirty or more inmates on the basketball court below to see whether she recognized any of them. [31] There was no suggestion from the police to point to the new detainee, who had just been arrested on another rape charge.

Owing to the gravity of the crime and penalty involved, we have meticulously studied the testimony of complainant Cleopatra Changlapon and find it to be clear, straightforward and categorical. The details of her narration are consistent on all material points. Her actions throughout her ordeal correspond to normal human behavior. We take particular note of her natural and spontaneous reaction of crying and attacking her molester when brought before her face to face. The records also eloquently exhibit that she repeatedly cried throughout her testimony. All of these actuations bear the ring of truth and deserve full faith and credit.

More importantly, complainant's narration of the events is well substantiated by the physical evidence. The second degree burns found on her face, chest and thighs prove that she was indeed burned with lighted cigarettes whenever she attempted to fight her assailants. The medico-legal officer confirmed that they were consistent with cigarette burns. [32] Furthermore, the contusions found on her body were said to be caused by a blunt instrument like a closed fist. [33] This confirms her testimony that she was repeatedly hit to stop her from struggling. The medico-legal officer placed the time of infliction of the external physical injuries on complainant within the last twenty-four hours. [34] The findings on her genitals --- namely the gaping labia majora, the congested and abraded labia minora, and the lacerations --- all suggest the entry of a foreign object, such as a fully erect male organ. [35] Finally, the presence of spermatozoa further confirms that complainant recently had sexual intercourse. [36]

In the face of complainant's positive and categorical declarations that accused-appellant was one of her rapists, accused-appellant's alibi must fail.

It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law. [37]

Furthermore, in order that the defense of alibi may prosper, accused-appellant must establish not only that he was

somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed. [38] In the case at bar, the place of commission of the rapes --- somewhere between Tam-awan and Longlong --- and the boarding house where accused-appellant alleged he was in the evening of July 14, 1998, are both situated within Baguio City. The distance between Tam-awan and Aurora Hills, especially at dawn, can be traversed in just a matter of minutes.

Indeed, as pointed out by the trial court, accused-appellant's witnesses failed to account for his whereabouts after 12:00 midnight. At the time of the rape, complainant distinctly heard one of her molesters state the time as 1:30. Since it was still dark when complainant was dropped off on the side of the road, it can safely be assumed that the crimes were committed at dawn.

The trial court, therefore, did not err in convicting accused-appellant of the complex crime of forcible abduction with rape. The two elements of forcible abduction, as defined in Article 342 of the Revised Penal Code, are: (1) the taking of a woman against her will and (2) with lewd designs. The crime of forcible abduction with rape is a complex crime that occurs when there is carnal knowledge with the abducted woman under 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. [39]

In the case at bar, the information sufficiently alleged the elements of forcible abduction, i.e., the taking of complainant against her against her will and with lewd design. It was likewise alleged that accused-appellant and his three co-accused conspired, confederated and mutually aided one another in having carnal knowledge of complainant by means of force and intimidation and against her will.

Aside from alleging the necessary elements of the crimes, the prosecution convincingly established that the carnal knowledge was committed through force and intimidation. Moreover, the prosecution sufficiently proved beyond reasonable doubt that accused-appellant succeeded in forcibly abducting the complainant with lewd designs, established by the actual rape. [40]

Hence, accused-appellant is guilty of the complex crime of forcible abduction with rape. He should also be held liable for the other three counts of rape committed by his three co-accused, considering the clear conspiracy among them shown by their obvious concerted efforts to perpetrate, one after the other, the crime. As borne by the records, all the four accused helped one another in consummating the rape of complainant. While one of them mounted her, the other three held her arms and legs. They also burned her face and extremities with lighted cigarettes to stop her from warding off her aggressor. Each of them, therefore, is responsible not only for the rape committed personally by him but for the rape committed by the others as well. [41]

However, as correctly held by the trial court, there can only be one complex crime of forcible abduction with rape. The crime of forcible abduction was only necessary for the first rape. Thus, the subsequent acts of rape can no longer be considered as separate complex crimes of forcible abduction with rape. They should be detached from and considered independently of the forcible abduction. Therefore, accused-appellant should be convicted of one complex crime of forcible abduction with rape and three separate acts of rape. [42]

The penalty for complex crimes is the penalty for the most serious crime which shall be imposed in its maximum period. Rape is the more serious of the two crimes and, when committed by more than two persons, is punishable with reclusion perpetua to death under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. Thus, accused-appellant should be sentenced to the maximum penalty of death for forcible abduction with rape. [43]

As regards the other three acts of rape, accused-appellant can only be sentenced to reclusion perpetua. The trial

court appreciated the aggravating circumstances of nighttime, superior strength and motor vehicle. However, these were not alleged in the information. Under the amended provisions of Rule 110, Sections 8 and 9 of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, aggravating as well as qualifying circumstances must be alleged in the information, otherwise, they cannot be considered against the accused even if proven at the trial. Being favorable to accused-appellant, this rule should be applied retroactively in this case. [44] Hence, there being no aggravating circumstance that may be appreciated, and with no mitigating circumstance, the lesser of the two indivisible penalties shall be applied, pursuant to Article 63, paragraph (2) of the Revised Penal Code.

Anent the matter of damages, the trial court correctly awarded the amount of P50,000.00 as moral damages. This was justified by complainant's emotional and physical suffering, as narrated in her testimony. [45] Notably, the prosecution successfully proved that complainant lost her virginity during the rape. [46] As she narrated, virginity is a highly regarded virtue among the people of Kalinga. [47]

However, the trial court failed to award civil indemnity to the complainant. We have ruled that if rape is committed or qualified by any of the circumstances which authorize the imposition of the death penalty, the civil indemnity shall be not less than P75,000.00. [48] For the other three counts of simple rape, where the proper penalty is reclusion perpetua, accused-appellant is liable for civil indemnity in the amount of P50,000.00 for each count. [49]

We also find that the actual damages awarded by the trial court was well substantiated. Complainant presented the required receipts for her medications, transportation and other expenses. [50] Complainant testified that as a member of the Kalinga tribe, she had to undergo the korong and songa rituals, wherein they had to butcher several chickens, pigs, and carabaos, thereby incurring total expenses of P90,000.00. [51] These rituals were intended for complainant's safety and to call on the tribe's spirits so that no more violence or misfortune may befall her. [52] The grand total of all these actual expenses, including those for medicines and transportation, as duly proved by the receipts and computations presented in evidence, is P 146,125.75, [53] the amount awarded by the trial court.

WHEREFORE, based on the foregoing, the Decision of the Regional Trial Court of Baguio City, Branch 6, in Criminal Case No. 15805-R, convicting accused-appellant Jeffrey Garcia y Caragay of one count of Forcible Abduction with Rape and three counts of Rape, is **AFFIRMED** with **MODIFICATIONS**. As modified, accused-appellant is sentenced to suffer the penalty of Death for the complex crime of Forcible Abduction with Rape and Reclusion Perpetua for each of the three counts of rape. Further, accused-appellant is ordered to pay complainant Cleopatra Changlapon the amounts of P146,125.75 as actual damages, P75,000.00 as civil indemnity and P50,000.00 as moral damages. Costs against accused-appellant.

In accordance with Article 83 of the Revised Penal Code, as amended, upon finality of this Decision, let the records of this case be forwarded to the Office of the President for possible exercise of pardoning power or executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Penned by Judge Ruben C. Ayson.

[2] TSN, November 9, 1998, pp. 3-7.

- [3] Ibid., pp. 8-16.
- [4] Ibid., pp. 17-20.
- [5] Ibid., pp. 20-22.
- [6] Ibid., pp. 22-24.
- [7] Ibid., pp. 24-25.
- [8] Ibid., pp. 28-34.
- [9] Ibid., pp. 34-35.
- [10] TSN, November 11, 1998, pp. 9-10.
- [11] Exh. "D".
- [12] Exh. "E-1"; TSN, October 1, 1998, p. 62.
- [13] Exh. "H-1"; TSN, October 8, 1998, p. 56.
- [14] Exh. "E".
- [15] Exhs. "M", "N". "O", "Q".
- [16] Exh. "R".
- [17] TSN, October 8, 1998, pp. 26-27; TSN, October 9, 1998, p. 14.
- [18] TSN, October 1, 1998, pp. 8-11.
- [19] TSN, November 9, 1998, pp. 41-43.
- [20] TSN, October 1, 1998, p. 14.
- [21] Exh. "S".
- [22] Docketed as I.S. No. 98-3868.
- [23] Rollo, p. 14.
- [24] TSN, August 4, 1998, pp. 3-13.
- [25] Ibid., p. 14.
- [26] TSN, March 1, 1999, pp. 7-12.
- [27] TSN, April 16, 1999; Exh. "19".
- [28] TSN, August 11, 1999, pp. 20-21.
- [29] Rollo, p. 74.
- [30] Ibid., pp. 97-98.
- [31] TSN, September 30, 1998, p. 7.
- [32] TSN, October 1, 1998, pp. 48-50.
- [33] Ibid., pp. 50-53.

[34] TSN, October 1, 1998, p. 58.

[35] Ibid., pp. 54-56.

[36] Exh. "D".

[37] People v. Mantes, G.R. No. 138914, November 14, 2001; citations omitted.

[38] People v. Vista, G.R. No. 137369, November 15, 2001.

[39] People v. Lacanieta, G.R. No. 124299 April 12, 2000.

[40] People v. De Lara, G.R. No. 124703, June 27, 2000.

[41] People v. Quiñanola, G.R. No. 126148, May 5, 1999.

[42] People v. Velasquez, G.R. No. 137383-83, November 23, 2000.

[43] Three justices of the Court have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless they submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

[44] People v. Ramirez, G.R. No. 136094, April 20, 2001.

[45] TSN, November 10, 1998, pp. 9-12.

[46] Exh. "D-3"; TSN, October 1, 1998, pp. 57,60.

[47] TSN, November 10, 1998, p.12.

[48] People v. Thamsey, G.R. No. 144179, July 19, 2001.

[49] People v. Nubla, G.R. No. 137164, June 19, 2001; People v. Galas, G.R. Nos. 139413-15, March 20, 2001.

[50] Exhs. "U" to "U-26".

[51] TSN, November 9, 1998, p. 50.

[52] TSN, November 10, 1998, p. 5.

[53] Exhs. "T" to "T-2".

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