

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EULALIO BOHOS, ET AL., DEFENDANT-APPELLANT.

G.R. No. 40995. June 25, 1980

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PER CURIAM:

This is a review on appeal of the decision dated December 18, 1974, of the Court of First Instance of Lanao del Norte, Branch IV, Iligan City, in Criminal Case No. 1440 convicting Eulalio Bohos of the complex crime of Forcible Abduction with Rape and sentencing him to die for each of the thirteen (13) separate acts of rape committed on the person of the complainant, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Eulalio Bohos GUILTY as principal and beyond reasonable doubt of the complex crime of Forcible Abduction with Rape under Articles 335 and 342 of the Revised Penal Code with the attending aggravating circumstances of nighttime and taking advantage of superior strength and number with no attending mitigating circumstance and hereby sentences the said accused to suffer the supreme penalty of death for each of the thirteen (13) separate acts of rape committed on the person of Myrna de la Vega.

"Further, the accused is sentenced to indemnify Myrna de la Vega in the amount of P500.00 for actual damages representing her expenses in coming to testify in this case in Iligan City from San Carlos City, P12,000.00 for moral damages and P6,000.00 for exemplary damages.

"Finally he is sentenced to pay the costs of this proceedings."

On September 17, 1966, a Saturday, Myrna de la Vega, then 16 years old and a student of the Immaculate Concepcion College in Ozamis City left the residential home at Kapatagan, Lanao del Norte, at 2:00 o'clock in the afternoon to see a movie in barrio Maranding, Lala, Lanao del Norte, accompanied by a small child who tagged along when Myrna went to the child's house in Maranding. At about 4:00 o'clock the child got thirsty so Myrna took her home but returned alone to view the rest of the film.

It was already 8:00 o'clock in the evening when she finally left the movie house to go home. In going to Maranding Myrna walked a kilometer via the highway and she had to take the same route in going home to Kapatagan. By that time the highway was already deserted and although there were houses along the way the occupants had already gone to bed. After walking for sometime she noticed several persons approaching and as they came nearer they turned out to be four men. Then she heard one of the men say, "Bay, Bay, mayron babae." She tried to run away from them but her efforts proved futile for she was no match to the four men who immediately caught up with her. One man held her right arm, another held her left arm and the other two covered her mouth. A passing cargo truck bound for Iligan City was stopped and she was dragged aboard it. The four men rode with her at the rear of the truck. Two men continued to hold her arms. A handkerchief was then placed inside her mouth, her panty was removed and right there on the truck one of the men abused her sexually. The cargo truck was made to stop at Magpatao, another barrio of Lala where she was forced to alight and taken to a small house along the highway, belonging to Teodoro Engio. That night, Myrna was ravished thirteen times, once in the truck and twelve times in the house of Teodoro Engio where the four men took turns in ravishing her three times

each. Everytime she was abused one man held her right hand, another held her left hand and another held her legs wide apart. After that night's ordeal, Myrna's hands and feet were tied. The following morning, September 18, 1966, her abductors untied Myrna and each one again took turns in having carnal knowledge of her while the others held her hands and her legs apart. After they were through they tied her up again. All in all Myrna was violated seventeen times.

Myrna was rescued at about 3:00 o'clock in the afternoon of September 18, 1966 by then Kapatagan Mayor Bernardo Nietes together with some of his policemen led by Desk Sergeant Apolonio Pangilinan in coordination with Philippine Army soldiers, in response to a report of Florencio Morilla a neighbor of the De la Vegas. They found Myrna in the house of Teodoro Engio fast asleep wearing only a "sando" while a small towel was wrapped around her waist to cover her private parts. Beside her, also sleeping was Agustin Nodado, one of the accused, who was in his underwear. Both were interrogated right in the house and Agustin Nodado gave the names of his companions as Teotimo Babanto, Felix Palcis and Eulalio Bohos. Myrna looked weak and pale; she could not talk very well and was trembling during the interrogation. However, she was able to tell Mayor Nietes and Sgt. Pangilinan that she was kidnapped and abused by four men including Nodado. That same afternoon, Teotimo Babanto, Felix Palcis and Eulalio Bohos were also arrested. Eulalio Bohos was arrested right along the highway of Maranding where the raiding team passed him on their way back to the Police Station of Kapatagan after the rescue of Myrna while Teotimo Babanto and Felix Palcis were picked up in Baroy where they were apprehended for pickpocketing. Immediately after the arrest of the three, Myrna identified them as the companions of Nodado who kidnapped her and took turns in raping her. Teodoro Engio was also apprehended for questioning but he explained that that he allowed the four who were his friends just to pass the night at his house. At the time of the trial Teodoro had already died.

On November 25, 1967, Felix Palcis, Teotimo Babanto and Eulalio Bohos escaped from the provincial jail while Agustin Nodado escaped on September 26, 1968, after he had stabbed to death the guard on duty (Report of the Provincial Warden, Exhibit "A"). Only Eulalio Bohos had been rearrested as of arraignment date on March 18, 1974. He pleaded not guilty to the offense charged, was tried and convicted as aforesaid. The three others are still at large.

The verified complaint filed by Myrna de la Vega with the Court of First Instance of Lanao del Norte on January 18, 1968, against Agustin Nodado, Teotimo Babanto, alias Toting, alias Ernesto Ybañez, Felix Palcis and Eulalio Bohos alleges:

"That on or about the 17th day of September 1966 in the barrio of Maranding, Municipality of Kapatagan, Province of Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the accused Agustin Nodado, in company with Teotimo Babanto, Felix Palcis and Eulalio Bohos, who have escaped from confinement in the Provincial Jail last November 25, 1967, as detained prisoners in Crim. Case No. 1311 together with Agustin Nodado, and who are still at large, armed with a deadly weapon, and with the use thereof, conspiring together, confederating and mutually helping with one another and with lewd designs, did then and there wilfully, unlawfully and feloniously take and carry away the undersigned by force and violence or intimidation in a cargo truck which happened to pass by bound for Iligan City and while in the said truck, the said accused abused her and upon reaching the barrio of Magpatao, Lala, this province, the said accused stopped the truck and forced her to alight thereon, dragged her to a certain house at Magpatao where she was detained, the said accused alternately and successively had sexual intercourse with her against her will, to the damage and prejudice of the offended party."

At the time of the trial in 1974, Myrna had transferred her residence to San Carlos City (Pangasinan) which explains the award of P500.00 for her expenses in going to Iligan City in order to testify. Mayor Nietes had abandoned politics and moved to Quezon, Bukidnon, as a farmer. And Dr. Pablito P. Abragan, Municipal Health

Officer of Kapatagan who performed the examination on Myrna was killed in 1971 during an ambush so that his findings (Exh. "B") had to be interpreted by Dr. Ramon Abragan, Sr., Provincial Health Officer who gave the opinion that force was used on the person of Myrna when she was sexually used.

Appellant's counsel de oficio, Mary Concepcion-Bautista, who is a very capable lawyer, states in her brief:

"At the outset, we must confess to an inner conflict as to whether we should proceed as counsel de oficio for the appellant after we found ourselves compelled to accept that indeed the crime of forcible abduction with rape had been committed, and that appellant had guilty participation in its commission.

"As this Honorable Court had aptly observed in its previous decisions, no country lass would allow herself to be so humiliated publicly unless she had really suffered and been so victimized.

"Furthermore, the half-nakedness of the victim at the time of her rescue was an indication of what she had gone through and one can surmise that she fell asleep out of sheer physical weakness and exhaustion. In addition, there was no reason to question her identification of the appellant when he was apprehended on September 18, 1966 and in the courtroom. Neither could we ignore the circumstance that appellant escaped, instead of insisting on an early trial which an innocent man would have done."

Nonetheless, appellant's counsel has raised certain points in an effort to mitigate his criminal liability. Thus she argues that there was no conspiracy among the four accused, hence the appellant should not be held liable for the acts of his co-accused.

It is true that there is no evidence in the record of a previous plan among the accused to abduct Myrna in order to rape her. No witness testified to having seen or heard the accused conspire or confabulate. The whole incident happened because the four accused met a woman walking alone at a deserted place at night. But for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime. It is sufficient that at the time of the commission of the offense all the accused acted in concert showing that they had the same purpose or common design and were united in its execution. (People vs. Cutura, G.R. No. L-12702, March 30, 1962, 4 SCRA 663; People vs. Verzo, G.R. No. L-22517, Dec. 26, 1967, 21 SCRA 1403; People vs. Estrada, G.R. No. L-26103, Jan. 17, 1968, 22 SCRA 111; People vs. Crisostomo, 46 Phil. 775 [1923]; People vs. Pajenado, G.R. No. L-26458, Jan. 30, 1976, 69 SCRA 172; People vs. Aleta, G.R. No. L-40694, Aug. 31, 1976, 72 SCRA 542; People vs. Cabiling, G.R. No. L-38091, Dec. 17, 1976, 74 SCRA 285; People vs. Roncal, G.R. No. L-26857-58, Oct. 21, 1977, 79 SCRA 509; People vs. Cercano, G.R. No. L-37853, Nov. 21, 1978, 87 SCRA 1, citing People vs. Clarit, G.R. No. L-14150, Oct. 31, 1961, 3 SCRA 331, People vs. Castro, G.R. No. L-17465, Aug. 31, 1964, 11 SCRA 699, People vs. Mandayag, 46 Phil. 838 [1923].) The degree of participation by each of them is immaterial (People vs. Verzo, supra, citing People vs. Macul, 86 Phil. 423 [1950], People vs. Bautil, G.R. No. L-18997, Jan. 31, 1966, 16 SCRA 57, People vs. Reyes, G.R. No. L-18892, May 30, 1966, 17 SCRA 309, People vs. Akiran, G.R. No. L-18760, Sept. 29, 1966, 18 SCRA 239). The simultaneous acts of the four accused - two of them holding Myrna's hands and the other two covering her mouth as they accosted her on the highway; the four of them dragging Myrna aboard the truck which they stopped and where she was violated by one of them with the assistance and encouragement of the three others; the four of them alternately and successively ravishing her inside the house of Teodoro Engio three times each on the night of September 17, 1966, and one each the following morning while one held complainant's right arm, another held her left arm and another stretched her legs wide apart - together with other circumstances, make evident a community of design, an indicia of a conspiracy to abduct complainant forcibly for the satisfaction of their carnal desire against her will.

We are satisfied that there was conspiracy among the four accused to abduct and rape Myrna so that the act of any one was also the act of the others.

Appellant's other point is: "Even if we may assume purely for the sake of argument that the complaining witness was forcibly abducted and then raped thirteen times, we submit that there was only one forcible abduction, with rape and that was the one allegedly committed on the truck or jeep. Any subsequent acts of intercourse in the house against her will would be only separate acts of rape and can no longer be considered separate complex crimes of forcible abduction with rape."

This point is well taken. There was only one forcible abduction with rape which was the one committed in the truck. Thus in *People vs. Jose, et al.*, G.R. No. L-28232, Feb. 6, 1971, 37 SCRA 450, where the four accused forcibly abducted Maggie de la Riva and each of them raped her, this Court held "that even while the first act of rape was being performed, the crime of forcible abduction had already been consummated, so that each of the three succeeding crimes of the same nature can not legally be considered as still connected with the abduction - in other words, they should be detached from, and considered independently of, that of forcible abduction and, therefore, the former can no longer be complexed with the latter." (At p. 475.)

We have, examined the record to ascertain if there was indeed forcible abduction with rape and other rapes in order to set our minds at ease. And the evidence is over-whelming so as to satisfy even the most skeptical reviewer that the crimes were in fact committed.

We have Myrna's testimony that she was forcibly abducted and then raped seventeen (17) times. Corroborating her were Bernardo Nietes, former Municipal Mayor of Kapatagan, Lanao del Norte, and Apolonio Pangilinan, former Desk Sergeant in the Kapatagan Police Force, concerning their rescue of Myrna in the afternoon of September 18, 1966, at Magpatao, Lala, Lanao del Sur, where she was brought by her abductors, and their investigation of the case immediately after the rescue which lead to the arrest of appellant Eulalio Bohos and his companions Agustin Nodado, Teotimo Babanto and Felix Palcis. Both Nietes and Pangilinan testified that in that investigation, Agustin Nodado identified his three companions as Teotimo Babanto, Eulalio Bohos and Felix Palcis. Pangilinan further testified that Teodoro Engio who was also apprehended on the same date for questioning, identified the four accused as his friends who asked his permission to pass the night in his house. And then we have the testimony of Dr. Ramon Abragan, Sr. to the effect that Myrna was abused when she was sexually used according to Exhibit "B" which reads as follows:

"REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF HEALTH
FIELD OPERATIONS
REGIONAL HEALTH OFFICE NO. 7
RURAL HEALTH UNIT
KAPATAGAN, LANAOS DEL NORTE

September 19, 1966

TO WHOM IT MAY CONCERN:

This is to certify that I personally performed the examination of MYRNA DE LA VEGA, 16 years old, single of Kapatagan, Lanao del Norte.

Findings:

Ocular inspection of the vulva revealed:

(1) Fresh blood along the external os.

(2) Perivulvar hyperomia, moderate, more pro-minent along both sides of the clitoris.

Internal examination revealed:

- (1) One finger can be admitted with slight pain, but can admit 2 fingers with difficulty on the part of the examiner and severe pain on the part of the patient.
- (2) Tenderness upon tactation of the cervix.
- (3) Hymen incomplete with slight laceration at 8:30 o'clock.
- (4) Laceration of the cervix slight at 6:00 o'clock with slight bleeding from the laceration.

(SGD) PABLITO P. ABRAGAN, M.D.
Municipal Health Officer”

The defense of the appellant is alibi. He claims that on September 17 and 18, 1966, he was in the house of Vicente Pangilinan at Kapatagan, Lanao del Norte. We reject this defense. The defense of alibi, which can be easily concocted, cannot prevail over the positive identification of the accused by the prosecution witness as the author of the crime (*People v. Caoile*, G.R. No. L-31104, Nov. 15, 1974, 61 SCRA 73). For alibi to prosper it is not enough to prove that the accused was somewhere when the crime was committed but that he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime during its commission (*People v. Cortez*, G.R. No. L-31106, May 31, 1974, 57 SCRA 308).

The aggravating circumstance of abuse of superior strength was correctly appreciated by the trial court but it erred when it also added nocturnity for there is no evidence to show that night-time was purposely chosen to facilitate the commission of the crime.

The aggravating circumstance of use of a motor vehicle should also be appreciated.

The crimes thus proved to have been committed are forcible abduction with rape and sixteen (16) separate rapes attended by the aggravating circumstances of superiority and use of a motor vehicle without any mitigating circumstance.

WHEREFORE, the judgment appealed from is modified in that Eulalio Bohos is sentenced to suffer not thirteen (13) but seventeen (17) death penalties; it is affirmed in all other respects. Costs de oficio.

SO ORDERED.

Teehankee, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Barredo, J., concurs with separate opinion.

Aquino, J., dissents.

Fernando, C.J., took no part, except to certify that with Justice Aquino voting for the imposition of only one death penalty, the result is that there are not enough votes for the additional sixteen other death penalties. The judgment therefore is that Eulalio Bohos is sentenced to suffer death for the multiple rape committed.

CONCURRING OPINION BARREDO, J.:

I concur. I find it difficult to agree with the observation of Mr. Justice Aquino in his dissent that "in strict legal theory, the offense committed in this case should be characterized as the continuous complex crime of kidnapping or serious illegal detention (detention of a female) with multiple rape." It is to me very evident that the taking of Myrna by force by the four accused in the manner disclosed in the record constitutes forcible abduction, the lewd

design being obvious from the fact that she was immediately raped the moment they succeeded in putting her on the truck. Precisely, what distinguishes kidnapping or illegal detention from forcible abduction is the presence of lewd design in the latter. As far as I am concerned, it is not legally possible to complex kidnapping with multiple rape unless the evidence is clear that at the time of the capture and taking of the victim, lewd design was completely absent. In the case at bar, the only inevitable conclusion I can gather from the circumstance I have just pointed out is that the four accused took and kept Myrna for no other purpose than to have carnal knowledge of her.

I believe that the imposition of seventeen death penalties upon the appellant is legally justified. The rape in the truck was itself punishable with death, constituting as it did the complex offense of forcible abduction with rape by two or more persons. (Arts. 48, 342 and 335 (3), Revised Penal Code, as amended.) The other sixteen rapes were committed by each of the four accused with the help of each other. It is revolting to the conscience that herein appellant should be punished only for the rapes he himself enjoyed, without being responsible for the other rapes he helped his companions commit. To view the situation in this case in the sense that the other sixteen rapes — after the one in the truck — as already absorbed in the charge of abduction with rape filed by the prosecutor is to be extremely overliberal in the application of our criminal law, considering that the information alleges on its face that Myrna was raped several times. If any procedural flaw is to be noted in this case, it is rather the failure of the defense to ask for a bill of particulars and to object to the presentation of evidence proving more than one rape.

All in all, for so heinous a crime as that proven to have been committed in this case, the heaviest conceivable penalty the laws and the Constitution permit, would, to my mind, be well deserved by the herein accused, casting all technicalities aside, specially since these are questionable or controversial.

DISSENTING OPINION AQUINO, J.:

I concur in the judgment of conviction but dissent from the ruling that the accused is guilty of sixteen rapes in addition to forcible abduction with rape, and that, therefore, he should be sentenced to seventeen death penalties.

That ruling is based on the holding in *People vs. Jose (the Maggie de la Riva case)*, L-28232, February 6, 1971, 37 SCRA 450, that the rapes committed after the forcible abduction with rape should be considered separate crimes and should be punished separately from the complex crime of forcible abduction with rape.

Eulalio Bohos, together with his three companions, who escaped and were not re-arrested, was charged with forcible abduction with rape in a complaint filed by the sixteen-year-old complainant.

In that complaint the number of rapes was not specifically alleged. It was simply alleged therein by the complainant that after the forcible abduction was committed, the four accused "alternately and successively had sexual intercourse with her against her will". In her supporting affidavit, the complainant did not state the number of rapes committed. That point was testified to by her at the trial.

She testified that she was raped once inside the cargo truck. Then, in the house where she was brought, each of the four accused raped her three times during the night and then each raped her once in the morning. According to her version she was raped seventeen times.

In strict legal theory, the offenses committed in this case should be characterized as the continuous complex crime of kidnapping or serious illegal detention (detention of a female) with multiple rape (Arts. 267[4] and 335, Revised Penal Code). The kidnapping was resorted to as a means of committing the rape. The accused should have been charged with that complex delicto continuado. (See *People vs. Ablaza*, L-27352, October 31, 1969, 30 SCRA 173, 178.)

Instead, they were charged with the complex crime of forcible abduction with rape. The rape was committed by two or more persons. Hence, it is punishable with reclusion perpetua to death. As the offense is complex, the capital penalty should be imposed.

In my opinion, the accused should be convicted only of forcible abduction with rape which is the offense charged in the information and which should be considered a continuous crime, embracing or absorbing the other sixteen alleged rapes which were not specifically alleged in the complaint. Therefore, only one death sentence should be imposed.

In *U. S. vs. Camilo*, 36 Phil. 757, the four accused who through force and intimidation took a young woman to an isolated house and there, again with force and intimidation, successively throughout the night had carnal intercourse with her, were convicted only of one crime of rape.

In *People vs. Manguiat and Sanqui*, 51 Phil. 406, the so-called Ana Refresca case, a nineteen-year-old girl was forcibly abducted in Barrio Putol, Calamba, Laguna and taken to the woods in Silang, Cavite and to other places, where she was brutally raped several times by Macario Manguiat while her hands were held by Hilario Sanqui.

Manguiat and Sanqui were charged with the complex crime of abduction with rape. Manguiat escaped from jail and was killed by Constabulary soldiers. Sanqui was convicted only of forcible abduction with rape.

In *People vs. Pineda*, 56 Phil. 688, Lourdes Dasig was forcibly abducted from her house in Barrio Santiago, Aliaga, Nueva Ecija and taken to Barrio San Carlos in the same municipality where she was forcibly thrown to the ground by the three accused who successively raped her despite her resistance.

Thereafter, the accused Fernando Pineda forcibly took Lourdes Dasig to a house in Barrio Manaraog, Rizal, Nueva Ecija. She was kept there by Pineda for fourteen days during which time Pineda often had carnal knowledge of her through threats of death and against her will.

Pineda and his two companions were convicted of the complex crime of forcible abduction with rape. (See *People vs. Oso*, 62 Phil. 271.)

The foregoing cases were decided on the unarticulated assumption that forcible abduction with multiple rape is a continuous crime, a concept not expressly provided by law but developed in criminal jurisprudence. (See *People vs. Cu Unjieng*, 61 Phil. 236, 300-303, where only one indeterminate penalty was imposed for the estafa through multiple falsification committed by the accused from November, 1930 to July 6, 1931.)

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