

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO GOROSPE AND RUFINO BULANADI, ACCUSED-APPELLANTS.

G.R. No. 51513. May 15, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In a verified complaint filed on October 8, 1974, with the Municipal Court of Pulilan, Bulacan, ANASTACIA DE JESUS accused GERARDO FAJARDO, RUFINO BULANADI and FELICIANO GOROSPE of the crime of forcible abduction with rape. (Expediente, p. 1.) The crime was said to have been committed on September 30, 1974, starting in Plaridel, Bulacan, thru Pulilan, and thence to Talavera, Nueva Ecija.

Municipal Judge Alfredo V. Granados of the Municipal Court of Pulilan received the complaint and conducted a preliminary investigation, first stage.

On October 25, 1974, the Complaint was amended. Rufino Bulanadi and Feliciano Gorospe were again named but Gerardo Fajardo was dropped and OSCAR ALVARAN was named instead. The date when the crime was said to have been committed was changed from September 30, 1974, to September 25, 1974. (Id., p. 41.)

Again Judge Granados conducted a preliminary investigation and on November 18, 1974, he issued an order for the arrest of Bulanadi, Gorospe and Alvaran and fixed their bail at P15,000.00 each. (Id., p. 70.)

Bulanadi and Gorospe posted the requisite bail. Alvaran remained at large.

The second stage of the preliminary investigation was set on February 5, 1975, but on that day neither Bulanadi or Gorospe appeared for which reason Judge Granados declared that they had waived their right thereto and elevated the case to the Court of First Instance of Bulacan. (Id., p. 87.)

On March 19, 1975, Provincial Fiscal Pascual C. Kliatchko filed with the CFI of Bulacan an information for forcible abduction with rape against Gorospe and Bulanadi. It was docketed as Criminal Case No. 1293-M. (Id., p. 88.) But on July 25, 1975, Fiscal Kliatchko filed an amended information which reads:

"That on or about the 25th day of September, 1974, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Feliciano Gorospe and Rufino Bulanadi, together with one Oscar Alvaran who is still at large, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully, and feloniously, by means of force, violence and intimidation, and with lewd design abduct the complaining witness Anastacia de Jesus, an unmarried woman, 14 years of age, by then and there taking and carrying her to Talavera, Nueva Ecija, against her will and without her consent, and upon arrival there, the said accused by means of violence, force and intimidation have carnal knowledge of the said Anastacia de Jesus against her will and consent." (Id., p. 100.)

Judge Nelly L. Romero Valdellon started the trial of the case on October 15, 1975. The accused and their counsel de parte had long been notified that the case was to be tried on that day but they did not appear so the former were

tried in absentia. After hearing part of the testimony of Anastacia de Jesus, the complainant, Judge Valdellon was transferred to Metro Manila and she was replaced by Judge Fidel P. Purisima who finished the trial. But Judge Purisima issued an order on March 10, 1976, wherein he inhibited himself from deciding the case. He said, "Considering that Judge Alfredo V. Granados is a first cousin by affinity of the undersigned Presiding Judge and if only to make sure that the decision to be rendered in this case shall be above suspicion and considering further the gravity of the offense charged, the undersigned Presiding Judge hereby inhibits himself from deciding this case." (Id., pp. 386-387.) So it was Judge Jesus R. de Vega who decided the case and rendered the following judgment:

"PREMISES CONSIDERED, the Court finds both the herein accused Gorospe and Bulanadi guilty beyond reasonable doubt of rape committed against Anastacia de Jesus as charged in the information. Considering the legal principle that each of the herein accused is responsible not only for the act of rape committed personally by him but also for the rape committed by his other co-accused on account of the finding of conspiracy or cooperation in the commission of the said crime charged against them, the Court accordingly sentences each of the herein accused Gorospe and Bulanadi to suffer two (2) perpetual penalties of reclusion perpetua to be served in accordance with Art. 70 of the Revised Penal Code, with all the accessory penalty of the law.

"Both accused are further ordered to indemnify Anastacia de Jesus in the amount of P40,000.00 for actual, exemplary and moral damages; and to pay the costs." (Id., p. 419.)

The case is now before Us on appeal.

The People's version of the facts is as follows:

"Complainant Anastacia de Jesus, a 14 year-old girl at the time of the incident, single, student at the Calumpit Institute, Bulacan, and resident of Puño, Calumpit, Bulacan, was, at about 10:00 a.m., of September 25, 1974, at Plaridel, Bulacan, in front of the Caltex Station, intending to cross the street to buy a book. She was looking for a book, entitled "Diwang Guinto" (pp. 2-5, t.s.n., Dec. 15, 1975; pp. 17-18, t.s.n., March 10, 1976; p. 4, t.s.n., March 11, 1976). Two persons passed by, one of whom was appellant Rufino Bulanadi, who waived a handkerchief across her face, which affected her consciousness and she felt dizzy but felt that she was being held and boarded into a motor vehicle (pp. 5-11, t.s.n., Dec. 15, 1975; p. 18, t.s.n., March 10, 1976).

"Complainant regained her full consciousness at about 8:00 o'clock in the evening of September 25, 1974, in a nipa hut near the irrigation pump, of Gerardo Fajardo, at Calipahan, Talavera, Nueva Ecija. Inside she saw appellants, Feliciano Gorospe, Rufino Bulanadi, and Gerardo Fajardo (pp. 11-14, 17, 21, t.s.n., Dec. 15, 1975). They were arguing why she (complainant) had to be taken by appellants Rufino Bulanadi and Feliciano Gorospe (p. 16, t.s.n., Dec. 15, 1975).

"That evening, at the said nipa hut, complainant was forced to drink a strange tasting royal soft drink by appellant Feliciano Gorospe and appellant Rufino Bulanadi, who held her hands (pp. 21-23, t.s.n., Dec. 15, 1975). After drinking the soft drink complainant lost consciousness. She woke up only the next morning with aches and pains all over her body especially her private part. She found herself naked: Appellants, Rufino Bulanadi and Feliciano Gorospe, were there by her side standing when she woke up (pp. 23-26, t.s.n., Dec. 15, 1975; p. 22, t.s.n., Jan. 12, 1976). Gerardo Fajardo was also there. All the three of them were naked. Evidently, appellants and Gerardo Fajardo sexually abused her (p. 27, t.s.n., Dec. 15, 1975; p. 14, t.s.n., March 10, 1976).

"Appellants and Gerardo Fajardo forcibly kept Anastacia de Jesus for nine (9) days in the hut, with appellants, and Gerardo Fajardo taking turns in sexually abusing her during the night. During the day she was guarded by Oscar Alvaran.

"After her nine-day ordeal, Gerardo Fajardo brought her to the house of Cirilo Balanagay at Bancal, Talavera, Nueva Ecija (pp. 20-23, t.s.n., March 12, 1976). When Gerardo Fajardo left the house, Anastacia de Jesus related to Cirilo Balanagay what the appellants and Fajardo did to her. Cirilo Balanagay, therefore, wired

Anastacia's parents and then brought her to the Talavera Municipal Building where she executed an affidavit about her ordeal. She also told the PC of her harrowing experience (pp. 23-25, t.s.n., March 12, 1976).

"When complainant was brought home, her friends readily noticed that she was not her usual self anymore as 'she cannot answer and she just kept on shouting and crying and trembling', saying 'keep away from me, have pity on me.' (pp. 14-15, t.s.n., Oct. 14, 1975).

"Complainant Anastacia de Jesus was physically examined on October 6, 1974, by Dra. Norma V. Gungon who issued a medical certificate on her findings, as follows:

'Patient examined with the presence of a ward Nurse. She is conscious, coherent answers to questions intelligently.

Physical Examination:

Breast - symmetrical, conical in shape, areola pigmented.

Mons pubis - pubic hair scanty in amount.

Internal Examination:

Hymen - presence of healed lacerations, at 11, 5, 3 o'clock.

Vaginal introitus - admits 2 fingers w/ difficulty.

Cervix - small, closed

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(Exh. G-1, p. 6, rec.)" (Brief, pp. 3-6.)

The appellants make the following assignment of errors:

"I. THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE WHICH THE PROSECUTION ALLEGES TO HAVE BEEN COMMITTED IN TALAVERA, PROVINCE OF NUEVA ECIJA AND NOT IN THE PROVINCE OF BULACAN.

"II. THE HONORABLE JUDGE JESUS R. DE VEGA, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, BRANCH II ERRED IN RENDERING THE DECISION APPEALED FROM WHEN HE HAS NO AUTHORITY TO DO SO BECAUSE THIS CASE WAS ENTIRELY TRIED IN THE COURT OF FIRST INSTANCE OF BULACAN, BRANCH I, PRESIDED OVER BY HONORABLE JUDGE FIDEL P. PURISIMA.

"III. THE LOWER COURT ERRED IN ADMITTING THE TESTIMONY OF GERARDO FAJARDO WHOSE CROSS-EXAMINATION WAS NOT FINISHED DUE TO HIS FAILURE TO APPEAR INSPITE OF A WARRANT FOR HIS ARREST.

"IV. THE LOWER COURT ERRED IN FINDING THE ACCUSED FELICIANO GOROSPE AND RUFINO BULANADI GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE." (Brief, pp. 21-22.)

The first assignment of error raises the following questions: (1) Why was the complaint not filed in Plaridel, Bulacan or Talavera, Nueva Ecija but in Pulilan, Bulacan? (2) Since the rape was committed in Talavera, why was the case tried by the CFI of Bulacan and not by the CFI of Nueva Ecija?

The above questions are easily answered. Abduction is a persistent and continuing offense. (U.S. vs. Bernabe, 23 Phil. 154 [1912].) Hence it may be "tried in the court of the municipality or province wherein the offense was

committed or any one of the essential ingredients thereof took place." (Rules of Court, Rule 110, Sec. 14[a].) The Municipal Court of Pulilan had jurisdiction because the abductors and their captive passed Pulilan on their way from Plaridel to Talavera. And the CFI of Bulacan (as well as the CFI of Nueva Ecija) had jurisdiction because essential elements of the offense took place in Bulacan (and also in Nueva Ecija).

The second assignment of error asserts that Judge de Vega had no authority to render the decision in the case.

Judge Purisima in the order wherein he inhibited himself from deciding the case also "ordered to have the same re-raffled off and assigned to another branch." The case was presumably re-raffled to Judge de Vega who issued an order on June 23, 1978, which states, *inter alia*:

"Considering the foregoing, and in order to be properly guided in the further disposition of this case, and to obviate possible objections and criticisms which may come from any or both parties in the final disposition thereof, the Court resolves to require the parties to submit their respective written comments within fifteen (15) days from receipt hereof on the propriety and advisability of the decision in this case to be rendered by the Presiding Judge of this Court; and to call a conference to hear further the views and arguments of the parties on this question, which is hereby set on July 18, 1978, at 1:30 p.m. Let notices be sent accordingly to all parties concerned." (Expediente, p. 390.)

Neither the comments nor the memorial of the conference are in the expediente but on March 28, 1979, counsel for the accused filed a motion stating:

"2. That the above promulgation was held in abeyance, and then the accused received the order dated June 13, 1978 where the Court called the parties to a conference on July 18, 1978;

3. That the parties appeared before this Court on July 18, 1978;

4. That up to the present a Decision in the above entitled case has not yet been promulgated.

WHEREFORE, it is respectfully prayed of this Honorable Court that the above entitled case be resolved." (Id., p. 401.)

And on June 4, 1979, Judge de Vega promulgated the decision. (Id., p. 410.)

We hold that Judge de Vega had the power to decide the case. "Where a court of first instance is divided into several branches each of the branches is not a court distinct and separate from the others. Jurisdiction is vested in the court, not in the judges, so that when a complaint or information is filed before one branch or judge, jurisdiction does not attach to said branch of judge alone, to the exclusion of the others. Trial may be had or proceedings may continue by and before another branch or judge." (Lumpay, et al. vs. Moscoso, 105 Phil. 968 [1959].)

It is to be recalled that in the original complaint filed by Anastacia de Jesus before the Municipal Court of Pulilan, Gerardo Fajardo was one of the accused. In the amended complaint, Fajardo's name was dropped and Oscar Alvaran was named instead. Nonetheless, when Anastacia testified she said that she was brought to the house of Gerardo Fajardo in Talavera, Nueva Ecija; that when she woke up after she was forced to drink something, Fajardo was there with Gorospe and Bulanadi, and all three were naked; that Fajardo was one of those who raped her; and that it was Fajardo who brought her to Cirilo Balanagay.

Why was Fajardo dropped from the complaint? The record does not yield an answer but perhaps he decided to cooperate with the complainant because soon after she finished her testimony the prosecution presented Fajardo as its next witness.

Fajardo testified, among other things, that he was given a lift from the monument in Caloocan City to Nueva Ecija

by Gorospe and Bulanadi; that in Plaridel, between the market and the bridge, the two forced Anastacia to go with them; that Anastacia was brought to his house and later transferred to a nipa hut near an irrigation pump; that in the nipa hut Anastacia was undressed by Gorospe; that Gorospe, Bulanadi and Alvaran took turns in spending 20 to 30 minutes inside the hut with Anastacia; and that, he did not have sex with her.

It can thus be seen that Fajardo was a key witness. His testimony corroborated that of Anastacia in material matters.

His direct examination took place on June 23 and 24, 1976. His cross-examination commenced on August 4, 1976 (whole day), and was continued on August 9, 1976. The cross-examination is recorded on pages 112 to 230 of the transcript. But the defense did not indicate that it was through with Fajardo.

On August 9, 1976, the trial court continued the hearing to August 11, 1976. (Expediente, p. 204.) On the latter date, Fajardo failed to appear and the case was rescheduled to be heard on September 13, 1976. (Id., p. 208.) On September 13, 1976, Fajardo again failed to appear and the case was reset to September 29, 1976. (Id., p. 222.) Fajardo did not appear on September 29, 1976, so he was ordered arrested. (Id., p. 223-226.) Fajardo was not arrested but despite such fact the prosecution rested its case.

In their third assignment of error the appellants bewail the fact that the trial court decided the case even though they had not finished cross-examining Fajardo.

The trial court committed no error in admitting the testimony of Fajardo although the defense had not finished its cross-examination. An examination of the transcript of Fajardo's testimony shows that he was subjected to detailed cross-examination on material points. In fact, the cross-examination was lengthier than the direct examination. We adopt with approval the statement of the court *a quo* on this point:

"The records show that the counsel for the accused has extensively cross examined Fajardo. The Court could not help but wonder what other matters not yet touched during the cross examination of Fajardo could still be elicited from him that would probably destroy or affect his testimony-in-chief. If the counsel for the accused expected Fajardo to testify further on material matters favorable to the cause of the defense, he should have proffered such further testimony and entered into the records how the absent witness would have testified if he were available for further cross-examination. The failure of the said counsel to do so indicates that every material point has been asked from Fajardo during the time he was under examination.

"While cross-examination is a right available to the adverse party, it is not absolute in the sense that a cross-examiner could determine for himself the length and scope of his cross-examination of a witness. The court has always the discretion to limit the cross-examination and to consider it terminated if it would serve the ends of justice.

"The Court, therefore, hereby resolves to admit the testimony of Fajardo. This resolution finds support, though indirectly, from Section 6, Rule 133 of the Rules of Court, which empowers the court to stop the introduction of further testimony upon a particular point when the evidence upon it is already so full that more to the same point cannot reasonably be expected to be additionally persuasive. The position herein taken by the Court in brushing aside technicalities is in accordance with a fundamental rule that the provisions of the Rules of Court shall be liberally construed in order to promote their object and assist the parties in obtaining a just, speedy and inexpensive determination of every action or proceeding. (Section 2, Rule 1, Rules of Court)." (Id., p. 418.)

Moreover, even if Fajardo's testimony be disregarded the accused may nonetheless be convicted in the light of other evidence.

The fourth assignment of error raises the issue of credibility of witnesses - those of the prosecution versus those of the defense.

The prosecution's version has already been stated above. We now have to consider the version of the appellants which is as follows:

"On September 30, 1974 at 4:00 o'clock in the afternoon, accused Feliciano Gorospe, Barangay Captain of Andal Alinio district, Talavera, Nueva Ecija, since 1972 up to the present and at the same time a member of the Sangguniang Bayan of Talavera, Nueva Ecija, representing the Barangay Group, went to the house of his friend, Reynaldo Matias at Calipahan, Talavera, Nueva Ecija, to attend a birthday party (pp.36 & 37, T.s.n., February 7, 1977, CFI). Accused Rufino Bulanadi, who was a former councilman of Calipahan, Talavera, Nueva Ecija, also attended said party as he was also invited (p. 12, T.s.n., February 28, 1977, CFI). At about 7:00 o'clock in the evening, several teenagers were shouting in front of the house of Gerardo Fajardo which is ONE HUNDRED (100) METERS away from the house where the birthday party was being held (p. 38, T.s.n., February 7, 1977 CFI). The house of Fajardo being within his jurisdiction (pp. 39 & 40, *ibid*), accused Barangay Captain Gorospe proceeded to the place where the shouts were coming from, followed by other guests in the birthday party, among whom was Councilman Rufino Bulanadi (p. 39, *ibid*). There were 2 groups of teenagers who were at odds with each other. One was the group of Gil Nocum and the other, the group of Isagani Castro. Barrio Captain Gorospe talked with the two (2) groups of teenagers and he was informed that Fajardo who promised to give a woman to one group made the same commitment with respect to the same woman to the other group (pp. 41 & 42, *ibid*). That woman was complainant Anastacia de Jesus, as there were previous occasions that Gerardo Fajardo brought women of ill-repute to his house, Gorospe called him and asked him why he brought again another woman of ill-repute to that place. He even asked Gerardo's wife, Della Fajardo, why she tolerated Gerardo to bring that kind of woman in their house when they are already married. She answered that she could not stop him because he would cause her bodily harm. Gorospe also called Anastacia and asked her why she went with Gerardo who is a married man (pp. 44 to 47, *ibid*). Thereafter he told her to leave the place. Gerardo pleaded that Anastacia be allowed to stay only for that night and he would take her out of the place the next day.

The following morning, October 1, 1974 while accused Rufino Bulanadi was tying the rope of his carabao to graze in the subdivision at Calipahan, Talavera, Nueva Ecija, Gerardo approached him and said, 'Konsehal maaari bang itira ko ang babaing dala-dala ko sa bahay sa balong-balong ng kalabaw mo' (Councilman, may I be allowed to let the girl who is with me in my house to live or stay in the shade of your carabao). He pleaded with Bulanadi because according to him his wife was quarrelling with him because of that woman (pp. 21-23, T.s.n., February 28, 1977, CFI). Bulanadi vehemently refused and reminded Gerardo about the warning of Barrio Captain Gorospe to get that woman out of the place. Gerardo left, angry and was murmuring (p. 23, *ibid*). Bulanadi left his carabao to graze and proceeded to his field to see the laborers who were pulling grasses there. The farmers in Talavera are organized into groups of Twenty (20) for the systematic distribution of irrigation water, each with a chairman. Bulanadi was the chairman of his group. Because there was shortage of water, he started the engine of his irrigation pump. He had his lunch in the field. At 3:00 o'clock in the afternoon, a son of an owner of a neighboring field informed him that water was already being released from the Sapang Baca Dam. Upon verifying that water was really coming, he stopped the motor of his irrigation pump. (pp. 22-26, *ibid*). He cleaned the passage of water to his field for two (2) hours. At 5:00 o'clock in the afternoon, he went home to eat because he was hungry. He left the pump house open because he intended to go back after supper. When he came back, he saw that there was light inside his pump house. As he was approaching, Gerardo met him and pleaded that he and the woman be allowed to sleep there. Bulanadi refused saying, 'I just bought this pump recently, 'Sasalahulain mo ba ito? Hindi pwede yon Gerardo, kamalasan yon.' (Are you going to tarnish this? That cannot be Gerardo, that will bring me bad luck' (pp. 26-29, *ibid*). Bulanadi saw Anastacia playing with the water. He told her not to make the water dirty as it is being used as drinking water and Anastacia said, 'suya naman kayo kay selan-selan mong matanda.' (You are very touchy old man). When Bulanadi told them that he would report them to the Barrio Captain, they pleaded to him not to do so, but just the same, he went to the Barrio Captain to report.

When Bulanadi arrived in the house of Barrio Captain Feliciano Gorospe, the latter was conversing with Oscar

Alvaran (p. 31, *ibid* & p. 49, t.s.n., February 7, 1977). Upon receiving the report, the 3, Rufino Bulanadi, Feliciano Gorospe and Oscar Alvaran, went to the pump house. Barrio Captain Gorospe talked to Gerardo Fajardo and Anastacia de Jesus saying, 'Talaga palang matitigas ang ulo ninyo, pinaalalahanan ko na kayo, ayaw pa ninyong lumayo dito'. (You are really hard headed, I have already warned you but still you did not leave this place). Bulanadi and Gorospe were very angry and Anastacia got angry too and said that it is none of their business what she and Gerardo do. She rushed towards the two as if to strike them but Gerardo stopped her and pleaded with the two to allow them to stay there just for that night because he said, 'aabutan na kami ng curfew' (we will be curfewed). Gorospe and Bulanadi relented and left warning them that if they would still be there the next morning they will report the matter to the P. C. (pp. 31--35, *ibid* & pp. 2-6, February 24, 1977, CFI).

The next morning, October 2, 1977, Wednesday, Gerardo Fajardo and Anastacia de Jesus left the pump house of Bulanadi. Gerardo brought Anastacia to the house of his cousin Florina at Munoz, Nueva Ecija, where they stayed that night. The following morning, October 3, 1977 he brought her to the house of his uncle Cirilo Balanagay at Bakal I, Talavera, Nueva Ecija (Exhibit I). He told his uncle that Anastacia is a student, and he requested Balanagay to devise ways and means to return her to her parents because he might be placed in trouble (p. 7, T.s.n., October 12, 1974, Municipal Court of Pulilan).

After Gerardo left, Balanagay went to the room where Anastacia was and volunteered to take her to her parents, but she said she would think it over. That night, October 3, 1974, Balanagay brought her to the house of Barrio Captain Andres Nazar of Bakal I, Talavera, Nueva Ecija, to inform him of Anastacia's presence in that house, and also so that she could relate everything to the Barrio Captain, (p. 10, T.s.n., October 12, 1974, Municipal Court of Pulilan). There was a regulation in Bakal I, Talavera, Nueva Ecija, that a stranger who arrives there should submit a statement as to the reason of his presence in the barrio. Barrio Captain Andres Nazar took the statement of Anastacia de Jesus (p. 4, T.s.n., February 7, 1977, CFI) which was in the form of question and answer. This was reduced in writing by Councilman Aniceto Damian who was summoned for that occasion, in the presence of the barrio captain himself, Cirilo Balanagay and his wife. The statement of Anastacia de Jesus marked as Exhibit "1" was signed by Councilman Aniceto Damian and Cirilo Balanagay as witnesses (pp. 7 to 14, T.s.n., February 7, 1977 CFI). To protect the interest of Anastacia, Barrio Captain Nazar asked Balanagay to notify her parents (p. 13, *ibid*).

On October 4, 1974, Cirilo Balanagay accompanied Anastacia to the Police Department of Talavera, Nueva Ecija, where she made a report (Exhibit 13). Then he wired the family of Anastacia at Pungo, Calumpit, Bulacan. On October 6, 1974 Anastacia's relatives arrived, composed of her uncle, Enrique de Jesus, brother of Victoriano de Jesus, sister Lolita de Jesus and brother-in-law Adriano Nicolas. They accompanied her to the Police Department of Talavera, where she made a statement, Exhibit 5 which is also Exhibit C (p. 3, T.s.n., June 16, 1976, CFI). That same date, October 6, 1974 she was examined by Dr. Norma Gongon at the Dr. Paulino J. Garcia Memorial Research and Medical Center upon request of the Police Department of Talavera, Nueva Ecija and a Medical Certificate was issued to her (Exhs. "G", "G-1", "G-2", "H" and "H-1").

In the meantime, on October 4, 1974, accused Barrio Captain Feliciano Gorospe and his wife, with Mayor and Mrs. Bonifacio de Jesus of Talavera, Nueva Ecija, Engineer and Mrs. Bacani and 3 other couples went to Baguio City to attend the convention of the Luzon Area Community Christian Family Movement at St. Louise University. They rented a house and stayed there for THREE (3) days, October 4, 1974 to October 6, 1974. At 5:00 o'clock in the afternoon on October 6, 1974, when the convention ended, they went home to Talavera, Nueva Ecija (pp. 10-12, T.s.n., February 24, 1977, CFI).

On October 6, 1974, at about 8:00 o'clock in the morning, accused Rufino Bulanadi on his way to the field to cut grasses for his carabao, passed by a store to buy cigarette. To his surprise he saw Gerardo there and he asked him where his 'alaga' was (the girl he is taking care of) and Gerardo answered, 'Pinagpapahinga ko siya sa Bakal at pinakawalan ko na' (I let her rest in Bakal and I have already let her go). Gerardo further said that the girl was intending to file a case against him, and Bulanadi told him, 'Mabuti nga sa iyo, ayaw mo kasing

tumigil sa masamang negosyo mo'. (That's good for you because you don't want to stop your bad business). When Bulanadi proceeded on his way to the field, a jeep suddenly stopped beside him. On the jeep were PC Sgt. Jimenez, several policemen and Anastacia de Jesus. Sgt. Jimenez immediately got off the jeep, tied Rufino's hand with his own rope that he brought with him to be used in tying the grasses that he would cut, and brought him to the Municipal Building of Talavera, Nueva Ecija, where he was locked in jail. When asked about Gerardo, he informed the P.C. that he saw him in the store. Gerardo was likewise arrested. Bulanadi was asked about the case and he said he did not know anything about it (pp. 37 to 40, T.s.n., February 28, 1977, CFI).

When accused Barrio Captain Gorospe arrived with his wife from Baguio in the evening of October 6, 1974, his mother informed him that a policeman was looking for him. He told his mother that he would just go to the Municipal Building the following day because he was tired. The next day, October 7, 1974 at 8:30 o'clock in the morning, he went to the Municipal Building. Upon his arrival, Gerardo met him, put his arms on his shoulders and said that the case can be settled in the amount of P200.00. Gorospe said 'tarantado ka pala' (You son of a bitch). 'I will not give even a single centavo because you are the one responsible for this. I have nothing to do with this case.' Gorospe proceeded to see Sgt. Jimenez who told him that the case was transferred to Cabanatuan City. The 3 of them, Bulanadi, Gorospe and Fajardo were brought to the PC headquarters where they were interviewed one after the other, after which Gorospe and Bulanadi were sent home.

The complainant filed the case in the Municipal Court of Pulilan, Bulacan, on October 8, 1974, two (2) days after she had gone home in Pungo, Calumpit, Bulacan (Exhibit 8). Gerardo Fajardo who was in the custody of the Police Department of Talavera, Nueva Ecija was taken by the Policemen of Pulilan, Bulacan.

On October 22, 1974 while the case was being investigated by Municipal Judge Alfredo Granados where Anastacia had already testified on October 9, 1974, Anastacia again executed another affidavit because that was what her lawyer, Atty. Santos wanted (p. 26, t.s.n., March 12, 1976, CFI). On the same date Gerardo Fajardo executed another statement in the Police Department of Pulilan, Bulacan. Thereafter, complainant filed an Amended Complaint wherein Gerardo, against whom she was originally complaining against, was excluded as one of the accused to be utilized as her witness, and Oscar Alvaran was included for the first time. The alleged date of the incident was changed from September 30, 1974 to September 25, 1974. Subsequently the case was elevated to the Court of First Instance of Bulacan, Branch I." (Brief, pp. 12-21.)

The version of the appellants does not inspire belief because it appears to have been contrived. The appellants portray Anastacia as wanton and unchaste woman - a prostitute. But one's credulity has to be unduly stretched in order to buy the line that a girl of 14 years who was still going to school was a prostitute who went far away from her home in order to peddle her body. The appellant's version is simply too crude to be convincing.

Opposed to the appellants' version is the affirmative narration of events made by Anastacia which were corroborated by Gerardo Fajardo. The story which she unfolded could have been inspired only by her thirst for justice. In her quest she had to live her ordeal all over again for a lengthy period because she was on the witness stand on December 15, 1975; January 12, March 10, March 11, May 3 and June 16, 1976. During all those days she had to bare in public her shame and humiliation.

To be sure there were inconsistencies in the testimony of Anastacia but they were in details rather than in the highlights of her terrible experience and could very well be attributed to her tender age and confused state of mind caused by her private hell.

The Solicitor General states that Gerardo Fajardo, the discharged state witness, also committed rape hence the appellants should each be found guilty of three (3) rapes because in a conspiracy the act of one is the act of all. We cannot agree in respect of the participation of Fajardo. Since Fajardo was dropped from the complaint his guilt had not been established. However, We agree with the Solicitor General's observation "that a motor vehicle

was used to bring her [Anastacia de Jesus] from Plaridel, Bulacan, where she was first deceived and drugged, and then taken to an isolated uninhabited place at a nipa hut, near an irrigation pump at Calipahan, Talavera, Nueva Ecija, where she was abused, two (2) aggravating circumstances are present, namely use of motor vehicle and uninhabited place (Art. 14, R.P.C.)," so that death is the proper penalty. (Brief, pp. 14-15.) However, for lack of the necessary number of votes the death penalty cannot be imposed.

WHEREFORE, the judgment of the court a quo is hereby affirmed in all respects. Costs against the appellants.

SO ORDERED.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

Fernando, C.J., in the result.

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