

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GAUDENIO PADILLA AND ROGELIO SUPERABLE, ACCUSED,
GAUDENCIO PADILLA, ACCUSED-APPELLANT.**

G.R. No. 56218. October 23, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the defunct Court of First Instance of Leyte, GAUDENCIO PADILLA and ROGELIO SUPERABLE were accused of forcible abduction with rape in Criminal Case No. 3169. The information against them which was based on the verified amended complaint of CARMEN HOBANIL, the offended party, reads as follows:

"That on or about the 26th day of April 1978, in the Municipality of Jaro, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, by means of force and intimidation, with deliberate intent and with lewd designs, did then and there willfully, unlawfully and feloniously abduct, bring and take away CARMEN MENOSA HOBANIL from her dwelling situated at Bo. Pange, Jaro, Leyte to the house of Abdon Superable at Bgy. San Roque, Jaro, Leyte, against her will and without her consent; that after having been abducted and taken away to the said place of Bgy. San Roque of the oft repeated town and province, the above-named accused Rogelio Superable, by means of force and intimidation and with the use of a bolo did then and there willfully, unlawfully and feloniously have carnal knowledge with Carmen Menosa Hobanil, against her will and without her consent, and to her damage and prejudice.

"The crime was committed with an aggravating circumstances of superior strength." (Expediente, pp. 10-11.)

Gaudencio Padilla was brought to trial but not Rogelio Superable who was at large. The dispositive portion of the trial court's decision reads as follows:

"PREMISES CONSIDERED, and there being no mitigating circumstances to consider, the accused Gaudencio Padilla is hereby sentenced to suffer the penalty of imprisonment for life, or reclusion perpetua; and he is hereby ordered to pay the amount of P10,000.00 to the complainant as moral damages hereof; plus the costs of this case.

"Insofar as the accused at large, Rogelio Superable, is concerned, let the records of this case be sent to the archives, without prejudice to its being revived upon his arrest." (Id., p. 141.)

Padilla appealed the sentence. His counsel de oficio has made no assignment of error except to claim "that the decision convicting Gaudencio of the crime of forcible abduction with rape as a principal by direct participation is contrary to law and the evidence on record." (Brief, p. 5.)

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

"The two accused, Rogelio Superable and Gaudencio Padilla, were notorious local bullies in barrio Pange, Jaro, Leyte (p. 10, t.s.n., Nov. 23, 1978). On April 20, 1978, at about 7:00 o'clock in the evening, the

aforenamed two accused, after consuming about one-half (1/2) gallon of 'tuba' agreed to proceed to a house in Barrio Pange where complainant stays, which house is owned by complainant's aunt, Cresencia Solaño (pp. 4, 8-10, Aug. 7, 1979). At that time, herein complainant Carmen Hobanil, a 19-year old 2nd year Commerce student of the Divine Word University, was spending her vacation there (pp. 14-16, t.s.n., Nov. 23, 1978). The two accused, upon seeing Carmen who was sitting in the sala and wearing only T-shirt and short pants, immediately entered the aforesaid house, grabbed Carmen by the hands, and forcibly pulled her up (pp. 4, 16-17, 20, t.s.n., Nov. 23, 1978). Accused Rogelio held Carmen's waist and right hand while accused Gaudencio held her left waistline and her left hand (p. 18, t.s.n., Nov. 23, 1978; p. 7, t.s.n., Dec. 22, 1978). Taken aback by the suddenness of the attack, Carmen shouted for help. Her aunt Cresencia who was then in the kitchen hurriedly responded to her call. (pp. 5 & 17, t.s.n., Nov. 23, 1978).

"Upon seeing her niece being held by Rogelio and Gaudencio, Cresencia immediately hugged her and tried to pull her away from the two men. In the process, Gaudencio was dragged along with Carmen outside the house (pp. 5, 17-18, t.s.n., Nov. 23, 1978). At this point, accused Gaudencio boxed the struggling Carmen, who fell together with Cresencia causing her to let go her hold on her aunt. Accused Gaudencio then pried loose Cresencia's hold on her niece while accused Rogelio threatened both Carmen and Cresencia with a small bolo or 'pisao' which he poked at Carmen's neck to stop her from struggling and shouting. Thereupon, the duo told Carmen that if anyone tries to help her she would be killed (pp. 17-18, t.s.n., Nov. 23, 1978). Forthwith, the two accused went on dragging Carmen away until they reached Barrio San Roque which is about two (2) kilometers distant (Ibid).

"At said barrio, the two accused brought Carmen inside a house inhabited by three children, who, upon seeing the two accused, immediately ran away (p. 19, t.s.n., Nov. 23, 1978). Once inside, accused Gaudencio left Carmen with Rogelio as he stood guard at the door. Accused Rogelio then forcibly undressed Carmen, and, as she kept on struggling, he poked his 'pisao' at her and began kissing her. After undressing Carmen, Rogelio pushed her several times until she fell on the floor. As the victim laid naked on the floor, Rogelio mounted her and threatening the victim with a 'pisao' succeeded in having sexual intercourse with the 19-year old student. Thereafter, as Carmen tried to get up, Rogelio pulled her down and while she laid still on the floor naked and trembling with fear, Rogelio again had carnal knowledge of her. After a while, Rogelio began to ravish her body once more and went on for the third time to force his sexual desires upon the young lady. (pp. 20-21, t. s. n., Nov. 23, 1978; pp. 2 & 5, t.s.n., Mar. 22, 1979).

"Shortly thereafter, accused Gaudencio entered the room and after whispering something to Rogelio, the two accused brought Carmen to another house about one kilometer away (p. 21, t. s. n., Nov. 23, 1978; p. 6, t.s.n., March 22, 1979). It was in said house where the police authorities, who were fetched by Cresencia, were able to rescue Carmen, Appellant Gaudencio, however, was able to escape. Only accused Rogelio was arrested and brought to the municipal hall where Carmen immediately filed her complaint against the two accused (pp. 21-22, t.s.n., Nov. 23, 1978).

"A few days later, accused Rogelio also managed to escape. It was only about a month after that appellant Gaudencio, who had gone into hiding in the house of his uncle in Barrio Catahugan, Abuyog, Leyte, more than 77 kilometers away, was finally apprehended in a hospital where he was confined, using a fictitious name, after undergoing an appendectomy (pp. 6-9, t.s.n., Aug. 7, 1979).

"The complainant, Carmen Hobanil, underwent medical examination immediately after the incident and the medico-legal report thereon shows the following injuries:

'FINDINGS

'Lesion: -

- 1) Contusion right breast upper medial quadrant.

- 2) Contusion right posterior chest level of 5 rib.
 - 3) Abrasion right posterior chest 3 F. B. below the contusion.
 - 4) Contusion left arm posterolateral aspect mid-3rd.
 - 5) Abrasion right arm postero-lateral aspect proximal 3rd.
 - 6) Abrasion left leg postero-mid-3rd.
 - 7) Abrasion left leg postero medial distal 3rd.
 - 8) Abrasion left ankle anterior.
 - 9) Abrasion left leg anterior aspect mid-3rd.
 - 10) Abrasion right leg antero-medial mid-3rd.
 - 11) Abrasion right leg antero-medial mid-3rd.
 - 12) Contusion right knee.
 - 13) Abrasion right thigh anterior aspect mid-3rd.
 - 14) Abrasion left buttocks.
 - 15) Abrasion left buttocks 2 F.B. below the 1st.
 - 16) Abrasion right labia majora.
- vaginal os admit 1 finger
 - Hymenal laceration 11 o'clock incomplete.
 - white-yellow discharge in vaginal vault.
 - Cervix pink and fine and closed.

Vaginal smear: Negative for sperm cells: (*Italics supplied*)

(Exhibit. "C" p. 5, Record)" (Brief, pp. 2-7.)

It is to be noted that it was Superable only who thrice raped the complainant. But Padilla was accused as a co-principal for the crime of forcible abduction with rape and the trial court concluded that "Un-doubtedly he had directly participated in the execution of the act of abducting the complainant by actually holding and dragging her (com-plainant) away; and later had stood guard during the perpetration of the rape by his co-principal Rogelio Superable. From the above circumstances it is safe to conclude that both conspired with each other to perpetrate the acts herein complained of. Conspiracy is implied when the accused had a common purpose and were united in its execution (PP vs. Delgado, et al., 77 Phil. 11). The community of purpose on the part of the two accused is plainly in-ferrable from the circumstances above narrated. "(Expediente, pp. 140-141.)

The appellant now claims that he did not conspire with Superable to commit the complex crime imputed to him; he also asserts that he did not directly participate in the abduction nor did he cooperate in the commission of the rape.

A conspiracy exists when two or more persons agree to commit a felony and they carry out their agreement. The existence of a conspiracy can be established by direct proof; it can also be inferred from the acts done during the commission of the crime. "To establish a conspiracy, it is not essential that there be proof as to previous

agreement to commit a crime, it being sufficient that the malefactors shall have acted in concert pursuant to the same objective." (People vs. San Luis, 86 Phil. 485, 497 [1950].)

In the case at bar there is no direct evidence that the appellant and Superable conspired to commit the crime imputed to them. Nonetheless, We agree with the trial court that the existence of the cons-piracy had been shown by the evidence which pointed to a community of purpose and concurrence of sentiment. We quote with approval the People's brief as follows:

"That appellant conspired with Rogelio in committing the crime charged is evident from the following set of facts and circumstances. First they had a drinking spree in the house of accused Rogelio and after consuming one-half gallon of 'tuba', at about 7:00 in the evening of April 20, 1978, they proceeded together to the house where complainant Carmen Hobanil stays. Upon seeing her, they simultaneously entered the house, grabbed Carmen by the hands and at the waist and dragged her out of the house despite resistance put up by the complainant and her aunt who was dragged along in the process.

"Second, after complainant had been pulled out of the house, appellant Gaudencio boxed her and pried loose Cresencia's hold on her while accused Rogelio threatened both the complainant and her aunt with a small bolo or 'pisao' which he poked at Carmen's neck.

"Third, both accused warned that if anyone comes near them, they will kill Carmen, after which they went on dragging away the complainant until they reached Barrio San Roque about two (2) kilometers distant where in a far and secluded house, the complainant was kept.

"Fourth, after forcing the complainant inside the said house, appellant Gaudencio stood guard to prevent any intrusion and to watch for any person as accused Rogelio ravaged Carmen thrice.

"Fifth, after whispering something to Rogelio, they brought the complainant to another house one kilometer away. It was in that second house where the authorities rescued the victim.

"To be sure, the foregoing chain of events and circumstances inevitably established conspiracy. There was concerted action, purpose and lewd design committed by both appellant Gaudencio and accused Rogelio." (Pp. 9-10.)

The appellant's claim that he did not directly participate in the abduction nor cooperated in the commission of the rape is belied by the evidence recited above. He is a co-principal not only by direct participation but also by cooperation. And the fact that he did not personally ravish Carmen is of no consequence because the conspiracy having been proved, the act of one conspirator is the act of the other.

The appellant also claims that there are inconsistencies in the testimony of the complainant. Suffice it to say that they refer to minor details only which were later sufficiently explained by her so that her credibility was improved rather than impaired. On the other hand, the appellant has been shown to be a devious person. He escaped from the police and was captured later in a hospital where he used a fictitious name to hide his identity.

WHEREFORE, the judgment of the court a quo is hereby affirmed with the sole modification that the award for damages is increased to P30,000.00. Costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Guerrero, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., no part.

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