

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO PARAS Y DIZON, ALIAS "ROMY ENRIQUEZ";
ALIAS "EDDIE PARAS", DEFENDANT-APPELLANT.**

G.R. No. 57195. April 28, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Accused-Appellant Ricardo Paras y Dizon, alias "Romy Enriquez", alias "Eddie Paras", took this appeal from a sentence of conviction for the crime of forcible abduction with rape imposed on him by the Court of First Instance of Pampanga, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused Ricardo Paras y Dizon alias "Romy Enriquez" alias "Eddie Paras" guilty beyond reasonable doubt of the felony of Forcible Abduction with Rape as charged in the information and the Court imposes him the penalty of RECLUSION PERPETUA, and to pay costs." (Decision p. 10; Rollo, p. 16)

The evidence of the prosecution sought to establish the following facts which had been synthesized in the People's brief as follows:

"On April 14, 1980, at about three o'clock in the afternoon, the accused arrived at the house of the private complainant Elena T. Bungay, in Colgante, Apalit, Pampanga. He claimed that he went to the said house because he was requested to deliver a message to the mother of the said complainant, Mrs. Bungay. Upon seeing Mrs. Bungay, the accused informed her that a certain "Boy", who he claimed was his friend and allegedly a co-worker of Mrs. Bungay's husband in Saudi Arabia, had some packages for Mrs. Bungay sent by her husband. While they were talking, Elena Bungay (private complainant in this case) together with her other sister arrived. It was then that Mrs. Bungay introduced her daughters to the accused (pp. 9 & 11, tsn, Dec. 1, 1980). Upon concluding their conversation, the accused requested Mrs. Bungay to buy for him some preserved meat and birds in the public market of Apalit, Pampanga. Acceding to his request, Mrs. Bungay instructed Elena to buy whatever the accused had requested and to return home immediately thereafter.

"The accused and Elena then left and boarded a bus for Apalit, Pampanga. Upon reaching the said place, Elena Bungay was about to alight from the bus when the accused told her not to get down anymore. The accused told her that instead, they would proceed directly to San Fernando, Pampanga to get the package. Eager to see the contents of the alleged package, Elena obeyed the accused.

"Upon reaching the Victory Liner Terminal in San Fernando, Pampanga where the package allegedly was, Elena asked the accused about it. The accused retorted that the said package was in Balanga, Bataan. Hearing the accused's reply, Elena told him that she cannot go as far as the said place because her mother permitted her to go up to Apalit, Pampanga only. Thus, she decided to go home. The accused then grabbed her arm and when a Victory Liner bus arrived, he ordered her to board the said bus. Upon boarding the bus, the accused and Elena sat side-by-side. The accused ordered her to keep quiet so that no harm would come to her, while holding his boy scout hunting knife. Intimidated, and fearing that the accused might carry out his threat, Elena was reduced to silence throughout the journey.

"They reached Balanga, Bataan at about 6:30 in the evening of the same day. Alighting from the bus, the accused still held the arms of Elena firmly. The accused then hailed a Honda tricycle, and directed the driver to bring them to a restaurant where the accused ate while Elena refused to eat. Elena then repeated to the accused that she must go home, but he told her that her house was far and that he would take care of her. After eating, the accused again hailed a Honda tricycle and brought Elena to the Marian Hotel. It was already seven o'clock in the evening when they reached the motel. Elena refused to enter the hotel, but the accused pushed her in until he succeeded in bringing her inside a room in the same hotel and locked the door. Inside the room Elena shouted for help, but the accused covered her mouth with a pillow. When she succeeded in removing the pillow, Elena kicked the accused but he slapped her on both sides of her face. The accused then tried to undress her. She resisted and tried to sit up on the bed, but the accused held her shoulders and forced her heavily to lie on the bed. The accused then boxed her thighs. When she still resisted, the accused took his knife and pressed the blade against the right side of her neck. Her strength and resistance gave out. It was then that the accused succeeded in having carnal knowledge of her.

"After the first sexual assault, the private complainant tried to get up but the accused held her again by the arms and told her, once more. She told him "you are a shameless person." Whereupon, the accused slapped her face again and then succeeded in having carnal knowledge of her for the second time.

"The complainant was only fifteen years old at the time of the commission of this offense. Thereafter, the accused prepared to go, but threatened Elena not to leave the place brandishing his knife. He then left, never to return to the hotel.

"The following day, April 15, 1980, at about 5:00 in the morning, Bungay went downstairs and inquired about the accused from one of the room boys in the hotel. The boy instead asked her to affix her signature on the registry book of the hotel, which she did. Bungay then left the hotel and headed to the place where buses were parked. She boarded a bus whose sign board showed its destination was San Fernando. At about 9:00 in the morning of the same day, she reached San Fernando, Pampanga. From there she boarded another bus in going home.

"Upon reaching home, Bungay reported the matter to her mother. Whereupon, they went to the Municipal Building of Apalit where she reported the incident and was investigated. Thereafter, the police, together with Mrs. Bungay and Elena, went to the Municipal Building of Balanga, Bataan. They reported the matter to the Chief of Police who initiated a search for Ricardo Paras. The found Paras and arrested him (pp. 12-36, tsn, June 25, 1980)." (Appellee's Brief, pp. 2-6; Rollo p. 98)

Testifying as the sole witness in his behalf, the accused-appellant, who gave his age as 33 years old, single, his occupation as a welder, and his residence at Balanga, Bataan, admitted substantially the occurrence of the incident narrated by complainant Elena Bungay. He denies, however, that he forced Elena into going with him as far as Balanga, Bataan, or that he did so with lewd designs. He confirmed the two acts of sexual intercourse that he had with Elena inside a room in Marian Hotel in Balanga, Bataan, but claimed that there was no force and intimidation perpetrated on Elena who consented to their repeated sexual acts. He declared that when he went to the house of complainant in Barrio Colgante, Apalit, Pampanga, Elena was sent out by her mother, not to buy certain food items which the appellant requested to be bought at the public market in the poblacion, but rather to go to San Fernando, Pampanga, to get the supposed package sent by Elena's father from Saudi Arabia from the house of a certain "Boy" who, according to the appellant, was the one to whom the package had been entrusted. Appellant claims that the bus in which he and Elena rode from barrio Colgante brought them to San Fernando, and not only to the poblacion of Apalit, Pampanga, as claimed by Elena. While they were in the bus bound for San Fernando, Elena talked to the appellant about the financial difficulties she encountered in finishing her high school studies, her having had a boy friend with whom she had parted ways, and her having taken a liking for the appellant, who, in turn, offered to extend financial aid to Elena so that she could continue her studies. When they

arrived in San Fernando, they alighted from the bus and took a stroll in the said town. They later boarded another bus for Bataan. At Dinalupihan, they transferred to another bus for Balanga. In the latter bus, the appellant continued to profess his love for Elena who reciprocated by telling him that she would like to know more of him inasmuch as she enjoyed his company. They arrived in Balanga at about 6:00 o'clock in the afternoon. They went around the town and, at the public market, the appellant bought a dress for Elena. They later ate at a restaurant after which they rode a tricycle that brought them to Marian Hotel where they registered and took a room thereat. Inside a hotel room, Elena changed her dress to the one bought at the public market, and they went out again for a stroll which included a visit to a disco house, after which they returned to their hotel room. Once thereat, they exchanged stories about their lives. The appellant told Elena that he would soon go to Saudi Arabia and from there, he would send her money for her schooling. Elena then undressed, took a bath, and went to bed with the appellant. They did the sexual act for two times and, after the second intercourse, the accused left, telling Elena that he would look for something for them to eat. The appellant did not go back to the hotel but proceeded to his house in barrio Cupang, Balanga, Bataan.

Assailing the finding that he committed the crime of forcible abduction, appellant disclaims that his taking away of Elena was perpetrated by use of force and intimidation. He further denies that the said taking of Elena was with lewd designs, an essential element of the crime of forcible abduction. Appellant cites the testimonies of Elena to the effect that their going together from the house of Elena in barrio Colgante was with the permission of Elena's mother; that Elena did not shout when the appellant prevented her from alighting at the poblacion of Apalit, and instead remained in the bus bound for San Fernando; that when they reached San Fernando and the appellant made her alight from the bus by pulling her arms, she did not shout nor call the attention of the other passengers; that when they were already in the bus bound for Balanga, neither did she shout nor cry for help; that the appellant even bought a dress for her at the public market in Balanga; and that from the public market, she and the appellant rode in a tricycle going to the hotel.

The aforementioned declarations of Elena do not necessarily show that she went with the appellant voluntarily. It is true that Elena's mother agreed to allow Elena to go with the appellant from their house in barrio Colgante. However, it sufficiently appears that from that moment, the appellant entertained sinister designs on Elena who was just introduced to him. His request for Elena's mother to buy some bird meat and tocino for him in the Apalit public market was apparently a mere ruse. That he had no intention to buy said food stuffs is shown by the fact that he did not allow Elena to go down at the poblacion of Apalit to buy the things that he had requested. If he indeed had that intention, he did not pursue the same in view of the imagined difficulty of having Elena ride with him in the same bus to go to another place. He did not allow Elena to alight when the bus was at the poblacion of Apalit, but instead asked her to go with him to San Fernando supposedly to get the package sent by his father from "Boy" who resides in said place. Going to San Fernando was not intended by Elena nor by her mother. Elena's objection to the appellant's suggestion that they go to San Fernando was undoubtedly weakened by her desire to get the package supposedly sent by her father. When they arrived in San Fernando, and the accused-appellant having failed to make Elena receive the package allegedly sent by her father, there could be little, if any, excuse for Elena to go voluntarily with the appellant any farther. She had already violated her mother's permission to go only to the poblacion of Apalit to buy tocino and bird meat for the appellant. She went as far as San Fernando possibly hoping that she would be able to get the thing sent by her father from Saudi Arabia. Not finding the package in San Fernando, and she having gone a long time since she left her house, her natural reaction would be to go back home. This circumstance renders it highly believable that, as claimed by Elena, the appellant had to force her by pulling her arms into riding a bus bound for Bataan, and that upon riding said bus, the accused took her to the farthest seat at the back thereof where he threatened Elena against making any outcry, and held an open boy scout knife which he pretended to use in cleaning his finger nails.

We cannot join the claim of the appellant that Elena willingly and voluntarily went with him inasmuch as, after his protestations of his love for her inside the bus, she had fallen for him. The surrounding circumstances do not warrant such a scenario. Elena at that time was a 15-year old provinciana. The appellant was a mature 33-year old adult, more than twice Elena's age. They met for the first time that afternoon shortly before they rode in the same bus. The appellant would want to create the impression that in such a short period of time and while he and Elena were riding a bus, he was such a giant of a lady killer who readily induced Elena to fall for him, to the extent of joining him in a romantic escapade to a place she had not been to before, and where she voluntarily and gladly surrendered to him her honor and womanhood, not only once but twice. The improbability of the version narrated by the appellant repels adherence to the same.

The appellant's contention that the taking of Elena to a hotel room in Balanga, Bataan, was without lewd designs is a desperate but futile attempt to escape responsibility for forcible abduction. There could be no doubt that the taking of Elena to a hotel was for the purpose of satisfying the appellant's lust on her. Indeed, it is not denied that he performed the sexual act on her twice. The taking of Elena could not be for any purpose other than his lascivious design to savor her womanhood. The appellant was a virtual stranger to Elena. He made no pretension that he intended or even proposed marriage to Elena. After quenching his bestial thirst, he left Elena in the hotel room to fend for herself, never to come back. The appellant did not even bother to make arrangements so that Elena could safely and conveniently go back home to her mother.

Under the circumstances already mentioned above, the commission of the crime of rape may hardly be disputed. The sexual act perpetrated by the appellant on Elena is not denied. The nature of the means employed by the appellant to make Elena submit to his lustful demands is not only borne out by the record, but readily deduceable from the facts attendant to the perpetration of the sexual intercourse in question. Elena had testified as to her acts of resistance, such as her outcries which were stifled by the placing by the appellant of a pillow over her mouth by her struggle, and which also caused the appellant to push her on the bed. Elena found herself in such a desperate situation that in submitting that for the second intercourse, she had virtually lost the will and power to resist to the extent that she had resigned herself "to die in said place."

We accordingly find no error in the finding of the trial court that the appellant committed the crime of forcible abduction with rape. We also agree with the penalty imposed on the appellant.

WHEREFORE, the decision appealed from is hereby AFFIRMED. With costs against the accused-appellant.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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