

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO L. REGLOS, ANASTACIO L. BROZO AND ANTONIO B.
FULLON, DEFENDANTS.**

G.R. No. 61663. November 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Court of First Instance of Batangas, Branch V, at Lipa City, an amended information for robbery with rape was filed against Wilfredo L. Reglos, Anastacio L. Brozo and Antonio B. Fullon. The amended information was docketed as Criminal Case No. 92 and reads:

"That on or about the 27th day of August, 1975, in Sabang, Lipa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, acting in common accord, and mutually aiding one another, by means of force, violence and intimidation, upon the person of Iris Mindanao, and without the knowledge and consent of the owner thereof, with intent of gain, did then and there, wilfully, unlawfully and feloniously take, rob, and carry away one (1) wrist watch, one (1) ring with seven stones and one (1) umbrella, with a total value of P320.00, belonging to said Iris Mindanao, and the same accused, by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously lie with and have carnal knowledge of the offended party, who was at that time deprived of reason."

After trial, the court held that "robbery was not proved." However, it "arrived at an inescapable conclusion, that the prosecution had proved the guilt of the accused beyond reasonable doubt, and the three accused: WILFREDO REGLOS, ANASTACIO BROZO, and ANTONIO FULLON, are individually GUILTY OF RAPE." The court rendered the following judgment:

"WHEREFORE, each of the said accused, shall suffer an indeterminate sentence of from TEN (10) YEARS, TWO (2) MONTHS and TWENTY (20) DAYS of prision mayor as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal as maximum, with the accessories of the law, and to pay the costs. They shall further jointly pay Iris Mindanao or her assigns, the amount of P12,000.00 as damages."

Article 335 of the Revised Penal Code defines rape and provides for its punishment. The lowest penalty for rape is reclusion perpetua which is also known as life imprisonment. Accordingly, it passes understanding why the trial court imposed an indeterminate sentence on each of the accused when the Indeterminate Sentence Law (Act No. 4102, as amended by Act No. 4225) stipulates that it shall not apply, inter alia, to persons convicted of offenses punished with life imprisonment. (Sec. 2.) And the error of the trial court was compounded when the Solicitor General stated in the People's brief that, "IN VIEW HEREOF, the penalty imposed being in accordance with law and the evidence, affirmance thereof is respectfully recommended, with costs." (On Page 21. Italics supplied.)

Reglos and Brozo did not appeal their conviction. Their decision has inured to their benefit because although the penalty meted to them is erroneous, it is not void for the trial court had jurisdiction to impose it.

As to Fullon, he filed a notice that he was appealing the decision to the Court of Appeals. Under the

circumstances the designation of the Court of Appeals as the appellate court was correct. Thereafter, Judge Demetrio M. Batario, Jr. who penned the decision issued this amazing order:

"The Record on Appeal having been duly certified by the Deputy Clerk of Court pursuant to Supreme Court Administrative Circular #2 as amended, and finding it to be in order, the same is hereby approved."

We have searched for the Record on Appeal but Our efforts have been in vain. There is, however, no cause to get excited because after all is said and done a Record on Appeal is not called for in criminal cases. What Circular No. 2, as amended by Circular No. 4 which was issued on August 21, 1978, requires is the elevation of the expediente, the folio of exhibits and the transcript of stenographic notes.

It turned out, however, that the transcript of the notes taken by stenographer Honesto Reyes was not elevated to the Court of Appeals. The missing transcript was for the trial held on October 13, 1976. On June 9, 1980, the Court of Appeals ordered Reyes to submit the transcript. But Reyes could not comply because he had died. Accordingly, on August 27, 1980, the Court of Appeals ordered a re-taking of the testimony of Florante Reyes and Iris Mindanao who testified on October 13, 1976. The testimony of Florante Reyes was re-taken on February 2, 1981, but Iris Mindanao was no longer able to testify because her mental condition had deteriorated. At the conclusion of the hearing on February 2, 1981, the trial court made the following statement:

"COURT:

Considering that the testimony of Iris Mindanao could be produced plus the new testimony of Dr. F.P. Reyes, these documents are ordered attached to the record of Crim. Case No. V-92 for transmission to the Court of Appeals."

Included in the records is a partial transcript of the hearing held on October 13, 1976, consisting of the direct and cross examination of Florante Reyes (whose testimony was re-taken on February 2, 1981) consisting of 54 pages and a portion of the direct examination of Iris Mindanao covering pages 59 to 81. Presumably stenographer Reyes was the one who prepared the transcript but could not finish it because of his death. At any rate, with the transcripts on hand, especially that covering the lengthy cross-examination of Iris Mindanao on November 11, 1976, consisting of 190 pages, We believe that justice can be administered in this case.

In a situation such as the one recounted above, We urge the Court of Appeals to detail the facts for the information of all concerned. As it is, the Court of Appeals said nothing about the situation.

On June 28, 1982, Fullon filed in the Court of Appeals a motion wherein he stated, among other things:

"1. That the undersigned accused-appellant is already incarcerated for more than seven (7) years, to date, and he is at present detained at the Camp Sampaguita, Muntinlupa, Metro Manila;

"2. That the undersigned accused-appellant is not granted the rights and privileges, which are given to insular prisoners, for reasons that he is still classified as detention prisoner;

"3. That he is withdrawing his appeal, for reason that he wanted to avail of all the rights and privileges, granted under the law, to prisoners, and in order to have a peace of mind." (Rollo, p. 36.)

It does not appear that the motion was submitted to the 8th Division of the Court of Appeals. On the contrary, it seems that motion was not submitted for at the bottom of the motion is the handwritten: "Note. Out of time. Draft of decision approved June 1982." But it was only on July 30, 1982, that the 8th Division with Sison, PV (as ponente), Victoriano and Colayco, JJ. promulgated the decision. The first and second paragraphs of the decision reads:

"For raping a mentally ill woman in Lipa City on August 27, 1975 the three (3) accused in this case were

sentenced to reclusion perpetua. Only one accused has appealed. The two others are already serving their sentence.

"Indicted and tried of the complex offense of robbery with rape upon a plea of not guilty and, after trial, convicted of rape, Wilfredo Reglos, Anastacio Brozo and Antonio Fullon were sentenced each to suffer an indeterminate penalty from 10 years, 2 months and 20 days of prision mayor to 17 years and 4 months of reclusion temporal, with the accessories of the law, to jointly indemnify their victim, Iris Mindanao or her assigns, in the sum of P12,000.00 as damages, and to pay the costs." (Rollo, p. 56.)

It is at once obvious that there is no congruence between the two paragraphs of the decision but three pairs of eyes failed to notice the mistake.

Fullon has reason to despair. If his motion to withdraw the appeal had been acted by the Court of Appeals, he would have benefitted from the wrong but nonetheless valid indeterminate sentence. But alas, the Court of Appeals found him guilty of rape and pronounced the following:

"WHEREFORE, the decision of conviction should be as it is hereby affirmed in all its parts. The impossible penalty, however, should be reclusion perpetua, pursuant to Art. 335 of the Revised Penal Code, as amended by Republic Act No. 2632, enacted June 18, 1960, and Republic Act No. 4111, enacted June 20, 1964, raising the penalty for rape to reclusion perpetua to death, even in the presence of mitigating and aggravating circumstances (People vs. Arizala y Flores, G.R. No. 59713, March 15, 1982), reclusion perpetua being an indivisible penalty.

"Despite our factual findings, let the records of the case be forthwith forwarded to the Honorable Supreme Court, for proper disposition in accordance with laws and authorities (Sec. 17, par. No. 4, sub-par. No. (4), Judiciary Act of 1948; Rule 124, Sec. 12, New Rules of Court; People vs. Daniel, L-40330, and People vs. Ramos, L-49818)." (Rollo, p. 68.)

And so on September 1, 1982, We accepted the case.

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

"At about six o'clock in the morning of August 27, 1975, the victim Iris Mindanao left her home in Barangay Talahiban, San Juan, Batangas, for the purpose of going to church in Lipa City. (tsn, p. 61, Oct. 13, 1976) After praying awhile inside the church at Lipa City, the victim went to a bakery nearby to take a snack, and because she did not have the necessary money to pay for what she took she left her watch with the store owner. (tsn, p. 96, Nov 11, 1976) Thereafter she walked towards the place where the jeepneys going to San Juan usually parked with the intention of going home. (tsn, p. 84, Nov. 11, 1976) While walking, accused Antonio Fullon (appellant), who was driving a passenger tricycle, offered her a ride which she accepted. (p. 85, id.) Instead of conducting her to the place where she intended to go, appellant went cruising around the city of Lipa for more than three (3) hours (tsn, p. 20, July 25, 1977). In one instance appellant stopped his tricycle at the Lipa City Park and initiated amorous advances towards the victim. The latter rebuffed accused by scratching him (tsn, p. 24, July 25, 1977), causing upon his arms some nail scratches injury. Frustrated, accused proceeded with the victim to the poblacion of Lipa (p.25, id.). Upon passing a drugstore, accused stopped his tricycle and bought a bottle of merthiolate. He applied it to his fingernail scratches inflicted by the victim. Thereafter, they proceeded and at this instant, accused's tricycle had a flat-tire and so he called upon Anastacio Brozo, another tricycle driver to accommodate them.

"Appellant together with Anastacio Brozo and Wilfredo Reglos brought the victim to a secluded place in Barrio Sabang, Lipa City, where they took turns in forcibly deflowering her." (Brief, pp. 5-6.)

Iris Mindanao's testimony in her direct examination concerning the rape is brief and simple. She said that she was 20 years old, single and a resident of Barrio Talahiban, San Juan, Batangas. In the morning of August 27, 1975,

she left her house at about 6:00 o'clock in the morning for Lipa City to hear mass at the cathedral which is near the Lipa City Colleges. On that occasion, Antonio Fullon, Anastacio Brozo and Wilfredo Reglos "took advantage" of her. Let Us now quote from transcript:

"FISCAL:

You stated a while ago that these three abused you, is that correct?

A

Yes, sir.

Q

On August 27, 1975?

A

Yes, sir.

Q

Where were you abused by these three accused?

A

In Barrio Sabang, Lipa City, sir, in a sugar plantation.

Q

Do you remember the time -- Who brought you to the sugar plantation?

A

Antonio Fullon, sir.

Q

By what means of transportation did he take you to the sugar plantation?

A

I was ridden in a tricycle, sir.

Q

Whose tricycle was that?

A

Antonio Fullon, sir.

Q

At the time when you arrived in a sugar plantation by Antonio Fullon in a tricycle, where were the two other accused?

A

They were with Antonio Fullon, sir.

Q

In a tricycle?

A

Yes, sir.

Q

Who was the driver of that tricycle?

A

Antonio Fullon, sir.

Q

While Antonio Fullon was driving the tricycle, where were you seated?

A

Inside the tricycle, sir.

Q

How about Anastacio Brozo and Wilfredo Reglos, where were they seated?

A

They were sitting beside the driver, sir, riding in tandem with the driver.

Q

Arriving at the sugar plantation, in Barrio Sabang, Lipa City, what happened?

A

They pulled me out of the tricycle, sir.

Q

After you were dragged out of the tricycle, what did they do to you by the three?

A

They helped one another to take advantage of me, sir.

Q

What in particular did Wilfredo Reglos do to you?

A

He was the last one who took advantage of me, sir, (pinagsamantalahan).

COURT:

What do you mean by the word 'pinagsamantalahan'?

A

They have taken my womanhood, sir.

COURT:

Proceed.

FISCAL:

Anastacio Brozo, what in particular did he do to you?

A

The same as Wilfredo Reglos did, sir.

Q

How about Antonio Fullon, what in particular did he do to you?

A

He was the first one to take advantage of me, sir.

Q

And when Antonio Fullon as claimed by you to be the first one who abused you, at the time when Antonio Fullon was in the very act of sexual intercourse with you, what was Wilfredo Reglos and Anastacio Brozo doing -- then at that time?

A

One was holding my two feet while the other one was holding my two hands, sir.

Q

At the time the first sexual intercourse made by Antonio Fullon to you, while the other two were holding your feet and your two hands, did you try to extricate yourself from their hold?

A

Yes, sir.

Q

Who was that second or next to have the sexual intercourse with you?

A

Anastacio Brozo, sir.

Q

While Anastacio Brozo was having sexual intercourse with you, what was Wilfredo Reglos and Antonio Fullon were doing at that time?

A

Antonio Fullon then took hold of my hands, sir.

Q

And Wilfredo Reglos was doing what?

A

Wilfredo Reglos was holding my feet, sir.

Q

What did you do while Antonio Fullon was having sexual intercourse with you?

A

I was trying to free myself, but I do nothing, sir, because they were helping one another against me and I can't do nothing, sir.

Q

Then came Wilfredo Reglos, the last person whom you stated to have abused you, is that correct?

A

Yes, sir.

Q

At the time when Wilfredo Reglos was having sexual intercourse with you, where was Antonio Fullon and Anastacio Brozo?

A

These two went away, sir". (TSN, Oct 13, 1976, pp. 63-70.)

On cross-examination by Atty. Luis A. Ilagan, Jr. who represented appellant Fullon, Iris testified that she reached Lipa City at about 9:30 a.m., prayed at the cathedral for a few minutes and then rode on a tricycle driven by Antonio Fullon so that she could board a jeepney elsewhere to return to San Juan. Instead of going to her destination, Fullon took her "round and round" Lipa City and then to a sugar plantation in Barrio Sabang. There the following happened:

ATTY. ILAGAN:

Q

What happened after you shall have been inside the sugar cane plantation?

A

They helped one another to take me down the tricycle, sir.

Q

Who was the first person who approached you in order for you to alight the tricycle?

A

Antonio Fullon, sir.

Q

What were his words for you to alight from the tricycle?

A

He told me that I should alight, sir.

Q

To that words of Fullon, what was your reply?

A

I asked him what we were going to do there in the sugar cane plantation, sir.

Q

When you said that to Fullon where was Brozo and Reglos?

A

They were there also, sir.

Q

Exactly where in that setting?

A

They alighted from the tricycle, sir.

Q

And, when you inquired from Fullon as to what the two of you will do there, what was the reply of Fullon?

A

Fullon told me that I am still 'pakipot' when I also wanted it.

Q

And, what was your answer?

A

I told them that I am not one as they suspected me to be, sir.

Q

And to those words you gave to Fullon, what did Fullon say?

A

He said that I will still pretend to be clean when he knew already what I am doing.

Q

And what was your answer?

A

I told him that his impression of me is wrong, sir.

Q

And then after that, what happened next?

A

They helped one another against me, sir.

Q

What do you mean helping one another against you?

A

They started to abuse me, sir.

COURT:

Q

What do you mean by that 'abuso'? What did the three do to you?

A

They took advantage of my womanhood, sir.

COURT:

Proceed.

ATTY. ILAGAN:

Q

And, they took advantage of your womanhood while inside the side car?

FISCAL CALINGASAN:

Misleading, Your Honor.

COURT:

Let the witness answer.

WITNESS:

A

No, sir.

COURT:

Where were you when they took advantage of you?

A

In the sugarcane plantation, sir.

COURT:

Proceed.

ATTY. ILAGAN:

Q

You mentioned that you were inside when you were brought to a sugarcane plantation, aboard a side car of the tricycle, did you alight from the side car of the tricycle?

FISCAL CALINGASAN:

The question has already been answered, Your Honor.

COURT:

The question is misleading because she did not alight from the tricycle. She was dragged out of the tricycle.

Proceed.

ATTY. ILAGAN:

Q

Who dragged you out of the side car?

A

Antonio Fullon, sir.

Q

How?

A

He took hold of my two hands, sir, and told me to alight from the tricycle.

Q

And after he shall have held you by your two hands and requested you to alight, you alighted, is it not?

A

I alighted, sir.

Q

Now, after alighting from the tricycle side car upon the request of Antonio Fullon, what next happened?

A

He told his two companions to help him, sir.

Q

Help him what?

A

Because I was fighting back and I was resisting, sir, so he asked his companions to help him, sir.

Q

Was there any conversation that transpired between you and Fullon after you shall have alighted from the tricycle upon his request?

FISCAL CALINGASAN:

I want to be clarified with the word used request, Your Honor. Let us clarify it.

COURT:

You ask that in your re-direct, Fiscal. Witness may answer.

WITNESS:

A

None, sir.

ATTY. ILAGAN:

Q

So, what did Fullon do after you shall have alighted from the side car upon his request?

A

He began to take off my clothes, sir.

Q

Who?

A

Antonio Fullon, sir.

Q

How about Reglos and Brozo, where were they?

A

One of them was holding my hands, the other my feet, sir.

Q

Where were your hands then?

FISCAL CALINGASAN:

It is already answered, Your Honor.

COURT:

Witness may answer.

A

Above my head, sir.

INTERPRETER:

Witness demonstrating the position of her hands which were above her head.

ATTY. ILAGAN:

Q

Is it not a fact that you were then standing when Fullon was undressing you?

A

No, sir.

Q

What were you then doing when you were being undressed by Fullon?

A

I was resisting, sir.

Q

You were resisting while you were standing?

FISCAL CALINGASAN:

Misleading, Your Honor.

COURT:

Sustained.

ATTY. ILAGAN:

Q

In what position were you when Fullon was undressing you?

A

Lying down, sir.

Q

Was he able to undress you?

A

Yes, sir.

Q

What happened after you shall have been undressed?

A

He began to abuse me, sir.

Q

At that time you were wearing a blouse and a pantsuit, is it not?

A

Yes, sir.

Q

So, were your blouse totally removed by Fullon from your body?

A

It was just raised, sir.

Q

And, after your blouse was raised up, what happened next?

A

He took off the bra, sir.

Q

How?

A

He took it off its place, sir.

Q

You mean to say, Miss Mindanao, he also lifted your bra?

A

Yes, sir.

Q

How?

A

He just raised it up, sir.

Q

And while your blouse and your bra were raised up, that was the time when Antonio Fullon abused you, is it not?

A

Yes, sir.

Q

Just exactly, Miss Mindanao, what do you mean by that phrase, that he abused you with your blouse and your bra raised up?

FISCAL CALINGASAN:

My objection is, the question is very clear already, Your Honor.

COURT:

Objection overruled. The witness may answer.

WITNESS:

A

The zipper of my pantsuit was opened forcefully, sir.

ATTY. ILAGAN:

Q

Who was forcing to open the zipper of your pantsuit?

A

Antonio Fullon, sir.

Q

And, were you struggling then?

A

Yes, sir.

Q

Were you able to effect a resistance from the acts of Antonio Fullon?

A

No, sir.

Q

Why?

A

Because somebody is holding my hands and my feet, sir.

Q

Was Antonio Fullon able to remove the zipper of your pantsuit?

A

Yes, sir.

Q

What next happened? By the way, where is the zipper of your pantsuit, in front or on the side?

A

On the side, sir.

INTERPRETER:

Witness pointing the position of the zipper on the left side of the pants.

ATTY. ILAGAN:

Q

When Antonio Fullon according to you was removing the zipper of your pantsuit, where was he in relation to your body?

A

He was near me, sir.

Q

What exactly was his position on your body?

A

He was on top of my body, sir.

Q

And more specifically, he was on your stomach, is it not?

COURT:

What stomach?

ATTY. ILAGAN:

Over the belly, Your Honor.

COURT:

You ask her.

ATTY. ILAGAN:

Was Antonio Fullon, while he was removing the zipper of your pantsuit which is at the side, over your belly?

A

He was face downward (nakadapa) over my body, sir.

Q

At that exact position, where was his face?

A

To me, sir.

Q

Were you then face to face, or were your face then near each other?

A

Yes, sir.

Q

Was he kissing you?

A

Yes, sir.

Q

And while he was kissing you, he was likewise embracing you?

A

Yes, sir.

Q

He was also kissing you when he was holding your private part or your breast?

A

Yes, sir.

Q

And on that occasion, on that date, August 27, 1975 that was all that Antonio Fullon did to you as an abuse of your womanhood?

A

No, sir.

Q

What do you mean no sir?

A

He took off his pants, sir.

COURT:

And then what?

A

And he pulled down my pantsuit and my panty, sir.

COURT:

Proceed.

ATTY. ILAGAN:

Q

After that, what happened?

A

What he wanted was consummated, sir.

Q

Up to what part of your torso was the pantsuit lowered?

A

Up to the thigh, sir.

Q

And, who was holding your feet, if you know?

A

Reglos, sir.

Q

And your feet were being held together in this manner, is it not?

(Counsel demonstrating the position with his two thighs close together)

A

My feet were together, sir.

Q

And they were together such that the thighs were close together?

A

Not exactly close together, sir, there is a space in between.

Q

How wide is that space?

A

I can not remember anymore, sir.

COURT:

Atty. Ilagan, you were not here when the doctor testified. He said there was a total destruction of the hymen.

ATTY. ILAGAN:

If Your Honor, please, total destruction of the hymen does not mean forced intercourse. A total destruction of the hymen could possibly mean a voluntary surrender, Your Honor.

COURT:

Proceed.

ATTY. ILAGAN:

Q

And when your pantsuit were lowered up to the middle of your thigh, what next happened?

FISCAL CALINGASAN:

Answered already, Your Honor.

COURT:

Answer the question.

WITNESS:

A

Fullon placed his body over my body, sir.

Q

Placed his body over your body. After that, what happened next?

A

After he had done that, he stood up, sir.

Q

What do you mean, Miss Mindanao, by your saying, that he has done that?

I will reform my question.

Q

You are referring to his having done that, by Antonio Fullon placing his body against you and that was all that he did?

A

No, sir.

Q

What do you mean no, sir?

A

There was a sexual relations, sir.

Q

Will you please describe to the Court how that sexual relation was done?

FISCAL CALINGASAN:

We will object to that. Just imagine a situation.

COURT:

What do you mean by describe?

ATTY. ILAGAN:

Narrate, Your Honor.

COURT:

Witness may answer.

WITNESS:

A

He inserted his sex organ into my vagina, sir.

Q

Where was his arms then?

COURT:

When?

ATTY. ILAGAN:

Q

When you said that the penis of Antonio Fullon was inserted in your vagina?

WITNESS:

A

His hands were on my breast, sir.

Q

How long a time was Fullon's body over your body?

A

For quite a while only, sir.

Q

More or less, Miss Mindanao, how long will that while be?

A

After he was through with his necessities, sir.

Q

Could it be around thirty minutes?

COURT:

Is that important?

ATTY. ILAGAN:

We will reform, Your Honor.

Q

Now, after that quite a while when Antonio Fullon was on top of you, what happened next?

WITNESS:

A

He removed his body from my body, sir.

Q

He stood up, is it not?

A

Yes, sir.

Q

And then, what did he do next?

A

He went away, sir.

Q

Went away where?

A

He disappeared there, sir.

Q

He disappeared in the sugarcane plantation?

A

Yes, sir.

Q

And, you were left with Reglos and Brozo only?

A

Yes, sir."

(TSN, Nov. 11, 1976, pp. 134-157.)

Dr. Wilbrodo G. Calderon, a resident physician at the Lipa City Hospital, testified for the prosecution. His testimony as summarized by the trial court is as follows:

"Dr. Wilbrodo Calderon, physician and medico-legal officer of Lipa City Hospital, in substance testified: 'I remember having physically examined accused: (with Medical Certificates Exh. "H", "G" & "I" respectively for) Reglos, Brozo and Fullon on August 28, 1975 at about 11:00 P.M., and also Iris Mindanao (Exh. "F" & "F-1", dated Aug. 27, 1975) allegedly rape. I performed upon her complete examination including genitalia with vaginal smear, and issued medical certificate Exh. "F" showing: ABRASION - forehead, cheeks, chin, arm bilateral-multiple linear abrasions; forearm, left linear abrasions; thigh right; INTERNAL EXAMINATION - Hymen complete laceration with fresh bleeding; Vagina - easily admits one finger admits 2 fingers with slight difficulty. Examining finger with fresh blood; Vaginal smear taken duplicate copy attached; CONDITION OF PATIENT ON DATE ATTENDED: conscious, loquacious, at times incoherent. PATIENT - admitted. (SGD.).' 'Hymen - complete laceration with fresh bleeding could have been caused by sexual intercourse. The vagina-smear Exh. "F-1" by microscopic examination shows sperms within the vagina. Iris told me somebody sexually assaulted her. From her wounds, it could be assumed that force and violence were employed upon her. Medical Certificates show for: Brozo - 'No evidence of external injury'; Reglos 'Abrasion periorbital area, right; Finger nail like scratch nuchal area; Linear abrasions left arm lateral aspect; Multiple finger nail like scratches, forearm, right and left; Abrasion thigh 3 inches above knee'; Fullon - 'Finger nail like scratches on: infrascapular area, medial aspect right arm, multiple right forearm; lateral, forearm, left.' Inasmuch as I did not find any injury on Brozo, I became quite inquisitive and asked how did it happen, and the two told me that the two of them were holding Iris Mindanao while Brozo was having sexual intercourse.' The doctor answered: 'Yes, Sir' to the question 'Would you say doctor that they admitted, that they raped the girl?' Fullon's four wounds show finger nail like scratches in the scapular area as well as the other scratches could have been caused possibly by struggle of a woman trying to extricate herself from the hold of a man. I did not ask Fullon and Reglos why they had those injuries. On cross-examination by Fullon's counsel, the doctor disclosed: 'One of them which I could not remember his name, was the one who told me that the two of them were holding (Iris) while Brozo was on top of Miss Iris Mindanao. I was the one who obtained the vaginal smear and it was the medical technologist who made the microscopic examination (with report) using code. On further cross-examination by Reglos' counsel he added: 'The hymen of Iris Mindanao was a complete laceration. The sperms in her vagina could only come from a man. I found fresh blood in the vaginal area which is not caused by menstruation.'" (Decision, pp. 4-6.)

The defense of Fullon is that he had no sexual intercourse with Iris Mindanao.

Testifying on direct examination, Fullon said that he was 24 years old, married, driver and a resident of Lipa City. On August 26, 1975, at about 11:30 a.m. Iris Mindanao boarded his tricycle. He was told to drive to Marauoy. What happened thereafter, according to him, is set forth as follows:

"ATTY. ILAGAN:

Q

Were you able to reach the place of Marauoy?

A

Yes, sir.

Q

When you reached that place, what did you do?

A

When we arrived in front of Sto. Niño Village, I asked her where she was going to alight.

Q

And in your inquiry, what was her reply?

A

She didn't give me any answer.

Q

What did you do when she did not give you any answer?

A

I suspected that she was a prostitute.

COURT:

Q

Anong gusto mong sabihin?

A

Pagirpir.

Q

Masamang babae, nagpapabayad, yon ba iyong puta o medyo seksi?

A

A woman with loose morals (nagpapaiyot.)

ATTY. ILAGAN:

Q

When you developed that suspicion that this woman who is your passenger is a pagirpir or prostitute, what did you do?

A

We talked, sir.

Q

What did you talk about?

A

I asked from where she was.

Q

And, what was her reply?

A

That she was from San Juan.

Q

What else, if any?

A

I also asked her name, sir.

Q

And, what was her reply?

A

Iris Mindanao.

Q

While you were having this conversation regarding her name, and from where she came from, where were you?

A

We were going around the town.

Q

Aside from the name and from where she came from, what else did you talk about while going around the city?

A

She has mentioned to me that her watch is pawned in the bakery, sir.

Q

When she informed you that her wrist watch was pawned at a bakery, what did you do?

A

I asked her if she wanted me to redeem her watch.

Q

And, what was her reply to your offer of redemption?

A

She agreed.

Q

And for how much did you redeem the watch?

A

P1.40, sir.

Q

Did you come to know in the course of your talking to Iris Mindanao while going around the city proper, how did it happen that she pawned her wrist watch to the bakery?

A

Yes, sir.

Q

What was the reason why the wrist watch was pawned?

A

She ate there without payment, sir.

Q

After redeeming the wrist watch from the bakery, what next did you do?

A

We left the bakery.

Q

Where did you go?

A

We went to a city park?

Q

Where is the city park you are referring to?

A

That was after the bridge of Sabang, sir.

Q

Were you able to reach that city park?

A

Yes, sir.

Q

What did you do there upon arrival?

A

I approached her, sir.

Q

Why did you approach her?

A

We talked, sir.

Q

And, what did you talked about?

A

I was coaxing her.

Q

Aside from coaxing her, what else did you do if you did anything?

A

I took hold of her arms, sir.

Q

Were you able to hold her?

A

No, sir.

Q

Why?

A

She scratched me on my hands, sir.

Q

After she scratched your arms, what did you do?

A

I went back to my tricycle and sat there, sir.

Q

After seating (sic) on your tricycle, what did you do?

A

I started the motor of my tricycle.

Q

And, where did you go after starting the motor of your tricycle?

A

We went back to town.

Q

Where did you pass in going to the city proper?

A

I passed by a drug store.

Q

For what?

A

I bought red medicine.

Q

Why did you bought (sic) red medicine?

A

I had her applied (sic) the medicine on my arms.

Q

While she was applying the red medicine on your arms, was there any conversation that transpired between you?

A

Yes, sir.

Q

What is the conversation all about?

A

I can't remember anymore what we talked about, sir.

Q

After she applied the red medicine in your arms, what did you do?

A

I asked her where she was going.

Q

And, what was her reply?

A

That she was going to San Juan.

Q

Upon being informed that she is bound for San Juan, what did you do?

A

I took her to the station where the vehicles going to San Juan are parked.

Q

Were you able to reach the place where vehicles bound for San Juan are parked?

A

No, sir.

Q

Why?

A

I had a flat tire.

Q

Where did this flat tire occur?

A

Opposite the Petron Gas Station.

Q

What did you do upon learning that your tricycle had a flat tire?

A

I told Miss Iris Mindanao to alight because I had a flat tire.

Q

Did she alight?

A

Yes, sir.

Q

After she alighted from your tricycle, what next happened between you two?

A

I was asking her for fare for boarding my tricycle.

Q

Were you able to collect from her the fare corresponding to her having board your tricycle?

A

She can't give me any, sir.

Q

Upon learning that this Iris Mindanao has no money to pay the fare, what next happened?

A

I was asking from her a plastic box which can be used for container of tools.

Q

And, did she give it to your request?

A

No, sir.

Q

Did she give any reason why she don't want to give you that red plastic cubota box?

A

Yes, sir.

Q

By the way, what is the color of that cubota box?

A

Red, sir.

Q

What was the reason given to you why she did not want to part with that red plastic cubota box?

A

Because it contained prayer book, sir.

Q

After she told you that she cannot give that red plastic cubota box, what next happened?

A

She took of her ring from her finger and that is what she gave to me, sir.

Q

Did you accept the ring which she gave to you.

A

Yes, sir.

Q

After accepting the ring which she gave to you, which she took from her finger, what next happened?

A

I even gave her P3.00 that time.

Q

Why do you have to give her P3.00?

A

As change for her fare for a ride in my tricycle.

Q

Did she accept the P3.00 which you gave her?

A

No, sir.

Q

What did she do with the P3.00 you gave her as change?

A

She threw it away, sir.

Q

This P3.00 was this in the form of peso coin or in peso bills?

A

In coins, sir.

Q

After she threw these three (3) pieces of peso coin, what next did you do?

A

I picked up those P3.00 coins.

Q

After you have picked up the three peso coin, what else happened?

A

I called for a tricycle.

Q

And, whose tricycle were you able to summon?

A

Anastacio Brozo's tricycle, sir.

Q

If this Anastacio Brozo is present in Court right now, will you please point him out?

INTERPRETER:

(Witness pointed to a man in Court who stood up and who answered by the name of Anastacio Brozo.)

ATTY. ILAGAN:

Q

What time more or less were you able to call the tricycle being operated by Anastacio Brozo?

A

More or less 2:30.

Q

After calling the tricycle of Anastacio Brozo, did you have any conversation with this Anastacio Brozo?

A

No, sir, we didn't talk to one another, sir.

Q

After calling Anastacio Brozo's tricycle what next happened?

A

I told her to board this woman.

Q

And, who is this woman you are referring to?

A

This Iris Mindanao.

Q

Aside from telling Anastacio Brozo to take as passenger Iris Mindanao, what else if any, did you say to Anastacio Brozo?

A

I told him to take Iris Mindanao to the station of vehicles bound to San Juan.

Q

And, was Iris Mindanao able to take the ride on the tricycle of Anastacio Brozo?

A

Yes, sir.

Q

Did you actually saw them left the place where you have your tricycle parked because of that flat tire?

A

Yes, sir.

Q

When they left the place where you were, what were you doing?

A

I pushed my tricycle to the vulcanizing, sir.

Q

Were you able to have your tricycle repaired that day?

A

Yes, sir.

Q

And, were you able to continue plying the route?

A

After having my tricycle repaired.

Q

In the course that you were taking the regular route of your tricycle, after having it repaired that day, did you come to see Iris Mindanao for the second time?

A

No more, sir.

Q

How about this Anastacio Brozo?

A

No, sir."

(TSN, July 18, 1977, pp. 6-17.)

The appellant has correctly stated that "the issue is one of appreciation of evidence—whether or not the facts established by the evidence on record, both by the prosecution and by the defense collectively, have sufficiently made out a situation as to satisfy the elements of the crime as defined and penalized under the Revised Penal Code." (Brief, p. 9.)

In most rape cases, only the complainant is able or willing to give direct evidence. The case at bar is no exception. However, the uncorroborated testimony of the victim is entitled to great weight and is sufficient to convict if it meets the test of credibility.

We are of the opinion that both the trial court and the Court of Appeals correctly appreciated the evidence as proving the case for the prosecution. There is no doubt that Iris Mindanao was raped on August 27, 1975. Iris said so and the acceptance by Brozo and Reglos of their conviction by not appealing is an affirmation of such fact. It only remains to be determined whether or not Fullon also raped the complainant.

The testimony of Iris regarding the rape on her by Fullon is simple, direct and convincing. It must prevail over the general denial of the appellant. The assignment of credibility by the trial court must be respected because it had the advantage of observing the witnesses and there is nothing in the record which would justify a deviation from the rule.

The appellant claims that the testimony of Iris "a confirmed schizophrenic is highly illogical." True it is that Dr. Florante P. Reyes, a physician at the Mental Hospital, testified that Iris had been confined at said hospital since 1971, and re-admitted in 1975. She was suffering from schizophrenia which, according to Dr. Reyes, is a mental disease characterized by loss of orientation; the individual becomes alien to reality. It is also called split or dual personality.

Iris was given a pass by the hospital on April 26, 1976, and advised to return for a monthly check-up. On January 3, 1977, she was again re-admitted to the hospital for relapse of schizophrenia. It can thus be said that on August 27, 1975, when Iris was raped she was not fully mentally sound and it can be assumed that she was in the same condition when she testified on October 13, 1976, and November 11, 1976. Nonetheless, according to Dr. Reyes when he was cross-examined by the appellant's counsel:

"ATTY. ILAGAN:

Q

So, if a rape incident occurred while this patient is psychotic, she can not recall later on that incident because she was psychotic during that time that the incident transpired?

A

She can, because even a psychotic person can cite an experience. It is very common in our hospital. If a patient was hit by another patient, this patient that was hit can testify that she was hit and she can tell the person who hit her."

(TSN, Feb. 2, 1981, p. 27.)

The appellant also claims that Brozo and Reglos did not implicate him in the rape. But why should they? They were not prosecution witnesses; they were the co-accused of the appellant; and if they had implicated the appellant they would have implicated themselves also.

The trial court found that only one crime of rape was committed. The three accused, as co-conspirators, are guilty of three rapes. They helped one another in raping the victim. (See *People vs. Babasa*, L-38072, May 17, 1980, 97 SCRA 672, also involving the rape of a tricycle passenger by the driver and his two confederates.) Hence, the appellant should be sentenced to three reclusion perpetuas.

WHEREFORE, the judgment of the trial court is affirmed with the sole modification that the appellant shall suffer the penalty of three reclusion perpetuas. No special pronouncement as to costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro and Escolin, JJ., concur.

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