

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR FERNANDEZ, DEFENDANT-APPELLANT.

*G.R. No. 80228. September 12, 1988*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

Nestor Fernandez was charged before the Regional Trial Court of Iloilo with the crime of Forcible Abduction with Rape committed as follows:

"That on or about the 9[th] day of August, 1982, in the Municipality of Jordan, Subprovince of Guimaras, Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused armed with a knife willfully, unlawfully and feloniously abducted forcibly the undersigned, a fourteen (14) year old woman, by then and there taking and carrying her away from the dwelling of a certain Luz Gallego at Brgy. San Miguel, Jordan, Guimaras, where the undersigned stayed during school days, against the will of the undersigned and with lewd designs, and brought her (undersigned) to Buenavista, Guimaras, and thereafter by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned several times against her will and consent."<sup>[1]</sup>

After hearing the evidence of the parties, Judge Jesus V. Ramos found the accused guilty, as charged, and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the offended party in the amount of P5,000.00.<sup>[2]</sup>

From this judgment, the accused has appealed.

The trial court summarized the evidence of the prosecution, as follows:

### **"EVIDENCE FOR THE PROSECUTION**

"The evidence for the prosecution tends to show that in the morning of August 9, 1982, a Monday, around 7:00 o'clock, when the complainant Elisa Galve, a 14-year old barrio school girl who was a first year student at the St. Joseph School in Jordan, sub-province of Guimaras (A Catholic School run by nuns) had just left her boarding house and was on her way to school, suddenly, from the side of the road near a mango tree, the herein accused Nestor Fernandez, who is a married man with a 'querida', appeared with a knife in his hand and held the right arm of the complainant warning her not to make a sound or shout for help or he will kill her. When the complainant inquired as to what he wants, he answered that she must come with him or he will kill her. With this answer, he started counting one up to three and intimated that he will really kill her if she refuses to come with him. Young and gullible as she was, she was successfully intimidated and her will controlled by the offender. She was then forced against her will to go with the accused who took a side road to reach Pena, around 9 kilometers away. According to the complainant, they did not meet any person along the way whom she knew, although they met some whom she did not know. All the while, the accused kept repeating the warning that she will be killed if she shouts or asks for help from anyone. She continued to keep quiet, believing that the accused would really kill her with the knife he had with him if she shouts for help. She was also afraid to run away from him since she was a small and frail young girl whom he could easily catch up

with. They alighted at Langab and walked a distance of around two kilometers until they reached the house of a certain 'Botoy', whom the complainant learned later to be an uncle of the accused by the name of Rudy Gagnao. As if by pre-arrangement, the said 'Botoy', although a married man with eight (8) children, was alone at the time. The complainant was confined in the only room of that small house of Botoy where she was served her meals by the accused. In the evening of the same day, August 9, 1982, at around 11:00 o'clock, the accused entered the room where complainant was trying to sleep and by intimidating her with the same knife he threatened her in the morning, against her will, he succeeded in undressing her and had carnal knowledge of her in spite of the resistance she put up. The complainant suffered intense pain in her private parts. But she did not shout because she knew by instinct that 'Botoy' was in cahoots with the accused. Besides, that ever-present threat to kill her with his knife which he whispered to her constantly, made her believe that he will carry out his threat if she does not accede to his desire. Her struggles to free herself were futile because he was much stronger than she was.

"The sexual act against her will was repeated the following evening. According to the complainant, she stayed inside the room crying during her stay in the house and goes out only for her personal necessities but always accompanied by the accused. Early Friday morning, the 13[th] of August, 1982, another uncle of the accused named Antonio Fernandez and a cousin of the accused, Rodrigo, fetched the complainant and the accused. They rode in a jeep to Pena, then to Buenavista, and then road [sic] in a pump-boat to Iloilo and took a PU to Sta. Monica, Oton, where the accused brought the complainant to the house of an old couple, the parents-in-law of Rodrigo, the first cousin of the accused. They stayed there Friday evening and the accused again had carnal knowledge with the complainant against her will, still being threatened by the accused with the same knife.

"The following day, a Saturday, August 14, 1982, the barangay captain of Constancia, Constantino Cordero, another relative of the accused, fetched the complainant and the accused and brought them back to Jordan, where a policeman apprehended the accused and placed him in jail. From Sta. Monica, Oton, to Jordan, Guimaras, the complainant was warned and intimidated by the barangay captain Cordero under threat of death, to say that she voluntarily went with the accused. Since it was a Saturday, the complainant, together with her father, came back to the Municipality of Jordan to have their sworn statements taken only on Monday, August 16, 1982. The complainant then got sick and she was physically examined by a physician, Dr. Rey Celiz, around a month after the alleged rape. A formal complaint for forcible abduction with rape against the accused was then filed by the minor assisted by her father on July 28, 1983."[3]

The accused, Nestor Fernandez, denied having forcibly abducted the complainant. He claimed that he and the complainant are lovers and that the complainant went with him voluntarily. He also denied having raped her. In fact, his testimony on direct questioning tends to show that the accused never had sexual intercourse with the complainant during the time they were together from 9 August 1982 to 14 August 1982. His version is as follows:

At about 6:00 o'clock in the morning of 9 August 1982, he left the house of Marcelino Galve, the father of the complainant Elisa Galve, in Constancia, Jordan, Guimaras, Iloilo, where he was staying, on his way to Bacolod City. Upon reaching Alibhon, also a part of the town of Jordan, he alighted and rode in another jeep. To his surprise, he saw the complainant following him. He asked her where she was going, and she replied that she was going with him. He became worried and upon reaching Baras, also a part of Jordan, he alighted. The complainant also went down from the jeep. He stayed for a while in Baras, while the complainant walked towards Pena. However, when the complainant was already far away, he decided to follow her. Upon reaching Pena, they rode in a jeep to Cabungahan in Buenavista, Guimaras. There, he brought the complainant to the house of his uncle, "Botoy."[4]

They arrived in the house of "Botoy" at about 12:00 o'clock noon, and were given lunch. "Botoy" asked him what he was going to do with the complainant and he explained: "I was about to go to Bacolod but she went with me.

So, I decided to go to your place because she will not go back to school and I want you to accompany her home." "Botoy" also asked the complainant why she went with the accused and she replied: "because 'she loves me.'" They slept together that night and on the next day, they went out of the house and gathered guavas.[5]

On the following day, they went to the house of the parents of the accused in Ayakan, about seven (7) kilometers away. They left the house of "Botoy" at about 3:00 o'clock in the afternoon and arrived at Ayakan about 7:00 o'clock in the evening. The mother of the accused asked the complainant why she went with the accused and the complainant answered: "what can I do because I love him." [6]

Very early the next morning, at about 3:00 o'clock, they went back to the house of "Botoy." They arrived in the house of "Botoy" at about 6:00 o'clock in the morning and spent the day going around the place with the children of "Botoy." [7]

They slept at around 8:00 o'clock in the evening, and when the accused woke up at about 5:00 o'clock in the morning of the next day, he was surprised to find his uncle, Antonio Fernandez, and his cousin, Rodrigo Fernandez, there. Antonio Fernandez told the complainant to go home because her parents were looking for her, but the complainant refused because she was in love with the accused. So, Antonio Fernandez decided to bring them elsewhere. They rode in a jeep to Buenavista and from there, they rode in a pump-boat to Iloilo City. Then, they rode in a jeep to Sta. Monica, Oton, Iloilo, and went to the house of the father-in-law of Rodrigo Fernandez, where they stayed for two days, Friday and Saturday.[8]

On that Saturday afternoon, however, at about 1:30 o'clock, the barrio captain of Constancia, Jordan, one Constantino Cordero, arrived and brought them back to Jordan. Upon landing at the wharf of Jordan at about 3:00 o'clock in the afternoon, the accused and the complainant were arrested and brought to the Municipal Building. The complainant was asked why she went with the accused and she replied that she went voluntarily. The complainant further told the policemen that "if you will imprison Nestor Fernandez so, you also imprisoned me. It is not his fault but rather my own fault." The accused was also asked by the policemen if he took the complainant by force and he replied that he did not. The accused told the policemen that he was courting the complainant as man to woman. He was then placed inside a prison cell. Another prison cell was prepared for the complainant, but her father relented and, instead, brought her home.[9]

Asked about the intimate relations he had with the complainant, the accused recounted that in the month of May 1982, he and the complainant would attend the "flores de mayo" novena and go home at night holding hands and they often kissed each other along the way. Then, sometime in June 1982, they attended a dance in Balayong, about two kilometers away. While he was inside the dance hall, he was hit by a stone, near his left ear. The wound bled profusely and the complainant cried all the way home. Upon reaching the house, the complainant heated some water and cleaned the wound. Then, in the month of July 1982, the accused and the complainant went to Villa Beach in Arevalo, Iloilo City, three times. On the first occasion, they arrived at about 10:00 o'clock in the morning and after eating their lunch and strolling around the beach, they went home to Guimaras at about 2:00 o'clock in the afternoon. On the second occasion, they also strolled around the beach and went home to Guimaras at about 2:30 o'clock in the afternoon.

On the third occasion, however, they arrived at the beach at about 2:00 o'clock in the afternoon. After strolling in the beach for sometime, they went to the house of the uncle of the accused, one named Lito Abelo to ask permission if they could spend the night there. But, the wife of Lito Abelo demurred because they were crowded in their house. She, however, promised to look for a place where the accused and the complainant could spend the night. She went around the neighborhood and found one near their own house. The accused and the complainant slept inside the bedroom. Then, at about 10:00 o'clock in the evening, the accused told the complainant: "I will

de-flower you," and the complainant answered: "you go ahead." So, the accused had sexual intercourse with the complainant. To his surprise, the accused did not find it difficult to have sex with the complainant and that she did not bleed. So, he asked the complainant if there was somebody else who had sex with her before him and she answered that she had a classmate in school who was the first to have sexual intercourse with her. They had sex three (3) times that night and went home to Guimaras at about 7:00 o'clock the following morning.[10]

The trial court, however, did not give credence to the claim of the accused that he and the complainant were lovers and found, instead, that the evidence presented proved beyond reasonable doubt that the accused is guilty of the crime charged.

In this appeal, the accused insists in his innocence and reiterates his claim that the complainant went with him of her own accord and that the sexual intercourses complained of were done freely and voluntarily. The Solicitor General agrees with him and recommends his exoneration. The People's counsel argues that the failure of the complainant to make an outcry or protest when she was allegedly raped against her will, or make protestations when they rode on board a jeepney and a pump-boat, despite the presence of other passengers therein, rendered her testimony incredible. The Solicitor General also makes capital of the declaration of the complainant that she was a virgin when she was forcibly abducted and then raped despite the showing in the medical certificate that her genitalia could admit two (2) fingers with ease and that she had several sexual intercourses previous to the examination. [11]

We do not agree with the theory of the Solicitor General nor do we accept the tale of the accused. We have reviewed the record of this case with great care and we are convinced that the offense complained of was committed through force and intimidation, as testified to by the complainant and affirmed by the trial court. The testimony of the complainant was given in a spontaneous and straightforward manner and is corroborated by other witnesses and by medical findings. Like the trial court, we are convinced of the sincerity of the complainant who had no reason to testify falsely against the accused and impute to him the commission of the crime of forcible abduction with rape. Considering the inbred modesty and antipathy of a Filipino woman to air in public things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had undergone in the hands of the accused if they were not true. It is her natural instinct to protect her honor.

Besides, the claim of the accused that he and the complainant are lovers is belied by the fact that the complainant lost no time in denouncing the wrong done to her. In fact, she said that if given the free will, she will kill the accused the moment she sees him.[12] It should also be noted that the complainant was brought back from Sta. Monica, Oton, Iloilo, to Jordan, Guimaras, on Saturday, 14 August 1982, and she filed her complaint against the accused on Monday, 16 August 1982.[13] She would have filed it earlier, but she was dissuaded by police officers who told her that it was a Saturday and there was no office. She testified:

**"Q**

If it is true that you were raped, Miss Witness or forcibly abducted, why did you not immediately report your having been raped or forcibly abducted when you were investigated by the police on August 14, 1982?

**A**

Because the police authorities told us to return the following morning because that was a Saturday and there was no office."[14]

The failure of the complainant to make an outcry in the house of "Botoy" and elsewhere, where she was brought

by the accused, has been sufficiently explained. The complainant could not shout because the accused repeatedly warned and threatened to kill her if she should shout or ask for help. It may seem unnatural considering the distances travelled and the presence of fellow travellers, but, it is not improbable. As the Court had said in one case,[15] "the workings of a human mind when placed under emotional stress, are unpredictable and people react differently. In the given situation, some may shout; some may faint; and some may be shocked into insensibility; while some may openly welcome the intrusion." In the instant case the complainant chose to keep quiet for fear of her life.

Besides, it is not true, as the Solicitor General says, that there were ten (10) persons in the house of "Botoy" when the complainant was brought there by the accused. The complainant declared that only "Botoy" was present when they arrived, leading the trial court to comment that the affair seemed to be a "pre-arrangement." [16] The testimony of the complainant reads, as follows:

**"Q**

You will agree with me Miss Witness that this Botoy has a family?

**A**

He has a family according to what I know but his family was not there when I arrived, it was only Botoy.

**Q**

Is it not a fact Ms. Witness that during your stay in the house of Botoy you even conversed with the daughters of Botoy, named Gina & Lidalen?

A I have not conversed with them and I have not even seen them." [17]

She further said:

**"Q**

Could you tell us the name of the first cousin who was with him at that time?

**A**

Botoy, his uncle.

**Q**

And of course, other than 'Botoy' were also present his wife and children, is it not?

## A

They were not there."[18]

Moreover, it seemed to her that "Botoy" was an accomplice in her abduction,[19] so that even if she should shout, while being raped by the accused, she could not expect any help from him.

The fact that the complainant's genitalia admits two fingers with ease despite her claim that she was a virgin before being raped by the accused, would not also render her testimony less credible. The sex organ is an elastic membrane and the medical examination was made after she had already been raped several times. Anyway, that discrepancy, if it can be considered such, is on a minor detail which will not destroy the credibility of her testimony.

The accused also points to certain portions of the testimony of the complainant which are allegedly inconsistent and render her testimony unworthy of credit, namely: (1) that the complainant stated that she was raped three (3) times, whereas, she claimed to have been raped four (4) times when she was examined by the physician; (2) complainant testified that the accused never proposed marriage to her (p. 15, tsn of July 25, 1984) whereas, in her affidavit (Exh. B), she stated that the accused proposed marriage; (3) complainant testified that her companions in going from Sta. Monica, Oton, Iloilo, were the accused and the latter's first cousin (p. 20, tsn, Feb. 22, 1984), deliberately omitting the presence of the barangay captain, Constantino Cordero, who fetched them; and (4) on direct examination, the complainant, when asked if they met any person on their way to Pena, Buenavista, Guimaras, answered in the negative (p. 7, tsn, Feb. 22, 1984); but, on cross-examination, she replied in the affirmative (p. 23, tsn of July 25, 1984).

These inconsistencies, however, are on relatively minor details which cannot destroy the credibility of the complainant's testimony. We cite, with approval, the following findings of the trial court:

"The defense harped on complainant's testimony that she was raped three times by the accused, whereas, she claimed to have been raped four times when she was physically examined by Dr. Rey Celiz. The testimony of complainant was given around two years after the incident happened and so many things could happen in a span of two years that could make the mind forget, especially that this young girl is trying hard to forget such traumatic incident. But the fact remains that the accused abused her several times, whether it was three or four times, is immaterial. This and other minor inconsistencies in complainant's testimony do not affect her credibility. In fact it lends truth to it as she was left alone to testify as to what actually happened."[20]

Finally, the accused assails the trial court for not giving due weight and consideration to the entries in the police blotter of the Jordan Police Department to the effect that the father of the complainant had charged the accused for having seduced his daughter and that the accused was booked for qualified seduction, and that the complainant was booked for disobedience and disrespect to parents.[21]

It should be noted, however, that the entries in the police blotter were made by a police officer without the participation of the complainant or her father, but upon information furnished him by the barangay captain. Nemasio Elevencionce of the Jordan Police Department testifying on behalf of the accused, declared, as follows:

## “Q

You said that another Patrolman Montilla was the one who reflected that in the police station?

**A**

Yes, sir.

**Q**

Who typed the police blotter, the original?

**A**

It was only handwritten.

**Q**

The word here 'seduced' and 'qualified seduction' were the words of the patrolman who booked or those were the words of the parents.

**A**

Yes, sir, those are the words of the patrolman who booked.

**Q**

You stated also a while ago that when you apprehended Elisa Galve together with Nestor Fernandez, you said that you booked her for disobedience to parents because she refused to go home when asked to go home. Who told you about it?

**A**

The barangay captain of the place.

**Q**

It was not the father who told you but the Barangay Captain?

**A**

Yes, sir."[22]

And, according to the complainant, she was told by the barangay captain to tell the policemen that she went with the accused voluntarily and she agreed because she was afraid that they will kill her. Her testimony reads, as follows:

**"Q**

It was also stated during the cross examination that in the police record of Jordan, it was reflected that you were disobedient to your parents for having gone with the accused. What do you say to that?

**A**

When I left Sta. Monica, the Barangay Captain told me to declare that it was my own free will to go with the accused and when I was still in the boat, he whispered to me that I will declare what he told me because I am also afraid that they will kill me."[23]

In any event, the issue raised is one of credibility. The Court has repeatedly upheld the time-honored doctrine that the findings of fact of trial courts are entitled to great weight and respect and should not be disturbed on appeal unless it is shown that such findings are not supported by the evidence or that the trial court failed to consider material facts and circumstances in its evaluation of the merits of the case which, if considered, will alter the result.[24] As we have hereinbefore stated, we find no cogent reason to disturb the findings of the trial court supporting its conclusion that the accused is guilty as charged. Hence, we affirm the judgment of conviction.

WHEREFORE, the judgment appealed from is **AFFIRMED**, with the modification that the indemnity due from the accused-appellant to the offended party should be, as it is hereby increased to P20,000.00. With costs against the appellant.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Sarmiento and Regalado, JJ., concur.

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[1] Original Record, p. 1

[2] Id., pp. 444, 454

[3] Id., pp. 445-446

[4] t.s.n. of Nov. 28, 1985, pp. 4-7

[5] Id., pp. 18-19

[6] Id., pp. 19-21

[7] Id., p. 21

[8] Id., pp. 21-25

[9] Id., pp. 25-29

- [10] Id., pp. 8-17
- [11] Rollo page 101, et seq.
- [12] t.s.n. of Oct. 24, 1984, p. 9
- [13] Original Record, p. 4
- [14] t.s.n. of Oct. 3, 1984, p. 20
- [15] People vs. Cabradilla, G.R. No. L-33788, Nov. 29, 1984, 133 SCRA 413, 418-419
- [16] Original Record, p. 445
- [17] t.s.n. of Aug. 29, 1984, pp. 3-4
- [18] t.s.n. of Oct. 3, 1984, pp. 5-6
- [19] t.s.n. of Feb. 22, 1984, p. 10
- [20] Decision, p. 9, Original Record, p. 452
- [21] Exhibit 3, Original Record, p. 335
- [22] t.s.n. of Sept. 4, 1985, pp. 11-12
- [23] t.s.n. of Oct. 24, 1984, pp. 8-9
- [24] People vs. Garafil, G.R. No. 74485-86, July 30, 1987, 152 SCRA 468, 474-475 and cases cited.

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