

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAULINO RIVERA Y ORDANZA, ACCUSED-APPELLANT.

G.R. No. 87187. June 29, 1995

Ponente: VITUG, J.

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VITUG, J.:

This appeal is interposed from the decision of the Regional Trial Court of Manila, Branch XLIX, in Criminal Case No. 87-58720-SCC convicting the accused thusly:

"WHEREFORE, judgment is hereby rendered finding the Accused PAULINO RIVERA y ORDANZA guilty beyond reasonable doubt, as principal, for the crime of FORCIBLE ABDUCTION WITH RAPE and hereby imposes on him the penalty of RECLUSION PERPETUA and hereby condemns him to pay to ALMIDA (AILEEN) PORTONA and her parents the amount of P30,000.00 as and by way of moral damages and the costs of suit.

"The period during which the Accused underwent detention during the pendency of this case shall be credited to him in full provided that he agreed, in writing, to abide by and comply strictly with the rules and regulations of the City Jail.

"SO ORDERED." [1]

The appellant was charged, on 02 November 1987, with forcible abduction with rape in a complaint filed by the victim, Almida Fortuna, which read:

"That on or about October 24, 1987, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown and helping one another, with lewd designs, did then and there wilfully, unlawfully and feloniously abduct, take and carry away from Cristobal Street, Punta, Sta. Ana, in said City, the undersigned complainant by means of force, violence and intimidation, to wit: by poking a knife at her and covering her mouth and forcibly bringing her into the grassy area at the back of a high concrete fence of EXON Chemicals, Inc., near the bank of Pasig River at Punta, Sta. Ana, this City, where the said accused together with his co-conspirators, by means of force, violence and intimidation, that is, by covering her mouth, holding her arms and legs and pointing a knife at her chest, succeeded in having carnal knowledge of her, against her will.

"Contrary to law." [2]

When arraigned on 17 November 1987, [3] appellant pleaded "not guilty" to the crime charged.

The evidence for the prosecution consists, by and large, of the detailed testimony of the victim herself.

Almida Fortuna y Muscosa, also known as Aileen, was a 17-year-old housemaid of the spouses Jose and Esperanza Almirante who owned a small store in No. 2958 A. Bautista Street, Punta, Sta. Ana, Manila, where they resided. The daughter of Alberto and Alfita Fortuna of Catbalogan, Samar, Aileen was only five feet and one inch tall and a mere fifth grader in the elementary school when she already had to work for a living.

On 24 October 1987, at about nine o'clock in the evening, Aileen was asked to buy a case each of beer and "Coca-Cola" from the store owned by a certain Dodong along Cristobal Street. Aileen had gone to the store of Dodong twice before without any untoward incident. Aileen boarded a jeepney bound for Calahig and alighted at the junction of Cristobal and Bautista streets. A male co-passenger also alighted and walked alongside Aileen[4] towards Dodong's store. The place was a residential area. A church stood at the corner of Cristobal and Bautista streets. Just as Aileen had walked past the church, her male co-passenger suddenly darted from behind, held her hands, covered her mouth,[5] and dragged her towards a small alley where the abductor hailed another man. The two brought Aileen to Obrero Street, some fifty meters away from Dodong's store. She was shoved on board a passenger jeepney, with four other men, parked in front of appellant's house. One of the men blew smoke on the face of Aileen that instantly made her feel dizzy. Since she continued to struggle, the others held her by the hand and covered her mouth.[6] After a while, Aileen was brought down and dragged to a grassy area beside a dike about two meters away from the fence of Exxon Chemicals, Inc. The place was illuminated by two light bulbs, a hundred watts each, atop a concrete fence. There were no houses in the vicinity. Upon reaching the dike, Aileen was pulled to the ground by four men. One of the malefactors pointed a six-inch knife to her breast. Appellant was then standing just about a meter away.[7]

The men helped each other in undressing the struggling Aileen. They succeeded in taking off her t-shirt, "bra," jogging pants, shorts and panty. Her t-shirt[8] was torn at its back by approximately eleven inches and at the right armpit by four inches. Her pair of corduroy shorts[9] was ripped by about eight inches in the area adjoining the legs while her jogging pants[10] was torn by one foot below the right hip. With her legs held apart, her hands raised to the level of her head and her mouth covered, one of the men mounted her and had sexual intercourse with her for about two minutes. Aileen cried out but did not lose consciousness.[11] Appellant then took his turn, went astride Aileen and had sexual intercourse with her which lasted for about four minutes. All that she could do was to stare in pain at her aggressor. Aileen could recognize him on account of the bright light.[12]

There was, suddenly, a heavy downpour which sent appellant and the rest of the group scampering away.[13] Aileen immediately dressed herself up and ran towards the direction of the road. In this plight, she was seen by Joel Calma and by a barangay tanod.[14] Aileen could not get a ride home because of the heavy downpour. She stayed on board a parked jeepney until about five o'clock in the morning when she proceeded to the church. Here, Dodong chanced upon her. After being told about what had happened, Dodong "phoned" the Almirantes who promptly fetched her.

Late that afternoon of 25 October 1987, Aileen, accompanied by Pat. Joselito Almirante, a son of her household employers, went to the Punta police detachment where she officially reported the incident. Aileen so described as best she could the persons who assaulted her.[15] On 27 October 1987, she was brought by the police to the house of Mrs. Teofila Munar, the barangay captain of Barangay 898, Zone 100, of Sta. Ana. Aileen saw a group of persons standing near the gate of the house but she did not notice appellant to be among them.[16] When Aileen mentioned the name of Joel Calma to Mrs. Munar, the latter summoned Joel. Questioned on the identity of the persons who raped Aileen, Joel named them.[17]

Later, Aileen was brought to Dr. Prospero A. Cabanayan, medico-legal officer of the National Bureau of Investigation, for medical examination. In his report,[18] Dr. Cabanayan stated that (1) there was no evident sign of extragenital physical injury on Aileen's body, and (2) there were healed deep hymenal lacerations at "3:00 o'clock and 8:00 o'clock positions in her sex organ."

On the basis of the information given to them by Joel Calma, the police picked up appellant at his residence in the early morning of 01 November 1987. At about five o'clock that afternoon, appellant was brought to Police Station No. 6 from the Punta police detachment. They dropped by at the house of the Almirantes. When Aileen saw

appellant, Aileen, trembling in anger, tried to approach appellant but she was stopped.[19] The group then proceeded to Police Station No. 6, where Aileen executed her sworn statement.[20]

Earlier in the day, at about eleven o'clock in the morning, Carlito Rosario, head of the barangay where the Almirantes resided, went to see Pat. Joselito Almirante to intercede for appellant who, it turned out, was the husband of Rosario's niece. Appellant's mother, Epifania, and his brother, Rodelio, also approached the Almirantes in an effort to settle the case.[21]

Appellant was formally booked on 02 November 1987, with no bail recommended for his release, and charged in court the following day.

In his defense, appellant, a 28-year-old high school graduate and a contract worker in Saudi Arabia from 1980 until his last trip back to the country on 18 August 1987, vehemently denied any participation in the crime. According to him, at around ten o'clock in the evening of 24 October 1987, he was at home viewing a television program. He stepped out of the house only for a moment to converse with his neighbor, Joel Calma, who happened to drop by. The two were later advised by the barangay captain, Teofila Munar, to stay indoor since the police were expected to then shortly conduct a "saturation drive." Appellant went back to watching television until he went upstairs to join his sleeping children.

Continuing with his narration, appellant said that, on 25 October 1987 he did not leave the house except to attend the Sunday mass with his children.[22] The following day, he left but only to conduct his two sons to school.[23] On 27 October 1987, he went to the Manila Resources Agency to apply for employment abroad but was already back home at about two o'clock in the afternoon. By the gate of their house and in the company of Joel Calma and two other friends, he saw an owner-type jeep parked beside the house of Mrs. Teofila Munar. Patrolmen Machon and Nombrado, one police aide and two female companions alighted from the vehicle and entered Mrs. Munar's house. Joel was summoned by Mrs. Munar. Curious, appellant followed Joel to Mrs. Munar's house. Joel was asked whether he knew the men who were responsible for raping Aileen but Joel answered in the negative.[24]

In the morning of 01 November 1987, appellant said, he was invited by the police to the Punta Police detachment. Appellant asked for a warrant of arrest but the policemen assured him that he was merely being invited for questioning. Appellant requested his mother to fetch the barangay captain and to follow him to the police detachment.[25] At the detachment, appellant was informed that he was a suspect in the rape case. He was detained from six o'clock in the morning to five o'clock in the afternoon. Appellant, maintained his innocence and turned down overtures by the police to "settle" the case.[26] Later, however, he relented and tried to seek a settlement explaining that the Arabian government had meantime given him a re-entry visa within six months or until 09 February 1988. No settlement materialized due principally to his brother, Teodorico Rivera, being also arrested on 22 January 1988 on suspicion that the latter was among those involved in the rape case.[27]

In the afternoon of the day of his arrest, appellant was brought to the Almirante residence. Aileen, appellant admitted, had so pointed to him as the culprit but it was only after Joselito Almirante had nodded his head to Aileen. The group proceeded to the police station to execute their respective sworn statements,[28] including those of Mrs. Munar and Joel Calma.[29]

On the supposed sudden downpour testified to by Aileen, the defense presented a certification from the Philippine Atmospheric Geophysical and Astronomical Administration ("PAGASA") to the effect that while Typhoon Pepang was within the Philippine area of responsibility from 21 to 25 October 1987, no rainfall was recorded between nine in the evening and midnight of 24 October 1987 by the Science Garden Weather Station in Quezon City and the MIA Weather Station in Pasay which covered Punta, Sta. Ana, although there was a cloudy sky with light southwesterly to variable winds.[30]

Recalled to the witness stand, Dr. Cabanayan testified that the sexual assault upon Aileen could not have been consummated on 24 October 1987 since her hymen had "healed" lacerations with sharp and coaptable edges.[31] Dr. Cabanayan conceded, however, that a sharp laceration is indicative of an early stage of healing and that the period of healing may vary depending on the way the woman takes care of her body.[32]

On 02 January 1989, the trial court,[33] convinced by the case for the prosecution and undaunted by the evidence for the defense, rendered its decision convicting the accused of the crime charged and sentencing him accordingly.

In this appeal, accused-appellant questions the legality of his arrest, the denial of his right to counsel during custodial investigation, the manner and method of his identification and, not the least, his conviction on the sole testimony of the complainant.

Appellant contends that the trial court should have declared his arrest illegal for having been made without a proper warrant.[34] Unfortunately, this issue is a matter that should have been seasonably raised by appellant before the trial court. In *People v. Codilla*,[35] the Court has held:

"This appellant starts his defense by challenging his warrantless arrest and detention for two days without any charges being filed against him. We have of necessity to reject this argument for the simple reason that he is estopped from questioning the legality of his arrest. Any objection involving a warrant of arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. Besides, this issue is being raised for the first time by appellant before this Court. He did not move for the quashal of the information before the trial on this ground. Hence, any irregularity attendant to his arrest, if any, was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty and participating in the trial." (Italics supplied.)

Appellant's plea of "not guilty" when arraigned and his participation at the trial without timely questioning the legality of his arrest forecloses any further ventilation in this appeal of the issue.[36]

Appellant claims to have been deprived of his right to counsel during custodial investigation. Appellant appears to have executed a sworn statement ("sinumpaang salaysay") before Pfc. Arturo A. Cortes at Precinct No. 6 of the Western Police District at around eleven o'clock in the evening of 01 November 1995,[37] after being apprised of his right to remain silent, right to counsel of his own choice and right against self-incrimination. In *People v. Galit*,[38] we did rule that any statement, whether exculpatory or inculpatory, taken from the accused during custodial investigation must be made with the assistance of counsel, and such statement, including a waiver of the right to counsel, made without the presence of counsel, shall be inadmissible in evidence. That right to counsel attaches from the moment the investigation starts, i.e., when the investigating officer begins to ask questions to elicit information and confessions or admissions from the accused.[39] In the recent case of *People v. Lucero*,[40] we have reiterated:

"The 1987 Constitution requires that a person under investigation for the commission of a crime should be provided with counsel. We have constitutionalized the right to counsel because of our hostility against the use of duress and other undue influence in extracting confessions from a suspect. Force and fraud tarnish confessions and render them inadmissible. We take pride in constitutionalizing this right to counsel even while other countries have desisted from elevating this right to a higher pedestal. We have sustained the inviolability of this precious right with vigor and without any apology."

Galit, however, itself recognizes the sustention of conviction as long as there still remains sufficient evidence therefor. Such is the case in this instance. Indeed, appellant's sworn statement has been offered in evidence by the defense as Exhibit 3 and, obviously, it did not serve as the basis for conviction. It is long settled that the testimony of a sole eyewitness, if credible and positive, is sufficient to convict an accused.[41] This principle applies with

greater force, than elsewhere, in rape cases where ordinarily the victim herself becomes the main witness for the prosecution. If her testimony is simple and straightforward, unshaken by a rigid cross-examination, the same must be given faith and credit.[42]

Going over the transcript of stenographic notes ourselves, we see no cogent reason to ignore the favorable assessment made by the trial court on Aileen's testimony. Thus:

"COURT:

Upon alighting from the jeep what happened?

"WITNESS:

When I alighted the jeep there was also a man alighting the jeep, and when I walked, that person went with me and then when I was near the store that person covered my mouth, sir.

"COURT:

What store are you referring to?

"WITNESS:

It is a big store, sir.

"COURT:

Are you referring to that place wherein you called 'Calahig'?

"WITNESS:

Yes, sir.

"COURT:

Proceed.

"FISCAL CADELINA: (con't)

After that man covered your mouth, what happened next?

"WITNESS:

After that he immediately held me by the hands and then at the same time covering also my lips, sir.

"FISCAL CADELINA:

This man who covered your mouth and lips, was he in front of you, or at your back?

"WITNESS:

He was behind me, sir.

"FISCAL CADELINA:

After he got hold of your hand, what happened next?

"WITNESS:

After that he called up another person, sir.

"FISCAL CADELINA:

And what did this person being called up by that man do if any?

"WITNESS:

That person who has been holding my hands and covering my lips was still holding me and then they pulled me, sir.

"FISCAL CADELINA:

How many men who pulled you?

"WITNESS:

Only two, sir.

"FISCAL CADELINA:

And where did they pull you?

"WITNESS:

They brought me to a jeep that was parked, and there were many male persons there, sir.

"FISCAL CADELINA:

How far is it from the Calahig Store?

"WITNESS:

It is not far. It was about only two (2) arms length, sir.

"COURT: (to the witness)

Just a moment. Do you know how long is one (1) arm's length?

"WITNESS:

Yes, sir.

"COURT:

Please show us by demonstrating how long is one arm's length is?

"WITNESS:

Like this (at this juncture, the witness is demonstrating the distance by using his two hands by spreading them to the level of her shoulder), sir.

"COURT:

Proceed.

"FISCAL CADELINA:

You said that they pulled you near a jeep. Now, what happened when you were there near the jeep?

"WITNESS:

They brought me to jeep that was parked and there were many male persons there. They immediately boarded

me inside the jeep and suddenly they blew me a cigarette smoke on me, sir.

"FISCAL CADELINA:

Which part of your body was the smoke directed?

"WITNESS:

My face, sir.

"FISCAL CADELINA:

After that what happened next?

"WITNESS:

I did not agree with them so I made a noise inside the jeep, sir.

"COURT:

How many men inside the jeep at the time if any?

"WITNESS:

About six (6), sir.

"COURT:

So, aside from the two who pulled you to the jeep, there were six other persons inside the jeep, is that correct?

"WITNESS:

Yes, sir.

"COURT:

Who among the six persons referred to by you blew smoke into your face?

"WITNESS:

I do not know his name but I could recognize his face, sir.

"COURT:

Was he one of those inside the jeepney or, was he one of those who pulled you?

"WITNESS:

One of those persons inside the jeep, sir.

"COURT:

Proceed.

"FISCAL CADELINA:

You said that after a smoke was blown to your face you resisted, is it not?

"WITNESS:

Yes sir.

"FISCAL CADELINA:

Why, what were they doing to you then at that time?

"WITNESS:

They were holding me by my hands and they were also covering my lips, that is why I struggled and made noise, sir.

"FISCAL CADELINA:

And after that, do you know what happened next?

"WITNESS:

I was brought down from the jeep and then they brought me to a dike, sir.

"FISCAL CADELINA:

How many men brought you to the dike from the jeep?

"WITNESS:

All of them, sir.

"FISCAL CADELINA:

You said you were brought to a river bank near a dike, right?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

How far was it from the jeep?

"WITNESS:

It is far, sir.

"COURT:

You try to estimate. From now where you are seated, can you point to any distance to outside of the Courtroom?

"WITNESS:

It is far, sir.

"FISCAL CADELINA:

Now, in that place where you were pulled up to the dike, please describe it whether there were houses in that place?

"WITNESS:

There were no houses and there were no people there, sir.

"COURT:

By the way do you know how to tell the time?

"WITNESS:

Yes, sir.

"COURT:

You know how long is one second, one minute or one hour?

"WITNESS:

Yes, sir.

"COURT:

From the jeep where you were taken down, up to the dike where you were brought, how many minutes more or less, did it take you to reach that place near the dike where you were brought?

"WITNESS:

About two minutes because they drove fast, sir.

"COURT:

Why, what means of transportation did you take, did you ride or did you walk?

"WITNESS:

We just walked, sir.

"COURT:

How many men brought you to the dike?

"WITNESS:

All of them, sir.

"COURT:

Proceed.

"FISCAL CADELINA:

And when you were there at the dike, will you tell us what happened next?

"WITNESS:

Upon reaching the dike, I was pushed which made me laid down flat on my back. They were holding my legs, my hands with my mouth covered, sir.

"FISCAL CADELINA:

And when you were lying down, what happened next?

"WITNESS:

They were trying to undress me but I resisted by crawling on the ground, sir.

"FISCAL CADELINA:

And did they insist in undressing you?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

And were they successful in undressing you?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

And what were the parts of your attire that were used by you at that time?

"WITNESS:

I was wearing a pante, a T-shirt and a short, sir.

"FISCAL CADELINA:

What else?

"WITNESS:

I was also wearing a pant and a bra, sir.

"FISCAL CADELINA:

Were all these six (6) persons you mentioned helped one another in undressing you?

"WITNESS

Yes, sir.

"FISCAL CADELINA:

And what about your bra, was it removed also?

"WITNESS:

It was strapped, sir.

"COURT: (to the Stenographer)

You put the tagalog words there 'naputol ang bra'.

"FISCAL CADELINA:

Was the bra finally removed?

"WITNESS:

No, sir.

"FISCAL CADELINA:

And after your pante was removed can you remember what happened next to you?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

What happened?

"WITNESS:

They had sexual intercourse on me, sir.

"FISCAL CADELINA:

While a man was on top of you, can you remember also what were the others doing?

"WITNESS:

They were holding my hands and my legs, sir.

"FISCAL CADELINA:

Is that all the other men were doing?

"WITNESS:

Some were covering my lips and the others were poking a bladed instruments to me, sir.

"COURT:

Let me see. Can you recognize if you see any of these six men again?

"WITNESS:

Yes, sir.

"COURT:

Now, there are nine male persons inside the Courtroom including a lawyer, the two personnel of the Court including the Fiscal and the Presiding Judge of the Court. Can you point to the Court if any of the six persons is inside the Courtroom now?

"WITNESS:

Yes, sir.

"STENOGRAPHER'S NOTE:

At this juncture, the witness is pointing to a person inside the Courtroom and when asked of his name he answered Paulino Rivera.

"COURT:

How did the men bring you from the jeep. According to you, you were walking. Did you walk or what?

"WITNESS:

They were pulling me, sir.

"COURT:

How many men were pulling you?

"WITNESS:

Four of them, sir.

"COURT:

What part of your body was being held by them at the time they were pulling you?

"WITNESS:

They were holding my both hands, my legs and they were covering my lips, sir.

"COURT:

Were your legs or feet on the ground as you were pulled going to the dike?

"WITNESS:

Yes, sir.

"COURT:

How were they holding your legs at the time you were being brought to the dike?

"WITNESS:

They were only holding one of my feet, sir.

"COURT:

How about the other leg?

"WITNESS:

My other leg was stepping on the ground, sir.

"COURT:

Of the four who were pulling you towards the dike, what was the Accused doing?

"WITNESS:

He was with us, sir.

"COURT:

Now, of the persons who were walking, one of them is the Accused, is it not?

"WITNESS:

Yes, sir.

"COURT:

Now, when you reached the dike, according to you they were trying to pull you down and they succeeded in pulling you down. Now, who among the six persons who tried to pull you down to the ground?

"WITNESS:

He is not yet arrested, sir.

"COURT:

So how many of them tried to pull you down?

"WITNESS:

Four of them, sir.

"COURT:

What about the Accused, what was he doing when you were being pulled to the ground?

"WITNESS:

He was there standing only, sir.

"COURT:

According to you they succeeded in pulling you down. Some were holding your hands, some were holding your legs and some were covering your mouth. Now, how many were holding your legs?

"WITNESS:

Two persons were holding my legs, sir.

"COURT:

How about your hands, how many persons were holding your hands?

"WITNESS:

Two persons were holding my hands and the other one was covering my lips, sir.

"COURT:

Who was covering your lips, was he one of those holding your legs and your hands?

"WITNESS:

Yes, sir.

"COURT:

Now, how about the Accused, what was he doing while some of them were holding your hands, some of them were pulling your legs, what was the Accused doing?

"WITNESS:

He was watching the persons, sir.

"COURT:

The other one according to you, there were two who were just standing by. At that time what was the other one doing?

"WITNESS:

He was pointing a bladed weapon at me, sir.

"COURT:

What part of your body was the bladed weapon pointed?

"WITNESS:

At my breast, sir.

"COURT:

You said that your panty and all your clothings were removed. Who removed your pants?

"WITNESS:

All of them removed my clothes, sir.

"COURT:

Are you sure?

"WITNESS:

Yes, sir. When they forced me to remove my clothings, I resisted that is why my clothings were torn.

"COURT:

Which one was torn, your pant?

"WITNESS:

Yes, sir.

"COURT:

Where is your pant now?

"WITNESS:

With the police, sir.

"COURT:

How about your shirt, was it also torn?

"WITNESS:

Yes, sir.

"COURT:

How about your shorts, was it torn also?

"WITNESS:

Yes, sir.

"COURT:

How about your 'pante' was it torn?

"WITNESS:

No, sir.

"COURT:

Why was not torn?

"WITNESS:

'Dahil ang garter po ay naputol.'

"COURT:

Who removed your pante?

"WITNESS:

One of the six (6) persons was able to remove my pante, sir.

"COURT:

Is he here now in Court?

"WITNESS:

He is not here, sir.

"COURT:

How about your shorts, who was able to remove it?

"WITNESS:

Those persons, sir.

"COURT:

Who among the six?

"WITNESS:

Not yet arrested, sir.

"COURT:

Who removed your pante?

"WITNESS:

The first person who raped me, (ang unang taong kumantot sa akin).

"COURT:

Is he inside the Courtroom, the first one who raped you?

"WITNESS:

He is not here, sir.

"COURT:

Proceed.

"FISCAL CADELINA:

Is the Accused one of those who removed your bra?

"WITNESS:

No, he had only sexual intercourse with me, sir.

"FISCAL CADELINA:

You said that two persons were holding your legs, two men were holding your hands and some were holding your mouth and some were poling (sic) a knife on your breast, is that right?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

Now, was that your position when the Accused went on top of you?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

When he went on top of you, was he wearing something, or he was naked?

"WITNESS:

He was wearing his short and he was nude up to his body, sir.

"FISCAL CADELINA:

Did you notice him removed his shirt?

"WITNESS:

When I noticed him he was without shirt already, sir.

"FISCAL CADELINA:

Did he succeed in raping you?

"WITNESS:

Yes, sir.

"COURT:

Now, this is very important. Before you were raped on that night, did you already have a sexual intercourse with another man?

"WITNESS:

None, sir.

"COURT:

Now, when that first one who raped you, what happened to you?

"WITNESS:

He was just on top of me, sir.

"COURT:

What was he doing?

"WITNESS:

He had sexual intercourse with me, sir.

"COURT:

Did you not lose consciousness while the first one was raping you?

"WITNESS:

No, sir.

"COURT:

Can you estimate more or less, how long did the first one stay on top of you and having sexual intercourse with you?

"WITNESS:

About two (2) minutes, sir.

"COURT:

And during that time that he was on top of you, you did not lose your consciousness?

"WITNESS:

No, I was just staring at him?

"COURT:

What else?

"WITNESS:

And I was crying, sir.

"COURT:

At that time when you were raped by the first one, where were your hands?

"WITNESS:

My hands were spread and held by those persons, sir.

"COURT:

How about your feet, where were they, while the first man who raped your was on top of you?

"WITNESS:

My feet was spread wide, sir.

"COURT:

Was anybody holding your legs?

"WITNESS:

Yes, sir.

"COURT:

After the first one was able to rape you, did you not lose consciousness?

"WITNESS:

No, sir.

"COURT:

Proceed.

"FISCAL CADELINA:

Now, after the first one stood up, what happened next?

"WITNESS:

He followed next, sir.

"STENOGRAPHER'S NOTE:

At this juncture, the witness is pointing to the Accused Paulino Rivera.

"FISCAL CADELINA:

You said that you saw him naked already, is that right?

"WITNESS:

Yes, sir.

"COURT:

When the first one raped you, did you feel anything going inside your private parts?

"WITNESS:

Yes, sir.

"COURT:

What did you feel?

"WITNESS:

Hot, sir.

"COURT:

What else?

"WITNESS:

Painful, sir.

"COURT:

In spite of that pains you did not lose consciousness, is that what you mean to tell the Court?

"WITNESS:

I was just crying. I could not shout because my lips were covered, sir.

"COURT:

Proceed.

"FISCAL CADELINA:

Now, when the Accused who was naked went on top of you, did you also feel anything or any penetration in your private part?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

While he was on top of you, were you staring at him or not?

"WITNESS:

Yes, sir.

"FISCAL CADELINA:

How long was he on top of you?

"WITNESS:

Longer than the first one, sir.

"FISCAL CADELINA:

How many minutes more or less?

"WITNESS:

About four minutes, sir.

"FISCAL CADELINA:

Now tell me. You said that there were six (6) persons who molested or abducted you at that time. Why do you recognize the Accused Paulino Rivera as the second one who raped you?

"WITNESS:

Because it was bright, sir.

"COURT:

Where did the light come from?

"WITNESS:

There was a light from the wall, sir.

"COURT:

Are you referring to the wall of the dike?

"WITNESS:

Yes, sir.

"COURT:

From where you are sitting, can you tell the Court the distance more or less, that wall from the lights?

"WITNESS:

From here up to that electric fan, sir.

"STENOGRAPHER'S NOTE:

The distance pointed to by the witness is about two to three meters per stipulation of the parties.

"COURT:

What kind of a light was that?

"WITNESS:

It was a bulb light, sir.

"COURT:

Where was that light attached with?

"WITNESS:

It was attached to a wall, sir.

"COURT:

Are there houses in the vicinity?

"WITNESS:

None, sir.

"COURT:

Were there no vehicles passing by or near that place?

"WITNESS:

None, sir.

"COURT:

Proceed.

"FISCAL CADELINA:

Now, from the nearest place, how far is the street where people pass-by?

"WITNESS:

That dike is passable by any person, sir.

"FISCAL CADELINA:

When the Accused stood up after four (4) minutes, what happened next?

"WITNESS:

After I was raped by this Accused, it suddenly rained heavily, sir.

"FISCAL CADELINA:

When it rained, what happened next?

"WITNESS:

They ran away, sir.

"FISCAL CADELINA:

You mean the six of them ran away?

"WITNESS:

That person who raped me first, I was able to grab his clothes because I was then wearing my short and my blouse and my bra at that time, sir."[43]

The issue of credibility being almost invariably within the exclusive province of the trial court, its findings deserve a great degree of respect.[44]

The findings of Dr. Cabanayan to the effect that Aileen did not sustain extra-genital injuries and that the healed lacerations of the victim's hymen indicate a penetration earlier than 24 October 1987 do not necessarily negate the fact that the rape could have occurred on that day. Dr. Cabanayan himself admitted the possibility of an early stage of healing. Neither are marks of physical violence indispensable to sustain a conviction of rape,[45] particularly, such as here, where there is nothing in the victim's testimony that physical injuries, outside of the rape, have been inflicted.

As to appellant's objection on the method by which he has been identified as one of the rapists of Aileen, appellant suggests that a police line-up should have been utilized. There is, however, no law which requires it.[46] In this case, the victim has had a good look at the appellant. Like most victims of criminal violence, the faces of their assailants are invariably etched indelibly in their minds.[47] Alibi, too, crumbles by the sheer weight of positive identification.

We need not belabor on the alleged attempts made by the appellant, as well as by some policemen, to "settle" this case. It does not appear that these overtures have been seriously considered. In any case, these so-called attempts, given the circumstances of this case, play most insignificantly in determining either the guilt or lack of guilt of appellant.

The commission by appellant of the crime of forcible abduction with rape, defined in Article 335, in relation to Article 342, of the Revised Penal Code has been proven beyond reasonable doubt. Under Article 335, whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. Under Article 342, the abduction of a woman against her will and with lewd designs shall be punished by reclusion temporal. Here, the crime of forcible abduction being a necessary means for committing the crime of rape conformably with Article 48 of the Code, appellant should be meted the penalty of the more serious crime in its maximum period, i.e., the penalty of death. Since, however, the imposition of the death penalty was still suspended by the 1987 Constitution when the crime was committed (Republic Act No.

7659 which reimposed the death penalty for the crime of rape not having yet been enacted at the time), the only imposable penalty would be reclusion perpetua.

WHEREFORE, the decision of the trial court finding appellant Paulino Rivera y Ordanza guilty beyond reasonable doubt of the crime of forcible abduction with rape and sentencing him accordingly is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, p. 68.

[2] Rollo, p. 6.

[3] Ibid., p. 34.

[4] Aileen Fortuna, TSN, 17 November 1987, p. 8.

[5] Ibid.

[6] Ibid., pp. 11-13.

[7] Ibid., pp. 17-22.

[8] Exh. A-1.

[9] Exh. A-2.

[10] Exh. A-3.

[11] Ibid., pp. 27-31.

[12] TSN, pp. 31-32.

[13] Ibid., p. 34.

[14] Ibid, p. 34.

[15] Aileen Fortuna, TSN, 31 May 1988, pp. 11-12.

[16] Appellant claimed that he was one of the persons standing by the gate of Mrs. Munar.

[17] Aileen Fortuna, TSN, 24 May 1988, pp. 41-46.

[18] Exh. B.

[19] Aileen Fortuna, TSN, 24 May 1988, pp. 46-48.

[20] Exh. C.

[21] Pat. Joselito Almirante, TSN, 24 May 1988, pp. 21-26.

[22] His wife was working as a domestic helper in Singapore.

[23] Paulino Rivera, TSN, 08 March 1988, pp. 27-30.

- [24] Ibid., pp. 30, 52.
- [25] Ibid., pp. 63-77.
- [26] Ibid., pp. 77-89.
- [27] Paulino Rivera, TSN, 10 March 1988, pp. 26-39.
- [28] Ibid., pp. 10-23.
- [29] Exhs. G and I.
- [30] Exh. 13.
- [31] Prospero Cabayanan, TSN, 08 September 1988, pp. 15-20.
- [32] Prospero Cabayanan, TSN, 25 November 1988, pp. 9 & 11.
- [33] Presided by Judge Romeo J. Callejo.
- [34] See Sec. 2, Article III, 1987 Constitution.

[35] 224 SCRA 104, 117.

- [36] People v. De Guzman, 224 SCRA 93, 100 citing U.S. v. Grant and Kennedy, 18 Phil. 122 and People v. Briones, 202 SCRA 708.
- [37] Record, p. 60.

[38] 135 SCRA 465.

- [39] See People vs. De Guzman, 224 SCRA 93.
- [40] G.R. No. 97936, 29 May 1995.
- [41] People v. Jimenez, 235 SCRA 322, 327.
- [42] People v. Saballe, 236 SCRA 365, 369.
- [43] Aileen Fortuna, TSN, 17 November 1987, pp. 8-34.
- [44] People v. Miranda, 235 SCRA 202, 213.
- [45] People v. Generalao, Jr., G.R. No. 93141, September 2, 1992, 213 SCRA 380.
- [46] People v. Sartagoda, G.R. No. 97525, April 7, 1993, 221 SCRA 251.
- [47] Ibid., at p. 257.

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