

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO CODILLA, GERMAN LUCANAS AND MARCELO PUTULIN, ACCUSED-APPELLANTS.

G.R. Nos. 100720-23. June 30, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

Margarita Alpos, Helen Pepito and Letecia Pepito instituted four separate complaints with the Regional Trial Court, Branch 12, Ormoc City, for rape against accused?appellants Rolando Codilla, German Lucañas and Marcelo Putulin. Two separate complaints were filed by Helen Pepito and Margarita Alpos against Rolando Codilla in Criminal Cases Nos. 3739-0 and 3740-0, respectively. German Lucañas was charged with the same offense of rape by the same Margarita Alpos in Criminal Case No. 3742-0, while Marcelo Putulin was also charged with the same crime of rape by Letecia Pepito, sister of Helen, in Criminal Case No. 3741-0.

These complaints[1] were of the following tenor:

Criminal Case No. 3739-0

"That on or about the 24th day of May, 1990, at around 3:00 o'clock in the morning, at Brgy. Concepcion, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, ROLANDO CODILLA y Dumalan, being then armed with a small pointed bolo, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein, HELEN PEPITO y Maglinte, against her will and in her own house.

All contrary to law and with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense.

In violation of Article 335, Revised Penal Code.

Ormoc City, December 19, 1990.

(SGD.) HELEN M. PEPITO

Complainant"

Criminal Case No. 3740-0

"That on or about the 27th day of November, 1990, at around 3:00 o'clock in the morning at Brgy. Concepcion, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, ROLANDO CODILLA y Dumalan, being then armed with a handgun with unknown caliber, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein, MARGARITA ALPOS, against her will and in her own house.

All contrary to law and with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense.

In violation of Article 335, Revised Penal Code.

Ormoc City, December 21, 1990.

(SGD.) MARGARITA ALPOS

Complainant"

Criminal Case No. 3741-0

"That on or about the 24th day of May, 1990, at around 3:00 o'clock in the morning, at Brgy. Concepcion, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, MARCELO PUTULIN y Genoguín, being then armed with a small pointed bolo, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant LETECIA PEPITO y Maglante, against her will and in her own house.

All contrary to law and with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense.

In violation of Article 335, Revised Penal Code.

Ormoc City, December 19, 1990.

(SGD.) LETECIA PEPITO

Complainant"

Criminal Case No. 3742-0

"That on or about the 27th day of November, 1990, at around 3:00 o'clock in the morning, at Brgy. Concepcion, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused GERMAN LUCANAS y dela Cruz, being then armed with a handgun with unknown caliber, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein, MARGARITA ALPOS, against her will and in her own house.

All contrary to law and with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense.

In violation of Article 335, Revised Penal Code.

Ormoc City, December 21, 1990.

(SGD.) MARGARITA ALPOS

Complainant"

The factual milieu of these cases, as correctly and succinctly summarized by the Solicitor General with page references to the transcripts of stenographic notes taken during the trial, is in concordance with the findings of the trial court, and we adopt and reproduce the same hereunder:

"In Criminal Case No. 3739-0, the private offended party, Helen Pepito, testified that she is thirteen (13) years old, single and a student (tsn, Feb. 19, 1991, p. 13). At about 3:00 o'clock in the early morning of May 24, 1990, at Barangay Concepcion, Ormoc City, she and her sister Letecia were awakened from their sleep by a heavy rain (tsn, Feb. 19, 1991, p. 15). When she opened her eyes, she was surprised to see two men wearing briefs and sleeveless shirts (tsn, Feb. 19, 1991, p. 16). The men were carrying bolos and a flashlight (tsn, Feb. 19, 1991, p. 15).

"One of the men asked her if they had money. When she replied that she had none, she was ordered to go down to the kitchen with him. She obeyed the man out of overwhelming fear (tsn, Feb. 19, 1991, p. 18).

"In the kitchen, one of the two men ordered her to remove her clothes. She initially refused, but when the man pointed his bolo at her, she undressed herself. The man then held both her hands, inserted his penis in her vagina and had sexual intercourse with her (tsn, Feb. 19, 1991, pp. 19-20). When the carnal act was consummated, she felt pain in her private parts (tsn, Feb. 19, 1991, p. 20).

"Helen Pepito identified the man who ravished her as Rolando Codilla (Ibid.).

"Dr. Nelso Udtajan, Senior Resident Physician of the Ormoc District Hospital, testified that he examined Helen Pepito on May 25, 1990. His findings, contained in Exhibit 'A' of Criminal Case No. 3739-0, show that Helen Pepito sustained lacerations in her hymen and indubitably indicated consummation of the carnal act (tsn, Feb. 19, 1991, pp. 7-9).

"In Criminal Case No. 3741-0, the private offended party, Letecia Pepito, testified that she is fifteen (15) years old, single and a student (tsn, Mar. 4, 1991, p. 3). In the early morning of May 24, 1990, she was awakened from her sleep by a light coming from a flashlight being focused on her face (tsn, Mar. 4, 1991, p. 4). When she opened her eyes, she saw two men who pointed bolos at her and her sister, Helen Pepito. One man ordered her sister to go down to the kitchen while the other brought her to the sala where he ordered her to remove her panty (tsn, Mar. 4, 1991, pp. 6-7). When she refused to comply, the man pushed her to the ground, removed her panty himself and sexually abused her (tsn, Mar. 4, 1991, p. 8).

"Letecia Pepito identified the man who raped her as Marcelo Putulin (tsn, Mar. 4, 1991, p. 10).

"The defense admitted the authenticity of the medical certificate issued by Dr. Nelso Udtajan which found that Letecia Pepito's hymen sustained lacerations that indubitably indicated the consummation of the carnal act (tsn, Feb. 28, 1991, pp. 2-4).

"Criminal Cases Nos. 3740-0 and 3742-0 involve the same private offended party, Margarita Alpos, and the offenses were committed under the same circumstances and time.

"Margarita Alpos testified that at about 3:00 o'clock in the early morning of November 27, 1990, she was sleeping in her house at Barangay Concepcion, Ormoc City when she was awakened by the fall of her gallon containing water (tsn, Feb. 28, 1991, p. 5). She stood up to go to the kitchen but was met by two men on the stairs who pointed a flashlight on her face (tsn, Feb. 28, 1991, pp. 5--6). The two men asked her to give them some money, but since she had no money at that time, the two men brought her upstairs. Once upstairs, the two men put out the light coming from an oil lamp. One of the men then put himself on top of Margarita and succeeded in having sexual with her (tsn, Feb. 28, 1991, pp. 7-8). When he was through, the other man took his turn in sexually abusing Margarita (tsn, Feb. 28, 1991, p. 8).

"Margarita Alpos identified the two men who sexually abused her as Rolando Codilla and German Lucañas (tsn, Feb. 28, 1991, p. 7).

"Dr. Edilberto Calipayan, Medical Officer IV of the Ormoc City Health Office, testified that he examined Margarita Alpos at about 3:00 o'clock p.m. on November 27, 1990 and he found that the victim had carnal intercourse with at least two men about thirteen (13) hours prior to examination (tsn, Feb. 19, 1991, pp. 4-7).

"Sgt. Romeo Peñaranda, a member of the Philippine National Police (PNP) assigned to Ormoc City, testified that at around 2:30 p.m. on November 27, 1990, he was at Brgy. Concepcion, Ormoc City, responding to a rape case. Together with him were PFC Mamerto Sarcol, Jr., PFC Diosdado Tagalog, Pat. Eduardo Bituin and CVO Manuel Pepito (tsn, Feb. 28, 1991, p. 32). They proceeded to the house of the Barangay Captain who provided them with a guide to show them the place where the rape suspects were hiding. The police were able to apprehend the suspects and brought them to the Ormoc City Police Station. Margarita Alpos was able to

identify two of the three suspects (Codilla and Lucañas) during the custodial investigation of the case, as the persons who sexually assaulted her (tsn, Feb. 28, 1991, pp. 35-36).

Helen and Letecia Pepito likewise identified the persons who raped them as Codilla and Putulin, respectively, at the Police Station during the custodial investigation of the case (tsn, Feb. 19, 1991, pp. 30-31; 60).[2]

Accused-appellants, anchoring their defense on denial and alibi, present different versions which, as culled from the joint decision of the court a quo, are respectively of the substantial import recounted in the succeeding paragraphs.[3]

Appellant Rolando Codilla asserts that on the fateful day of May 24, 1990, at around 3:00 A.M., he was at San Isidro, Leyte, working in the four-hectare cornland of Ernesto de la Cruz, having done so since the middle part of March of the same year. He claims that he never left the place until August 6, 1990 when he stopped working on the aforesaid land. This was corroborated by Ernesto de la Cruz who confirmed having hired Codilla to harvest his corn from March, 1990 to August 6, 1990, and who supported Codilla's claim that he never left San Isidro during this time.

Codilla also denies having had carnal knowledge of Margarita Alpos, claiming that on November 27, 1990, at about 3:00 A.M., when the alleged rape occurred, he was sleeping in their house at Sitio Tipik II, Bgy. San Jose, Ormoc City.

Appellant German Lucañas, on his part, avers that having stayed in Manila for twelve (12) years, he came home to Ormoc City on November 11, 1990 on board the M/V Cebuano Princess with appellant Marcelo Putulin. On November 27, 1990, at about 3:00 A.M., he was at Sitio Tipik II, Bgy. San Jose, Ormoc City, visiting his uncle, Gaudioso Potot.

Witness Gregoria Genoguín was presented by the defense to prove that she has known appellants Codilla and Lucañas for fourteen years; that she was a resident of Sitio Tipik II, Bgy. San Jose, Ormoc City; and that Codilla and Lucañas stayed in the barracks of Del Socorro at Bgy. Concepcion, Ormoc City.

As for appellant Marcelo Putulin, he alleges that he was in Manila on January 10, 1989 and he stayed there until November 11, 1990 when he returned to Ormoc City with appellant Lucañas. While in Manila, he sustained himself by selling hotcakes. Florentina Putulin, Marcelo's mother, was also called to the witness stand to testify to the fact that her son was in Manila from January, 1990 to November, 1990 and that he never left Manila during this period.

At the arraignment, appellants Codilla and Lucañas, assisted by Atty. Crisologo S. Bitas,[4] and appellant Putulin, assisted by Atty. Pablo Oliver, entered pleas of not guilty[5] and, after a joint trial on the merits, the court a quo rendered a joint decision, with the following decretal portion:

"WHEREFORE, decision is hereby rendered:

1. In Crim. Case No. 3739-0 finding the accused ROLANDO CODILLA guilty beyond reasonable doubt of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code. There being no aggravating nor mitigating circumstances, the court imposes upon the same ROLANDO CODILLA the sentence of RECLUSION PERPETUA and to indemnify HELEN PEPITO (in) the sum of P20,000.00;
2. In Crim. Case No. 3740-0, finding the accused ROLANDO CODILLA guilty beyond reasonable doubt of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code. There being no aggravating nor mitigating circumstance, the court imposes upon the same ROLANDO CODILLA the sentence of RECLUSION PERPETUA and to indemnify MARGARITA ALPOS (in) the sum of P20,000.00;

3. In Crim. Case No. 3741-0, finding the accused MARCELO PUTULIN guilty beyond reasonable doubt of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code. There being no aggravating nor mitigating circumstance, the court imposes upon the same MARCELO PUTULIN the sentence of RECLUSION PERPETUA and to indemnify LETECIA PEPITO (in) the sum of P20,000.00;

4. In Crim. Case No. 3742-0, finding the accused GERMAN LUCAÑAS guilty beyond reasonable doubt of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code. There being no aggravating nor mitigating circumstance, the court imposes upon the same GERMAN LUCAÑAS the sentence of RECLUSION PERPETUA and to indemnify MARGARITA ALPOS (in) the sum of P20,000.00.

As all three (3) accused are detention prisoners, the period of their detention shall be credited in full if they conform in writing to the rules and conditions of convicted prisoners, otherwise only 4/5 thereof. In the case of ROLANDO CODILLA, by reason of the two sentences of Reclusion Perpetua, the two penalties shall be served successively in accordance with the provisions of Article 70 of the Revised Penal Code.

SO ORDERED."[6]

Appellants now invoke this Court's jurisdiction to review and reverse the decision of the court a quo, contending that the latter supposedly erred: (1) in not considering the dubious circumstances surrounding their arrest which is violative of their constitutional rights, and by indicating fabrication of charges against them; (2) in not considering the conduct of the police investigators during the pre-trial identification of appellants which was calculated to induce positive identification; (3) in giving credence to the testimonies of the prosecution witnesses despite their incredibility and unworthiness, and (4) in not considering acceptable jurisprudence that identification arising from suggestive police behavior is unreliable and inadmissible for being violative of an accused's right against self-incrimination.[7]

During the pendency of this appeal, after it was proven that appellant Rolando Codilla escaped from the Ormoc City Jail on July 27, 1991, the Court issued a resolution on April 6, 1992[8] dismissing his appeal pursuant to Section 8, Rule 124 of the Rules of Court which provides, inter alia, that "(t)he court may also, upon motion of the appellee or on its own motion dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal." It is a judicial dictum that where the accused escapes from custody or jumps bail during the pendency of his appeal, the appellate court has the discretion to either postpone the resolution of his case until his recapture or to dismiss the appeal.[9]

Meanwhile, the Jail Warden of the Ormoc City Jail, Rodolfo D. Sonon, also manifested in a letter dated August 11, 1992, that appellant German Lucañas was missing and that the latter's whereabouts is unknown up to the present. He expressed the belief that Lucañas was one of the victims of the flash flood which hit Ormoc City last November 5, 1991.[10] In a resolution dated September 14, 1992,[11] the National Bureau of Investigation (NBI) was ordered by this Court to investigate Lucañas' whereabouts. In response to NBI queries, Jail Warden Sonon again manifested, in a letter dated September 22, 1992,[12] that Lucañas is still missing.

After its investigation, the NBI submitted a report to this Court dated November 4, 1992, containing the following excerpts:

"03. x x x An interview was conducted at Ormoc City to determine the veracity of the report submitted by the former City Jail Warden JUANITO CATIPAY. In an interview with JUANITO CATIPAY he averred that because of the growing water occupying the ground floor at around 11:30 in the morning, he decided to open the cell at the ground floor so that the prisoners could take refuge at the second floor or other elevated portion of the jail. Minutes later, several people took shelter at the second floor making it unmanageable coupled with the circumstance that everybody was in panic and concerned with his own safety. x x x

"04. In view thereof, based on the interview and the spot inspection conducted by this Command coupled with the fact that nobody was sever recovered after the calamity which was positively identified as that of GERMAN LUCANAS, plus the fact that no witness could either confirm or deny the fact of death of herein subject, nor could this command safely conclude the fact that he might still be alive, this Command after a careful search for herein subject (in) in depth study of this matter respectively finds the following:

1. That as to GERMAN LUCANAS being one of the victims of the flashflood which hit Ormoc City last November 5, 1991, this Command based on the foregoing premises had found no basis to adopt such a conclusion.

2. That as to his present whereabouts, the same remains unknown."[13]

Atty. Erlich V. Barraquias, counsel of record for appellant Lucanas, manifested that he does not have sufficient knowledge to form a belief as to the whereabouts of his client, and that Juanito Lucañas, father of said appellant, informed him that there has been no communication between him and his son since the Ormoc City flash flood.[14]

From the foregoing, it is not clear whether Lucañas died or merely escaped and is now in hiding. At any rate, in either case, his appeal will have to be dismissed and declared abandoned. If he has indeed escaped, he is deemed to have abandoned his appeal in line with our pronouncement in *People vs. Quiritan, et al.*,[15] to the effect that if an accused-appellant escapes or refuses to surrender to the proper authorities, he is deemed to have abandoned his appeal, and so his appeal should be dismissed. Moreover, he is guilty of evasion of service of sentence under Article 158 of the Revised Penal Code. If, on the other hand, he was indeed one of the victims of the Ormoc City tragedy, under Article 89 of the Revised Penal Code his criminal liability, with respect to the personal penalties, is totally extinguished and as to the pecuniary penalties, since his death occurred while this case is pending appeal, the civil indemnity to be paid subsists and must be charged against his estate.[16]

The conviction of both appellants Codilla and Lucañas must, therefore, be affirmed, with the modification that their respective civil liabilities should be increased to an indemnity of P30,000.00 for each offended party respectively raped by them. The circumstances of nighttime, dwelling and use of a deadly weapon shall hereinafter be discussed as matters of law involved in these cases and our disposition thereof, although the imposable penalty of reclusion perpetua has to be maintained.

As for appellant Putulin, his appeal from his conviction for the rape of Letecia Pepito stands and his liability wherefor we shall now resolve, the discussion which follows being with reference to his criminal liability alone.

This appellant starts his defense by challenging his warrantless arrest and detention for two days without any charges being filed against him.[17] 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.[18] 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 court 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.[19]

After considering the factual findings on which the impugned decision is based, we do not descry any cogent reason to depart from the holding of the lower court. As has often been emphasized, on the matter of credibility of witnesses the findings of the trial court are generally accorded great weight and respect, if not conclusive effect, because it has the opportunity to observe the demeanor of witnesses while testifying. Such findings may only be disturbed on appeal if there is any showing that the trial court overlooked some material or substantial fact which

if given consideration will alter the assailed decision[20] and, as we have just stated, we do not find any such arbitrary oversight or omission by the court below.

Letecia's account regarding the rape committed upon her was given full faith and credit by the trial court.[21] We agree with the latter that Letecia is a credible witness, having testified in a categorical, straightforward, spontaneous and frank manner, and having remained consistent on cross-examination.[22] Her story finds ample support in the testimony of her sister. Helen, who was likewise deflowered on that fateful day of May 24, 1990. The two sisters were able to identify their abusers through the "lamparilla" which was then lighted inside their house.[23] Moreover, their claims that they were raped that early morning have been corroborated by Anita Royeras, the wife of the barangay captain of Barangay Catayum, Ormoc City, who had been conducting a surveillance in their community and had observed that the three suspicious-looking appellants used to go home at around 3:00 o'clock in the morning.[24]

Although Letecia could recognize her abuser, as shown by the fact that she was able to describe the latter's physical features at the police station a day after the incident, she did not know his name nor his whereabouts.[25] Nevertheless, on November 28, 1990, she was able to identify her defiler, who turned out to be appellant Putulin, when the latter was picked up and placed in a police line-up together with the other two appellants herein.[26] This positive identification was reiterated in open court during the trial.[27]

The scenario and details of the sexual abuse were fully established by the evidence for the prosecution. After barging into Letecia's room, appellant Putulin threatened her with a knife and ordered her to go to the sala. Along the way, appellant continuously pushed her, causing her to fall to the ground and sustain bruises on her elbow. Upon reaching the sala, appellant Putulin commanded her to remove her underwear and, when she refused, he removed it himself and then satisfied his bestial desire. Despite the struggle put up by the overpowered victim, the sexual abuse was consummated.[28] Letecia was paralyzed with fear, causing her to succumb to appellant's animal instinct.

Considering her tender age, the force and intimidation exerted upon her suffice to constitute that requisite element of rape. It is well settled that the force or violence required in rape cases is relative; when applied, it need not be overpowering or irresistible.[29] It need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible are beside the point.

So it must likewise be for intimidation, which is addressed to the mind of the victim and is, therefore, subjective. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule: it is therefore enough that it produces fear -- fear that if the victim does not yield to the lecherous demands of the accused, something would happen to her at that moment or even thereafter, as when she is threatened with death if she reports the incident. Intimidation includes the moral kind, as the fear caused by threatening the girl with a knife. When such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to act with equanimity of disposition and with nerves of steel; or to act like an adult or a mature and experienced woman who would know what to do under the circumstances, or to have the courage and intelligence to disregard the threat.[30]

For an innocent girl who was then only fifteen years old, we are satisfied that the threats made by appellant against this complainant engendered in her a well-grounded fear that if she dared resist or frustrate his lustful advances, she would be killed.[31]

The defense attempts to discredit her testimony on the theory that she together with her sister Helen, did not immediately reveal the incident to their parents who were just sleeping in the room nearby and, instead, just let

the time pass crying and sobbing in one corner.[32] This specious contention cannot pass judicial muster.

The fact that she and her sister did not immediately divulge their ravishment does not necessarily mean that they were not sexually desecrated. Being then of very tender ages and utterly innocent of the ways of the world, their temporary silence is easily understandable. They could have been terrified by the threats of their ravishers and shocked into insensibility by the satyric acts they were subjected to. Young and naive as they were, they ingenuously opted to momentarily suffer in silence if only to avoid humiliation and embarrassment that may be brought about by the public disclosure of such dastardly acts.[33]

It is likewise of no moment that the rape occurred with the complainant's parents, brothers and sisters just sleeping in the nearby room.[34] It is not impossible nor incredible for her family members to be in deep slumber and not be awakened while the sexual assault was being committed. As we have repeatedly pointed out, rape can be committed even in places where people congregate: in parks, along the roadside, within school premises and even inside a house where there are other occupants. Lust is no respecter of time or place.[35]

We are convinced, in line with our previous rulings which we now repeat, that what motivated complainant to come out in the open is her desire to obtain justice. It is unthinkable that a rural-bred and minor victim like her would endure the embarrassment and humiliation of a public disclosure that she had been ravished, allow an examination of her private parts, and undergo the ordeal and expense of a court proceeding if her story is a lie.[36] Considering the inbred modesty and antipathy of a Filipina to the airing in public of things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had undergone if it were not true.[37] Besides, by testifying, she made public a painful and humiliating secret which others would have simply kept to themselves forever, jeopardizing her chances of marriage or foreclosing the possibility of a blissful married life as her husband may not fully understand the excruciatingly painful experience which would always haunt her.[38]

Appellant's alibi is too superficial and transparent to merit this Court's consideration, as he was even caught fabricating stories to suit his defense. As correctly pointed out by the lower court the fact that he was in Manila since January 10, 1989 and returned to Ormoc City on November 11, 1990 does not prevent him from being in Ormoc City on May 24, 1990 when the crime occurred. He was unable to present any witness who could prove to the satisfaction of this Court that on the precise date of May 24, 1990, at 3:00 o'clock in the morning, he was indeed in Manila.

On this point, we give credit to and quote with approval this observation of the court below:

"On the claim of Marcelo Putulin that he was in Manila at the time Letecia and Helen Pepito were raped on May 24, 1990, the accused's evidence does not inspire belief. The assertion by accused Marcelo Putulin that he took a jeepney from Pier 17 to Makati and he found the place where his mother lives by just asking people when he did not even have the address of (his) mother is too incredible to be true. The court takes judicial notice that there are no jeepneys in the pier area of Manila that have a direct route to Makati and it is absolutely impossible to find the place in Makati where his mother lives if he did not even know the address. Marcelo Putulin's claim that he came to know Rolando Codilla only in November 11, 1990, through German Lucañas, is belied by the fact that the three of them were at one place at the barracks of (D)el Socorro in Brgy. Concepcion, at the time of their arrest and their claim that they worked in the farm of (D)el Socorro is too shallow. Marcelo Putulin and German Lucañas told the court that they had work in Manila and came to Ormoc City in November 1990 to take a vacation. If true, why did they have to work as farm laborers when their purpose in coming to Ormoc was to take a vacation?"[39]

Being aware of appellant's prevarications, the trial court had to advise the former's counsel not to ask appellant any more re-direct questions, with the warning that he would "just be exposing this witness to perjury." [40] Not

even appellant's mother, Florentina, could sustain his fabricated defense, for when asked how she was able to say that her son never left Manila for Ormoc City from January to November, 1990 all she could say was: "Because every Sunday I have to visit him in his place because Sunday is my day-off." [41] The rape occurred on May 24, 1990 which was a Thursday. It is, therefore, possible for appellant to have arrived in Manila before Sunday, that is, before May 27, 1990, just in time for his mother's visit.

Besides, mother and son rendered conflicting testimonies on the witness stand to which the former's attention had to be called by the trial court:

"Q Do you know if that was the first time that your son Marcelo Putulin arrived in Manila, that is January, 1990?

A Last January 15, 1990, it was the third time that Marcelo Putulin have gone (sic) to Manila, and the first time he went to Manila he was yet single; the second time he was already married. [42]

x x x

Q But you are not aware that your son testified that it was the first time, on January 10, 1990, that he left for Manila, no other date and year when he has gone to Manila?

A Maybe he was just frightened because he is innocent and illiterate. [43]

x x x

Q When your son Marcelo Putulin arrived in Manila in January 1990, did he go direct(ly) to your house or did you meet him at the pier?

A No, sir, because he went directl(ly) to my uncle and there he called me by telephone.

COURT

Q Your son testified in court that he went direct(ly) to you, as a matter of fact the court was rather surprised with the way he testified that he just took a jeepney from the pier to Makati and the court takes judicial notice that there are no jeepneys to Makati. What can you say about this?

A Maybe he was frightened because he was not used to testify before the court because he is illiterate." [44]

The foregoing testimonial colloquy clearly does violence to what we have held in a number of cases that evidence to be worthy or credit, must not only proceed from a credible source but must, in addition, be credible in itself. And by this is meant that it shall be natural, reasonable and probable as to make it easy to believe. [45]

Appellant also asserts that the police investigators induced positive identification by placing him and the two other appellants in a police line-up by themselves only and by having them undress, thus violating their right against self-incrimination. [46] We disagree.

The right against self-incrimination has been defined as a protection against testimonial compulsion. [47] It prohibits the use of physical or moral compulsion to extort communications from the accused, not an exclusion of his body as evidence when it may be material. [48] Essentially, the right is meant to "avoid and prohibit positively the repetition and recurrence of the certainly inhuman procedure of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction." [49]

With the passage of time, this has been extended to any evidence "communicative in nature acquired under circumstances of duress." An act, whether testimonial or passive, that would amount to disclosure of incriminatory facts is covered by the inhibition of the Constitution. This should be distinguished, parenthetically,

from mechanical acts the accused is made to execute which are not meant to unearth undisclosed facts but to ascertain physical attributes determinable by simple observation, like requiring him to take part in a police line-up.[50] In fact, it has been held that to require a person to remove his garments would not be violative of the right against self-incrimination. To require the accused to put on a pair of pants and a hat to determine whether they fitted him for measuring or photographing of a party, or the removal or replacement of garments or shoes, are not within the privilege against self-incrimination too.[51]

Contrary to appellant's asseverations, there was no undue influence exerted by the police upon the complainant which induced the latter to positively identify him. As already noted, even right after the incident, complainant was able to describe the features of her rapist at the police headquarters, and upon being given the chance to identify the malefactor at the police line-up, she did so without faltering.

The cases to which appellant clings for his protection, far from favoring his cause, actually work against him. First, in *People vs. Cruz*,[52] the lighting situation in the house was wholly uncertain and rendered highly suspect and questionable, if not altogether infirm, the ability of the two girls to shape out a positive identification of the appellant therein. Moreover, the identification at the police station was attended by a great deal of whispered conversations, as well as by at least one unexplained conference elsewhere in the municipal building, at which they were present immediately prior to their being confronted by the accused. Furthermore, the witnesses there were unable to identify the accused at sight.

In the cases of *People vs. Hassan*[53] and *People vs. Domingo, et al.*,[54] the eyewitnesses were not positive enough as to the identity of the assailant. In fact, in the latter case, the witness even declared that he would not be able to recognize the assailant, even if he were to see him again. In *Chavez vs. Court of Appeals, et al.*,[55] there was no issue as to proper identification, but only as to the accused being called by the prosecution to the witness stand.

In the instant case, the environs were conducive enough for complainant to recognize her debaucher at the time of the incident. As earlier stated, the "lamparilla" was still lighted when herein appellant barged into her room. Moreover, upon seeing the suspect at the police line-up, she immediately identified him without even the least prodding from the law enforcers.

As we have heretofore observed, a consideration of the modifying circumstances attendant to this case would be virtually of academic value insofar as the aggravation of appellants' criminal liability and the corresponding penalty therefor are concerned,[56] in view of the constitutional constraint thereon. It is felt, however, that a disquisition is in order for future guidance as a sub silentio treatment may be misconstrued as implying the non-applicability of said circumstances to these cases.

We rule that the court a quo erred in not appreciating the aggravating circumstances of nocturnity and dwelling. Nighttime, according to Viada, is that period of darkness beginning at the end of dusk and ending at dawn.[57] Our Civil Code defines nights as from sunset to sunrise.[58] When the rapes were committed at 3:00 A.M. on May 24, 1990, it was still "nighttime," and this aggravating circumstance can be considered as long as it is proved, even if not alleged in the information.[59] It is obvious that appellant Putulin and his two other co-appellants specially sought the cover of darkness to facilitate the commission of the crimes without their being recognized, aside from ensuring their unmolested escape. They chose to unleash their evil deeds at the unholy hour of 3:00 o'clock in the morning, taking advantage of the stillness of a sleeping world.[60]

The crime having been perpetrated in the house of the complainant, there can be no serious debate that the aggravating circumstance of dwelling should properly be appreciated, considering the sanctity of privacy which the law accords to a human abode.

The use of a deadly weapon which is considered as a qualifying circumstance in the crime of rape^[61] is likewise to be appreciated to constitute the offenses charged in these cases into what are jurisprudentially referred to as qualified rapes, such circumstance being alleged in each of the complaints in these cases and it being uncontroverted that herein appellant was armed with a pointed bolo, appellant Codilla with a bolo and a handgun, while appellant Lucañas used a handgun, to realize their criminal objectives. Nevertheless, the penalty of reclusion perpetua imposed by the trial court on appellants shall remain because of the constitutional proscription against the imposition of the death penalty until the restoration thereof by congressional fiat.

WHEREFORE, with the MODIFICATIONS that the civil indemnity, which accused-appellants Rolando Codilla, German Lucañas and Marcelo Putulin must pay to each of their victims for every crime of rape committed by them against the latter, is hereby increased to P30,000.00; and that the aggravating circumstances of nighttime and dwelling together with the qualifying circumstance of use of a deadly weapon, are duly taken account of in point of law as above explained and are hereby made of judicial record in these cases, the assailed judgment of the court a quo is consequently AFFIRMED, with costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), and Nocon, JJ., concur.
Padilla, J., on leave.

[1] Original Record, Crim. Case No. 3739-0, Regional Trial Court, Branch 12, Ormoc City, 74-76.

[2] Brief for the Appellee, 5-11; Rollo, 166-172.

[3] Original Record, Crim. Case No. 3739-0, ante, 79-80.

[4] Ibid., 18; Original Record, Crim. Case No. 3742-0, 16.

[5] Ibid., Crim. Case No. 3741-0, 19.

[6] Original Record, Crim. Case No. 3789-0, 83-84.

[7] Brief for Accused-Appellants, 7; Rollo, 101.

[8] Rollo, 137.

[9] Longao vs. Fakat, 30 SCRA 866 (1969).

[10] Rollo, 154.

[11] Ibid., 204.

[12] Ibid., 208.

[13] Ibid., 210-211.

[14] Ibid., 221.

[15] 197 SCRA 32 (1991).

[16] People vs. Tiu, G.R. Nos. 75032-33, December 2, 1992.

[17] Brief for the Accused-Appellants, 10; Rollo, 104.

- [18] De Asis vs. Romero, etc., et al., 41 SCRA 235 (1971).
- [19] People vs. Rabang, 187 SCRA 682 (1990).
- [20] People vs. Alvarez, 213 SCRA 722 (1992).
- [21] Original Record, Crim. Case No. 3739-0, 83.
- [22] See People vs. de Guzman, G.R. Nos. 102409-10, December 21, 1992.
- [23] TSN, February 19, 1991, 15; March 4, 1991, 5.
- [24] Ibid., February 20, 1991, 7.
- [25] Ibid., March 4, 1991, 23.
- [26] Ibid., id., 78-79.
- [27] Ibid., id., 11.
- [28] Ibid., id., 5, 11, 19.
- [29] People vs. Alvarez, supra.
- [30] People vs. Grefiel, G.R. No. 77228, November 13, 1992; People vs. Matrimonio, G.R. Nos. 82229-24, November 13, 1992.
- [31] People vs. Matrimonio, supra.
- [32] TSN, March 4, 1991, 22.
- [33] See People vs. Alvarez, supra.
- [34] TSN, February 19, 1991, 21, 24.
- [35] People vs. Villorente, 210 SCRA 647 (1992).
- [36] People vs. Alvarez, supra.
- [37] People vs. Grefiel, supra.
- [38] People vs. Matrimonio, supra.
- [39] Original Record, Crim. Case No. 3739-0, 82.
- [40] TSN, March 5, 1991, 59.
- [41] Ibid., April 3, 1991, 9.
- [42] Ibid., id., 7-8.
- [43] Ibid., id., 13.
- [44] Ibid., id., 16.
- [45] Vda. de Bonifacio et al. vs. BLT Bus Co., Inc., etc., et al., 34 SCRA 618 (1970); People vs. Macaso, 64 SCRA 659 (1975); People vs. Peruelo, 105 SCRA 226 (1981).
- [46] Brief for the Accused-Appellants, 10-13; Rollo, 104-107.

[47] *People vs. Olvis*, 154 SCRA 513 (1987).

[48] See *Alih, et al. vs. Castro, etc., et al.*, 151 SCRA 279 (1987).

[49] *People vs. Olvis*, *supra*.

[50] *U.S. vs. Wade*, 388 U.S. 218, 18 L ed 2d 1146, 87 S Ct 1926.

[51] *People vs. Otadora*, 86 Phil. 244 (1950).

[52] 32 SCRA 181 (1970).

[53] 157 SCRA 261 (1988).

[54] 165 SCRA 620 (1988).

[55] 24 SCRA 663 (1968).

[56] Article 335, Revised Penal Code, as amended by R.A. No. 4111, provides that whenever the crime of rape is committed, -inter alia, with the use of a deadly weapon, the penalty shall be reclusion perpetua to death.

[57] Cited in Reyes, Luis B., Revised Penal Code, Twelfth Edition, 353, Volume I (1981).

[58] Article 13.

[59] *People vs. Collado*, 60 Phil. 610 (1934); *People vs. Raquinio*, 17 SCRA 914 (1966).

[60] See *People vs. Grefiel*, *supra*.

[61] *People vs. Entes*, 103 SCRA 162 (1981); *People vs. Garcia, et al.*, 105 SCRA 6 (1981); *People vs. Lamberte*, 142 SCRA 685 (1986).

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