

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO “EDDIE” TAMI ALIAS “JOJO”, ACCUSED-APPELLANT.

G.R. Nos. 101801-03. May 02, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Once again, the case before us illustrates the continuing social malady of revolting sexual deviance.

On February 27, 1990, Ruel Paderna, Froilan Landrio, Geralyn Landrio, Imelda Mamasig, Arthur Trajano, Arnel Pacardo and complainant Amelita Dequito, all teenagers and residents of barangay Labangal, went to downtown General Santos City to witness and take part in the commemoration of the landing of General Paulino Santos and the first batch of National Land Settlement Administration (NLSA) settlers in Dadiangas before the 2nd World War. They arrived at about nine o'clock in the evening at Lion's Beach and stayed for only twenty (20) minutes. Thereafter, they proceeded to the plaza to watch the program at the City Hall. They stayed until one o'clock in the morning after which they boarded a tricycle to go home. The tricycle driver however brought them only as far as Silway Bridge because of fear of hold-uppers farther on.[1]

At the foot of Silway Bridge, they got off and began to trek home. When they reached the middle of the bridge, another tricycle arrived. On board were Eduardo Tami and Mohammad Bagatao who, from a distance of about 30 meters, shouted at them to stop. Bagatao pulled out a gun and pointed it to them while walking towards them. At this point, Geralyn Landrio, Froilan Landrio and Arthur Trajano decided to flee and ran away from their companions. Obviously, the other four were left behind to wait for Bagatao and Tami. As they approached, Bagatao asked Ruel Paderna if the latter knew him. Paderna answered in the affirmative and said they were schoolmates.[2]

Bagatao then herded the group towards a coconut grove where he pistol-whipped Paderna on the head once and Pacardo twice. Afterwards, he ordered them to leave. As the group started to move on, Tami told Bagatao to leave one of the girls behind. Thereupon, Tami pulled away Amelita Dequito from Paderna's grasp and told the others to leave without Amelita. Helpless, the others did as they were ordered to.[3]

From there, Paderna, Pacardo and Mamasig proceeded to the police sub-station at Makar, General Santos City to report the abduction of Amelita. Efforts were made by P/Sgt. George Taborete and his group to look for Amelita Dequito but the same were fruitless.[4]

In the meantime, while everybody else was looking for her, Amelita Dequito suffered a most harrowing experience and grave violation upon her person and her chastity. She narrated her sordid experience through her testimony on direct examination, thus:

Q

After your 3 companions left you with Bagatao and Tami, what happen (sic)?

A

They ordered me to walk while they are (sic) behind me and directed me (sic) I should follow and pointed the gun behind me.

COURT:

Q

Who of the two was pointing the gun at you?

A

Glo Bagatao.

PROS. GACAL:

Q

Where did the 3 of you go?

A

To Acharon Beach.

Q

How far is this place from the place where you were abducted to this Acharon Beach where you were brought to?

A

From here up to Ramon Magsaysay College (estimated by the court to be 200 to 250 meters).

Q

Upon reaching the Acharon Beach, what happen (sic)?

A

Upon reaching the place Glo Bagatao took off his polo shirt and he again said `you are the daughter of Boy Porras' and I said `di lagi' and then again he said `you are an informer of the NPA.' I said `no I am a student.'

Q

After he said that what did he do next?

A

He said `no you are the daughter of Boy Porras and he showed me a scar which according to him was the result of the stabbing on him by Boy Porras.

Q

And after that what happen (sic)?

A

He removed his pants.

Q

After removing his polo shirt, then his pants, what was left is (sic) his covering?

A

Only his brief.

COURT:

Q

Where was Tami all this time?

A

He was just near us.

PROS. GACAL:

Q

And after uncovering himself with his polo shirt, pants and only the brief was left what happen (sic) next?

A

He pointed his gun at the left side of my head and ordered me to undress.

Q

Did you follow his command to undress?

A

No, sir.

Q

And what did he do when you did not follow his command?

A

He again said 'take off your dress' and he forced me to remove it after which he fired the gun upward after pointing the muzzle upward.

Q

After that what happen (sic)?

A

He removed the button of my pants after unzipping it.

Q

And then?

A

He held me by my left shoulder and forced me to lie (sic) down.

Q

And you were pushed to the ground?

A

Yes, sir.

Q

And when you were already lying down on the ground what happen (sic)?

A

He placed himself on top of me and held my 2 arms with his two hands and pinning my arms over my head.

Q

And then what happen (sic)?

A

Then he instructed Eddie Tami to pull down my pants.

Q

And did Tami do as instructed by Glo Bagatao?

A

Yes, sir.

Q

And was your pants removed from your body?

A

Yes, sir.

COURT:

Q

Entirely off your legs?

A

Yes, sir.

PROS. GACAL:

Q

Were you wearing panty then?

A

Yes, sir.

Q

Who removed your panty if there was anybody who removed it?

A

Glo Bagatao pulled the garter of my panty at my side and then ordered Tami to remove it from my legs.

Q

Was it removed?

A

Yes, sir.

COURT:

Q

Entirely off your legs?

A

Yes, your Honor.

PROS. GACAL:

Q

What were you wearing on the upper portion of your body?

A

A t-shirt.

Q

Was your t-shirt removed?

A

First he pulled the front portion of my t-shirt pulling it hard including my bra and it was destroyed.

Q

Was the front portion of your t-shirt torn?

A

Yes, sir.

Q

Was it removed from your body?

A

No, sir.

Q

Was it removed ultimately from your body?

A

Yes, sir because he made me sit down and then removed the t-shirt from my body.

Q

Including your bra?

A

Yes, sir.

Q

So at that moment when your t-shirt and bra were removed you were completely naked?

A

Yes, sir.

Q

And when you were completely naked what happen (sic) next?

A

He again made my lye (sic) down and then he kissed my lips, my neck and my breast.

Q

How did he made you lye (sic) down gently or what?

A

He forcibly made me lye (sic) down.

COURT:

Q

On the ground or at (sic) the sand?

A

On a grassy portion, Your Honor.

PROS. GACAL:

Q

And when you were lying down already what happen (sic)?

A

Glo ordered Tami to remove his (Bagatao's) brief.

Q

When Tami was ordered to remove Bagatao's brief what was the position of Bagatao or where was he at that time when he ordered Tami to remove his brief?

A

He was already on top of me.

Q

Astride or parallel to your body?

A

He was already on top of me.

Q

Now, why did you not try or did you struggle so that these things could not happen, the removing of your pants, panty, bra and your shirt?

A

I struggled and fought back.

Q

Did you not shout for help?

A

I was only crying because they warned me that they will kill me if I will shout.

Q

After Bagatao's brief was removed by Tami what happen (sic) next?

A

He ordered me to spread my legs.

Q

And (did) you do as you (were) ordered?

A

No, sir.

Q

So what did you do with your legs when he was already on top of you and trying to have congress with you?

A

I kept on closing my legs.

Q

So what happen (sic) when you tried to close your thighs (sic) together and even went to the extent of closing your legs so that it will not be spread about?

A

I struggled and kept on moving my body.

Q

And then what happen (sic)?

A

He boxed my thighs.

Q

Both thighs?

A

He boxed my thigh with his left hand and also on the right thigh.

Q

While all these things were happening where was Tami?

A

He was near us sitting down and looking at us.

Q

Did he do something while you were closing your thighs together and closing your legs and trying to struggle so that Glo Bagatao could not complete his desire to have sex with you?

A

He said to me `just follow what he wants a (sic) Day or he might kill us.'

Q

Did he also do something?

A

Glo Bagatao told him to spread my legs.

Q

Did he do it?

A

Yes, sir.

Q

In other words he held your feet and spread it apart?

A

Yes, sir.

Q

While he was holding your feet apart, Bagatao was on top of you?

A

Yes, sir.

xxx xxx xxx

PROS. GACAL:

Q

After that what happen (sic)?

A

He first kept on kissing me on my lips, my neck including my breast and after that he inserted his penis to (sic) my vagina.

Q

Was he able to insert his penis into your vagina?

A

Yes, sir.

Q

When his penis was already inside your vagina what movement was there of his body if any?

A

He made a push and pull movement.

Q

And how long did he stay on top of you doing the push and pull movement while his penis was inside your vagina?

A

About 10 minutes.

Q

After that what happen (sic)?

A

I cried because I noticed that I was bleeding and later on there were persons who arrived.

Q

How did you feel when his penis was inserted into your vagina?

A

I felt pain.

Q

You said there were some persons who arrived, was Glo Bagatao were (sic) already through with having sex with you?

A

Yes, sir, he was already through.

Q

And what was he doing when those people arrived?

A

He was kissing me.

Q

How many persons, more or less, arrived?

A

More or less 5 persons.

Q

And when those 5 persons, more or less, arrived what did they say if they said anything?

A

I heard those persons say `who's there?'

Q

How far were you when those 5 persons from the place where you were abused when they said `who are they'?

A

From here to that cypress tree with a white paint on its trunk (25 meters).

Q

When those persons said `whose there' what did Glo Bagatao do if he did anything?

A

He hurriedly put on his pants and answered, `this is Glo Bagatao.

'xxx xxx xxx

PROS. GACAL:

Q

When Bagatao approached those persons what did Tami do?

A

Tami inserted the muzzle of the gun inside my mouth and warned me not to make any noise otherwise he will fire the gun if I will make noise.

COURT:

Q

What gun did he use, the gun held by Bagatao?

A

Yes, your Honor.

PROS. GACAL:

Q

How did it happen, if you know, that the gun of Bagatao went to the possession of Tami?

A

When Glo Bagatao was already on top of me and he took off my t-shirt he gave his gun to Tami.

Q

How did (sic) Tami able to insert the muzzle of the gun in your mouth?

A

He held me by my shoulder and then placed my cheeks with the same hand he used in holding my shoulder and then it was forced open he inserted the muzzle of the gun.

Q

Did you notice if Bagatao and the 5 other persons talked to each other?

A

Yes, sir.

Q

Were you able to heard (sic) what they are talking about?

A

I heard but I cannot understand it because it was in the Moslem dialect.

Q

And after Bagatao talked with those 5 persons what did he do next?

A

The 5 persons left the place and then Glo Bagatao went near us again.

Q

When he left you in the place where you were with Tami what happen (sic) next?

A

Tami gave the handgun to Glo Bagatao and he instructed (sic) to put on my t-shirt.

Q

And your t-shirt was put on your body?

A

Yes, sir.

Q

How about your pants?

A

Not yet.

Q

Your panty?

A

No.

Q

Your bra?

A

No also.

Q

After your t-shirt was on your body what happen (sic)?

A

He ordered Jojo Tami to bring all the clothings because we will be leaving the place.

Q

Were you wearing shoes that time?

A

No more.

Q

You mean from the plaza you did not wear any shoes?

A

I was wearing my shoes.

Q

What happen (sic) to your shoes?

A

It (sic) was taken off at the time when I was on the ground struggling.

Q

So your shoes was (sic) one of those things brought by Tami as ordered by Bagatao?

A

Yes, sir.

xxx xxx xxx

PROS. GACAL:

Q

And where were you brought?

A

Still at the Acharon Beach and beside the Veres Ice Plant.

Q

How long was the place where you were abused to the Veres Ice Plant?

A

Infront of the new City Hall Building (estimated by the court to be 80 meters).

Q

And when you leave (sic) the Veres Ice Plant what happen (sic)?

A

Again I was forced to lye (sic) down so he will have another sexual intercourse with me.

COURT

Q

Who, Bagatao?

A

Yes, sir.

PROS. GACAL:

Q

Was your t-shirt removed?

A

No more, sir.

Q

How did he force you?

A

He held me by my hand and pulled me down.

COURT:

Q

Also on the grass?

A

Yes, your Honor.

PROS. GACAL:

Q

Was he able to consummate his desire?

A

He first stood up to remove his pants and brief.

Q

Then?

A

He handed again the gun to Tami.

Q

And then?

A

Then he placed (himself) on top of me while I was crying.

Q

Did you not struggle?

A

I struggled, sir, but I was very weak at that time.

Q

And then what happen (sic)?

A

He again inserted his penis at (sic) my private part.

Q

What movement of his body was there, if any, when his penis was already inside?

A

He again made the push and pull movement.

Q

By the way, what time was that, more or less?

A

Almost 3 o'clock dawn.

Q

At the Acharon Beach when you were fist (sic) abused what time was that, more or less?

A

About 2 o'clock.

Q

After abusing you for the second time near the Veres Ice Plant what happen (sic) next? I withdraw. When this Glo Bagatao was having sex with you for the second time near the Veres Ice Plant where was this Tami?

A

Also still nearby watching us.

Q

After having sex with you for the second time what happen (sic) next?

A

Tame gave the gun to Glo Bagatao and ordered Tami to dress me up.

Q

Was it Tami who dressed you up?

A

Yes, sir, because he was ordered by Glo Bagatao to dress me by way of helping me.

Q

Why did he ordered (sic) Tami to help you not being you to (sic) dress?

A

Because according to him I am (sic) very slow in putting up (sic) my clothes.

Q

From there what happen (sic)?

A

They again brought me to Purok Maguindanao.

Q

To what place in Purok Maguindanao were you brought by the 2?

A

To the house of his uncle.

Q

And you were brought there?

A

At the hut of his uncle.

Q

Was there any person there at that hut?

A

None, sir.

Q

How far is Veres Ice Plant to that hut at Purok Maguindanao?

A

About 200 to 250 meters (from here to RMMC).

Q

And you were brought inside that hut?

A

Yes, sir.

Q

How big, more or less, is that hut?

A

It was only small (witness pointing to a dimension of 8 feet x 8 feet as estimated by the court).

Q

Did you notice the roofing of that hut?

A

Made of coconut leaves.

Q

Is there a flooring in that hut?

A

Yes, sir.

Q

What is the flooring of that hut?

A

Bamboo slats.

Q

How high is the floor of that hut to the ground?

A

About 1 1/2 feet high.

Q

Is there a stairs in that hut or only one step from the ground?

A

One step from the ground to the floor.

Q

Does it have a walling?

A

Bamboo slat wallings (sic).

Q

Nailed closely to one another?

A

Nailed apart.

Q

The walling is made of what, if you know?

A

Bamboo.

PROS. GACAL:

Q

Right, what happen (sic) inside that hut?

A

He again told me to undress.

Q

Did you obey his command?

A

No, sir.

Q

Who is this `he'?

A

Glo Bagatao.

Q

When you did not obey his command what happen (sic)?

A

He undressed me.

xxx xxx xxx

PROS. GACAL:

Q

What did you do when he removed your pants or when he was removing your clothing I mean?

A

I was kicking.

Q

Then?

A

But he still successfully removed my pants because I was very weak.

Q

Your panty?

A

At that time I have not worn any panty anymore.

Q

Your t-shirt?

A

I did not remove it.

Q

You did not shout?

A

No more because I was just crying as he warned me that he will shoot me if I will shout.

Q

After he removed his pants what did he do?

A

He again removed all his clothings making him totally naked.

Q

Then?

A

He again placed himself on top of me.

Q

Did you not struggle?

A

I struggled but I was already very weak I seemed not able to move anymore.

Q

What time was that?

A

Past 3 o'clock.

Q

Was he able to insert his penis inside your vagina?

A

Yes, sir.

Q

Was he able to consummate his sexual intercourse with you?

A

Yes, sir.

Q

And while he was abusing you inside that hut where was Tami?

A

He was just outside the hut sitting.

Q

Why, is (sic) there a bench there, outside?

WITNESS:

A

There was a bench attached to the hut made of bamboo.

PROS. GACAL:

Q

After having sex with you, what happen (sic)?

A

He said `do not worry I will marry you' and I answered him `I do not like you because I have a boyfriend.'

Q

And after that what happen (sic)?

A

He tied my two hands at my back.

Q

And then?

A

And then he went to sleep.

Q

About you?

A

I continued crying with my two hands tied at my back.

Q

And after that what happen (sic)?

A

When he was already asleep, Tami approached me.

Q

And what did Tami do or if he said anything?

A

He said `I will release you and let you go home because I pity you.'

Q

When Bagatao went to sleep, where was the gun?

A

He placed the gun under the pillow.

xxx xxx xxx

PROS. GACAL:

Q

When your hands were untied by Tami what happen (sic) next?

A

He told me to put on my pants.

Q

How about your panty?

A

No, sir.

Q

Why, where was your panty?

A

My panty was already placed inside the pocket of my pants at the time Glo ordered Tami to carry my belongings.

Q

So you put on your pants?

A

Yes, sir.

Q

And after you put on your pants where were you brought by Tami?

A

He brought me to Saavedra Saway Elementary School.

Q

How far is this Saavedra Saway Elementary School?

A

From here I think to the post office (estimated to be about 150 meters by the court).

xxx xxx xxx

PROS. GACAL:

Q

Did you ask him where he will bring you when you were already released?

A

Yes, and he told me that he will bring me home.

Q

Was the path from the hut to the direction of Saavedra Saway Elementary School the path to your house?

A

It has a road on the other side going to our place.

xxx xxx xxx

Q

When you reached the Saavedra Saway Elementary School what happen (sic)?

A

He told me to sit down outside the room.

Q

Did you ask him why he will (sic) let you sit down there?

A

Yes, sir, and I asked him and he said 'do not ask me many questions just follow what I will tell you' and at that time he had also a handgun with him.

Q

Then you follow (sic) him?

A

No, sir, he pulled me forcing me to sit down.

Q

Where?

A

In (sic) the cemented floor.

Q

Infront of the school?

A

Inside the school building.

xxx xxx xxx

Q

And he pulled you there and what did he do next?

A

He ordered me to remove my dress also.

Q

Did you follow?

A

No, I did not.

Q

So what did he do?

A

He removed my pants.

xxx xxx xxx

PROS. GACAL:

Q

What did you do when he was removing your pants?

A

I tried to push him.

Q

And then?

A

He said 'I will shoot you if you will not follow me'

Q

So what happen (sic) next?

A

My pants was (sic) removed.

Q

Who removed?

A

Jojo Tami.

Q

And when your pants were removed what happen (sic)?

A

He also removed his pants.

Q

And then?

A

Including his brief.

Q

And then?

A

He made me lye (sic) down on the cement by pulling me down.

Q

What was your physical condition at that time?

A

I was already very weak and about to collapse, I do (sic) not know how I feel (sic) at that time I could not understand my condition.

Q

And when you are (sic) already on the pavement what did he do?

A

He also inserted his penis at (sic) my vagina.

Q

And he did the push and pull also?

A

Yes, sir.

Q

And after that?

A

He put on his pants and told me that we will leave.

Q

How about your pants what happen (sic)?

A

He carried my pants.

Q

So you had only your t-shirt on?

A

Yes, sir.

Q

And where did he bring you?

A

To another room.

Q

Also of the same school?

A

The same school.

Q

How far on that pavement to the place where you were brought the second time?

A

From here to the new city hall building (estimated to be 25 meters).

Q

Is that place the same building?

A

The same school but different building.

Q

He brought you inside the room or was (sic) in the corridor of that building?

A

At (sic) the corridor of that building.

Q

And when you reached that place what happen (sic)?

A

He again pulled me down to lye (sic) down.

Q

And what happen (sic) when you are (sic) already on the pavement?

A

He again removed his pants and brief.

Q

And then?

A

He again placed himself on top of me.

Q

In short he was able to have sex with you?

A

Yes, sir.

xxx xxx xxx

Q

From there what happen (sic)?

A

He told me to put on my clothes.

Q

You put on what?

A

He told me that my panty is (sic) inside the jacket of my pants.

Q

So?

A

He told me to put on my panty as well as my pants.

Q

And you did?

A

Yes, sir.

Q

How about your bra?

A

No, sir, but it is (sic) inside the pocket of my pants.

Q

Did he tell you also that the bra is (sic) inside the pocket of your pants?

A

Yes, sir.

xxx xxx xxx

PROS. GACAL:

Q

So what did you do when you were told that the bra is (sic) in one of your pockets of the pants?

A

I checked to verify if my bra is (sic) really in my pocket and was about to put it on when Tami told me not to put it on anymore.

Q

And then?

A

He placed his arm on my shoulder and warned me not to make any noise but to follow whatever he will say.

Q

And then?

A

He brought me to Silway Bridge.

Q

How far is the Saway Saavedra Elementary School to the Silway Bridge?

A

From here up to RMMC (200 to 250 meters).

Q

And what did he do to you there in the Silway Bridge?

A

He said `alright you go home but do not tell the police or anybody because I and Bagatao will kill you and your family.'

Q

And then he left you there?

A

He was looking at me while I was running very fast away from him.

xxx xxx xxx[5]

After Amelita ran away from Eddie Tami, she proceeded to the house of Ruel Paderna, her boyfriend, and related to him and his family her agonizing experience. Ruel's father then went to the police station and later fetched Amelita's mother and sister.[6] Thereafter, all of them went to the police sub-station at Makar to report the incident. At the said station, Amelita told the police that Bagatao might still be found asleep in his uncle's hut at Purok Maguindanao.[7]

At around six o'clock in the morning of February 20, 1990, the law enforcers led by P/Cpl. George Taborete together with Ruel's father, Amelita's mother and Amelita herself, went to the hut of Bagatao's uncle. Bagatao was indeed still asleep as Amelita had surmised and awoke only when P/Cpl. Taborete took the gun from under his pillow.[8] He was then placed under arrest by P/Cpl. Taborete and was brought to the Makar police sub-station.[9] There, he was identified by Amelita as one of the culprits of the dastardly crime committed against her.[10] The handgun used by him was likewise identified by Amelita.[11] Later on, at around eight o'clock in the morning, Amelita was brought to the Emergency Hospital at General Santos City to undergo physical examination. Dr. Zaldy Lim conducted the examination and accordingly issued a Medical Certificate[12] which reveals the following findings, viz:

The hymen was not intact but with 3 and 6 o'clock position lacerations, positive, whitish, vicid material vaginal canal. There is a possibility that it could be semen. Contusion 2 x 2 mm. lateral aspect distal 3rd radius left and right (side of the left and right wrist) and abrasion linear 1 cm. 3rd metacarpophalangeal joint posterior aspect right (between the fingers and the back of the left hand). The laceration could be less than 48 hours.[13]

Consequently, an information was filed with the Regional Trial Court, Branch 23, General Santos City and docketed as Criminal Case No. 6175, accusing MOHAMMAD BAGATAO, alias "Glo" and appellant EDDIE TAMI, alias "Jojo" of the crime of Forcible Abduction with Rape, committed as follows:

That on or about February 28, 1990, at about 2:00 o'clock in the morning, of (sic) Labangal, General Santos City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring confederating together and mutually helping one another, both armed with unlicensed guns, did then and there willfully, unlawfully and feloniously, with lewd designs, abduct Amelita D. Dequito, a woman, against her will from the coconut grove in Labangal and was brought to the compound of the beachhouse of the Shellane Company, also in Labangal, and did then and there, with the use of force and intimidation with firearm by both accused, accused Mohammad Bagatao has (sic) carnal knowledge of complainant against her will; that thereafter complainant, against her will, was brought by both accused to the grassy area beside the Veres Ice Plant, also in Labangal, and did then and there accused Mohammad Bagatao, with intimidation, has (sic) carnal knowledge of complainant against her will, while accused Eddie Tami acted as look-out; and that thereafter both accused brought the complainant against her will to a house in Purok Maguindanao, Labangal, and did then and there accused Mohammad Bagatao by means of intimidation has (sic) carnal knowledge of complainant against her will, while accused Eddie Tami acted as a 'look-out'.

CONTRARY TO LAW.[14] In another Information filed, appellant EDDIE TAMI, alias "Jojo" was charged, in Criminal Case No. 6176, for Rape, committed as follows:

That on February 28, 1990, at about past 3:00 o'clock in the morning, in the campus of Saavedra Saway Elementary School in Labangal, General Santos City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and by means of intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of complainant against her will and that thereafter complainant was brought to the concrete wall of another school buildings and accused did then and there, with intimidation, have carnal knowledge of complainant against her will for the second time.

CONTRARY TO LAW.[15]

In a related Information filed, accused MOHAMMAD BAGATAO, alias "Glo" was charged, in Criminal Case No. 6177, for violation of P.D. 1866 (Illegal Possession of Firearm), committed as follows:

That on February 28, 1990 in Labangal, General Santos City, Philippines, and within the jurisdiction of this

Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) homemade (paltik) 20 gauge pistol without having obtained the necessary permit or license to possess the same from proper government agencies, which firearm he used in the commission of the crime of Forcible Abduction with Rape.

CONTRARY TO LAW.[16]

Since the three (3) cases arose out from the same incident and involved the same parties, they were tried jointly.

Upon arraignment, appellant and his co-accused pleaded "Not Guilty" to the offenses charged in the Informations. Accordingly, trial on the merits ensued.

On June 17, 1991, the trial court rendered a Consolidated Decision, the dispositive portion of which reads:

WHEREFORE, the Court renders the following judgments:

A. CRIMINAL CASE NO. 6177

FOR ILLEGAL POSSESSION OF FIREARM

For failure of the prosecution to prove the negative fact alleged in the information, that is, the accused Mohammad Bagatao possessed the firearm, Exhibit "B", without a license or permit to possess the same, the said accused MOHAMMAD BAGATAO is ACQUITTED on reasonable doubt.

The gun, Exhibit "B", is confiscated and forfeited in favor of the Government.

B. CRIMINAL CASE NO. 6175

FOR ABDUCTION WITH RAPE

Finding accused Mohammad Bagatao and Eduardo `Eddie' Tami guilty beyond reasonable doubt of the crime of abduction with rape on three (3) counts committed with the use of a deadly weapon, plus the established fact that the rapes were committed by two persons, the Court hereby sentences both accused MOHAMMAD BAGATAO and EDUARDO `EDDIE' TAMI to THREE (3) death penalties. But considering that under the Constitution, the death penalty shall no longer be imposed, the Court hereby sentences MOHAMMAD BAGATAO and EDUARDO `EDDIE' TAMI to THREE (3) reclusion perpetuas each. Pursuant to Article 70 of the Revised Penal Code, they shall not remain in prison for more than forty (40) years.

C. CRIMINAL CASE NO. 6176 FOR RAPE

Finding accused Eduardo `Eddie' Tami guilty beyond reasonable doubt of the crime of rape on two (2) counts, the Court hereby sentences accused EDUARDO `EDDIE' TAMI to TWO (2) reclusion perpetuas.

Although accused Eduardo `Eddie' Tami has been sentenced to a total of five (5) reclusion perpetuas, the maximum period of his imprisonment shall not exceed forty (40) years (Article 70, RPC).

Both accused Mohammad Bagatao and Eduardo `Eddie' Tami shall serve their sentences at the National Penitentiary at Muntinlupa, Rizal. In the computation of the forty (40) years, the maximum period that they shall remain in prison, each is credited with 4/5 of his preventive imprisonment.

Each of the accused is further sentenced to pay Amelita Dequito, the offended party, the sum of TWENTY-FIVE (P25,000.00) each for moral damages.

SO ORDERED.[17]

Aggrieved by the above-quoted ruling, only appellant Eduardo "Eddie" Tami interposed the present appeal ascribing to the court a quo the following errors, to wit:1

. The court erred in finding the accused guilty of having conspired with Mohammad Bagatao to abduct and rape the complainant three times.

a. The court erred in finding that the complainant was raped twice at the Acharon Beach-first near the Shellane Compound and the second beside the Veres Ice Plant;

b. Assuming the complainant was raped by Bagatao at the Acharon Beach, the court erred in finding the accused guilty with Bagatao for the alleged rape near the Shellane Compound.

c. Assuming the complainant was raped by Bagatao the second time at the Acharon Beach, the court erred in finding the accused guilty with Bagatao for the alleged rape beside the Veres Ice Plant.

d. The court erred in finding the accused guilty of rape with Bagatao who forcibly had sexual intercourse with the complainant at the hut of Bagatao's uncle at Purok Maguindanao.

2. The court erred in finding the accused, armed with a gun, guilty of having raped the complainant twice at the Saavedra Saway Elementary School.

3. The court erred in not acquitting the accused on the ground that his guilt has not been proven beyond reasonable ground (sic).[18]The appeal is not impressed with merit.

Appellant vehemently denies participation in the crimes charged in the informations. In his brief, he maintains that he did not conspire with co-accused Bagatao to abduct complainant Amelita Dequito and that the prosecution failed to prove that he had come to an agreement with Bagatao to commit the crime charged. He asserts that he was just following the orders of his cousin Bagatao when he acted as a "lookout" while the former was sexually assaulting Amelita.[19]

This contention spurs disbelief.

It is true that there is no evidence on record of a previous agreement between the accused to abduct Amelita in order to rape her and that no witness testified to having seen or heard the accused conspire. However, it is a well-settled rule that for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime. It is sufficient that at the time of the commission of the offense, all the accused acted in concert showing that they had the same purpose or common design and were united in its execution.[20] In the case at bench, the simultaneous and participatory acts of the appellant and his co-accused reveal a community of design, an indicia of a conspiracy to forcibly abduct complainant Amelita Dequito for the satisfaction of their carnal desires against her will. To hold an accused liable as co--principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[21] In this case, contrary to his protestation that he only acted as "lookout", appellant was not merely present when the crime charged was committed. He actually took part in the sexual assault. And the finding of the trial court reveal just that hence, the same is accordingly afforded weight and respect and we quote:

The evidence of the prosecution that Bagatao and Tami conspired in abducting Amelita is clear. When Bagatao

told the four to go, Tami said to them to leave one of the women, and grabbed and pulled Amelita away from Ruel Paderna, who was holding her by the hand, and ordered the other three to leave. When the three hesitated, Bagatao pointed his gun to them saying that he would shoot (sic) them if they did not leave. It was Tami who pulled Amelita's panty off her legs when Bagatao was on top of Amelita, and it was Tami who removed Bagatao's brief when the latter was on top of Amelita, ready to do the act. When Amelita refused to spread her legs, Tami, on the say so of his cousin, held Amelita's feet and spread her legs apart and then Bagatao sent his penis home, that is, to the vulva of Amelita. And when 5 persons came near the scene, and Bagatao walked over to them, to talk with them, Tami inserted the muzzle of Bagatao's gun into the mouth of the girl to threaten her not to let out an outcry.

Beside the Veres Ice Plant; where Bagatao and Tami took her to, and where Bagatao made his second fling, with the girl. Bagatao handed his gun to Tami, and the latter watched Bagatao do the act from a very near distance. After Amelita had put on her dress with the help of Tami, the two cousins took her to Purok Maguindanao, particularly to a hut owned by Bagatao's uncle, and there Bagatao had the third fling with her, again against her will. Again, Tami was there. Before Bagatao went to sleep, he bound Amelita's hands behind her. Conspiracy is evident in Criminal Case No. 6175. That Mohammad Bagatao and Eduardo 'Eddie' Tami conspired in the commission of the crime of abduction with rape is not doubted.[22] (*Italics supplied*)

Anent appellant's contention that he was only acting on orders of his co-accused Bagatao, it would suffice to state that to be free of criminal culpability, a person invoking irresistible force or uncontrollable fear must show that the force exerted was such that it reduced him to a mere instrument acting not only without will but against his will as well.[23] Compulsion must be of such character as to leave appellant no opportunity for self-defense in equal combat or for escape.[24] In the instant case, appellant failed to prove that he was without any choice but to follow the orders of Bagatao. Records bear out that he did not take advantage of the numerous opportunities presented before him to leave the scene prior to and during the commission of the acts complained of to avoid any impression that he was part of the conspiracy.

On the issue of credibility of witnesses and evidence adduced before the court a quo, we sustain the trial judge in giving credence to the evidence of the prosecution after having assessed it as against the testimony of the defense witnesses, whose demeanor he also had the opportunity to observe personally. His impressions on the matter at hand are binding on us in the absence of a clear showing of a grave abuse of discretion or an obvious misapprehension of the facts. In the instant case, we do not find such flaws in the factual conclusions of the court a quo.

Moreover, the manner in which Amelita Dequito narrated the commission of the crime charged is admirable for its spontaneity and clarity. It was positive and categorical. The trial court's finding on this is apt:

In crimes of rape, which is said to be the human male's worse indiscretion because he stoops to the level of the lower animals, the brutes, the beasts, the testimony of the offended party, in most cases, is the only available testimonial evidence to prove its commission. But what counts is which of the testimonies, that of the offended party's or that of the defendant's is more believable, more credible more logical, more reasonable. This situation gives the courts of justice a hard time in deciding whether to accept the uncorroborated testimony of the offended party or not. But this Court was not had put to accept as true the testimony of Amelita Dequito that she had been abducted by the two accused and raped. The commission of the rapes had been clearly established by the evidence of the prosecution. The testimony of Amelita Dequito, in all regards, is believable, conclusive, logical and probable, while those of Bagatao's and Tami's are just the opposite that they are unbelievable, illogical, improbable, and are all contrary to human expectations and behaviours. The Court can not believe that Amelita Dequito, a decent girl from a decent family, who had a boyfriend, who was with her at the time, would take

Bagatao to the uncle's house, much less go with him to the uncle's house, nor go with to the hut in dead of the night. No amount of specious reasoning or testimony could set the mind of the Court to believe the truth, or the half truth, or even plausible. Defendant's defense is palpably and miserably weak. It has failed to impress the court. The most that it has done to the court was to insult its intelligence. The defendants cannot say that the court has only the complainants' words for the rapes. Ruel Paderna and Arnel Pecardo testified on the events preceding the rapes, which, of course, they had not witnessed. Paderna and Pecardo corroborated Amelita's testimony to the effect that the defendants by means of force and intimidation took her away from her companions. The abduction was forcible. Ruel Paderna, Amelita's sweetheart; Arnel Pecardo; and Imelda Mamasig lost no time in reporting the abduction to the police. Amelita Dequito, the offended party, lost no time in reporting the attack against her honor to the police after she regained her freedom from her attackers. She guided the police to the hut where defendant Bagatao had his last fling with her. She went to the Emergency Hospital for medical examination at 8 o'clock of February 28, 1990 and gave her sworn statement to police investigator Taborete on the afternoon of February 28, 1990.[25] Appellant further claims that regardless of whether he had a gun or not, it is simply incredible that he would rape victim Amelita twice at different places in the same school after she already allegedly had been raped thrice by Bagatao.[26]

Appellant argues that from the time he and complainant left the hut of Ulama (Bagatao's uncle) up to the point that he brought her to Silway bridge and let her go, the interval was not long enough to physically able him to consummate two sexual intercours with her. Similarly, appellant reasons out it was highly improbable for Bagatao to have performed three successive sexual intercours in just a span of one or two hours.[27]

This claim deserves no merit.

Appellant's pretended apprehension on his physical capacity to consummate sex two times and on his co-accused three times does not persuade us. We certainly find nothing incredible in Amelita's testimony as to the number of times she was raped. Given the two accused's physical built and age at the time of the commission of the crime,[28] we find no physical impossibility in their consummating the sexual assaults in the given period of time. In *People v. Ramos*,[29] we held that:

As to the claim of appellant that it was physically impossible for him to have committed the three rapes, in succession within a period of three to four hours, Dra. Lolita Mercado, an expert witness categorically declared in court that Mario Ramos is capable of raping any woman, and based on her examination of Ramos, it is possible that in three and one half (3 1/2) minutes after the first he can again have the next sexual coition. Appellant's sexual prowess was likewise attested to on cross-examination by his wife xxx

xxx xxx xxx

At any rate, on the matter of sexual outlet, there are high-rating individuals belonging to the so-called 'sexual athlete' class. The noted sexologist Kinsey says that intervals between climaxes may range from 10 seconds to 3 minutes.[30]

When a young and decent Filipina testifies that she was raped she says all that is necessary to show its commission. Considering the inbred modesty and antipathy of a Filipina to airing in public things that affect her honor, it is hard to conceive that the complainant would assume and admit the molestation and ignominy she had undergone,[31] and endure the ordeal of testifying to all its shameful details, if she had not in fact been raped.[32] Moreover, appellant and his co-accused were positively identified by complainant and two other witnesses Ruel Paderna and Arnel Pacardo who testified on the events leading to the forcible abduction, i.e., the taking away of complainant from her companions by means of force and intimidation. Amelita's testimony as to who abused her is credible where, as in this case, she had absolutely no motive to incriminate and testify against appellant and his

co-accused. Finally, appellant contends that the trial court erred in imposing on him the penalty of five (5) reclusion perpetuas. He claims that, at most, he should only be found guilty of having committed two (2) counts of forcible abduction with rape.[33] We do not agree.

Considering the foregoing findings on conspiracy with Bagatao insofar as the forcible abduction with rape is concerned and on two (2) separate counts of rape committed by appellant himself, appellant is therefore liable for one (1) forcible abduction with rape and four (4) counts of rape pursuant to our ruling in *People v. Jose*[34] reiterated in *People v. Bohos*[35] where we held that:

Appellant's other point is: `Even if we may assume purely for the sake of argument that the complaining witness was forcibly abducted and then raped thirteen times, we submit that there was only one forcible abduction, with rape and that was the one allegedly committed on the truck of jeep. Any subsequent acts of intercourse in the house against her will would be only separate acts of rape and can no longer be considered separate complex crimes of forcible abduction with rape.

"This point is well taken. There was only one forcible abduction with rape which was the one committed in the truck. Thus in *People v. Jose, et al.*, G.R. No. L-28232, Feb. 6, 1971, 37 SCRA 450, where the four accused forcibly abducted Maggie de la Riva and each of them raped her, this Court held `that even while the first act of rape was being performed, the crime of forcible abduction had already been consummated, so that each of the three succeeding crimes of the same nature can not legally be considered as still connected with the abduction - in other words, they should be detached from, and considered independently of, that of forcible abduction and, therefore, the former can no longer be complexed with the latter.[36]

Consequently, the appellant was correctly imposed the penalty of five (5) reclusion perpetuas. However, in view of recent jurisprudence, the award of moral damages to complainant Amelita Dequito is increased from P25,000.00 to P50,000.00 for each of the crimes he committed.

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED** subject to the modification on the amount of moral damages, which is increased from P25,000.00 to P50,000.00 for each of the crimes appellant Eduardo "Eddie" Tami committed.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] TSN, September 11, 1990, pp. 3-5.

[2] *Id.*, at 5-6

[3] *Id.*, at 6-8.[4] *Id.*, at 8-9.[5] TSN, September 14, 1990, pp. 60-78.

[6] *Id.*, at 78.

[7] *Id.*, at 77-80.

[8] *Id.*, at 80-81

[9] *Id.*, at 81.

[10] *Id.*, at 81-82; Exhibit "B".[11] *Ibid.*; *Ibid.*[12] Exhibit "A".[13] *Ibid.*[14] Decision, pp. 1-2; Original Records, pp. 69-70.

[15] *Id.*, at 2; *Id.*, at 70.

[16] *Ibid.*; *Ibid.*[17] *Id.*, at 28-29; *Id.*, at 96-97.[18] Appellant's Brief, pp. 1-2; Rollo, p. 109.[19] Appellant's Brief, pp. 9-18.[20] 20 *People v. Modesto de Roxas and Protacio Alilio*, G.R. No. 106783, February 15, 1995; *People v. Ronnie Mallari, et al.*, G.R. No. 104891, February 6, 1995; *People v. Gundran*, 228 SCRA 583 [1993]; *People v. Magalang*, 217 SCRA 571 [1993]; *People v. Uy*, 206 SCRA 270 [1992]; *People v. Bausing*, 199 SCRA 355 [1991]; *People v. Quinones*, 183 SCRA 747 [1990]; *People v. Bohos*, 98 SCRA 353 [1980]; *People v. Aleta*, 72 SCRA 542 [1976]; *People v. Cutura*, 4 SCRA 663 [1962]; *People v. Belen*, 118 Phil. 880 [1963]; *People v. Colman*, 103 Phil. 6 [1958]; *People v. Cu Unjieng*, 61 Phil. 236 [1935]; *People v. Carbonel*, 48 Phil. 866 [1926]; *People v. Mandayog*, 46 Phil. 838 [1923].[21] *People v. Modesto de Roxas and Protacio Alilio*, *supra.*; *People v. Peralta*, 25 SCRA 759 [1968].

[22] Decision, pp. 24-25; Original Records, pp. 92--93

. [23] *People v. Delos Reyes*, 215 SCRA 63 [1992]; *People v. Loreno*, 130 SCRA 311 [1984].[24] *People v. Delos Reyes*, *supra.*

[25] Decision, 23-24; Original Records, pp. 91-92

. [26] Appellant's Brief, p. 22.[27] *Id.*, at 23.[28] Tami was 21 [TSN, November 8, 1990, p. 208] while Bagatao was 18 [TSN, October 31, 1990, p. 165].[29] 197 SCRA 523 [1991].

[30] *Id.*, at 535-536.

[31] *People v. Dabon*, 216 SCRA 656 [1992].

[32] *People v. Estolano*, 193 SCRA 383.[33] Appellant's Brief, p. 26; Rollo, p. 109.[34] 37 SCRA 450 [1971].[35] 98 SCRA 353 [1980].[36] *People v. Bohos*, *supra.*, pp. 361-362.

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