

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN JULIAN, ALBERTO BUMANGLAG, ERNESTO MACALIPIS, AND PEDRO DULDULAO, ACCUSED. EDWIN JULIAN, ACCUSED-APPELLANT.

G.R. Nos. 113692-93. April 04, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Rape is chilling, naked sadism. It is marked by the savagery and brutality of the assault on the helpless victim's person and privacy. Thus, a severe penalty is meted out by the State, as *parens patriae*, for this abhorrent crime, revealing the clear legislative intent to "protect women against the unbridled bestiality of persons who cannot control their libidinous proclivities."^[1]

This is an appeal from the Decision^[2] dated September 15, 1993 of the Regional Trial Court, First Judicial Region, Branch 15^[3] stationed in Laoag City, in Criminal Case No. 2822-15 finding Accused-appellant Edwin Julian guilty of forcible abduction with rape plus three counts of rape. Incidentally, the city prosecutor committed the unfortunate mistake of not including Edwin Julian as an accused in Criminal Case No. 2823-15 resulting in the dropping of the latter from that related case.

In the amended Criminal Complaint^[4] in Criminal Case No. 2822-15, Accused-appellant Edwin Julian and Accused Alberto Bumanglag, Mario Alonzo alias Marcos Obrero, Ernesto Macalipis and Pedro Duldulao were charged with forcible abduction with rape. The crime was committed as follows:

"That on or about the 19th day of November, 1984, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, together, confederating with and mutually helping one another, did then and there wilfully (*sic*), unlawfully and feloniously, with lewd design, forcibly abduct (*sic*) the undersigned complainant against her will, and did then and there take her, pursuant to their common criminal design, to an uninhabited place in Barangay 15, San Nicolas, Ilocos Norte, where each of the accused Edwin Julian, Alberto Bumanglag, Mario Alonzo alias Marcos Obrero, and Pedro Duldulao by means of force and intimidation, and with the use of a deadly weapon, have carnal knowledge of the undersigned complainant, against her will, to her damage and prejudice in such amount as maybe (*sic*) awarded to her under the provisions of the New Civil Code of the Philippines.

That the aforestated offense has been attended by the following aggravating circumstances:

1. Use of motor vehicle;
2. Nighttime, sought purposely to facilitate the commission of the crime and to make its discovery difficult; and
3. Abuse of superior strength.

CONTRARY TO LAW.”

The foregoing amended complaint, filed with the certification of Assistant City Fiscal Constante C. Caridad after the latter had found a prima facie case against the accused, was treated as the Information. When arraigned, all the accused, except Ernesto Macalipis who was not arrested and remained at large, pleaded not guilty to the charge. Subsequently, Bumanglag jumped bail but the trial court correctly ordered his trial in absentia. In an order dated November 21, 1986, the court a quo dropped Mario Alonzo alias Marcos Obrero from the information after the complainants had cleared him of participation in the crime charged. After trial, the trial court rendered a judgment, the dispositive portion of which reads:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING, Judgment is hereby rendered declaring EDWIN JULIAN, ALBERTO BUMANGLAG, and PEDRO DULDULAO guilty beyond reasonable doubt of the crime of Forcible Abduction with Rape and three (3) separate Crimes of Rape in Criminal Case No. 2822, and are hereby sentenced to suffer the penalty of FOUR (4) TERMS of reclusion perpetua, and to indemnify, jointly and severally, complainant Nelia Agtarap in the amount of P150,000.00. In Criminal Case No. 2823, the Court finds ALBERTO BUMANGLAG and PEDRO DULDULAO guilty beyond reasonable doubt of the crime of Forcible Abduction with Rape and two (2) separate crimes of Rape, and are hereby sentenced to suffer the penalty of THREE TERMS of reclusion perpetua, and to indemnify, jointly and severally, complainant Angeles Alonzo in the amount of P150,000.00.

Accused ALBERTO BUMANGLAG is sentenced in absentia having escaped from detention during the trial. With respect to accused ERNESTO MACALIPIS who was not arrested and has remained at large, the two (2) cases are hereby ordered ARCHIVED insofar as he is concerned, to be automatically revived upon his arrest.

Pursuant to Administrative Circular No. 2-92 of the Supreme Court dated January 20, 1992, the bailbond given for the provisional liberty of EDWIN JULIAN and PEDRO DULDULAO are hereby CANCELLED and they are hereby ordered committed to prison immediately.

SO ORDERED.”[5]

The Bureau of Corrections informed this Court in a letter dated July 7, 1994 that Accused-appellant Edwin Julian “was received in the New Bilibid Prison on October 14, 1993,” but that there was “no record of confinement of ALBERTO BUMANGLAG and PEDRO DULDULAO,”[6] who are thus deemed at large.

The Facts

Version of the Prosecution

The prosecution’s version, as gleaned by the trial court from the testimonies of prosecution witnesses Angeles Alonzo (the complainant in Criminal Case No. 2823-15 and witness in Criminal Case No. 2822-15) and Nelia Agtarap (the complainant in Criminal Case No. 2822-15 and witness in Criminal Case No. 2823-15) is as follows:

“Angeles and Nelia, 35 and 33 years old, respectively, and both residents of Laoag City, worked as beauticians at Ceasar’s Beauty Parlor located in the Laoag City supermarket. In the evening of November 19, 1984 between 7:00 to 8:00 o’clock they left the beauty parlor in the company of two male customers who had invited them to go out for snacks. They rode in the 2-door Gemini car of Roy Valdez, a vacationing ‘balikbayan’, together with Jun Alcon, Roy’s friend. They first went to the residence of Angeles in Nangalisan where she asked permission to go out with her friends.

They returned to the poblacion to buy their snacks after which they proceeded to the Laoag City (Marcos) Bridge.

They stopped at the southern end of the bridge and parked their car on the eastern lane facing north, near a streetlight. Angeles, Roy and Jun got off while Nelia remained inside the car seated at the right front seat. The door was open and she was facing her three companions who were only one meter away from the car.

While they were thus enjoying the breeze and taking their snacks, four (4) men later identified as the accused approached from the western side of the bridge and surrounded them. Julian opened the car's left door and sat on the driver's seat. Bumanglag pointed a gun at them and ordered them to get inside the car. When they hesitated, one of the accused pushed them inside the car. Once inside the car, the accused put on masks. Julian backed up the car and drove towards Gabu and then turned left towards Suba. All this time, the accused were threatening the complainants to keep quiet and forced them to stoop everytime a vehicle approached. On the road to Suba, Duldulao and Macalipis tore the seat cover of the car and used it to blindfold Angeles and Nelia. Duldulao also tied the hands and feet of Roy Valdez and Jun Alcon. Julian then stopped the car at a narrow road in what turned out to be a forested area and all of them were told to get out.

Bumanglag removed the blindfold of Angeles and led her to an open field about 10 to 12 meters away from the car. He pointed a gun at her hand and told her to follow and do as told. At the same time Julian and Duldulao led Nelia, also with blindfold removed, to another place about 6 meters away from the place where Bumanglag led Angeles.

Poking his gun at various parts of Angeles' body, Bumanglag ordered her to remove her pants and panty. Angeles first pleaded with Bumanglag to spare her and when she resisted Bumanglag kicked and boxed her thighs. After her pants and panty were removed, Bumanglag ordered Angeles to lie down and when she refused he pushed her to the ground. He lay on top of her, kissing and embracing her. Angeles fought and resisted by pressing her legs together but Bumanglag was stronger. He forced her legs apart with his own legs and succeeded in raping her.

After Bumanglag was through with her she put back her panty and pants but Duldulao came along and forced her to undress again, threatening her if she refused. She felt so weak and had no more energy to fight and resist and so Duldulao also succeeded in raping her, even adding insult to injury by asking if she was enjoying it.

After Angeles had dressed up, Duldulao took her back to the car but on the way they met Macalipis who grabbed her from Duldulao. She cried out for help and shouted, 'Nelia, where are you?' Nelia shouted back, 'I'm here' and Nelia was also crying. Macalipis also forced Angeles to undress and succeeded in raping her. She felt very tried (sic) and had no more strength to resist. She managed to dress up but after walking about 2 meters toward the car she felt so exhausted that she sat on the ground. Macalipis told her that they did what they did because they had just come down from the mountains and that they were deprived of sex for a long time. It was then that Nelia approached them, accompanied by Julian, Bumanglag and Duldulao. They came from the direction where, minutes before, she heard Nelia crying.

As previously stated, when Bumanglag led Angeles to the place where he raped her, Nelia was also taken to a secluded place by Julian and Duldulao. While Nelia's hands were held together by Duldulao, Julian forcibly undressed her and when she resisted Julian slapped her and threatened her with a gun. After Julian succeeded in removing her clothes, Nelia was raped first by Julian, followed by Bumanglag and by Julian again for the second time. Duldulao did not rape Nelia but he held her while she was being raped by Julian but Nelia does not know who held her when she was raped by Bumanglag because she was by then hysterical. When Julian raped Nelia the second time, Bumanglag was present. During all the time Nelia and Angeles were being raped, they cried out to each other for help.

Later, when they had re-grouped, Julian threatened Nelia and Angeles not to report to the police and to consider what happened to them as just a bad dream and that henceforth they should call him 'brod'. Julian also told

Nelia, Angeles and their two male companions to retrieve the car from (sic) Solsona because they will bring it there.

They all re-boarded the car and with Julian at the wheel they drove eastward until they reached a place near the highway in San Nicolas where Nelia and Angeles were told to alight. About ninety (90) meters further to the south, their two male companions were also allowed to alight. Nelia and Angeles ran towards their two companions and helped them remove their blindfolds and untie their hands. From there they walked to the house of Angeles in Nangalisan. By then it was near dawn.

Early the following morning, Nelia left Angeles' house and went home to Barangay Caaocan. (sic) Roy Valdez and Jun Alcon had earlier left without bidding good-bye to either Angeles and Nelia.

Angeles reported for work at the beauty parlor. About 9:00 A.M. she was called to the telephone. She recognized the voice as that of Julian when he said he is their 'brod'. He also told Angeles to tell their two male companions not to look for the car in Solsona because they left the car west of the provincial capitol building. Julian repeated his threats and because of such threats Angeles and Nelia did not report the incident to the police and did not submit to a medical examination."^[7]

The prosecution also presented Policeman Rodrigo Ventura, Chief Investigator of the Laoag City Police, who gave the following testimony:

"On February 6, 1985 at the Laoag City Police headquarters, Ventura was investigating Alberto Bumanglag and Ernesto Macalipis in connection with several carnapping incidents in Laoag City, particularly the complaint of one Alfredo Alcon, Jr. that carnappers forcibly took his Gemini car on November 19, 1984. The two suspects had been earlier arrested by the Batac police for carnapping and Ventura had requested for their custody. While he was interrogating the suspects, Angeles Alonzo and Nelia Agtarap arrived at the police station. They told Ventura that they heard over the radio about carnapping suspects being investigated by the police. They also told him that on November 19, 1984 the car they were riding in was carnapped and that they were sexually abused by the carnappers. Upon seeing Alberto Bumanglag and Ernesto Macalipis, Angeles and Nelia immediately identified them as two of the men who sexually abused them on the night of November 19, 1984. The two suspects admitted their participation in the rape and carnapping incident and identified their companions as Edwin Julian and Mario Obrero and others. Later, when Edwin Julian was arrested, the complainants identified him as one of those who abducted them and who raped Nelia Agtarap. The identification was made in the Office of then City Mayor Rodolfo C. Fariñas where Julian admitted the accusation against him and named Pedro Duldulao as one of his companions."^[8]

Laoag City Police Investigator Alden Rosacio testified that:

"On April 17, 1986 Pedro Duldulao was brought to the Laoag City Police Station by his relative, Pat. Samuel Barit, also of the Laoag City Police, for investigation in connection with carnapping and rape cases in Laoag City. Among these cases was the complaint of Roy Valdez that his car was stolen on November 19, 1984 and that his two lady companions were raped. Duldulao told the police what he knew about the cases being investigated and asked for a lawyer to assist him in making a confession. Whereupon, Rosacia accompanied Duldulao to the Citizens Legal Assistance Office (CLAO), now the Public Attorneys Office (PAO), where Duldulao's extra-judicial confession was taken. Duldulao was assisted by CLAO lawyer Maria Calija. Before giving his extra-judicial confession, Duldulao was duly apprised of his constitutional rights by both Pat. Rosacia and lawyer Calija. Duldulao voluntarily confessed that on November 19, 1984 at about 9:00 P.M., Edwin Julian, Alberto Bumanglag, Ernesto Macalipis and Mario Obrero sexually abused two women whom he (Duldulao) and his four-named companions abducted from the Marcos Bridge in the victims' car, together with two male

companions.”[9]

Meanwhile, Maria Calija, CLAO lawyer, testified that “Duldulao asked her for legal assistance and corroborated the testimony of Rosacia with respect to her participation in the preparation of Duldulao’s extra-judicial confession.”[10]

Version of the Defense

The defense posits denial and alibi as follows:

“The accused Edwin Julian denied the charges against him and put up the defense of alibi. He testified that in the early days of October 1984 he went to Alcala, Pangasinan and was employed by one Ruben Mendoza as the latter’s personal representative and spokesman in his construction firm. Mendoza was at that time the vice president of the Association of Barangay Captains of Pangasinan. Julian’s brother, a member of the military, was assigned as security man of Mr. Mendoza together with a certain Maj. Pedrino. Edwin Julian didn’t return to Laoag until March 1986. His parents and his wife visited him in Pangasinan and his father showed him the affidavits of the complainants and that was the first time he learned of the charges filed against him. They then negotiated for his surrender to the police. He told police investigators that he was in Pangasinan when the alleged abduction and multiple rape took place but he didn’t execute a written statement.

Rosemarie Julian corroborated the testimony of her husband that from October 1984 to March 1986 Edwin was in Alcala, Pangasinan. She testified that during all this time she and her children were living in Barangay Navotas, Laoag City but visited her husband about five times and stayed in the house of Mr. Ruben Mendoza. She first learned of the case against her husband in March 1986. That was the time she reported for work as an employee of the then PC-INP in Camp Juan, Laoag City. When her co-employees informed her about the cases against her husband, she went to Alcala to inform him. When her husband arrived in Laoag in April 1986 he was immediately detained at the provincial jail.”[11]

Error Assigned

The defense cites a single error:

“The trial court erred in giving credence to the prosecution’s evidence relative to the identity of accused-appellant Edwin Julian and his involvement in the commission of the crime of forcible abduction with rape described in Nelia Agtarap’s amended complaint in the face of the inconclusiveness and unreliability of the entire prosecution’s evidence of the identities of the malefactors and consequently, erred in rejecting his defenses of denial and alibi unrebutted by the prosecution.”[12]

Ultimately, the issue boils down to the credibility of the witnesses.

This Court’s Ruling

We affirm the judgment of the trial court.

Credibility of Witnesses

The defense questions whether “the entire evidence of the prosecution relative to the identities of the malefactors are conclusive and reliable to warrant the inference that the identity and involvement of accused-appellant in the crime described in Agtarap’s amended complaint had been established beyond reasonable doubt.”[13] Appellant answers this question in the negative, based on the following: (1) the statement of Roy Valdez, one of private complainant’s male companions that fateful night, given at the Laoag City police station the next day, that “four unidentified men were the culprits”; (2) Private Complainant Angeles Alonzo’s testimony that “she was not able

to recognize her and her companions' abductors"; (3) the lapse of "almost three months" before the two private complainants reported to the police that they had been raped; (4) their failure to undergo medical examination; (5) Angeles' sworn statement that Marcos Obrero had no participation in the crime charged, thereby contradicting her earlier sworn complaint against five suspects including Obrero; and (6) the two private complainants' subsequent execution of an affidavit of desistance in favor of Accused Pedro Duldulao.[14]

In deciding this appeal, the Court is guided by certain well-established principles in reviewing rape cases, to wit: "(a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where usually only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense." [15] Furthermore, as in other rape cases, "the credibility of the offended party's testimony is determinative of the outcome" [16] of the case because "when an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof." [17]

In assessing the credibility of witnesses, the long-held doctrine is that "the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected." [18]

After a thorough review of the entire record of this case, we find that the trial court did not overlook any such material fact nor did it commit any palpable error in its assessment of the testimonies of the prosecution and defense witnesses. The record shows the unequivocal and unswerving testimonies of Nelia Agtarap and Angeles Alonzo faithfully recounting their harrowing experience that fateful night of November 19, 1984 and sufficiently identifying Appellant Julian as one of their abductors who raped them. In fact, Nelia steadfastly charged Appellant Julian of raping her not only once but twice. Their accounts of the circumstances antecedent to, during and after their forcible abduction and rape are replete with significant details that jibe on material points. Their version is significantly backed by the complaint filed by one of their male companions in their disastrous double date, Alfredo Alcon Jr. (Jun Alcon), that his Gemini car was forcibly taken from him that same evening of November 19, 1994. Hence, we find no cogent reason to disturb the findings and assessment of the trial court as to the credibility of witnesses. As astutely and correctly observed by the trial court:

"The details of the abduction and multiple rape were clearly and graphically described by the complainant, two fairly good-looking ladies in their late twenties and early thirties at the time of the commission of the crime. They testified in a straightforward, forthright and convincing manner, positively identifying the accused as their attacker (tsn, September 10, 1986, pp. 27-33; tsn, November 19, 1986, pp. 13-16; tsn, October 23, 1989, pp. 26-33). No evidence was presented to show that the complainants had ulterior motives to falsely charge the accused." [19]

Identification of Appellant

The defense contends that the identification of Accused-appellant Edwin Julian by Private Complainant Nelia Agtarap was made doubtful by Roy Valdez's report that his Gemini car had been taken by four "unidentified" men. We find this contention puerile. The only import of the statement of Roy, a nonresident balikbayan, was that

he did not recognize the four who had taken his car but this did not mean he would not be able to recognize and identify them if he saw them again. Furthermore, to support their argument, the defense points to Angeles Alonzo's testimony that she did not recognize the perpetrators of the crime committed against them. Their argument is of no moment, however, since they cited Alonzo's statement out of context. As aptly stated by the Solicitor General:

"The claim misleads.

A reading of the purported testimony readily shows that Angeles Alonzo did not readily recognize the malefactors only at the time when they suddenly approached her and her companions. Thus:

'q Do you know the accused Pedro Duldulao?

a No, sir. When the incident happened, I was not able to recognize their faces.

q What is that incident you are referring to?

a It was when they took us from the Marcos Bridge.' (p. 4, TSN, September 10, 1986)"[20]

The trial court elucidated the matter stating that "from a reading of the transcript of her entire testimony, it is clear that what she meant was that she did not know their names (tsn, December 16, 1986, p.13). Angeles testified in Ilocano and based upon the experience of undersigned presiding judge, the original meaning must have gotten lost in the process of translation."[21]

Contrary to the defense's assertion, the findings of the court a quo clearly and indubitably show that the private complainants had the opportunity, and indeed were able, to identify Appellant Julian, viz.:

"The evidence shows that the southern end of the Laoag bridge where the complainants parked their car on the night of November 19, 1984 was well-lighted (tsn, September 10, 1986, p. 9). The faces of the accused were therefore visible to the complainants as the accused approached from the western lane of the bridge, surrounded the complainants and forced them inside the car. At this point the accused put on their masks. On the way to Suba, the complainants were blindfolded, obviously to avoid close-proximity recognition during the time it took to reach Suba. But once in the forested area their blindfolds were removed and that sometime during the rape episode the accused also removed their masks, perhaps confident that they had so intimidated their victims that even if they were recognized, the victims would not report to the police. It was probably this confidence that led to Edwin Julian's audacity to stare at the victim's faces and say 'may I look at your faces' (tsn, November 19, 1986, p. 24). It was a moonlight (sic) night (tsn, September 10, 1986, p. 23) and the faces of the accused were visible to the complainants. By the time they drove back to San Nicolas, the accused had become bold enough to dispense with their masks. All these circumstances show that the complainants had ample opportunity to look at and remember the faces of the accused.

Admittedly, the complainants did not know the names of the accused at the time of the incident although they recognized their faces (tsn, December 16, 1986, p. 13). In fact, in the case of Edwin Julian and Pedro Duldulao, Angeles Alonzo testified that Julian had patronized their beauty parlor once or twice (tsn, supra, p. 7) while Nelia Agtarap testified that Duldulao's face was familiar because he had passed by the beauty parlor a number of times (tsn, November 27, 1989, p. 23). Duldulao himself testified that he knew Angeles Alonzo when he was still a passenger jeepney conductor (tsn, January 14, 1993, p. 3)."[22]

Delay in Reporting the Forcible Abduction and Rape

The mere fact that almost three months had passed before Nelia and Angeles decided to report to the police authorities the crime committed against them does not negate the veracity of their charge. The Court reiterates that

“(t)he failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders’ making good their threats to kill or hurt their victims.”[23] This is “understandable as Filipino women are known to be affectedly shy and coy. Rape stigmatizes the victim, not the perpetrator. It is a sad reality that a non-virgin who has been deflowered against her will is nonetheless treated with scorn by society.”[24] In the final analysis, what is important is that both Nelia Agtarap and Angeles Alonzo revealed they had been raped when they filed their sworn complaint with the Laoag Police. Consequently, Nelia’s delay in filing the complaint does not in any way affect her credibility. In one case, a complaint was filed three months after the incident, and this Court held that “three months is not too long a period to file a complaint for rape.”[25]

Medical Examination Not Indispensable to Prosecution of Rape

The defense points to the failure of the private complainants to submit themselves to medical examination prior to their filing a sworn complaint charging the accused of raping them. The defense argues that this was a fatal defect in the prosecution of the instant case. We disagree. No law requires a medical examination for the successful prosecution of rape. Thus, it has been held:

“ x x x lack of lacerated wounds does not negate sexual intercourse. Moreover, the fact that hymenal lacerations were found to be ‘healed round edge’ and no spermatozoa was found does not necessarily negate rape. A freshly broken hymen is not an essential element of rape. For that matter, in crimes against chastity, the medical examination of the victim is not an indispensable element for the successful prosecution of the crime, as her testimony alone, if credible, is sufficient to convict the accused thereof.”[26] (Underscoring supplied.)

Falsus in Uno, Falsus in Omnibus?

The defense further argues that since Private Complainant Angeles Alonzo had made a false accusation against Marcos Obrero, a mistake she herself later corrected resulting in Obrero’s being dropped from the case, the testimonies of the private complainants Angeles Alonzo and Nelia Agtarap, who had both falsely charged Obrero, should be discredited in whole. We are not persuaded. The doctrine of falsus in uno, falsus in omnibus “deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. That is the present rule in the Philippines, and appellant cannot x x x discredit such portions of her testimony as are otherwise credible.”[27] Hence, the mere fact that Angeles and Nelia had mistakenly implicated Obrero in their complaint does not belie their charges against the other accused including the accused-appellant Edwin Julian when, from the evidence on record, such charges are overwhelmingly credible and probable.

The fact that both private complainants each executed an affidavit of desistance in favor of Accused Duldulao does not destroy their credibility since each has satisfactorily explained her execution of the document. As insightfully put by the trial court:

“As to the affidavits of desistance, the complainants explained that they were virtually tricked into signing them by Duldulao’s former counsel. It appears that there was an attempt to ‘settle’ the case insofar as Duldulao was concerned, apparently with the blessings of then presiding judge who suspended proceedings for six (6) months to give the parties a chance ‘to arrive at a final satisfactory settlement’ (Order dated November 12, 1987, p. 214, Record of Crim. Case No. 2822). And obviously, the attempt failed because the complainants later repudiated the

affidavits (tsn, September 4, 1990, pp. 16-17). The Court takes note that the affidavits were signed on February 20, 1987 but the jurat is dated February 19, 1987 or the day before it was signed, evidencing haste in its preparation and giving credence to complainant's claim they were forced and virtually tricked into signing the affidavits.

In his confession, Duldulao admitted he was with all the other accused when they forcibly abducted the complainants, but impliedly denied having raped them, pointing to the others as the ones who did. However, since conspiracy is alleged and duly proven, such disclaimer is for naught since the act of one is the act of all.”[28]

Appellant's Defense of Alibi Debunked

“Courts have always looked upon the defense of alibi with suspicion and have always received it with caution not only because it is inherently weak and unreliable but because it is easily fabricated. For alibi to serve as basis for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met. Appellant must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.”[29] Appellant Edwin Julian did not substantiate his claim of alibi with clear and convincing evidence. This was evident from the finding of the trial court that:

“In the case of Edwin Julian, the Court is not convinced that he was in Alcala, Pangasinan when the crime was committed. Not only did he fail to present the testimonies of his supposed employer and that of his brother who allegedly recommended him to that employer, he also failed to present any documentary proof of his supposed employment in the construction firm of Mr. Ruben Mendoza at the time of the incident. From Julian's demeanor on the witness stand, it appeared obvious to the Court that he was acting out a concocted story. True, his wife testified in Court but her testimony must be regarded as naturally biased. Furthermore, Julian testified that he learned of the charges against him when his father showed him the affidavits of the complainants. On the other hand, his wife testified that her co-employees in the PNP told her about the charges and it was she who informed her husband. The Court believes that what happened is that when Julian learned of the arrest of Bumanglag and Macalipis, he fled to Pangasinan and hid there for more than a year. In fact, a warrant for his arrest was issued on May 2, 1985 (p. 8, Record of Crim. Case No. 2822).”[30]

Since, as previously discussed, Appellant Julian “was positively identified by the victim of rape herself who harbored no ill motive against the accused, the defense of alibi must fail.”[31]

In the light of the foregoing, this Court's conscience rests easy on the moral certainty that Accused-appellant Edwin Julian has been proven guilty beyond reasonable doubt of the crime charged. However, we differ with the trial court's ruling in Criminal Case No. 2822-15 declaring co-conspirators Edwin Julian, Alberto Bumanglag and Pedro Duldulao guilty of forcible abduction with rape plus three more counts of rape. For when the first act of rape was committed by Edwin Julian against Nelia Agtarap, the complex crime of forcible abduction with rape was then consummated. Hence, there were only two separate acts of rape remaining, directly and successively committed by Bumanglag and, for the second time, by Julian against Nelia Agtarap, for which they may be further held liable.[32] In other words, Julian, Bumanglag and Duldulao are each guilty of one count of forcible abduction with rape and two counts of rape. This modification of the trial court's judgment will benefit only Edwin Julian, as the two remaining accused (Bumanglag and Duldulao) are at large. Furthermore, this Decision is without prejudice to the filing of another information against Edwin Julian for his participation in the forcible abduction and rape of Angeles Alonzo for which he has not yet been prosecuted, as he had not been included in the amended complaint treated as the information in Criminal Case No. 2823-15.

On the other hand, Appellant Julian and the other accused cannot be held liable for three counts of forcible abduction with rape. This is based on the pronouncement of the Court in *People vs. Bohos*[33] which was

reiterated in *People vs. Bacalso*[34] 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 or 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 vs. Jose, et al.*, G.R. No. L-28322, February. 6, 1971, 37 SCRA 450, where the four accused 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 cannot 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.’ (Underscoring supplied.)

WHEREFORE, the decision of the trial court dated September 15, 1995 in regard to Appellant is hereby MODIFIED. Appellant Edwin Julian is found guilty beyond reasonable doubt of forcible abduction with rape in Criminal Case No. 2822, but he is guilty of only two separate additional crimes of rape therein. Three terms of reclusion perpetua are hereby imposed on him. The indemnity due to the victim Nelia Agtarap in the amount of P150,000.00 stands. The trial court’s decision in regard to Accused Alberto Bumanglag and Ernesto Macalipis, who are at large, remains unmodified.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] *People vs. Babasa*, 97 SCRA 672, 682, May 17, 1980.

[2] *Rollo*, pp. 26-55.

[3] Judge Wenceslao I. Agnir Jr., presiding.

[4] *Rollo*; pp. 6-7.

[5] *Rollo*, pp. 29-30.

[6] *Ibid.*, p. 70.

[7] *Decision*, pp. 7-12; *Rollo*, pp. 32-37.

[8] *Ibid.*, pp.12-13; *Rollo*, pp. 37-38.

[9] *Ibid.*, pp. 13-14; *Rollo*, pp. 38-39.

[10] *Ibid.*, p. 14; *rollo*, p. 39.

[11] *Ibid.*, pp. 15-16; *Rollo*, pp. 40-41.

[12] Appellant’s Brief, p. 1; *Rollo*, p. 96.

[13] *Ibid.*, p. 10.

[14] *Ibid.*, pp. 10-12.

[15] *People vs. Alimon*, G.R. No. 87758, pp. 11-12, June 28, 1996; citing *People vs. Casinillo*, 213 SCRA 777, September 11, 1992, *People vs. Matrimonio*, 215 SCRA 613, November 13, 1992, and *People vs. Lucas*, 232 SCRA 537, May 25, 1994.

[16] *Ibid.*, p. 12; citing *People vs. Jaca*, 229 SCRA 332, January 18, 1994.

[17] *People vs. Ramirez*, G.R. No. 97920, pp. 12-13, January 20, 1997; quoting *People vs. Sanchez*, 250 SCRA 14, November 16, 1995, citing *United States vs. Ramos* 1 Phil. 81, (1901), *Anciro vs. People*, 228 SCRA 629, December 17, 1993, and *People vs. Repollo*, 237 SCRA 436, October 7, 1994.

[18] *Ibid.*, p. 12; quoting from *People vs. Gabris*, G.R. No. 116221, pp. 8-9, July 11, 1996 citing *People vs. Vallena*, 244 SCRA 685, June 1, 1995.

[19] *Rollo*, p. 49.

[20] *Appellee's Brief*, p. 21; *Rollo*, p. 707.

[21] *Rollo*, p. 51.

[22] *Ibid.*, pp. 44-45.

[23] *People vs. Gecom*, 254 SCRA 82, February 23, 1996; citing *People vs. Yambao*, 193 SCRA 571, January 25, 1993, and *People vs. Ulili*, 225 SCRA 594, August 24, 1993.

[24] *People vs. Faigano*, 254 SCRA 10, 15, February 22, 1996.

[25] *People vs. Yparraguirre*, G.R. No. 117702, p.5, February 10, 1997; citing *People vs. Cabresos*, 244 SCRA 362, May 26, 1995, *People vs. Casil*, 242 SCRA 724, March 27, 1995, and *People vs. Casil*, *supra*.

[26] *People vs. Cura*, 240 SCRA 234, 243, January 18, 1995; citing *People vs. Santiago*, 197 SCRA 556, May 28, 1991, *People vs. Madridano*, 227 SCRA 363, October 22, 1993, *People vs. Abordo*, 224 SCRA 725, July 23, 1993, *People vs. Dio*, 226 SCRA 176, September 8, 1993, and *People vs. Arce*, 227 SCRA 406, October 26, 1993.

[27] *Ibid.*, p. 244.

[28] *Rollo*, pp. 48-49.

[29] *People vs. Cañada* 253 SCRA 277, 286, February 6, 1996; citing *People vs. Querido*, 229 SCRA 753, February 7, 1994.

[30] *Rollo*, pp. 51-52.

[31] *People vs. Cañada*, *supra*, pp.286-287; citing *People vs. Rejano*, 237 SCRA 645, October 18, 1994.

[32] *Reyes, Luis B.*, *Criminal Law*, Book I, p. 667, (1993); citing *People vs. Bohos*, 98 SCRA 353, June 28, 1980.

[33] *Supra*, pp. 361-362.

[34] 210 SCRA 206, 213-214, June 22, 1992.

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