

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO CARAANG, VIRGILIO CANLAS JR., MANNY BELAGOT (AT LARGE), ROLANDO REBOTA (AT LARGE) AND FOUR JOHN DOES (AT LARGE), ACCUSED,**

*G.R. Nos. 148424-27. December 11, 2003*

Ponente: PANGANIBAN, J.

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**PANGANIBAN, J.:**

Even if appellant is guilty of two counts of forcible abduction with rape, he cannot be sentenced to death because the crimes happened in 1990, prior to the effectivity of the Death Penalty Law. Nonetheless, the civil liabilities to be awarded should be equal to those prescribed for crimes committed under circumstances that would have justified the imposition of death, had they been committed after the effectivity of RA 7659. Indeed, the Civil Code, which governs civil liabilities, has been in effect since 1950 and is thus applicable to the herein factual environment.

**The Case**

Danilo Caraang appeals the November 24, 2000 Decision[1] of the Regional Trial Court (RTC) of San Jose City, Nueva Ecija, (Branch 39), in Criminal Case Nos. C-14(91), C-15(91), C-16(91) and C-17(91). The RTC convicted him, together with Virgilio Canlas Jr., of the complex crime of abduction with rape, two counts of rape and one count of acts of lasciviousness. They were sentenced to reclusion perpetua for each of the first three crimes; and imprisonment of four (4) years, two (2) months, one (1) day to six (6) years of prision correccional for the last.

The decretal portion of the RTC Decision reads as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Danilo Caraang and Virgilio Canlas, Jr. GUILTY beyond reasonable doubt -

"(1) In Criminal Case No. C-14(91), of the complex crime of Abduction with Rape, and are hereby

(a)

sentenced to suffer Reclusion Perpetua;

(b)

ordered to pay jointly and severally Vanelyn Flores, P50,000.00 as compensatory damages; P50,000.00 as moral damages; and P50,000.00 as exemplary damages;

"(2) In Criminal Case No. C-15(91), of the crime of Rape, and are hereby

(a)

sentenced to suffer Reclusion Perpetua;

(b)

ordered to pay jointly and severally Lorna Salazar, P50,000.00 as compensatory damages; P50,000.00 as moral damages; and P50,000.00 as exemplary damages;

"(3) In Criminal Case No. C-16(91), of the crime of Rape, and are hereby

(a)

sentenced to suffer Reclusion Perpetua;

(b)

ordered to pay jointly and severally Vanelyn Flores, P50,000.00 as compensatory damages; P50,000.00 as moral damages; and P50,000.00 as exemplary damages; and

"(4) In Criminal Case No. C-17(91), of the crime of Acts of Lasciviousness, and are hereby

(a) sentenced to suffer imprisonment of Four (4) years, Two (2) months, One (1) day to Six (6) years of prison correccional;

(b) ordered to pay jointly and severally Lorna Salazar, P20,000.00 as compensatory damages and P10,000.00 as moral damages."[2]

Second Assistant Provincial Prosecutor Ubaldino A. Lacurom charged appellant and his co-accused in the following criminal Informations:

In Criminal Case No. C-14(91)

"That on or about the 10[th] day of November, 1990, in the Municipality of Carranglan, Province of Nueva Ecija, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and helping one another did then and there abduct, take and carry away with lewd design and by means of force and intimidation, Vanelyn Flores to an uninhabited grassy upland five hundred (500) meters away and there and then, conspiring and confederating together, and by means of force and intimidation, said accused have sexual intercourse with her against her will.

"That as a consequence of the commission of the crime, Vanelyn Flores sustained actual, moral and consequential damages in the amount of P100,000.00."[3]

In Criminal Case No. C-15(91)

"That on or about the 10[th] day of November, 1990, in the Municipality of Carranglan, Province of Nueva Ecija, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating, and helping one another did then and there abduct, take and carry away with lewd design and by means of force and intimidation, LORNA SALAZAR to an uninhabited grassy upland five hundred (500) meters away and there and then, conspiring and confederating together, and by means of force and intimidation, said accused have sexual intercourse with her against her will.

"That as a consequence of the commission of the crime, Lorna Salazar sustained actual, moral and consequential damages in the amount of P100,000.00."[4]

In Criminal Case No. C-16(91)

"That on or about the 10[th] day of November, 1990, in the Municipality of Carranglan, Province of Nueva

Ecija, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating, and helping one another did then and there abduct, take and carry away with lewd design and by means of force and intimidation, Vanelyn Flores to an uninhabited grassy upland five hundred (500) meters away and there and then, conspiring and confederating together, and by means of force and intimidation, said accused have sexual intercourse with her against her will.

"That as a consequence of the commission of the crime, Vanelyn Flores sustained actual, moral and consequential damages in the amount of P100,000.00." [5]

In Criminal Case No. C-17(91)

"That on or about the 10[th] day of November, 1990, in the Municipality of Carranglan, Province of Nueva Ecija, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating, and helping one another did then and there abduct, take and carry away with lewd design and by means of force and intimidation, LORNA SALAZAR to an uninhabited grassy upland five hundred (500) meters away and there and then, conspiring and confederating together, and by means of force and intimidation, said accused have sexual intercourse with her against her will.

"That as a consequence of the commission of the crime, Lorna Salazar sustained actual, moral and consequential damages in the amount of P100,000.00." [6]

On April 1, 1991, the trial court issued a Warrant of Arrest [7] against all the accused. Appellant and Canlas Jr. were arrested and detained at the Nueva Ecija Philippine National Police (PNP) Company Headquarters, [8] but all the others remained at large. When arraigned on June 18, 1991, the two, assisted by their counsel de parte, [9] pleaded not guilty after the Informations had been read and explained to them in a language that they fully understood. [10] Trial on the merits ensued. Since there were common witnesses and the acts complained of arose from the same incident, the cases were consolidated and tried jointly. [11] Thereafter, the lower court promulgated its assailed Decision. Counsel for appellant then filed the Notice of Appeal [12] on January 22, 2001.

## The Facts

### Version of the Prosecution

In its Brief, [13] the Office of the Solicitor General (OSG) narrates the factual antecedents of the case as follows:

"About 11 o'clock on the night of November 10, 1990, the group of Vanelyn Flores, Lorna Salazar, Angeline Flores, Jona Ampil, Gina Canzon, Froilan Galamay, Jimmy Pascual and Tirso Ganzon were on their way home to Sitio Abibeg, Gen. Luna, Carranglan, Nueva Ecija. The group had just attended a 'bangsal-bangsal' or a pre-nuptial dance at Barangay Dipaan, Car[r]anglan, Nueva Ecija.

"The moon [had] just begun to rise, and the road they were traversing was quite dark. Reaching the boundary of Abibeg and Dipaan, the group was accosted by two (2) armed men. Brandishing their guns, the men ordered the group to follow them. The two (2) armed men wore bonnets. However, Vanelyn Flores recognized one of them as appellant Danilo Caraang, having known him for a long time since they were neighbors in the same barangay and because of the peculiar way he walked and stood. Jimmy Pascual likewise recognized the two armed men as appellant Danilo Caraang and Virgilio Canlas.

"The group was forced to walk through rice paddies till they reached an uninhabited and grassy place near a creek or 'parang,' approximately 500 meters away from the place where they were waylaid.

"Upon reaching the 'parang,' the armed men ordered the female members of the group to sit down while the male members were ordered to lie on the ground face down.

"Vanelyn Flores was the first female removed from the group by appellant. She knew that it was appellant who

grabbed her hand and who pulled her to a nearby creek about 50 meters away. There, Vanelyn saw another man waiting.

"All of a sudden, appellant poked his gun on Vanelyn's temple and ordered her to remove her pants. Vanelyn became terrified and cried. Appellant forced her to lie down on the ground. He repeated his order that she remove her pants. Vanelyn, however, refused. This prompted appellant's companion to grab both of Vanelyn's hands. As Vanelyn was immobilized, appellant succeeded in removing her pants and underwear. Thereafter, appellant removed his pants, mounted Vanelyn and had sexual intercourse with her. Vanelyn felt excruciating pain.

"By then, the place was well-illuminated by moonlight. The moment appellant removed his bonnet, Vanelyn saw that her rapist was indeed appellant Danilo Caraang. Vanelyn was sexually abused by appellant for more than 15 minutes, after which she was returned to their group.

"After an hour, Vanelyn was again forcibly brought by appellant to the nearby creek. Vanelyn was made to lie down by appellant who poked his gun at her. Petrified with fear, Vanelyn could not resist as appellant's companion removed her underwear and her pants. Then appellant's companion mounted her and sexually abused her. Vanelyn again cried because of terrible pain. After appellant's companion had satisfied his lust, appellant returned Vanelyn to the group. He approached Lorna Salazar and forced her to go with him.

"Lorna Salazar was first blindfolded and then brought to a place away from the group. She was turned over to a man who removed the cover from her eyes. Lorna saw [that] the man [was] wearing a bonnet.

"The man ordered Lorna to remove her pants but she fought back. Thus, he kicked Lorna hard in the abdomen which caused her to lose consciousness. When she regained consciousness, Lorna felt weak and dizzy. She also saw that she was naked. The man who raped her ordered her to put on her pants. Thereafter, she was returned back to the group.

"Subsequently, two other companions of appellant, who were also armed, took Lorna Salazar away from the group. They also wanted to rape her. However, as the men were starting to remove her clothes, Lorna cried and pleaded for mercy. The two men relented. One of them asked Lorna to give him a kiss mark instead. As he prepared to be kissed, the man removed his bonnet. Lorna was able to identify him as Manny Belagot. Then she was returned to the group.

"Around 4 o'clock in the morning, the group was released at the place where they were abducted. Before departing, the armed men threatened the group thus `pag nagsumbong kayo, papatayin naming kayo lahat.'

"Vanelyn Flores and her sister Angeline, together with Lorna Salazar, arrived at their house crying. They narrated to Vanelyn's parents all about the incident. Immediately, Vanelyn was brought by her parents to San Jose City, where she was examined by Dr. Rolando Valencia. Dr. Valencia reported the following findings:

`First, Erymetamous vulva meaning the vulva was reddish. Vulva is the external part of the female organ. Then, there was slight abrasion on the vaginal fourchette. Meaning, there was an abrasion in the fourchette. If you will spread the vagina of a woman, the portion that you will see is the fourchette and in the lower portion thereof was the abrasion. My third findings is: Hymenal laceration with sharp edges at 3 o'clock and 7 o'clock. Meaning there was laceration in the hymen particularly at 3 o'clock and 7 o'clock position. The hymen is the rigid membrane. x x x [The] vagina admitted two fingers with difficulty and the patient felt pain. Vaginal cervical [smear], meaning the taking of the fluid from the vagina for examination and it proved of the presence of sperm cell (tamod).

"Meanwhile, on November 16, 1990, Lorna Salazar was medically examined by Dr. Restituto Duran who reported the following findings:

`Breast-no contusion, no abrasion, well formed and firm, nipple small, areola brownish in color. Abdomen-no contusion, abrasion, hematoma, rest of the body show no sign of contusion, abrasion and hematoma.

Vagina-no signs of contusion, abrasion and hematoma. Pubic hair moderate. Hymen-lacerated at 12:00 o'clock, seven o'clock and six o'clock much lacerated. Vagina canal-admits 1 finger with resistance, admits 2 fingers with much resistance. Cervix is somewhat soft and tender upon touching.

"The laceration suggests that there was a forceful entrance at the vaginal canal by a hard object." [14]  
(Citations omitted)

### Version of the Defense

On the other hand, appellant, in his Brief, [15] summarizes the facts of the case as follows:

"This is a case of 4 counts of rape with forcible abduction filed against CARAANG and others. CARAANG was convicted based on the testimonies of the complainants whereby they alleged that they were waylaid and raped by a group of men belonging to the CAFGU. CARAANG [denies] the accusations against him. He maintains that he is innocent and that he was not at the place of the incident and that he was sick at that time. This defense was not believed by the trial court [which] x x x dismissed it as a mere alibi. [Hence] this appeal." [16]

### Ruling of the Trial Court

The RTC was convinced beyond reasonable doubt that appellant and his cohorts had conspired in abducting the victims and eventually raping them. It gave full faith and credence to the testimonies of the prosecution witnesses, especially those of the two victims -- Vanelyn Flores and Lorna Salazar. Upholding the positive identification they had made, it rejected appellant's alibi.

The court a quo found that only one act of abduction had been committed by all the accused. It added that the crafty way in which they made the victims go with them revealed the lewd intention of the abduction. That the former had intended to have carnal knowledge of the latter from the very beginning was further held by the lower court. The rapes were thus complexed with the crime of abduction. However, the RTC held that the subsequent instances of rape committed were separate and distinct counts thereof. As to the fourth criminal Complaint, it found appellant guilty only of acts of lasciviousness, since no carnal knowledge had occurred.

Hence, this appeal. [17]

### The Issues

In his appeal, appellant assigns the following alleged errors for our consideration:

"A. The trial court erred in finding that there was positive identification of Caraang as the rapist." [18]

"B. The trial court erred in not appreciating the existence of other facts and circumstances which are of weight and substance in favor of the accused-appellant which shows that there is reasonable doubt." [19]

"C. The evidence against the accused did not fulfill the test of moral certainty and is not sufficient for conviction." [20]

"D. The trial court erred in finding that there was conspiracy." [21]

Simply put, the issue to be resolved is whether the prosecution was able to prove the charges beyond reasonable doubt. In the main, appellant contests the positive identification made by the victims and the trial court's finding of conspiracy. He also cites questionable circumstances that allegedly create reasonable doubt in his favor.

### The Court's Ruling

The appeal of the rape charges is unmeritorious; however, the alleged acts of lasciviousness have not been proven

beyond reasonable doubt.

Main Issue:

Proof of Guilt Beyond Reasonable Doubt

In support of his appeal, appellant assails the testimonies of the victims, claiming that these do not pass the test of credibility. He avers that several allegations therein -- especially those made by Flores -- create reasonable doubt. He also enumerates several circumstances that allegedly make the prosecution's case insufficient to rebut the constitutional presumption of innocence.

First, he alleges that Flores could not have positively identified him as one of the perpetrators of the crimes, because it was nighttime when the incident occurred. He further argues that she did not directly testify to having seen him; instead, she merely identified him by the way he spoke, stood and moved. Second, he points to alleged inconsistencies between her court testimony and her sworn affidavit before the police. Third, he cites questionable circumstances that allegedly create reasonable doubt. He specifically points to the fact that Flores, instead of immediately filing a complaint with the police, went first to the CAFGU detachment with her group -- supposedly a sign that she was unsure of the identities of the culprits.

Fourth, he faults the prosecution for failing to present any bloodied panty, pants or dress belonging to the victim. Such failure was supposedly fatal for its part, because it did not present any other physical evidence to prove the rape. Finally, he claims that the RTC erred in finding conspiracy, since the prosecution had likewise failed to prove that there was prior agreement among the accused.

We will address the sub-issues raised by appellant seriatim.

Positive Identification

In discrediting the positive identification made by Flores, appellant argues that she could not have seen the faces of the perpetrators, since the incident happened at nighttime. Moreover, he avers that she did not directly testify that she had seen him; rather, she based the identification purely on the way he spoke, stood and moved.

We disagree. The testimony of Flores was categorical, convincing and unequivocal. It was replete with details that were consistent with the testimonies of all the other prosecution witnesses. Positively pointing to appellant and his co-accused as the culprits, her straightforward testimony proceeded thus:

"Q

Will you please tell the Honorable Court what was that untoward incident that happened to you?

A

We were waylaid/intercepted by Danilo Caraang, sir.

Q

How many were they?

A

There were two of them, sir.

Q

Did you recognize the companion of Danilo Caraang?

A

No, sir.

Q

Now, please look around and tell the Honorable Court if you can identify Danilo Caraang if he is inside the court room?

A

That one, sir. (The witness pointed to a person inside the courtroom who gave his name as Danilo Caraang).

Q

Is he the same person whom you saw that evening of November 10, 1990 when you were intercepted on your way to Abibeg from Dipaan?

A

Yes, sir.

Q

Now, what did this Danilo Caraang tell you if ever he told you anything at all?

A

He told us: 'for a while, our leader wants to talk to you,' sir.

Q

After that?

A

He told us to go with them, sir.

Q

Where?

A

There at Parang, sir.

Q

And how far was that from the road where you were intercepted to the place where you were brought, to that Parang?

A

About 500 meters, more or less, sir.

Q

When you reached that place where you were brought by the two, what happened?

A

We were ordered to sit down, sir.

Q

By whom?

A

Danilo Caraang, sir.

Q

Did you notice his superior[,] if there was any superior at all or the leader of the group?

A

There was, sir.

Q

Did you notice him there?

A

Yes, sir.

Q

How many were they or their companions awaiting in that place?

A

Only one, sir.

Q

Now, when you reached that place which is more or less 500 meters away from the place where you were intercepted and you were told to sit down, did you ever sit down?

A

Yes, sir.

Q

How about the rest of your companions?

A

Our three male companions were ordered to lay flat [on] their bellies, sir.

Q

And you are referring to Froilan Galamay, Jimmy Pascual and Tirso Ganzon, is it not?

A

Yes, sir.

Q

When your three male companions were ordered to lay face down what happened next?

A

I was taken by Danilo Caraang, sir.

Q

By the same person you have just identified a while ago?

A

Yes, sir.

Q

You said Danilo Caraang held you, in what particular part of your body did he ever hold you?

Atty. Cruz:

We will be constrained to object, there was no proper basis, they were merely taken.

Court:

Reform.

Atty. Borja:

Q

What did this Danilo Caraang do to you when you were sitting down?

A

He held me, sir.

Q

On what part of your body?

A

My right hand, sir.

Q

When he held you by your right arm what did you do next?

A

He brought me to the creek, sir.

Q

And how far is that creek from where you were seated and your group?

A

About 50 meters, sir.

Q

When you were brought by Danilo Caraang in that particular place near the creek, what did you see there?

A

There [was] a person there, sir.

Q

And what was that person doing there if you know?

A

None, sir.

Q

Were you able to recognize that person awaiting x x x you there?

A

No, sir.

Q

When Danilo Caraang was able to bring you to that place near the creek what did he do if he ever did anything?

A

His gun was pointed [at] me and ordered me to remove my pants, sir.

Q

Will you please describe that gun pointed [at] you if he pointed his gun [at] you?

A

It [was] small, sir, stainless.

Q

A hand gun?

A

Yes, sir.

Q

On what particular part of your body did Danilo Caraang point that gun to you?

A

Here at my temple, sir.

Q

And when he pointed his gun to you what did you feel then?

A

I was crying, sir.

Q

At that particular moment when you were already crying what did he do if he did anything to you?

A

He lay me down and he x x x [forcibly removed] my pants, sir.

Q

How did he do it?

A

His companion held my x x x hands above my head and Danilo Caraang removed my pants, sir.

Q

At that juncture, [when] the other man [was holding] your x x x arms and Danilo Caraang was removing your pants, was he able to remove the same?

A

He was able to remove it, sir.

Q

Besides your pants did you have any underwear also?

A

There was, sir.

Your Honor, considering that this is a case [involving] decency and public [morals], we will move and pray that the public be excluded from the courtroom.

Court:

As the witness is about to testify [on a case involving] morality, the public is hereby directed to leave the courtroom, except the parents of the witness and the accused. Proceed.

Atty. Borja:

Q

At the time your pants and panty were being removed by the accused Danilo Caraang, did he ever tell you anything or utter words to you?

A

There was, sir.

Q

Please tell the Court what was the utterance or expression made by Danilo Caraang?

A

That if I will not allow them I will be killed, sir.

Q

On that circumstance what did you do if any?

A

I cried, sir.

Q

Was he able to push you down to the ground?

A

Yes, sir.

Q

And when you were pushed to the ground what about your pants or trousers and panty[, were you still wearing them]?

A

Yes, sir.

Q

How was he able to remove it?

A

He removed it because my arms were being held by the other person, sir.

Q

When you were lying down on the ground what happened next?

A

That [was] the time when he removed my panty, sir, then later on he kissed me and that [was] it.

Q

And how were you able to recognize Danilo Caraang positively on that particular occasion?

A

Because of the way x x x he speak[s], the way x x x he stand[s], and the way he move[s], I know him, sir.

Q

May we know whether his face was covered at that time?

A

He already removed his bonnet, sir.

Q

And will you please tell the Honorable Court, during that time of the night, was it dark or was it [dim] or with moon?

A

It was very bright, sir.

Q

Why did you say that it was bright then?

A

The moon was big, sir.

Q

And what was already the position of the moon then on the night of November 10, 1990?

A

It was on this direction, sir. (The witness pointed 1:00 o'clock during day time.)

Q

You said Danilo Caraang removed his bonnet covering his face at the time he was kissing you and started to take or to deflower you, please tell the Honorable Court what happened?

Atty. Cruz:

We will object to the question, you Honor, it has no basis.

Court:

Sustained. Reform the question.

Atty. Borja:

Q

When your trousers or panty was removed and you were laid down by Danilo Caraang, what happened next?

A

He placed his body on top of me, sir.

Q

When he placed his body on top of you was he in his full dress at the time?

A

No more, sir.

Q

What made you tell he [was] not in x x x normal clothes?

A

Because being on top of me I felt it because I [had] no more pants, sir.

Q

What did you feel?

A

There [was] pain, sir.

Q

What part of your body was in pain?

A

My private part, sir.

Q

Why?

A

Because I was being raped by Danilo Caraang, sir.

Q

When you said you were being raped, are you telling the Court that he penetrated your private part by his penis?

A

Yes, sir.

Q

Since you said you were in terrible pain, will you please tell the Court whether previously there had been an experience, it at all, by you in this kind of traumatic incident?

Atty. Tomas:

May we move to strike out the word terrible as a conclusion of the counsel.

Court:

Strike that out.

Witness:

A

Not yet, sir.

Atty. Borja:

Q

You mean to tell the Court that at that time you [were] still a virgin?

A

Yes, sir.

Q

Because of that circumstance when Danilo Caraang was abusing you physically, how did you feel?

A

I felt too much pain on my private part, sir.

Q

Were you able to recognize whether there was blood?

A

Yes, sir.

Q

How long did this Danilo Caraang [a]bused you?

A

More than 15 minutes, sir.

Q

After that 15-minute period what transpired next?

A

He ordered me to wear my pants, sir.

Q

And did you accede to his order?

A

Yes, sir.

Q

After putting on your dress or your pants and your panty what did he do next to you if ever he did any?

A

He took me and brought me back to my companions, sir.

Q

And when you were taken back to the rest of your companions[,] what did you see there?

A

My companions, sir.

Q

How about your three male companions?

A

They were still lying face down [on] the ground, sir.

Q

Since you were brought back to the place where you were held by Danilo Caraang and his companion how long did you stay there?

A

More than an hour, sir.

Q

After that one-hour period what transpired next?

A

I was taken again, sir.

Q

Who took you again?

A

Danilo Caraang, sir.

Q

How did he take you?

A

He took me again and brought me down, sir.

Q

Where?

A

The same place where he brought me, sir.

Q

Did you reach the place where he abused you?

A

Yes, sir.

Q

Upon reaching that place where you were formerly abused, what happened next?

A

Danilo Caraang again held me, sir.

Q

Why?

A

He laid me down, sir.

Q

When you were lying down, were you still with your trousers and panty?

A

Yes, sir.

Q

When you laid down, what happened next with your panty and trousers?

A

He was pointing me his gun while the other man was removing my trousers and panty, sir.

Q

Was that other man able to remove your trousers or pants?

A

Yes, sir.

Q

After removing your pants, what about your underwear?

A

He also removed my panty, sir.

Q

After both [were] removed, your pants and panty, by the other person and that Danilo Caraang pointed to you a gun, what happened next?

A

That other person placed his body on top of me, sir.

Q

Did he undress or remove his trousers before he placed his body on top of you?

A

Yes, sir.

Q

What did you feel when he placed his body on top of you while lying down?

A

I cried also, sir.

Q

Besides crying what else?

A

I felt too much pain on my private part, sir.

Q

Why [were] you in pain, in terrible pain, according to you, in your private part?

A

Because I was being sexually abused again, sir.

Q

By that person, companion of Danilo Caraang?

A

Yes, sir.

Q

After having been abused by that other person-companion of Danilo Caraang, what happened next?

A

I was ordered to wear my pants, sir.

Q

And after having worn your underwear and pants, what did this other person do to you if any?

A

I was taken by Danilo Caraang and [I was] brought x x x back to my companions, sir."[22]

x x x x x x x x

"Court:

Q

Where did you say [you, together with your companions,] were intercepted by accused Caraang x x x?

A

It [was] at the boundary of Sitio Abibeg and Sitio Dipaan, sir.

Q

Prior to November 10, 1990, tell the Court if you know Caraang already?

A

Yes, sir, I have known him for a long time.

Q

At that point and time when you were allegedly intercepted by Danilo Caraang, tell the Court what was his physical appearance?

A

He was using x x x camouflage pants with a uniform and he was wearing x x x rubber shoes, and he was wearing a white T-shirt, sir.

Q

He was with a mask?

A

He was wearing a bonnet but his face was exposed, sir.

Q

And when you were allegedly intercepted, is it the impression of the court from you that you [had] a clear eyeview of Caraang's face?

A

Yes, sir.

Q

And you made mention to the court likewise that you were brought beside the creek, that is correct?

A

Yes, sir.

Q

Were you asked to lie down or you were forced to lie down?

A

I was forced to lie down, sir.

Q

When you said you were forced, what do you mean by that?

A

My shoulder was pushed back, sir, and that caused me to lie down.

Q

How many persons were there when you were asked to lie down.

A

Two (2), sir.

Q

But you could not recognize the other person?

A

Yes, sir.

Q

And per your testimony, Caraang succeeded in having sexual intercourse with you, that is true?

A

Yes, sir.

Q

How did he do it to you?

A

That [was] it, sir, he [laid] me down and he pointed his gun to my temple.

Q

Caraang himself did that to you?

A

Yes, sir.

Q

With what hand [was] he holding the gun?

A

Right hand, sir.

Q

What about his left hand?

A

That [was] it, sir, he used it in removing my pants.

Q

After he allegedly was able to remove your pants did he also remove your panty?

A

Yes, sir.

Q

And by that, you mean the pants and the panty were totally removed from you?

A

Yes, sir.

Q

And by that, you also mean that half of your body was exposed naked?

A

Yes, sir.

Q

And after he was able to remove the pants and the panty, tell the court what he did next?

A

That [was] it, sir, he placed his body on top of me.

Q

And what were you doing then when he placed his body on top of you?

A

I cried, sir.

Q

You did not even give a sign of struggle?

A

I was struggling, sir, but I could not do anything because his companion was holding my hands.

Q

But your legs were free?

A

I was trying to keep my two legs intact but I could not do it, sir.

Q

Why?

A

I was afraid, sir."[23]

According to Flores, on the night the incident occurred, the place where they were brought was brightly illuminated by the moon. Thus, she was able to take a good look at and remember the face of appellant. These details make her testimony and positive identification of him even more credible and reliable.

Visibility is indeed a vital factor in determining whether an eyewitness could have identified the perpetrator of a crime.[24] It is settled that when conditions of visibility are favorable, and when the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted.[25] In proper situations, illumination produced by a kerosene or wick lamp, a flashlight, even moonlight or starlight may be considered sufficient to allow identification of persons.[26] Under such circumstance, any attack on the credibility of witnesses, based solely on the ground of insufficiency or absence of illumination, becomes unmeritorious.[27]

To be sure, Flores had an unobstructed view of appellant because of their proximity with each other. Given her familiarity with him, as well as the illumination provided by the moonlight on that fateful evening -- reasonably sufficient for the identification of persons -- we doubt if she could have erred in identifying him.

Experience suggests that it is precisely because of the unusual acts of violence committed right before their eyes that witnesses can remember the identities of criminals with a high degree of reliability at any given time.[28] Indeed, although Flores was subjected to rigorous cross-examination, she neither faltered in her positive identification of appellant nor gave any statements materially inconsistent with her entire testimony.

Equally important is the fact that there was no showing of any improper motive on her part that would make her testify falsely against him. Hence, the logical conclusion is that no such motive exists, and that her testimony is worthy of full faith and credence.[29]

Furthermore, the contention of appellant that Flores did not directly testify that she had seen him is completely belied by her above-quoted testimony. Although she did mention that she recognized him by the way he spoke, stood and moved, those qualities were not her only bases for identifying him; she was also able to see his face during the incident. She positively testified thus:

"Q

At the point and time when you were allegedly intercepted by Danilo Caraang, tell the Court what was his physical appearance?

A

He was using x x x camouflage pants with a uniform and he was wearing x x x rubber shoes, and he was wearing a white T-shirt, sir.

Q

He was with a mask?

A

He was wearing a bonnet but his face was exposed, sir.

Q

And when you were allegedly intercepted, is it the impression of the court from you that you [had] a clear eyeview of Caraang's face?

A

Yes, sir."[30]

During the rape, she was likewise able to see appellant's face as evidenced by the following excerpt from her testimony:

"Q

And how were you able to recognize Danilo Caraang positively on that particular occasion?

A

Because of the way x x x he speak[s], the way x x x he stand[s], and the way he move[s], I know him, sir.

Q

May we know whether his face was covered at that time?

A

He already removed his bonnet, sir.

Q

And will you please tell the Honorable Court, during that time of the night, was it dark or was it [dim] or with moon?

A

It was very bright, sir.

Q

Why did you say that it was bright then?

A

The moon was big, sir.

Q

And what was already the position of the moon then on the night of November 10, 1990?

A

It was on this direction, sir. (The witness pointed 1:00 o'clock during day time.)"[31]

Given such direct and categorical statements, we cannot sustain appellant's arguments. Moreover, we do not doubt the veracity of the testimony of Salazar, the other victim. She testified as follows:

"Q

In your case, as you said you were taken next after Van[e]lyn Flores was returned from the place where she was brought, how were you taken?

A

That person who returned back Van[e]lyn Flores where she was ordered to sit in a different place [was] the same person who took me, sir.

Q

Why do you know that [she] was the same person when according to you you were not able to identify [him]?

A

I only remember his face, sir.

Q

Was he not in mask?

A

There was, sir.

Q

Up to what portion of the face was the mask?

A

The face was covered except the eyes, the nose, and the mouth, sir.

Q

If you would see that person again, would you be able to identify that person again?

A

Yes, sir.

Q

Will you please look around and tell the Court if that person is inside the courtroom?

A

He is here, sir.

Q

Point to him[.]

A

He was the one recognized by my companions, sir. (The witness pointed to a person inside the courtroom who, when asked of his name, responded to the name of Danilo Caraang.)

Q

You were taken according to you next after Angelina Flores, tell the Court where you were brought?

A

I was brought to another direction, sir, my eyes were covered and I was turned-over to a person who was wearing a bonnet.

Q

Are you telling the Court that the person who took you from the group was the same person who brought you somewhere within the vicinity?

A

Yes, sir, because after taking me away from the group that person handed me to another person.

Q

And what did that person do to you?

A

After that person who took me away from the group [had] already entrusted me to another man and that person who took me had already left, that man told me to remove my pants, sir.

Q

Did you remove your pants as told?

A

Not yet, sir.

Q

What did that man do to you?

A

I told him, 'I thought that you will not do me something wrong,' and that man answered that I talked [too] much, sir.

Q

And then what happened to you next?

A

I was fighting back but he kicked me and the kick landed on my abdomen, sir.

Q

What did you feel when you were kicked?

A

The kick was so hard that I lost consciousness, sir.

Q

Did you regain consciousness?

A

When I regained consciousness I was ordered to put on my pants, sir.

Q

Are you telling the Court that when you were kicked and lost consciousness something happened to you?

A

There was, sir.

Q

Tell the Court what happened to you?

A

That person took advantage of my womanhood, sir."[32]

"Q

Were you able to recognize any of your captors who released you?

A

There was, sir.

Q

And who is that person which you came to know?

A

Manny Belagot and Rolando Rebota, sir.

Q

Are they the only persons you recognized?

A

Yes, sir.

Q

How were you able to know them?

A

The second time that they took me and brought me to another direction he took off his mask and he asked me to give him a kiss mark and that was the time I recognized him, sir.

Q

And who was he?

A

Manny Balagot, sir.

x x x x x x x x

Q

Now, after the said incident[,] Madam Witness[,] was there a point [in] time that you were able to identify other persons who captured you during that fateful time?

A

There was, sir.

Q

[When] was it?

A

When we were then about to go to school I saw them again, sir.

Q

And who are these persons you are referring to?

A

Manny Belagot, sir.

Q

Only Manny Belagot?

A

Danilo Caraang, a certain Canlas and Rolando Rebota, sir.

Q

How many days after the incident did you [see] them?

A

When we went to school, that was Wednesday, sir."[33]

That the testimonies of the two victims were nothing less than positive and materially consistent with each other

foreclosed the probability of any false testimony on their part and served to bolster their credibility. Throughout the time they were on the witness stand, they remained unwavering in their declarations and thus evoked reliability and sincerity.

Time and time again, this Court has reiterated the principle that where the culpability or the innocence of the accused hinges on the credibility of the witnesses and the veracity of their testimonies, the task of assigning values thereto is best left to the trial court.[34] Indeed, it has the excellent opportunity of obtaining firsthand impressions of their demeanor and conduct, an opportunity that is not equally available to appellate courts.[35]

Needless to say, the straightforward, clear and positive testimony of the victims -- coupled with the absence of any motive to fabricate evidence or to falsely implicate appellant -- may be enough to convict him.[36] Neither can his denial and alibi be sustained in the light of their positive identification of him as the perpetrator of the crime.[37] When categorical and consistent and without any ill motive on the part of the eyewitness testifying on the matter, it prevails over such defenses[38] which -- unless substantiated by clear and convincing proof -- are deemed negative, self-serving and undeserving of any weight in law.[39]

Alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove.[40] For it to prosper, proof that the appellant was somewhere else when the crime was committed is insufficient; it must likewise be demonstrated that it was physically impossible for him to have been at the scene of the crime at the time.[41] In the case before us, appellant himself testified that he had been at the very same place where the victims had come from.[42] Thus, it would not have been physically impossible for him to be at the scene of the crime on the date and time they testified to.

Besides, even the witnesses presented by appellant could not exculpate him from criminal liability. He testified that on the night of November 11, 1990 until the next morning, he stayed inside the house of Barangay Chair Reynalda Baltazar.[43] When asked who his companions were, he pointed to the barangay chair's daughter and grandchild.[44] Interestingly, he did not even mention Conchita Baltazar -- his sister, who happened to be Reynalda's daughter-in-law. She testified that she had been with him the whole night of November 11, 1990 until the morning of the next day, November 12, when they left the house of her mother-in-law.[45]

If indeed he had witnesses to prove that he did not leave the house, he should have presented them, so that they could positively testify that he never left their sight. Instead, he presented the barangay chair, who admitted that she had been too busy during the dance party to have kept an eye on him throughout the night; and his sister, whom he did not even mention, who testified that she had been with him at the time.

#### Discrepancy Between the Sworn Statement and the Court Testimony

In trying to discredit Flores, appellant claims that her sworn statement before the police is materially inconsistent with her testimony. Again, we cannot sustain this contention.

Appellant's reliance on the affidavit of Flores in order to cast doubt on her testimony is futile. The Court has consistently ruled that discrepancies between the statements in an affidavit and those made on the witness stand do not necessarily downgrade the latter.[46] Ex parte affidavits are usually incomplete, frequently prepared by administering officers, and cast in their language and understanding of what affiants have said.[47] Almost always, the latter would simply sign such documents after being read to them.[48] Basic is the rule that, taken ex parte, affidavits are considered incomplete and often inaccurate. They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.[49]

Affidavits are generally subordinate in importance to open-court declarations, because the former are often executed when the mental faculties of affiants are not in such state as to afford them a fair opportunity to narrate more extensively the incidents that have transpired.[50] Normally, witnesses are able to explain inconsistencies when they are examined thoroughly in court, where they are given the chance to state as fully as they can the events that transpired during the commission of the crime. Obviously, this kind of opportunity is not available to them when their affidavits are taken.

By its very nature and the manner it is taken, an affidavit can hardly compare with the weight of a testimony given in open court. Likewise, the supposed failure of eyewitnesses to include some material facts in their affidavits does not in any way diminish the veracity of their court testimonies. In other words, whenever there is inconsistency between the two, the latter commands greater weight.[51]

We have also repeatedly held that minor disparities do not detract from the essential credibility of testimonies that are coherent and intrinsically believable on the whole. This principle holds true particularly when, as in this case, there is consistency in the narration of the principal occurrence and in the positive identification of the accused.[52] What is clear is that the responsibility of appellant for the crime charged was indubitably established by both the sworn statement and the testimonies. If, indeed, there is any inconsistency between the two, these are minor and incidental. Mere inconsistencies on non-material points are not enough to deny weight to the entire testimony; often, in fact, such discrepancies reassure against the likelihood of a rehearsed testimony.[53]

#### Failure to Immediately File a Complaint with the Police

Appellant questions why Flores and her group went to the CAFGU detachment first, instead of immediately filing a complaint with the police, if indeed they already knew that he was one of the culprits. This behavior allegedly shows that the victims were unsure of the identities of the offenders.

On the contrary, we have extensively examined the testimonies of both Flores and Salazar, but found no uncertainty in their positive identification of appellant and his companions. Never was it shown that the victims had to go to the CAFGU detachment to ascertain the identities of the culprits. It is clear that the former already saw, recognized and identified appellant on the night of the crime itself.

It was the father of Flores who testified that she and her group had first gone to the CAFGU detachment before filing a complaint with the police. However, such statement has absolutely no effect on the credibility of the victims. It should be clear that after the crime had been committed against them, they went home and reported the incident to their parents, then sought medical doctors for physical examination. Going to the CAFGU detachment was but a logical response of Flores and her group to the incident that happened. They wanted the culprits to be arrested; because the latter were members of the local CAFGU, naturally, the former proceeded to that office. Certainly, there was no delay in the filing of a complaint with the police. Flores' father testified as follows:

"Q

Having known that and positively known that your daughters were abused, what action did you do if any?

A

I went to the Detachment Commander of the CAFGU, Gen. Luna, sir.

Q

And what did the Detachment Commander of the CAFGU do?

A

The Detachment Commander, sir, ordered the members of the CAFGU to assemble and in that instance, my daughter was able to identify Caraang.

Q

Who among your daughters identified Danilo Caraang?

A

Vanelyn Flores, sir.

Q

Were you present in that confrontation?

A

Yes, sir, I was there.

Q

And when you said you reported the incident to the Detachment Commander of the Philippine Army, to whom were you referring to, what were the names of those persons?

A

Danilo Caraang, sir, and Amado Alcantara.

Q

Who else?

A

Sgt. Espadero, sir, and those others named, sir, are all Sgts.

Q

Having been pointed to you by your daughter Vanelyn that it was Danilo Caraang and Virgilio Canlas, Jr. who violated their chastity, what else did the Detachment Commander do if they did anything on that occasion?

A

They were arrested, sir, and were brought to the Municipality of Carranglan, N.E. and later on, the authorities of Carranglan endorsed them to the 182nd PC.

Q

What about the local police of the PNP of Carranglan, what did they do if any?

A

We went to the PNP of Carranglan, sir, for several times but they failed to take the statement of my daughters, so what we did was to come here to the 182nd PC in order to execute our respective affidavits and in our place, picture taking were made at the scene of the incident."[54]

The above-quoted testimony definitely strengthens the case against appellant. When Flores went to the CAFGU detachment, she was able to identify him positively. To be sure, his assertion that the victims had to go to the CAFGU detachment because they were unsure of the identities of the culprits was not only unfounded, but also speculative.

#### Physical Evidence

Appellant then faults the prosecution for failing to present any bloodied panty, pants or dress belonging to Flores. He argues that the trial court erred in accepting the fact that no other physical evidence had been presented by the prosecution to support and corroborate the testimonies of the victims. Though he concedes that these objects are not essential in proving rape, he invokes our ruling in *People v. Godoy*,<sup>[55]</sup> which is supposedly applicable to the present controversy. In that case, the deliberate non-presentation of the bloodstained skirt was ruled to have weakened the cause of the prosecution.

Again, this argument fails to convince us. In *Godoy*, the testimony of the complainant was inherently weak, and no other physical evidence was presented by the prosecution to bolster the charge of rape, except for the medical report which had even negated one of the essential elements of the crime.<sup>[56]</sup> Hence, the deliberate non-presentation of the complainant's bloodstained skirt was held to "vigorously militate against the prosecution's cause."<sup>[57]</sup>

In the case before us, the convincing and unwavering testimonies of not only one victim, but two victims -- taken together with the similarly credible corroborative testimonies of other witnesses -- leave no room to doubt appellant's guilt. Moreover, unlike in *Godoy*, the medical findings presented in the present case are sufficient to sustain the charge of rape.

The testimony of Dr. Valencia, coupled with the corresponding Medical Reports,<sup>[58]</sup> clearly establishes the rape. Thus, the non-presentation of Flores' bloodied underwear, skirt and pants is not indispensable to proving the rape.

Neither was it important for the prosecution to prove that appellant was afflicted with a sexually transmissible disease that he had passed on to Flores. In the crime of rape, all that has to be proven is carnal knowledge of a woman under any of the following circumstances: 1) when force, threat or intimidation is used; 2) when the offended party is deprived of reason or is otherwise unconscious; 3) when fraudulent machination or grave abuse of authority is employed; or 4) when the offended party is under twelve years of age or is demented, even though none of the circumstances mentioned above be present.<sup>[59]</sup> At most, in rape, the transmission of a sexually transmissible disease to the victim is not an element of the crime, but an aggravating/qualifying circumstance<sup>[60]</sup> that has to be proven to sustain conviction.

Not to be overlooked are the medical findings on the other victim, Salazar. Although she testified that she had been knocked unconscious at the time she claimed to have been raped, the overwhelming evidence proves that she was indeed a victim of rape.

When the victim cannot testify on the actual commission of the rape because she had been rendered unconscious

before the act was committed, the conviction may be based on circumstantial evidence. Such evidence is admissible, provided that more than one circumstance is duly proven, and that the totality or the unbroken chain of the circumstances proven lead to no other logical conclusion than that of the guilt of the accused.[61]

According to the positive testimony of Flores, appellant took her from the group, raped her, then returned her to where the others were. On the part of Salazar, she also testified that the person who returned her to the group was the same person who had taken her away.[62] She positively pointed to appellant as the person who had done so.[63]

Thereafter, Salazar was handed over to another person, who ordered her to remove her pants.[64] Although she resisted, she was kicked so hard on the abdomen that she passed out.[65] After regaining consciousness, she was already naked and feeling excruciating pain in her private part.[66] She was then ordered to put on her pants.[67] The medical findings on her, as testified to by her doctor, are as follows:

"Q

As regards to the third finding and you said no sign of contusion, abrasion and hematoma and also as regards the hymen. Will you please explain this in laymen's term?

A

In laymen's term, sir, that shows that the vagina of the victim Lorna B. Salazar, the vaginal canal was subjected to forceful entrance of somewhat hard object.

Q

Your findings as regards the hymen, will you please again elaborate on this?

A

The laceration that showed in the medical examination suggest that there was a forceful entrance at the vaginal canal by a hard object.

Q

When you said there was this forceful laceration, was the wound you found still fresh or an old wound?

A

Still fresh, sir.

Q

And what would have caused the forceful entrance to this?

A

As I have said, sir, it could be due to forceful penetration of hard object.

Q

Could it be a penetration of a man's penis?

A

Yes, sir.

Q

Your last finding is as regards entrance to the vaginal canal shows redness and tender to touch, what do you mean by this?

A

In laymen's terms, sir, the cervix is somewhat infected so it is tender in touching the cervix.

Q

And at the entrance of the hymen, it is infected by what?

A

It could be infected by bacterial infection, sir.

Q

You are referring to the wounds sustained by the vagina?

A

I am referring to the tenderness and redness in the entrance of the vagina, sir.

Q

But this tenderness and redness on the private part of the patient could have been due to infected wound sustained by the victim, as a result of the forceful entrance on her private part?

A

That could be, sir."<sup>[68]</sup>

The totality of the circumstances in this case warrants a finding that Salazar, while unconscious, was also a victim of rape committed by the group to which appellant belonged.

As to the charge of acts of lasciviousness, however, we cannot sustain the trial court's conviction of appellant. Unlike the testimony of Salazar concerning the rape -- which we find convincing, positive and categorical -- we cannot say the same of her charge of acts of lasciviousness. All that she mentions in her testimony is as follows:

"Q

How were you able to identify these persons who waylaid you on the night of November 10, 1990?

A

Because when I was taken for the second time he asked me to kiss him, and that he removed his mask and I raised my blindfold, that is why I was able to recognize him, sir." [69]

Other than this bare, passing statement, absolutely no other evidence was presented to prove the charge of acts of lasciviousness. Salazar did not even testify on the surrounding circumstances of this incident. Given the utter lack of evidence, we have no other option but to dismiss that charge.

#### Proof of Conspiracy

In a final attempt to absolve himself of criminal liability, appellant questions the trial court's finding of conspiracy. According to him, the prosecution failed to present concrete evidence showing prior agreement among him and his co-accused to commit the crime charged.

We disagree. There is no doubt that appellant and his co-accused acted in conspiracy, as seen through their concerted actions in abducting the victims with lewd design and later on raping them. Direct proof is not essential to establish conspiracy; which may be inferred from the acts of the assailants before, during and after the commission of the crime. [70] In a conspiracy, it is not necessary to show that all the conspirators actually committed all the elements of the crime charged; what is important is that all of them performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to commit the crime. [71] Thus, the act of one becomes the act of all, and each of them will thereby be deemed equally guilty of all the crimes committed. [72]

It must be shown that each co-accused cooperated in the commission of the offense -- either morally through advice, encouragement or agreement; or materially through external acts indicating a manifest intent of supplying aid in the efficacious perpetration of the crime. [73] In this case, the testimonies of the victims and their witnesses, as well as all other pieces of evidence presented indubitably established the concerted design of all the accused to abduct the group forcibly and to rape its female members.

The common purpose of the accused was manifestly shown by the deliberate and methodical manner in which the crimes were committed. The victims were first tricked into going with appellant. When they arrived at a secluded place, the women were ordered to line up, while their male companions were told to lie on their stomachs. [74] According to the victims, more men were already waiting at the place where the former were brought, [75] a fact that only shows that all the accused indeed knew what was going to happen.

Thereafter the women were brought, one at a time, to the place where the rapes were to occur. The manner in which the crimes were committed points to no other conclusion than that all the accused had knowledge of the criminal design. In fact, appellant himself committed the first act of rape on Flores. Moreover, he was an indispensable participant in the second act thereof. He was the one who brought her to his companions who took turns in raping her, [76] while he pointed a gun at her. [77] Holding the victim and threatening her with a gun while another was raping her was more than sufficient to show indubitably a common criminal design.

After appellant had satisfied his own lust and later aided his companion in raping Flores, the evidence indicates that he and his co-accused intended to commit rape again -- which they actually accomplished -- this time on Salazar. He was also involved in her forcible abduction with rape, as it was again he who took her away from her group and handed her over to one of his co-accused. [78] The pattern of the rapes committed and the indispensable role of appellant therein is clear. Any intimation that he had nothing to do with them would be nothing less than unbelievable. In view of the presence of conspiracy, all the co-accused bear equal responsibility. [79]

The finding of conspiracy is significant, because it changes the criminal liability of all the accused and makes them answerable as co-principals regardless of the degree of their participation in the crime. [80] Their liability

becomes collective, with each participant deemed equally responsible for the acts of the others.

To reiterate, conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[81] It comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to pursue it actually.[82] As in this case, conspiracy is proved by concerted acts or other forms of evidence indicative of actual cooperation -- a common purpose or design, as well as a concurrence of sentiments to commit the felony and to pursue it actually.[83]

The two elements of forcible abduction, as defined in Article 342 of the Revised Penal Code, are as follows: (1) taking a woman against her will and (2) doing so with lewd designs. This complex crime occurs when there is carnal knowledge of the abducted woman under any of the circumstances mentioned earlier when force or intimidation is used; when the woman is deprived of reason or is otherwise unconscious; and when the woman is under twelve years of age or is demented.[84]

All told, the prosecution sufficiently proved the elements of forcible abduction -- the taking of the victims against their will with lewd design. As to the first element, although they voluntarily went with appellant, it was indubitably shown that they did so upon being deceived. According to their testimonies, he told them that his leader wanted to talk to them, and that no harm would be done to them.[85] Upon this representation, they went with him.

The employment of deception suffices to constitute forcible abduction.[86] This Court has previously ruled that if the victim's consent was obtained through deceit and there was therefore no valid consent, the crime is forcible abduction, as the deceit may be considered as constructive force.[87] The second element, lewd design, was established by the actual rapes.[88]

Proceeding to the charges, aside from alleging the necessary elements of the crimes, the prosecution convincingly established that appellant and his co-accused had conspired, confederated and mutually aided one another in having carnal knowledge of the victims against the latter's will by means of force and intimidation.

### The Proper Penalties

#### Preliminary Consideration:

##### No Double Jeopardy

Hence, appellant is guilty of two complex crimes of forcible abduction with rape -- one against Flores and the other against Salazar. Since there were two victims, the trial court erred in convicting him of only one count of the complex crime of forcible abduction with rape. There can be no violation of the constitutional right of appellant against double jeopardy, because the decisive issue here is whether he was convicted of a crime charged in the Information. A reading of the four separate Informations shows that in each one, he was indeed charged with forcible abduction with rape. Having been sufficiently informed of the accusations against him, he can thus be convicted of two counts of the complex crime of forcible abduction with rape, as we have done here based on the evidence presented.

Moreover, it is settled that when the accused appeals from the sentence of the trial court, they waive their right to the constitutional safeguard against double jeopardy and throw the whole case open to review by the appellate court. The latter court is then called upon to render such judgment as law and justice dictate -- whether favorable or unfavorable to them, and whether the issues it resolves have been assigned as errors or not.[89] Such an appeal confers upon it full jurisdiction over the case and renders it competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[90]

## Conspiracy

In the present case, appellant should also be held liable for the other count of rape he and his co-accused committed -- one after the other -- against Flores. Clearly, there was conspiracy as shown by their obvious, concerted efforts to perpetrate the crimes. It should be clear that appellant is responsible not only for the rape he personally committed, but for the rape committed by the others as well.

## One Complex Crime Against Each Victim

However, there can be only one complex crime of forcible abduction with rape committed against each victim. The crime of forcible abduction was necessary only for the first rape.[91] After the complex crime had already been consummated, the subsequent rape can no longer be considered as a separate instance thereof.[92] That is, it should be detached from, and considered independently of, the forcible abduction.[93] Hence, any subsequent rape of the same victim is simply rape and can no longer be considered as a separate complex crime of forcible abduction with rape.[94]

Article 48 of the Revised Penal Code governs complex crimes as follows:

"Art. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

## Penalty for the More Serious Crime

As earlier adverted to, the forcible abduction was necessary for the succeeding rape of each victim. Consequently, for the complex crime of forcible abduction with rape, the penalty for the rape -- which is the more serious crime -- shall be imposed in its maximum period. At the time of the commission of the crime, the applicable penalty for rape committed by two or more persons was reclusion perpetua to death.[95] Since the rape was committed by two or more persons -- a fact duly alleged in the Information and proven in court -- it should have warranted the imposition of the death penalty.

However, appellant committed the crime of forcible abduction with rape on November 10, 1990 -- before the passage of Republic Act 7659 or the Death Penalty Law, which took effect on December 31, 1993. Thus, the trial court correctly ruled that the penalty that could be imposed was reclusion perpetua.

As regards the act of rape committed against Flores, appellant is likewise sentenced to reclusion perpetua. This separate act of rape, directly and successively committed against her by his co-accused, was the only one remaining for which he may be further held liable. All told, three terms of reclusion perpetua should be imposed upon him.

## Damages

Regarding appellant's pecuniary liabilities, we award P75,000 as civil indemnity ex delicto for each of the two (2) counts of the complex crime of forcible abduction with rape instead of the P50,000 compensatory damages awarded by the trial court. First, considering that the rape was committed by two or more persons, as alleged in the Information and proven in court, an increase in civil indemnity is proper. Second, this Court has previously ordered the accused to pay civil indemnity in the amount of P75,000, so long as the crime was committed under circumstances that would justify the imposition of the death penalty -- even if that penalty had not yet been imposed -- because the crime was committed before the effectivity of the Death Penalty Law.[96]

Likewise, we affirm the award of P50,000[97] as moral damages for each of the two counts of forcible abduction with rape. Moral damages are given without need of further proof other than the fact of rape. The law recognizes the victim's injury, which is concomitant with and necessarily results from the odiousness of the crime, thus warranting per se the award of moral damages.[98]

As to exemplary damages, Article 2230 of the Civil Code provides:

"ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

Thus, we award the victims P25,000 each for exemplary damages in view of the alleged and proven qualifying circumstance of the rape committed by two or more persons. Relative to the civil aspect of a case, an aggravating circumstance -- whether ordinary or qualifying -- should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.[99]

For the single count of rape committed on Flores, for which the proper penalty is reclusion perpetua, we affirm the P50,000 civil indemnity ex delicto and the P50,000 moral damages.

WHEREFORE, the appeal is DENIED, insofar as the rape with abduction and the rape are concerned. Appellant Danilo Caraang is found GUILTY beyond reasonable doubt of two counts of the complex crime of forcible abduction with rape -- one against Vanelyn Flores in Criminal Case No. C-14(91) and the other against Lorna Salazar in Criminal Case No. C-15(91). He is hereby sentenced to reclusion perpetua for each count. He is further found guilty beyond reasonable doubt of the separate crime of rape committed against Vanelyn Flores in Criminal Case No. C-16(91), for which he is sentenced to another term of reclusion perpetua.

To summarize, the pecuniary awards are as follows: (1) the amount of P75,000 each for Criminal Case Nos. C-14(91) and C-15(91) as indemnity ex delicto; (2) P50,000 each as moral damages; and (3) P25,000 each as exemplary damages. For the separate crime of rape committed against Vanelyn Flores in Criminal Case No. C-16(91), the victim is entitled to another P50,000 as civil indemnity ex delicto, P50,000 as moral damages, and P25,000 as exemplary damages, in addition to his conviction for rape and his sentence to one more term of reclusion perpetua. Costs against appellant.

Finally, the conviction of Appellant Caraang for acts of lasciviousness in Criminal Case No. C-17(91) is hereby REVERSED and SET ASIDE for insufficiency of evidence.

### **SO ORDERED.**

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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[1] Rollo, pp. 32-43. Penned by Judge Reynaldo A. Alhambra.

[2] Assailed Decision, pp. 11-12; rollo, pp. 42-43.

[3] Dated March 5, 1991; rollo, p. 5; records, Vol. I, p. 1.

[4] Dated March 5, 1991; id., p. 7; id., Vol. III, p. 1.

[5] Dated March 4, 1991; id., p. 9; id., Vol. IV, p. 1.

[6] Dated March 4, 1991; id., p. 11; id., Vol. V, p. 1.

[7] Records, Vol. I, p. 4.

[8] See the May 15, 1991 Letter of SPO1 Diosdado P. Leal addressed to the trial court; records, Vol. I, p. 5.

[9] Atty. Arsenio S. Tomas.

[10] See the RTC's Order dated June 18, 1991; records, Vol. I, p. 12.

[11] See TSN, July 3, 1991, p. 3.

[12] Rollo, p. 44; records, Vol. II, p. 499; signed by Atty. Gerardo V. Hermogenes.

[13] Signed by Assistant Solicitors General Carlos N. Ortega and Antonio L. Villamor and Associate Solicitor Fenicar A. Tabao.

[14] Appellee's Brief, pp. 8-15; rollo, pp. 106-113.

[15] Signed by Atty. Gerardo V. Hermogenes.

[16] Appellant's Brief, pp. 2-3; rollo, pp. 58-59.

[17] This case was deemed submitted for resolution on August 22, 2002, upon this Court's receipt of Appellee's Brief. Appellant's Brief was filed on March 22, 2002. The filing of a Reply Brief was deemed waived, as none had been submitted within the reglementary period.

[18] Appellant's Brief, p. 3; rollo, p. 59. Original in upper case.

[19] *Id.*, pp. 12 & 68. Original in upper case and underscored.

[20] *Id.*, pp. 16 & 72. Original in upper case and underscored.

[21] *Id.*, pp. 17 & 73. Original in upper case and underscored.

[22] TSN, July 3, 1991, pp. 5-13.

[23] *Id.*, pp. 22-24.

[24] *People v. Ramirez*, 357 SCRA 222, April 20, 2001; *People v. Mansueto*, 336 SCRA 715, July 31, 2000; *People v. Adoviso*, 368 Phil. 297, June 23, 1999.

[25] *People v. Ramirez*, *supra*; *People v. Cogonon*, 331 Phil. 208, October 4, 1996.

[26] *People v. Licayan*, 378 SCRA 281, February 28, 2002; *People v. Ramirez*, *supra*; *People v. Ronas*, 350 SCRA 663, January 31, 2001; *People v. Mansueto*, *supra*.

[27] *People v. Ronas*, *supra*; *People v. Biñas*, 377 Phil. 862, December 8, 1999; *People v. Adoviso*, *supra*.

[28] *People v. De Leon*, 378 SCRA 495, March 6, 2002; *People v. Porras*, 413 Phil. 563, July 17, 2001; *People v. Sumallo*, 367 Phil. 14, May 24, 1999.

[29] *People v. Barnuevo*, 418 Phil. 521, September 28, 2001; *People v. Galam*, 382 Phil. 376, February 15, 2000; *People v. Platilla*, 363 Phil. 684, March 9, 1999; *People v. Banela*, 361 Phil. 61, January 18, 1999.

[30] TSN, July 3, 1991, p. 22.

[31] *Id.*, p. 9.

[32] TSN, July 6, 1993, pp. 10-12.

- [33] TSN, February 23, 1995, pp. 3-4.
- [34] *People v. Abejuela*, 375 SCRA 236, January 30, 2002; *People v. Basquez*, 418 Phil. 426, September 27, 2001; *People v. Gailo*, 375 Phil. 202, October 13, 1999; *People v. Oliva*, 368 SCRA 210, October 25, 2001.
- [35] *People v. Basquez*, *supra*; *People v. Deleverio*, 352 Phil. 382, April 24, 1998.
- [36] *People v. Fortich*, 346 Phil. 596, November 13, 1997; *People v. Malabago*, 338 Phil. 177, April 18, 1997.
- [37] *People v. Balmoria*, 351 Phil. 188, March 20, 1998; *People v. Baydo*, 273 SCRA 526, June 17, 1997; *People v. Datun*, 338 Phil. 884, May 7, 1997; *People v. Apongan*, 337 Phil. 393, April 4, 1997; *People v. Caritativo*, 326 Phil. 1, April 1, 1996.
- [38] *People v. Lovedorial*, 349 SCRA 402, January 17, 2001; *People v. Enriquez*, 354 Phil. 659, July 20, 1998.
- [39] *People v. Sansaet*, 376 SCRA 426, February 6, 2002; *People v. Jose*, 381 Phil. 207, January 31, 2000; *People v. Orbita*, 379 Phil. 334, January 19, 2000.
- [40] *People v. Lachica*, 382 SCRA 162, May 9, 2002; *People v. Sansaet*, *supra*; *People v. Cuenca*, 375 SCRA 119, January 29, 2002.
- [41] *People v. Hofileña*, 389 Phil. 553, June 22, 2000; *People v. Legaspi*, 387 Phil. 108, April 27, 2000; *People v. Llanes*, 381 Phil. 733, February 4, 2000; *People v. Rendoque*, 379 Phil. 671, January 20, 2000.
- [42] TSN, May 15, 1997, p. 5.
- [43] *Id.*, pp. 7-9.
- [44] *Id.*, pp. 9-10.
- [45] TSN, September 1, 1999, p. 5.
- [46] *People v. Matugas*, 377 SCRA 434, February 20, 2002; *People v. Munta*, 371 SCRA 208, November 29, 2001; *People v. Honra Jr.*, 341 SCRA 110, September 26, 2000.
- [47] *People v. Munta*, *supra*; *People v. Honra Jr.*, *supra*; *People v. Quiñanola*, 366 Phil. 390, May 5, 1999.
- [48] *People v. Banguis*, 353 Phil. 480, June 26, 1998.
- [49] *People v. Bumidang*, 346 SCRA 807, December 4, 2000; *People v. Gabris*, 328 Phil. 184, July 11, 1996.
- [50] *People v. De Leon*, *supra*; *People v. Mendoza*, 369 SCRA 268, November 16, 2001.
- [51] *People v. Jalosjos*, 369 SCRA 179, November 16, 2001; *People v. De la Cruz*, 313 SCRA 189, August 26, 1999; *People v. Ibalang*, 350 Phil. 22, February 24, 1998.
- [52] *People v. De Leon*, *supra*.
- [53] *People v. Garcia*, 381 SCRA 722, May 7, 2002.
- [54] TSN, May 4, 1993, pp. 6-7.
- [55] 321 Phil. 279, December 6, 1995.
- [56] *Id.*, p. 320.
- [57] *Ibid.*, per Regalado, J.

- [58] Exhibits "A" and "B" for the prosecution; records, Vol. VII, pp. 1-2.
- [59] Article 266-A of the Revised Penal Code.
- [60] Article 266-B (6) of the Revised Penal Code.
- [61] *People v. Mercado*, 419 Phil. 534, October 12, 2001; *People v. Tolentino*, 352 SCRA 228, February 19, 2001; *People v. Perez*, 366 Phil. 741, May 19, 1999.
- [62] TSN, July 6, 1993, p. 10.
- [63] *Id.*, p. 11.
- [64] *Ibid.*
- [65] *Ibid.*
- [66] TSN, November 24, 1994, p. 21.
- [67] TSN, July 6, 1993, p. 12.
- [68] TSN, November 15, 1995, pp. 6-7.
- [69] TSN, July 6, 1993, p. 16.
- [70] *People v. De Leon*, *supra*; *People v. Bejo*, 376 SCRA 651, February 13, 2002; *People v. Templa*, 415 Phil. 523, August 16, 2001.
- [71] *People v. Gutierrez*, 379 SCRA 395, March 18, 2002; *People v. Cantuba*, 379 SCRA 41, March 12, 2002; *People v. Campomanes*, 376 SCRA 307, February 6, 2002; *People v. Dy*, 375 SCRA 15, January 29, 2002; *People v. Carbonell*, 418 Phil. 533, September 28, 2001.
- [72] *People v. Dumalahay*, 380 SCRA 37, April 2, 2002; *People v. Drew*, 371 SCRA 279, December 3, 2001; *People v. Medios*, 371 SCRA 120, November 29, 2001.
- [73] *People v. Visaya*, 352 SCRA 713, February 26, 2001.
- [74] TSN, July 3, 1991, pp. 5-6; TSN, October 10, 1991, pp. 4-5; TSN, July 6, 1993, pp. 5-8.
- [75] TSN, July 3, 1991, pp. 6-8; TSN, July 6, 1993, p. 8.
- [76] TSN, July 3, 1991, pp. 11-13.
- [77] *Id.*, p. 12.
- [78] TSN, July 6, 1993, pp. 10-11.
- [79] *People v. Sabadao*, 344 SCRA 432, October 30, 2000.
- [80] *Estrada v. Sandiganbayan*, 377 SCRA 538, February 26, 2002.
- [81] Paragraph 2 of Article 8 of the Revised Penal Code.
- [82] *People v. Appegu*, 379 SCRA 703, April 1, 2002; *People v. Quitlong*, 354 Phil. 372, July 10, 1998.
- [83] *Estrada v. Sandiganbayan*, *supra*.
- [84] *People v. Garcia*, 378 SCRA 266, February 28, 2002.

[85] TSN, July 3, 1991, pp. 5-6; TSN, October 10, 1999, p. 4; TSN, July 6, 1993, pp. 6-7.

[86] *People v. Ablaneda*, 357 SCRA 479, April 30, 2001.

[87] Regalado, *Criminal Law Conspectus* (2000 ed.), p. 620; citing *U.S. v. De Vivar*, 29 Phil. 451, February 11, 1915.

[88] *People v. Garcia*, *supra* at note 88; *People v. Ablaneda*, *supra*; *People v. De Lara*, 389 Phil. 756, June 27, 2000.

[89] *People v. Las Piñas Jr.*, 377 SCRA 377, February 20, 2002; *People v. Rondero*, 378 Phil. 123, December 9, 1999.

[90] *Ibid.*

[91] *People v. Garcia*, *supra* at note 88.

[92] *Ibid.*

[93] *People v. Fortich*, *supra*; *People v. Julian*, 337 Phil. 411, April 4, 1997.

[94] *Ibid.*

[95] Article 335 of the Revised Penal Code.

[96] *People v. Lacanieta*, *supra*; *People v. Bañago*, 368 Phil. 728, June 29, 1999.

[97] *People v. Garcia*, *supra* at note 88; *People v. Velasquez*, 345 SCRA 728, November 23, 2000; *People v. Lacanieta*, *supra*.

[98] *People v. Amaquin*, 377 SCRA 362, February 20, 2002.

[99] *People v. Villanueva*, GR Nos. 146464-67, November 12, 2002; *People v. Barcelon Jr.*, 389 SCRA 556, September 24, 2002; *People v. Catubig*, 416 Phil. 102, August 23, 2001.

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