

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERMONETTE JOY FORTICH AND RUDY GAID,
ACCUSED-APPELLANTS.**

G.R. Nos. 80399-404. November 13, 1997

Ponente: ROMERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-80399-404/>

ROMERO, J.:

Accused-appellants Permonette Joy Fortich and Rudy Gaid were each charged with two counts of forcible abduction with rape,[1] one count of robbery with frustrated homicide[2] and one count of robbery.[3]

I. In Criminal Case No. 3809 - Forcible Abduction with Rape

“That on or about March 31, 1983 in the evening, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with violence and intimidation, and with the use of an unlicensed firearm, conspiring, confederating together with one Rudy Gaid alias Boy Gaid, who is presently at large, and mutually helping one another, did then and there wilfully, unlawfully and feloniously abduct the herein complainant, Marilou Nobleza by then and there taking and carrying her away with her sister, Maritess Nobleza, and loading said complainant on board a stolen pick-up, against her will and consent and with lewd designs, and brought her from Alta Tierra, Carmen Hill, this city, to Malasag, this city, and while at Malasag, did then and there wilfully, unlawfully and feloniously have carnal knowledge (by accused Permonette Joy Fortich) of the herein complainant, against her will and consent, to her great damage and prejudice.

Contrary to Article 342 in relation to Article 335 of the Revised Penal Code.”

II. In Criminal Case No. 3877 - Forcible Abduction with Rape

“That on or about March 31, 1983, in the evening, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with violence and intimidation and with the use of an unlicensed firearm, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously abduct the complainant Maritess Nobleza, by then and there taking and carrying her away with her sister, Marilou Nobleza, and loading in a stolen pick-up with her sister, against her will and consent and (sic) with lewd designs, and brought her from Alta Tierra, Carmen Hill, this City, to Malasag, this city, and while at Malasag, this city (sic) did then and there wilfully, unlawfully and feloniously by means of violence and intimidation have carnal knowledge (by accused Permonette Joy Fortich) of the complainant, against her will and consent, to her great damage and prejudice.

Contrary to Article 342 in relation to Article 335 of the Revised Penal Code.”

III. In Criminal Case No. 3878 - Forcible Abduction with Rape

“That on or about March 31, 1983, in the evening, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named (accused), with violence and intimidation, and with the use of an unlicensed firearm, and a motor vehicle, conspiring, confederating together and mutually helping one

another did then and there wilfully, unlawfully and feloniously abduct the complainant Maritess Nobleza, by then and there taking and carrying her away with her sister, Marilou Nobleza, and loading in a stolen pick-up with her sister, against her will and consent and with lewd designs, and brought her from Alta Tierra, Carmen Hill, this city, to Malasag, this city, and while at Malasag, this city (sic), did then and there wilfully, unlawfully and feloniously by means of violence and intimidation have carnal knowledge (by accused Rudy Gaid alias Boy) of the said complainant, against her will and consent, to her great damage and prejudice.

Contrary to Article 342 in relation to Article 335 of the Revised Penal Code.”

IV. In Criminal Case No. 3896 - Forcible Abduction with Rape

“That on or about March 11, 1983 (sic), in the evening, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with violence and intimidation and with the use of an unlicensed firearm, and motor vehicle, conspiring, confederating together and mutually helping with (sic) one another, did then and there wilfully, unlawfully and feloniously abduct the complainant Marilou Nobleza, by then and there taking and carrying her away with her sister, Maritess Nobleza, and loading in a stolen pick-up with her sister, against her will and consent and with lewd designs, and brought her from Alta Tierra, Carmen Hill, this city to Malasag, this city (sic), and while at Malasag, this city, did then and there wilfully, unlawfully and feloniously by means by violence and intimidation have carnal knowledge (by accused Rudy Gaid alias ‘Boy’) of the complainant, against her will and consent, to her great damage and prejudice.

Contrary to Article 342 in relation to Article 335 of the Revised Penal Code.”

V. In Criminal Case No. 3977 - Robbery with Frustrated Homicide

“That on or about March 31, 1983, at Carmen Hill, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms, with violence and intimidation upon persons, with intent of gain and against the will of the owner thereof, conspiring, confederating together with one Rudy Gaid alias ‘Boy Gaid,’ and mutually helping one another, did then and there wilfully, unlawfully and feloniously take, rob and carry away a polo shirt, pants while being worn by Luis S. Tumang and a cash worth P160.00, a wrist watch (Elgin) worth P500.00, valued all in all in the total amount of P660.00, to the damage and prejudice of the said owner in the aforesaid sum; that on the occasion of the robbery and to enable them to facilitate the taking and robbing (sic) the offended party, and to carry out with ease the commission of the offense, accused Permonette Joy Fortich with intent to kill, did then and there wilfully, unlawfully and feloniously attacked and mauled the said Luis S. Tumang, struck and hit him with a firearm, thereby inflicting the following injuries, to wit: fracture depressed type left perietat (sic) bone; contusion (sic) hematoma left temporal area; abrasion behind left ear; multiple linear abrasion both thigh and leg, which ordinarily would cause the death of the said offended party, thus performing all the acts of execution which would produce the crime of Homicide, as a consequence, but nevertheless, did not produce it by reason of some cause independent of his will, that is, by the timely and able medical attendance rendered to the offended party which prevented his death.

Contrary to Article 294 in relation to Article 249 and Article 6 of the Revised Penal Code.”

VI. In Criminal Case No. 4162 - Robbery

“That on or about March 31, 1983, more or less 10:30 in the evening at Carmen Hill, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously with intent of gain by means of violence and intimidation on the person take, steal and carry away polo shirt and pants while being worn by one Rolly (I)mperio and a wallet (sic) contained (sic) P85.00 in cash, who was at the same time attacked and beaten up by the said accused, inflicting upon him physical

injuries, to wit: Laceration of parietal area, 2 cm. in length, to the damage and prejudice of the said offended party.

Contrary to Article 294 of the Revised Penal Code.”

Upon arraignment, accused-appellants pleaded not guilty to all the charges.

On November 25, 1983, the six criminal cases, upon agreement of the prosecution and the defense, were consolidated and tried jointly.

The evidence for the prosecution elicited the following facts:

On March 31, 1983, at about 8:00 o'clock in the evening, after attending mass at St. Augustine Church, Cagayan de Oro City, sisters Marilou and Maritess Nobleza, together with their friends Rolly Imperio and Luis Tumang, proceeded to Alta Tierra Hotel in Carmen Hill using an Isuzu pick-up owned by the latter's mother. After a while the group decided to go home. Suddenly, two men armed with handguns who were later identified as appellants emerged from the rear end of the vehicle and fired a single shot which hit the left side of the pick-up. They introduced themselves as members of the New People's Army (NPA) and ordered the sisters to get inside the vehicle while Imperio and Tumang were instructed to strip.

Gaid thumped Imperio on the head with a .38 caliber revolver causing him to fall down, while Tumang was hit several times by Fortich in various parts of the body and momentarily lost consciousness. Tumang was divested of his wallet containing one hundred sixty pesos (P160.00) in cash, five U.S. dollars (P70.00), six Saudi Arabian Riyals (P30.42), one 12K gold wristwatch worth P500.00, pants valued at P140.00, and shoes worth P125.00. All of these items were not recovered.[4] Imperio, on the other hand, was stripped of his pants valued at P135.00, a wallet worth P45.00 containing P85.00 in cash, a pair of shoes, and one t-shirt.[5]

Appellants drove the pick-up, with Marilou and Maritess at the back seat, towards Acuña Beach some ten kilometers away from the city, but found it to be closed for the night. While traversing the highway leading to Barangay Puerto, appellants spotted a military checkpoint along the highway, made a hasty U-turn, and returned to the city. All the time, the sisters were consistently threatened with summary execution. Marilou pleaded for their freedom and told them to just take the pick-up. The plea, however, fell on deaf ears. Appellants detoured and entered a dirt road leading to Malasag where they parked the vehicle. At this juncture, Gaid had transferred to the backseat with Marilou while Maritess was made to sit up in front with Fortich. Gaid poked his gun at the right side of Marilou's neck and ordered her to remove her pants under pain of death. Aware that she was biding her time, he himself removed her pants with the gun still pointed at her. She implored that she be spared but Gaid, who was obviously much stronger, forced her legs apart, positioned himself on top of her, kissed and fondled her, and succeeded in consummating his bestial act. Maritess, on the other hand, was ravaged by Fortich. Appellants switched victims twice before divesting them of their watches, a handbag containing P15.00 in cash, a shirt, toilet tissue and toothbrush, and the pick-up's stereo and tools. They then drove down the highway and left the sisters at a gasoline station some three kilometers from the city. Unable to contact the police, the victims proceeded to the Cagayan de Oro Medical Center (CMC) and submitted themselves to medical examination.

Meanwhile, soon after appellants left Carmen Hill with the two sisters, Imperio and Tumang ran to the City Hall and reported the robbery incident. Acting on this report, the police immediately scoured the city for the suspects but this proved unavailing. The victims proceeded to the Northern Mindanao Regional Training Hospital in Cagayan de Oro City where Imperio's injury was examined and treated.

Prosecution witness Jaime Rivera testified that appellants went to his house at about 4:00 o'clock in the morning of April 1, 1983, bringing with them a revolver and a bag containing a car stereo, watch and wallet. He was

apparently asked to sell the revolver for not less than P300.00, with a promise that he would receive a fifty percent commission. In the course of selling the firearm, he was apprehended by the police and detained at the City Hall for six days.

Police investigator Eulalio Rafesora of the Cagayan de Oro Integrated National Police (INP) testified that upon Fortich's arrest, the latter was apprised of his constitutional rights which he, however, expressly waived. Accordingly, on April 4, 1983, an interrogation conducted by the police ensued and statements elicited therein were reduced to writing and sworn to before another prosecution witness, Deputy City Clerk of Court Aurelio I. Zaldivar, who also reminded him of his rights.

Dr. Socrates Sabanal of CMC declared that he examined Marilou Nobleza and found her to be suffering from the following injuries, viz.: superficial abrasions (R) inner aspect, labia minora, hematoma, antero-medial aspect P/3 (R) thigh. He stated that the abrasions on the labia minora were caused by the forceful penetration of a penis into the vagina. As regards Maritess, Dr. Sabanal revealed the extent of her injuries suffered as "labial skin discoloration," probably caused by a penis or a finger.

CMC Medical Director Dr. Francisco L. Oh testified that he treated Luis Tumang for the following injuries, to wit: (1) fracture, depressed type left parietal bone; (2) contusion hematoma left temporal area; (3) abrasion behind left ear; and (4) multiple linear abrasions on both thighs and legs. A neuro-surgeon of CMC, a certain Dr. Valmores, advised Tumang to seek further treatment in another hospital as the head injury could have fatally affected the brain. Tumang was admitted at the Medical City General Hospital in Mandaluyong, Metro Manila, from April 7 to 16, 1983, under the care of Dr. Bienvenido B. Aldanese, incurring a total expense of P22,603.85.

Contrary to the foregoing facts, the defense relied on the uncorroborated testimonies of appellants.

Appellant Fortich, a 20-year old driver residing at Buenavista Village, Cagayan de Oro City, recounted that at about 8:30 in the evening of March 31, 1983, he left Barangay Gusa for the city and there met Gaid with whom he has applied for a driving job. He was invited to dinner and a few drinks at Gaid's house. After sometime, they allegedly got drunk and hied off to Carmen Hill to appreciate its cool and breezy atmosphere. Thereafter, a pick-up arrived from which a group of two men and two women alighted. They then laid a mat on the grass behind their vehicle. Appellants were ten meters away from them when suddenly the two men, piqued by their presence, furiously rushed towards them. Fortich allegedly defended himself by striking one of them with a flashlight causing the latter to fall down.

To escape the wrath of the two men, appellants drove the pick-up with the two sisters and headed towards Acuña beach which, however, was closed for the night. Fortich alleged that after conversing with the sisters for some time, the latter alighted at Marcos Bridge while Gaid drove him to his house in Patag.

Fortich denied, among other things, that he sexually violated Marilou or that he even possessed a firearm, as alleged by Tumang and Imperio. As regards the affidavit taken during the custodial investigation, he admitted that the signature appearing therein was his but the same was obtained through duress.

Appellant Gaid had a slightly different version of what transpired on March 31, 1983. He narrated that after consuming hard liquor, both of them proceeded to Carmen Hill. Upon reaching said place, they noticed a pick-up with a male and female inside and another couple at the open rear end of the vehicle. As the two pairs were allegedly caressing and kissing, they stood watching for almost thirty minutes. Later, the couple inside emerged from the vehicle and joined the other two at the back. All of them were naked and engaged in sexual congress on a mat lying on the grassy spot. The women, later identified as sisters Marilou and Maritess, noticed them and immediately grabbed their clothing and scampered inside the pick-up, while their male partners confronted the

appellants. A scuffle ensued. After throwing several punches, Gaid darted towards the pick-up and saw Fortich already seated on the driver's seat with the sisters at the back seat.

Fortich drove towards Acuña beach at Baloy. During the trip, Gaid chatted with Maritess who appeared to be an old acquaintance of his. Apparently, it was Maritess who urged them to proceed to Acuña beach. The sisters even drank bottles of beer and smoked three sticks of marijuana.

It was past midnight when they reached Acuña beach and after having gone through a horrible night, they decided to park the vehicle to rest. Fortich fell asleep while Maritess vomitted. When the latter felt better, Gaid drove the sisters to somewhere in Licoan and Fortich, to his house in Patag. While traversing the Patag-Carmen road, he observed that a police vehicle was following him. Alarmed, he hurriedly accelerated his speed. When he passed a military check-point, he was fired upon. Fortunately, only the rear portion of the vehicle was hit.

Gaid reached Kamarok, an interior barangay of Opol, at about 2:00 o'clock in the morning and repaired to the house of his mother-in-law Beatrice Rivera. He told his brother-in-law Jaime Rivera, a witness for the prosecution, the details of what allegedly transpired in the night. Two days thereafter, he slipped back into the city by passing through another town and resumed driving his passenger jeep.

In its decision dated August 15, 1984,[6] the trial court convicted appellants in the following manner:

“WHEREFORE, in view of all the foregoing consideration, the court(:)

(1) FINDS, in CRIMINAL CASE NO. 3977 both accused PERMONETTE JOY FORTICH and RUDY (Boy) GAID, guilty beyond reasonable doubt as principals, of the crime of simple ROBBERY as defined and penalized under Article 294, paragraph five (5) of the Revised Penal Code, with the mitigating circumstance of drunkenness, which is not habitual and not offset by any aggravating circumstance, and applying the INDETERMINATE SENTENCE LAW, hereby imposes upon each of them the indeterminate penalty of Four (4) Years and Two (2) Months of PRISION CORRECCIONAL, as minimum, to Six (6) Years, One (1) Month and Ten (10) Days, of PRISION MAYOR, as maximum, and to pay the costs; and to indemnify Luis S. Tumang, the amounts of One Thousand Twenty-Five (P1,025.42) Pesos and Forty-two Centavos, for the cash and articles stolen; and the total amount of Twenty Two Thousand Six Hundred Three Pesos and 85/100 (P22,603.85) for plane fare, hospitalization and medical expenses; and the further sum of P5,000.00, for moral damages. Accused shall be credited with the period of their preventive imprisonment. The home-made revolver .22 cal., (Exh. A) is hereby forfeited in favor of the Government;

(2) FINDS, in CRIMINAL CASE NO. 4162, both accused Permonette Joy Fortich and Rudy (Boy) Gaid, guilty beyond reasonable doubt, as principals of the crime of Simple ROBBERY, as defined and penalized under Article 294, paragraph five (5) of the Revised Penal Code, with the sole mitigating circumstance of drunkenness, which is not habitual, and not offset by any aggravating circumstance, and applying the Indeterminate Sentence Law, hereby imposes upon each of them the indeterminate penalty of Four (4) Years and Two (2) Months of PRISION CORRECCIONAL, as minimum, to Six (6) Years, One (1) Month and Ten (10) Days of PRISION MAYOR, as maximum; and to pay the costs; and to indemnify ROLLY IMPERIO the amount of Two Hundred Sixty Five (P265.00), value of the cash and articles stolen; and Two Thousand Pesos (P2,000.00) for moral damages. Accused shall be credited with the full period of their preventive imprisonment. The .22 caliber homemade Revolver (Exh. A) is hereby confiscated in favor of the Government; likewise, the ammunitions, Exhs. A-1 to A-8.

(3) FINDS, in CRIMINAL CASE NO. 3809, both accused PERMONETTE JOY FORTICH and RUDY (Boy) GAID guilty beyond reasonable doubt as principals of the crime of FORCIBLE ABDUCTION WITH RAPE, with the use of a deadly weapon as defined and penalized in Article 342, in relation to Article 335 of the Revised Penal Code, with the lone mitigating circumstance of drunkenness, which is not habitual and with no aggravating circumstance to offset the same, hereby imposes upon each of them the penalty of RECLUSION

PERPETUA; and to indemnify MARILOU NOBLEZA, the amount of Twenty Four (P24,000) Thousand Pesos; and the costs. The .22 cal. Revolver (Exh. A) is hereby forfeited in favor of the Government. Accused shall be credited with the period of their preventive imprisonment. Likewise, the ammunitions, Exhs. A-1 to A-8 are confiscated in favor of the government.

(4) FINDS, in CRIMINAL CASE NOS. (sic) 3896, that the crime herein charged is already included in the aforementioned Crim. Case No. 3809, hence the same is dismissed, with costs de oficio.

(5) FINDS, in CRIMINAL CASE NO. 3877, both accused PERMONETTE JOY FORTICH AND RUDY (Boy) GAID guilty beyond reasonable doubt as principals of the crime of FORCIBLE ABDUCTION, as defined and penalized under Article 342 of the Revised Penal Code, with the sole mitigating circumstance of drunkenness, which is not habitual, and with no aggravating circumstance to offset the same, and applying the Indeterminate Sentence Law, hereby imposes upon each of them the indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY, of PRISION MAYOR, as minimum, to TWELVE (12) YEARS and ONE (1) DAY OF RECLUSION TEMPORAL, as maximum; and to pay the costs; and to indemnify MARITESS NOBLEZA the amount of TWELVE THOUSAND (P12,000.00) Pesos. The Revolver (Exh. A) is forfeited in favor of the Government; likewise the ammunitions, Exhs. A-1 to A-8.

(6) FINDS, in CRIMINAL CASE NO. 3878, that the crime charged herein is already included in the aforementioned Criminal Case No. 3877, hence the same is hereby DISMISSED, with costs de oficio.

SO ORDERED.”[7]

From this judgment, appellants interposed the instant appeal, raising the following assignment of errors:

1. The trial court erred in admitting the extrajudicial confession of accused-appellant Permonette Joy Fortich despite the fact that it was taken in violation of his constitutional right to counsel.
2. The trial court erred in convicting herein accused-appellants despite failure of the prosecution to prove their guilt beyond reasonable doubt.”[8]

We find no reversible error impelling a reversal of the trial court’s decision.

We cannot sustain the argument for the defense that the extra-judicial confession of Fortich obtained without the assistance of counsel is inadmissible in evidence.

The doctrine that an uncounseled waiver of the right to counsel is not to be given legal effect was first pronounced on April 26, 1983, in *Morales v. Enrile*[9] and reiterated in *People v. Galit*[10] on March 20, 1985. While the *Morales-Galit* doctrine eventually became part of Section 12(1) of the 1987 Constitution, it affords no relief to appellants, for the requirements and restrictions outlined therein have no retroactive effect and do not affect waivers made prior to April 26, 1983.

In the instant case, the extra-judicial confession and waiver were executed on April 4, 1983. The trial court correctly admitted the same for “there was at that time no pronounced guidelines requiring that the waiver of counsel by accused can be properly made only with the presence and assistance of counsel.”[11] If indeed Fortich’s confession was extracted from him as a result of coercion by policemen at the police station, he could have informed Deputy Clerk of Court Zaldivar and his counsel Atty. Leo Roa of the maltreatment he suffered.

Thus, the Court has ruled that where one who has made a confession fails to present any evidence of compulsion or duress or violence on his person for purposes of extracting a confession; where he failed to complain to the officers who administered the oaths, such as the fiscal in this case; where he did not institute any criminal or administrative action for maltreatment against his alleged intimidators; where he did not have himself examined by a reputable physician to buttress his claim of maltreatment; and where the assailed confession is replete with

details which could not have been known to the police officers if they had merely concocted the confession, since the statements were inculpatory in character, the extrajudicial confession may be admitted, with the above circumstances being considered as factors indicative of voluntariness.[12] Accordingly, the extra-judicial confession and waiver voluntarily and intelligently made by Fortich are admissible in evidence.

Appellants anchor their defense solely on the denial of the charges imputed to them.

It is an established doctrine that the defense of denial cannot prevail over the positive identification of the accused.[13] The court is convinced that Marilou did recognize the physical features of her tormentors as she was in a supine position when appellants successively mounted her. "The victim's recognition of appellant as her attacker cannot be doubted for she had ample opportunity to see the face of the man who ravaged her during the carnal act." [14] She was as close to the appellants as was physically possible, for a man and a woman cannot be physically closer to each other than during a sexual act.[15] Marilou had ample opportunity to observe appellants while she was being terrorized and, subsequently raped. Thus, there is no reason to doubt the veracity of her statement where she declared that she recognized appellants as her transgressors. Moreover, the latter failed to show any reason why Marilou would impute such a serious charge against them. Needless to state, a "straightforward, clear and positive testimony, coupled with the absence of any motive to fabricate or to falsely implicate the accused, may be enough to convict the appellant." [16]

Aside from being positively identified, the different versions presented by appellants are contrary to ordinary human experience.

The following declaration of the trial court that the testimonies of appellants are incredulous is well taken.

"The claim of the accused that the departure from Alta Tierra, on the pick-up to Acuña beach was the idea of Maritess Nobleza does not inspire belief. Marilou testified that it was the idea of one of the two accused. The sisters, Marilou and Maritess, are single, presumably virgins, and absent contrary proof, (the accused having adduced none) are presumed to be modest and chaste in keeping with traditional Filipina disposition. The court cannot believe that in a gunshot-filled atmosphere, almost chameleon-like (-) the girls would transfer their promiscuous desires (if ever they were) from their erstwhile male companions (Tumang and Imperio) in a brief encounter and stoically abandon the two companions and in turn seek pleasure somewhere with new partners who had earlier allegedly come upon them in the act of making love on a mat behind the pick-up. The court cannot believe that Maritess and Marilou - sisters as they are - would be so promiscuous and profligately (sic) libidinous that they would make love with two male companions, in the presence, and within sight of each other." [17]

It should be noted that Maritess Nobleza, for unknown reasons, did not testify for the prosecution. Marilou's assertion that her sister was simultaneously violated, however, supports a finding of appellants' guilt. Time and again, the Court has declared that "in crimes of rape, conviction or acquittal virtually depends entirely on the credibility of the victim's testimony because of the fact that usually only the participant can testify to its occurrence." [18] The case at bar presents an unlikely situation wherein two sisters were simultaneously ravaged in the presence of, and in plain view, of the other. Accordingly, the failure of one to declare in court her ordeal may be adequately proved by the other. In light of this factual setting, there is, therefore, no doubt that Maritess was likewise a victim of multiple rapes.

As regards Criminal Cases No. 3977 and 4162 for robbery with frustrated homicide and robbery, respectively, Article 293 of the Revised Penal Code provides:

"Article 293. Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person or using force upon anything shall be guilty of robbery."

The trial court, however, erred in designating the crime committed as robbery with frustrated homicide. There is no such crime.[19] There should have been two separate informations: one for robbery and another for frustrated homicide. Notwithstanding the erroneous charge in the information, the Court finds no reason to overturn the conviction of appellants for the crime of simple robbery.

The asportation by appellants of the personal properties was done by means of violence against or intimidation upon the persons of Imperio and Tumang. It appears further that Imperio suffered cranial injury which allegedly required three stitches to repair. Inasmuch as the doctor who issued the medical certificate did not testify thereon, said certificate is hearsay evidence as to the nature of the injuries inflicted and, therefore, inadmissible in evidence. In *People v. Pesena*,[20] it was ruled that when there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance, it is only slight physical injuries.

As regards the injuries suffered by Tumang, we subscribe to the finding of the lower court that, notwithstanding the non-presentation of Dr. Aldanese of the Medical City General Hospital at the trial, Tumang's credible testimony bolstered by documentary evidence, such as progress payments and professional fees for neurological management and craniotomy excision of depressed fracture, proved that the latter suffered less serious physical injuries, as defined in Article 265[21] of the Revised Penal Code.

With respect to the charge of frustrated homicide in Criminal Case No. 3977, the trial court correctly observed that the element of intent to kill was not present. It must be stressed that while Fortich was armed with a handgun, he never shot Tumang but merely hit him on the head with it. In *Mondragon v. People*,[22] it was held that the intent to kill being an essential element of the offense of frustrated or attempted homicide, said element must be proved by clear and convincing evidence and with the same degree of certainty as is required of the other elements of the crime. The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt.

The physical injuries inflicted upon Imperio and Tumang by reason of or on the occasion of the robbery are penalized under Article 294, paragraph 5 of the Revised Penal Code which provides:

“Art. 294. Robbery with violence against or intimidation of persons. - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer.

x x x x x x x x

5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases.”[23]

The trial court correctly disregarded the aggravating circumstances of nighttime, uninhabited place, and use of a motor vehicle. The mitigating circumstance of intoxication, however, was erroneously appreciated in favor of both appellants.

Nocturnity is an aggravating circumstance when it is deliberately sought to prevent the accused from being recognized or to ensure his unmolested escape.[24] There must be proof that this was intentionally sought to insure the commission of the crime and that appellants took advantage thereof. In the instant case, there is paucity of evidence that the peculiar advantage of nighttime was purposely and deliberately sought by the accused; “the fact that the offense was committed at night will not suffice to sustain nocturnidad.”[25]

Neither can the use of a motor vehicle be appreciated as an aggravating circumstance. In the case at bar, the offenses of robbery and forcible abduction with rape could have been effected even without the aid of a motor vehicle. In the case of *People v. Mil*,[26] it was held that use of a motor vehicle is not aggravating where it was not used to facilitate the crime or that the crime could not have been committed without it. In *People v.*

Garcia,[27] the use of motor vehicle was deemed unaggravating if its use was merely incidental and was not purposely sought to facilitate the commission of the offense or to render the escape of the offender easier and his apprehension difficult.

As regards the aggravating circumstance of uninhabited place, the records do not show that appellants actually sought an isolated place to better execute their purpose. The evidence needed to support its application are insufficient. Accordingly, this circumstance should not be considered against appellants.

The lower court, however, erred in appreciating intoxication as a generic mitigating circumstance. Under the Revised Penal Code, intoxication is mitigating when it is not habitual or delinquent, that is, not subsequent to the plan to commit the crime. In *People v. Apduhan, Jr.*, [28] it was held that to be mitigating, the accused's state of intoxication must be proved. Once intoxication is established by satisfactory evidence, in the absence of proof to the contrary, it is presumed to be non-habitual or unintentional. In the case at bar, appellants merely alleged that when the offenses were committed, they were already drunk. "This self-serving statement stands uncorroborated. Obviously, it is devoid of any probative value." [29]

The trial court found ample evidence to support a finding of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. [30] Direct proof is not essential to show conspiracy as its existence could be inferred from the conduct of the accused before, during and after the commission of the crime, showing that the accused had acted in unison with each other, evincing a common purpose or design. [31] It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. [32] Conviction is proper upon evidence showing that appellants acted in concert, each of them doing his part in the commission of the offense. In *People v. Gundran*, [33] it was held that in such a case, the act of one becomes the act of all and each of the accused will thereby be deemed equally guilty of the crime committed.

In the case at bar, the evidence revealed that appellants arrived together at Carmen Hill and, at gunpoint, forcibly took Imperio and Tumang's personal belongings and fled with the sisters on board the stolen pick-up. After fleeing, appellants successively abused Marilou and Maritess inside the vehicle. These acts manifestly disclose their "joint purpose and design, concerted action and community of interest." [34]

The Court is, therefore, convinced that appellants' criminal culpability of every charge was proved beyond reasonable doubt.

In the case of *People v. Julian*, [35] however, it was ruled that when the first act of rape was committed by appellant, the complex crime of forcible abduction with rape was then consummated. Any subsequent acts of intercourse would be only separate acts of rape and can no longer be considered separate complex crimes of forcible abduction with rape. Accordingly, a modification of trial court's decision is in order.

WHEREFORE, the decision of the trial court dated August 15, 1984 is hereby MODIFIED as follows:

In Criminal Case No. 3809: Forcible Abduction with Rape

Appellants Permonette Joy Fortich and Rudy Gaid are hereby convicted of the crime of forcible abduction with rape and, likewise, of three counts of rape as defined and penalized in Article 342, in relation to Article 335, of the Revised Penal Code. Accordingly, appellants shall each suffer four terms of reclusion perpetua. In line with recent jurisprudence, [36] appellants are further ordered to indemnify Marilou Nobleza in the amount of P200,000.00 each as moral damages.

In Criminal Case No. 3877: Forcible Abduction with Rape

Appellants Permonette Joy Fortich and Rudy Gaid are hereby convicted of the crime of forcible abduction with rape and, likewise, of three counts of rape as defined and penalized in Article 342, in relation to Article 335, of the Revised Penal Code. Accordingly, appellants shall each suffer four terms of reclusion perpetua. In line with recent jurisprudence, appellants are further ordered to indemnify Maritess Nobleza in the amount of P200,000.00 each as moral damages.

In Criminal Cases No. 3977 and 4162: Robbery

Appellants Permonette Joy Fortich and Rudy Gaid are hereby convicted of the crime of simple robbery as defined and penalized under Article 294, paragraph 5 of the Revised Penal Code. Applying the Indeterminate Sentence Law, appellants shall each suffer twice the penalty of four (4) years and two (2) months of prision correccional, as minimum, to six (6) years, one (1) month and ten (10) days, of prision mayor and shall solidarily indemnify Luis S. Tumang in the amount of (1) P1,025.42 for the cash and articles stolen; (2) the aggregate amount of P22,603.85 for the plane fare and medical expenses; (3) and the further sum of P10,000.00 as moral damages. Appellants shall likewise pay Rolly Imperio the amount of P265.00 for the cash and articles stolen and P10,000.00 as moral damages.

The .22 caliber revolver and ammunitions are FORFEITED in favor of the Government. Costs against appellants. SO ORDERED.

Melo, Francisco, and Panganiban, JJ., concur.

Narvasa, C.J., (Chairman), on leave.

[1] Case No. Complainant Accused

3809 Marilou Nobleza Permonette Joy Fortich

3877 Maritess Nobleza Permonette Joy Fortich

3878 Maritess Nobleza Rudy Gaid

3896 Marilou Nobleza Rudy Gaid

[2] Case No. Complainant Accused

3977 Luis Tumang Rudy Gaid

[3] Case No. Complainant Accused

4162 Rolly Imperio Permonette Joy Fortich

[4] TSN, February 17, 1984, pp. 144-152.

[5] Rollo, p. 75.

[6] Penned by Judge Senen C. Peñaranda.

[7] Rollo, pp. 89-91.

[8] Appellant's Brief, p. 1, Rollo, p. 152.

[9] 121 SCRA 538 (1983).**[10] 135 SCRA 465 (1985).**

[11] *People v. Nabaluna*, 142 SCRA 446 (1986).

[12] *People v. Damaso*, 190 SCRA 595, 609 (1990); *Belvis III v. Court of Appeals*, 167 SCRA 324 (1988); *People v. Villanueva*, 128 SCRA 488, 501 (1984); *People v. Balane*, 123 SCRA 614 (1983); *People v. Mada-I-Santalani*, 93 SCRA 317 (1979); *People v. Feliciano*, 58 SCRA 383, 391 (1974); *People v. Paras*, 56 SCRA 248, 262 (1974).

[13] *People v. Guamos*, 241 SCRA 528 (1995).

[14] *People v. Esquila*, 254 SCRA 140 (1996).

[15] *People v. Castañeda*, 252 SCRA 247 (1996).

[16] *People v. Malabago*, G.R. No. 108613, April 18, 1997.

[17] *Rollo*, p. 85.

[18] *People v. Malabago*, G.R. No. 108613, April 18, 1997; *People v. Ching*, 240 SCRA 267 (1995); *People v. Rivera*, 242 SCRA 26 (1995); *People v. Bulaybulay*, 248 SCRA 601 (1995).

[19] *People v. Lagmay*, 215 SCRA 218 (1992).

[20] 81 Phil. 398.

[21] “Art. 265. Less serious physical injuries. - Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of arresto mayor.

Whenever less serious physical injuries shall have been inflicted with the manifest intent to insult or offend the injured person, or under circumstances adding ignominy to the offense, in addition to the penalty of arresto mayor, a fine not exceeding 500 pesos shall be imposed.

Any less serious physical injuries inflicted upon the offender’s parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by prision correccional in its minimum and medium periods, provided that, in the case of persons in authority, the deed does not constitute the crime of assault upon such person.”

[22] 17 SCRA 476 (1966), citing *People v. Villanueva*, 51 Phil. 488.

[23] The duration of which penalty is four (4) years, two (2) months and one (1) day to ten (10) years.

[24] *People v. Baring*, 187 SCRA 629 (1990).

[25] *People v. Boyles*, 11 SCRA 88 (1964).

[26] 92 SCRA 89 (1979).

[27] 105 SCRA 325 (1981).

[28] 24 SCRA 798 (1968).

[29] People v. Noble, 77 Phil. 93.

[30] Article 8, Revised Penal Code.

[31] People v. Bergonia, et al., G.R. No. 89369, June 9, 1997.

[32] People v. Quinao, G.R. No. 108454, March 13, 1997.

[33] 228 SCRA 583 (1993).

[34] People v. Datun, G.R. No. 118080, May 7, 1997.

[35] G.R. No. 113692-93, April 4, 1997.

[36] People v. Malabago, G.R. No. 108693, April 18, 1997; People v. Butron, G.R. No. 112986, May 7, 1997; People v. Romua, G.R. No. 126175, May 29, 1997.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.