

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NEMESIO BACALSO, ACCUSED-APPELLANT.

G.R. Nos. 94531-32. June 22, 1992

Ponente: MEDIALDEA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-94531-32/>

MEDIALDEA, J.:

Accused-appellant Nemesio Bacalso was charged before the Regional Trial Court of Bohol (Tagbilaran) with two counts of rape in two (2) separate informations.

Criminal Case No. 5880, the information alleged:

"That on or about the 19th day of February, 1989, at Barangay Montesuerte, Municipality of Carmen, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, then armed with a bolo, entered the house of the victim by fraudulently representing himself to be a military officer and, once inside, forcibly carried the victim, one Bernalda Bautista, and brought her to a nearby farm hut belonging to Mr. Yulie Sipsip, and by means of force and intimidation by pointing a bolo to the offended party, did then and there wilfully, unlawfully, and feloniously have sexual intercourse with her against the will and consent of the latter; to the damage and prejudice of the offended party in an amount to be proved during the trial of this case.

"Acts committed contrary to the provisions of Article 335 of the Revised Penal Code, as Amended by RA Nos. 2632 and 4111 in relation to Article 14 Nos. 14 and 15 with the aggravating circumstances of craft and fraud which the accused employed and taking advantage of superior strength. (p. 5, Rollo)

Criminal Case No. 5881, the information alleged:

"That on or about the 19th day of February, 1989, at Barangay Monte Suerte, municipality of Carmen, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, then armed with a bolo, entered the house of the victim by fraudulently representing himself to be a military officer and, once inside, forcibly carried the victim, one Bernalda Bautista, and brought her to a nearby cassava plantation, and by means of force and intimidation by pointing a bolo to the offended party, did then and there wilfully, unlawfully and feloniously have sexual intercourse with her against the will and consent of the latter; to the damage and prejudice of the offended party in an amount to be proved during the trial of this case.

"Acts committed contrary to the provisions of Article 335 of the Revised Penal Code, as Amended by RA Nos. 2632 and 4111 in relation to Article 14 Nos. 14 and 15 with the aggravating circumstance of craft and fraud which the accused employed and taking advantage of superior strength." (p. 7, Rollo).

The prosecution, through its witnesses, showed that at about ten o'clock in the evening of February 19, 1989, the accused forcibly tried to enter the house of the complainant who was then living with her mother, Mrs. Concepcion Qui. Accused-appellant cut the nylon rope on the door of Mrs. Qui's house which served as its lock. At this point, the dogs barked. Mrs. Qui woke up and prevented the accused from going upstairs but her efforts proved futile. The accused threatened her with a bolo, the tip of which even hit her forehead. He succeeded in

going upstairs to the room where the victim, Bernalda Bautista (also called Vicky) was staying with her seven month old son. He dragged Vicky out of the house and brought her to a cassava plantation where he succeeded in having sexual intercourse with the victim two times at an interval of one minute. From the cassava plantation, the accused-appellant brought the victim to the house of Feliciano Segueria. He requested Segueria's permission for both of them to pass the night in his house. He also borrowed a dress from Segueria's wife for Vicky whose clothes were muddy and drenched since it was raining hard that night. According to Segueria, the accused-appellant told him that they had sexual intercourse in the cassava plantation. Vicky, however, secretly told him that the accused-appellant kidnapped her. Segueria advised her to just keep silent and just follow the accused because they will follow them later (presumably to rescue her). Soon after, the accused and the victim went down from Segueria's house and proceeded to a hut owned by Yulie Sipsip. There the accused again succeeded in having sexual intercourse with her.

The victim's mother, Mrs. Concepcion Qui testified that when the accused-appellant succeeded in dragging the victim from her house, she immediately sought the assistance of her neighbors. She requested her neighbor Delfin Betinol to inform the barangay captain, Bonifacio Lafranco. The latter then formed a search team which passed by Segueria's house. They proceeded to the nipa hut owned by Yulie Sipsip. There, they found the accused naked, holding the bolo with one hand and the victim with the other hand. The barangay captain announced their presence and Segueria commanded the victim to get away from accused-appellant. The accused tried to resist but later pleaded to dress up first. Thereafter, he then surrendered.

The victim testified that she struggled against the accused but could not escape because she was threatened by the accused with the bolo he was carrying. She did not shout because the rain was heavy and the sound of the rain falling on the roof of the house was loud.

The accused-appellant testified solely for his defense. He claimed that he and the victim were sweethearts. That being sweethearts, Vicky in fact later gave him a panty with the name "Vicky" embroidered in it and a handkerchief which he presented as exhibits. On that night of February 19, 1988, he claimed that Vicky invited him for dinner as advance celebration for her child's birthday. Vicky's mother, her sister and her brother shared dinner with them. They conversed with each other for about half an hour. Because of the heavy rain, Vicky told him to stay and sleep in the sala. She also told him that when everyone would have gone asleep, she will come to him and ask him to transfer to her bedroom upstairs. This she did. On that night, they slept together. When her mother learned of this, her mother kicked Vicky. The accused went downstairs but Vicky followed him. Vicky decided to go with the accused when her mother drove her away.

After trial, the accused-appellant was found guilty of the complex crime of forcible abduction with rape and sentenced to suffer the penalty of reclusion perpetua and to pay the victim P20,000.00 as moral damages. The dispositive portion of the decision reads:

"WHEREFORE, foregoing considered, the court finds accused Nemesis Bacalso alias Mesio GUILTY beyond reasonable doubt of the complex crime of Abduction with rape and hereby imposes the penalty of Reclusion Perpetua and to pay the victim moral damages in the amount of P20,000.00 plus costs of the proceedings and reasonable actual expenses of P2,000.00.

"x x x." (p. 71, Rollo)

From the judgment of conviction, accused-appellant filed this appeal. In his brief, he presented the following assignment of errors.

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND CONFLICTING TESTIMONIES OF PRIVATE COMPLAINANT AND HER MOTHER, MRS. CONCEPCION CUI.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT. (p. 44, Rollo)

We find no reason to reverse the decision of the trial court which relied mainly on the testimonies of the complainant, her mother and Feliciano Segueria in dismissing the theory of the defense. The task of assessing the credibility of the witnesses lies on the trial court which had the opportunity of observing the demeanor and manner of testifying of the witness. And, unless the trial court had overlooked or misconstrued some material facts which, if considered, would affect the result of the case, this Court is bound to affirm the factual findings of the trial court. We are not persuaded by the theory of the defense that the accused-appellant and the victim were sweethearts. Such theory was clearly a fabrication resorted to by him to save himself. Nobody in the community corroborated his claim leaving him alone to testify for himself.

We agree with the verdict of the trial court which convicted the accused-appellant on the following evidence testified to by the prosecution witnesses as against that of the defense witnesses:

1. The testimony of the complainant that she was abducted and raped by the accused-appellant was corroborated by two other witnesses. First, Feliciano Segueria, testified that the accused-appellant together with the complainant arrived at his house on that night and the former requested for permission for both of them to pass the night there. The complainant however, secretly told him that she was kidnapped and raped by the accused. To this, Segueria advised her to keep silent and just follow the wishes of her captor and promised her that they will follow them later. This testimony of Segueria was confirmed by the barangay captain. Second, the barangay captain also testified that when he was informed of the abduction of Vicky, they immediately formed a search and rescue team. The team passed by Segueria's house. Segueria informed them of what transpired in his house. Then Segueria joined the team and they proceeded to the nipa hut owned by Yulie Sipsip where they found the accused-appellant and the complainant. The testimonies of these two witnesses corroborated the claim of complainant. They were spontaneous, direct and had all the marks of truth. They were consistent in all the material details.

2. The testimony of complainant's mother that the accused-appellant threatened her while she was struggling to prevent him from forcibly taking her daughter and that he struck her with his bolo in her forehead was confirmed by the injuries she sustained.

3. The absence of spermatozoa was explained by the doctor who examined the complainant. Said doctor testified that it could have been washed out when the complainant washed her vagina. But, absence of spermatozoa does not negate rape. What is essential is that there was penetration which was testified to by the complainant.

The doctor could not confirm whether there was really penetration. No doctor can because the complainant was, as testified to by the examining doctor, oviparous. It is a condition in which the vagina which had just delivered a baby leaves the vaginal barrel loose. The entry of a penis will leave no significant trace.

4. The complainant is small and frail. She is an uneducated barrio lass. Pitted against an ex-convict, she cannot be expected to put up a struggle strong enough to overcome the strength of the accused-appellant. Moreover, the

accused-appellant was holding a bolo from the time he forcibly entered the house of Mrs. Qui until the search team caught up with them.

5. The version of the accused is not believable. He claimed that they were sweethearts - a claim which only he was aware of. It cannot be believed that the complainant, an uneducated, married barrio lass would agree to become the sweetheart of an ex-convict. It is also very unlikely that nobody in the community knew that they were lovers if in fact it was the truth. The accused-appellant should have strengthened his defense with the testimony of another member of the community. It is true that he presented as exhibits a panty with name "Vicky" embroidered in it and a handkerchief allegedly given by the complainant. Such evidence does not convincingly show that these items were indeed Vicky's or that even if they were Vicky's personal effects these were voluntarily given to the accused-appellant. Moreover, these pieces of evidence were not sufficient to overcome the very strong evidence of the prosecution.

The accused-appellant cited inconsistencies in certain portions of the testimonies of the prosecution witnesses and prayed that his conviction be reversed on these grounds. We note however, that the inconsistencies committed by the prosecution witnesses dealt on minor matters which do not render their entire testimonies incredible. Minor inconsistencies in the testimonies of witnesses are natural and even enhance their credibility as witnesses as these discrepancies indicate that the responses given were honest and unrehearsed. They even tend to show sincerity and absence of connivance (*People v. de los Reyes y Pustigo*, G.R. No. 85771, November 19, 1991).

The accused-appellant was charged before the trial court with two counts of rape. Both informations, however, sufficiently alleged that before the complainant was raped, she was forcibly abducted from her house and brought to a cassava plantation where the accused had sexual intercourse with her. Taking all these circumstances into consideration, the trial court convicted accused-appellant with the complex crime of abduction with rape. This was correct. It is not the name of the offense in the caption that controls but the allegations in the body of the information sufficiently describing the offense and its elements. Where there is a disparity between the caption and the body, the latter prevails. Article 342 of the Revised Penal Code defines and penalizes the crime of forcible abduction. The elements are: 1) that the person abducted is any woman, regardless of her age, civil status or reputation; 2) that the abduction is against her will; and 3) that the abduction is with lewd designs. Rape, on the other hand is committed when an offender had carnal knowledge with a woman 1) by force or intimidation or 2) when the woman is deprived of reason or is unconscious or 3) when the woman is under twelve years of age. The carnal knowledge in the instant case was committed through the first means, that is, through force and intimidation. The prosecution proved beyond reasonable doubt that the accused-appellant succeeded in forcibly abducting the complainant with lewd designs and in having sexual intercourse with her against her will three (3) times. Twice while they were in the cassava plantation and once while they were in Yulie Sipsip's hut.

In *People v. Bohos*, G.R. No. L-40995, June 28, 1980, 98 SCRA 353, We held:

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

"This point is well-taken. There was only one forcible abduction with rape which was the one committed in the truck. Thus, in *People v. Jose, et.al.*, G.R. No. L-28232, Feb. 6, 1971, 37 SCRA 450, where the four accused forcibly abducted Maggie de la Riva and each of them raped her, this Court held, 'that even while the first act of rape was being performed, the crime of forcible abduction had already been consummated, so that each of the three succeeding crimes of the same nature cannot legally be considered as still connected with the

abduction - in other words they should be detached from, and considered independently of, that of forcible abduction and, therefore, the former can no longer be complexed with the latter."

Thus, when accused-appellant first succeeded in having sexual intercourse with the complainant, the complex crime of forcible abduction with rape was consummated. There were two other sexual intercourses committed by accused-appellant against the will of complainant as found by the trial court which should be considered independently from the abduction with rape. However, only two of these rapes were alleged in the two informations. Hence, accused-appellant can only be held guilty of one complex crime of forcible abduction with rape and another count of rape.

Article 48 provides that in complex crimes, the penalty for the most serious crime shall be imposed in its maximum period. Rape is the more serious of the two crimes and is punishable with reclusion perpetua under Article 335 of the Revised Penal Code, as amended by RA 2632 and 411. Since reclusion perpetua is a single indivisible penalty, it shall be imposed as it is.

ACCORDINGLY, the decision appealed from is MODIFIED. The accused-appellant is found guilty of the complex crime of forcible abduction with rape and another crime of rape and is hereby sentenced to suffer the penalty of reclusion perpetua in each case or two counts of reclusion perpetua. Accused-appellant is also ordered to pay the victim the sum of P30,000.00 for each offense as indemnity.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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.