

## FIRST DIVISION

**[ G.R. No. 118935, October 06, 1997 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO LO-AR Y BERING, ACCUSED-APPELLANT.  
D E C I S I O N**

**KAPUNAN, J.:**

This is an appeal from the decision of the Regional Trial Court of Zamboanga City<sup>[1]</sup> convicting herein appellant Fernando B. Lo-ar of Forcible Abduction with Rape.

The complaint charging appellant with said offense states:

That on or about July 13, 1993, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a hard object, by means of force and intimidation, and with lewd designs, willfully, unlawfully and feloniously, abducted the undersigned Isabelita Campoy y Dampayla by then and there forcibly dragging her from Oscar Hardware, R.T. Lim Boulevard, this City, where she was then walking and placed her on board a waiting jeep and thereafter brought her inside Cottage No. 17, Greenhill Motel, located at Lunzuran, this City, where said accused by means of force and intimidation willfully, unlawfully and feloniously have carnal knowledge of her against her will; there being present an aggravating circumstance in the commission of said offense as it was facilitated with the use of motor vehicle.

CONTRARY TO LAW.<sup>[2]</sup>

Arraigned on August 13, 1993, appellant pleaded "not guilty" to the above charge. Trial commenced on October 6, 1993.

The prosecution's version of the facts is as follows:

The victim, Isabelita O. Campoy, was 17 years old when the alleged crime was committed. Originally a resident of Taliga, Sindangan, Zamboanga del Norte, Isabelita came to Zamboanga City on June 25, 1993. There, she stayed with her aunt, Catherine Acogedo, and helped the latter manage her store located along R.T. Lim Boulevard. The store would usually open in the afternoon and close at 2:00 the next morning.

At around 2:00 in the morning of July 13, 1993, before closing time, complainant went to the restroom about 80 or 90 meters from her aunt's store to relieve herself.

The restroom was closed, however. Complainant thus proceeded to the Oscar Hardware about 50 to 60 meters farther away but found the place too dark. Before she could head back to the store, one of the two persons aboard a jeep parked at the side of the road called her in Visayan dialect "Kadyut lang," meaning, for a moment. As complainant approached the jeep, the accused alighted from the vehicle and grabbed her. Complainant struggled to free herself as the accused lifted her into the jeep, but her resistance went for naught. The accused pushed complainant into the seat behind the driver and sat beside her. He covered her mouth and poked something on her back as the jeep drove off.

Upon arriving at the vicinity of Greenhills Motel in Guiwan, Lunzuran, the accused ordered complainant to alight from the jeep. Complainant refused but the accused forcibly pulled her out of the jeep, after which the vehicle left. The accused then brought the complainant to the compound near the highway where there were small houses or cottages. The accused talked to an old man for a while and warned complainant not to make any noise as the man was his friend. The accused then ordered complainant to enter one of the cottages. Complainant refused, so the accused forced her into the cottage. The accused closed the door and turned off the light. Complainant however turned it on. This angered the accused who turned off the light anew and slapped complainant on the face. Thereafter, the accused pushed complainant into the bed, took off her shirt, bra and pants, and forced her to lie down. The accused initially was not able to have his way with complainant on account of the latter's resistance. The accused, however, eventually overpowered complainant and succeeded in having sexual intercourse with her. She felt pain in her private part.

After satisfying his bestial lust, the accused lay on the bed until he fell asleep. At this juncture, complainant saw the chance to escape. She put on her clothes and went out of the house without being noticed. She walked past the hotel gate and, upon reaching the road, flagged a tricycle. Complainant told the tricycle driver to take her to her aunt's house where she found her friends to whom she related her ghastly experience. Complainant's friends accompanied her to the police station where complainant narrated her ordeal to SPO4 Abraham Rojas. She then signed a Complaint-Assignment Sheet. Informed by the complainant that the suspect was still at the cottage, SPO4 Rojas, together with the complainant, her friends and two others proceeded on board a police vehicle to the scene of the crime. The investigating party first went to the Country Living Motel at Guiwan, but complainant said that that was not the place where she was abused. Rojas thus told the driver to proceed to Lunzuran. Along the way, complainant saw a sign board of the Greenhills Motel and realized that that was the place where she was brought by the accused.

Upon reaching the Greenhills Motel, SPO4 Rojas approached the Desk Information counter and was informed that the accused was still in the cottage. Rojas, together with a motel employee entered the cottage and saw a naked man sleeping on the bed. Complainant identified the man as the very person who abducted and abused her. Thereupon, Rojas apprehended appellant.

Thereafter, complainant subjected to a medical examination. Dr. Henry Cawley, a Medico-Legal Officer from the National Bureau of Investigation who examined complainant submitted a report<sup>[3]</sup> with a finding of a "fresh incomplete deep hymenal laceration" present in the victim's genitalia "compatible with sexual intercourse with a man on or about the alleged date." The report also revealed the

presence of spermatozoa.

The accused, on his part, admitted the sexual intercourse with the complainant but claimed that the same was consensual. He alleged that it was complainant herself who "made the first move." His account of the events which transpired at the time of the alleged incident is as follows:

At around 8:00 to 9:00 in the evening of July 12, 1993, the accused was having dinner alone at Stall No. 40 located along R.T. Lim Boulevard. The woman who served his order approached him and asked if she could sit by his side. She introduced herself as Libeth, supposedly the nickname of complainant Isabelita Campoy. The accused told her to take a seat and asked her if she wanted anything to drink. Complainant asked for a bottle of Coke. She then told him that she had a problem.

Complainant related that she used to work as a helper in Dapitan. Later, she was taken by her aunt who promised her a good job in Zamboanga City. Upon arriving in Zamboanga City, complainant was made to work for her aunt at the barbecue stand, serving and entertaining customers. She was not paid any salary but was instead given P2.00 for every bottle her customer ordered. Complainant asked if she could borrow money from the accused. She said that she could not borrow money from her aunt to whom she owed P150.00 for the fare from Dapitan. Moreover, her aunt would not allow her to look for another job because it was difficult to look for waitresses in Zamboanga City.

Complainant then told the accused that she would agree to go with him if he would give her P300.00. The accused who described himself as a "civilian agent from the intelligence division" of Recom 9, demurred saying that he was still conducting surveillance at that time. He told her, however, that "if you want to go with me, it's up to you, and the money that you need, I can give it to you." Complainant replied that he could come back at her "off-time" at 2:00.

The accused claimed that as a result of their long conversation, he and complainant became "sweethearts." Thus, at around 1:45 a.m., the accused came back to the store. He told complainant that they could not go together because there were many people in Zamboanga City who knew him. He then gave her P30.00 for her fare so they could ride separate tricycles to Lunzuran. The couple alighted right at the entrance of the Greenhills Motel, just along the highway.

The accused knocked at the gate and a man from the motel counter opened the gate for them. The accused asked the man whether there was a vacant room. The man replied that Cottage No. 17 was still available. The accused then asked him how much and asked for an extra blanket. The man gave him a blanket and the accused paid him.

The man conducted the couple to the cottage and opened the door. The couple then entered the cottage. Complainant later went outside and relieved herself behind the cottage. After five minutes, she went back to the cottage.

Complainant requested that the light be turned off as she was ashamed and had not yet "tasted" any man. After engaging in some conversation, the couple had sexual intercourse twice.

Thereafter, the complainant informed the accused that she could not go home. This surprised the accused who replied, "you know how to come with me, so you must know how to go home." Complainant explained that she might be killed by the husband of her aunt, Ernesto Salcedo, a policeman, because she was not able to go home that night. She asked him to go with her to their house. The accused refused, saying "this is not our agreement." Complainant warned the accused that if he would not go with her, she would demand P50,000.00 from him. Should he refuse to pay her the said amount, she would report to the police that she had been raped. "It's up to you," the accused replied.

At around 5:30, complainant asked if she could go home. The accused consented to her request. After she left, the accused went to sleep.

A little before 7:00 a.m., the accused heard someone knocking at the door. He opened the door to find several policemen who informed him that he was a rape suspect. The accused then put on his clothes and went with the policemen.

Salustiano Infante, an employee of the Greenhills Motel since 1977, testified in behalf of the defense. He narrated that at around 2:00 in the morning of July 13, 1993, Infante, who was stationed at the counter, saw a man walking with a woman coming from the main road towards the counter, the woman about one meter behind the man. Infante recognized the man as a regular customer who had previously checked in many times at the motel. Upon reaching the counter, the man introduced himself as an intelligence officer and asked whether there was a vacant room. The woman stood by, waiting for the man. Infante replied that there was a vacant room available and conducted them to Cottage No. 17, about 20 meters from the counter. Infante opened the door of the cottage and switched on the light while the couple waited right at the stairs leading to the cottage. The man then went up the stairs followed by the woman. Infante left the couple and went back to the counter. He did not observe anything unusual throughout the couple's stay at the cottage.

Infante again saw the woman at around 5:30 a.m. at the gate and walking towards the main road. The woman would later come back at 6:30 in the morning with several policemen.

After hearing, the trial court, on November 4, 1994, rendered its decision the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court finds the accused FERNANDO LO-AR y BERING guilty beyond reasonable doubt as principal in the complex crime of FORCIBLE ABDUCTION WITH RAPE and taking into account the presence of the aggravating circumstance of use of motor vehicle in abducting the victim which is not off-set by any mitigating circumstances hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, to pay the amount of P50,000.00 to private offended party Isabelita Campoy y Dampayla as moral damages and to pay the costs.

Being a detention prisoner, the said accused is entitled to the full time of

the period of his preventive detention provided he has abided with the conditions set forth in Article 29 of the Revised Penal Code.

SO ORDERED.<sup>[4]</sup>

Hence, this appeal, the lone assignment of error being--

**THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BEYOND REASONABLE DOUBT OF THE CRIME OF FORCIBLE ABDUCTION WITH RAPE.**

While appellant admits that he succeeded in having carnal knowledge with complainant, he claims that none of the circumstances enumerated in Article 335<sup>[5]</sup> of the Revised Penal Code is present in this case.

Firstly, complainant was 17 years old then. She was of sound mind and not demented.

Secondly, accused had not deprived her of reason. Throughout the incident, she had the presence of mind.

Thirdly, her allegation that accused used force on her is highly improbable and incredible.<sup>[6]</sup>

In support of his contention that he did not use force upon the victim, appellant claims that complainant did not shout or call the attention of the people along R.T. Lim Boulevard when she was being abducted. Neither were there visible signs of physical injury on complainant's body, nor was there any tear in her clothing. Finally, the motel caretaker, Salustiano Infante, testified that appellant and complainant did not make any noise while inside the cottage.

We are not impressed.

Appellant's assertion that complainant did not shout while she was being abducted is belied by the records. Complainant testified that she did shout and struggle to resist appellant's advances. Thus:

Q Did you try to struggle when he was lifting you into the jeep?

A Yes, sir, I was struggling.

Q That was the reason why he was not able to lift you into the jeep right away because you were struggling?

A When he was lifting me, I was struggling, but he was not able to put me into the jeep immediately.

Q When you were struggling, did you shout?

A I was able to shout only once.<sup>[7]</sup>