



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARK ANTHONY ROMERO y FLORES,

Petitioner,

G.R. No. 267093

Present:

LEONEN, *SAJ*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ*.

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

MAY 29 2024

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DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari*¹ assails the Decision² dated November 2, 2022 and Resolution³ dated April 18, 2023 of the Court of Appeals in CA-G.R. CR-HC No. 15062 titled *People of the Philippines v. Mark Anthony Romero y Flores*, finding petitioner Mark Anthony Romero y

¹ *Rollo*, pp. 11–23.

² *Id.* at 34–44. Penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Victoria Isabel A. Paredes and Florencio M. Mamauag, Jr. of the Fourteenth Division, Court of Appeals, Manila.

³ *Id.* at 46–47. Penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Victoria Isabel A. Paredes and Florencio M. Mamauag, Jr., of the Former Fourteenth Division, Court of Appeals, Manila.

Flores (Romero) guilty of forcible abduction, and denying his Motion for Partial Reconsideration, respectively.

ANTECEDENTS

Romero was charged with the special complex crime of kidnapping with rape under Information dated July 26, 2019, viz.:⁴

That between the hours of 7:00 o'clock in the evening of July 24, 2019 until on or about 3:00 o'clock in the morning of July 25, 2019 at [REDACTED], municipality of [REDACTED], province of [REDACTED] and within the jurisdiction of this Honorable Court, the accused MARK ANTHONY ROMERO [y] FLORES, with intent to deprive the 16-year[-]old minor complainant [AAA*] of her liberty, conniving and confederating with an unidentified male person (JOHN DOE) who was driving a tricycle with sidecar where [AAA] and MARK ANTHONY ROMERO [y] FLORES] were seated, then and there willfully, unlawfully[,] and feloniously covered the mouth of [AAA] with a foul-smelling handkerchief which caused her to lose consciousness, while JOHN DOE continued to drive the tricycle towards the direction of [REDACTED], [REDACTED], [REDACTED], where they brought [AAA], who was unconscious and with lewd designs, had carnal knowledge of her against her will and without her consent to her damage and prejudice.

That the crime was committed with the aggravating circumstance the accused MARK ANTHONY ROMERO [y] FLORES is a recidivist, having been previously convicted by final judgment of the crime of Slight Illegal Detention under paragraph 3 of Article 268, which is embraced in the same title of the Revised Penal Code.

When arraigned on August 2, 2019, Romero entered a plea of not guilty. During the preliminary conference on September 16, 2019, the parties stipulated on the following:

- (i) the identity of Romero as the one charged and arrested in this case;
- (ii) he and his unknown companion owned the tricycle which was pointed to and recognized by private complainant AAA to be the same one she boarded on the night of July 24, 2019;
- (iii) Romero had pictures at the gallery of the [REDACTED] Municipal Police Station from his previous cases, one of which involved illegal detention with attempted rape;

⁴ *Id.* at 34 & 70-71.

* In line with Amended Administrative Circular No. 83-2015, as mandated by Article 266(A) of the Revised Penal Code as amended by Republic Act No. 8353, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

- (iv) on July 24, 2019 and immediately prior and subsequent to said date, Romero did not leave Catanduanes;
- (v) Romero resided in [REDACTED], near the [REDACTED] River;
- (vi) on July 24, 2019, the tricycle being driven was plying around [REDACTED]; and
- (vii) on said date, Romero was already released from detention from the [REDACTED] District Jail.⁵

The Prosecution's Version

The prosecution presented the following witnesses: (1) AAA; (2) Police Corporal Johza Emelyn Molet (PCpl Molet); (3) Dr. Ruth Lizaso-Dy (Dr. Lizaso-Dy); (4) Municipal Social Welfare and Development Officer Rita Rodulfo; and (5) AAA's mother, CCC.⁶

Their testimonies essentially alleged that on July 24, 2019, around 7:00 p.m., AAA just finished practicing cheer dance at the [REDACTED], [REDACTED]. While waiting for a ride home, she flagged down a passing yellow tricycle then heading towards the direction of [REDACTED].⁷

As she was about to board the tricycle, Romero, who was seated inside the sidecar, alighted and let her in before boarding again and sitting beside her. She then told the driver of the tricycle that she would alight in [REDACTED]. The driver did not respond but immediately sped off. While onboard, she received a text message from one of her friends. She was surprised when Romero suddenly grabbed her phone just when she was about to reply to the text message. The tricycle driver suddenly accelerated upon reaching the corner of the street leading to her house instead of slowing down.⁸

Romero then suddenly covered her mouth and nose with a foul-smelling handkerchief. She got dizzy and felt weak until she lost consciousness. After several hours, she woke up. She was surprised to see from her watch that it was already 3:00 a.m. of July 25, 2019. She got frightened when she discovered that she was fully naked and her private part was aching. She then realized that she was lying on a bamboo bench inside a cottage, just beside the [REDACTED] River. She looked around and saw her cellphone, clothes, and underwear placed on the bench. She observed that there were empty bottles of Emperador Gin Light scattered inside the cottage.⁹

⁵ *Rollo*, pp. 34-35.

⁶ *Id.*

⁷ *Id.* at 36.

⁸ *Id.*

⁹ *Id.*

After a while, she forced herself to stand and dress up. While putting her clothes back on, she noticed bloodstains on her underwear. She went outside the cottage and climbed the stairs towards the door. Since she could not find someone to help her, she kept walking until she reached the [REDACTED] [REDACTED] at [REDACTED] around 4:30 a.m. She sat on the stairs of the gym and waited for the arrival of tricycles plying the route going to [REDACTED]. It was only around 6:30 a.m. when she was able to board a tricycle going home.¹⁰

Upon reaching her house by 7:00 a.m., she immediately disclosed to her elder sister, BBB, what just happened to her. BBB then relayed the horrifying incident to their aunts, who told [REDACTED] to go and fetch their parents.¹¹ When their parents arrived at their house, they accompanied her to the [REDACTED] Municipal Police Station. The police officers accompanied them to the [REDACTED] Municipal Police Station.¹²

At the police station, AAA was shown a rogues' gallery where she identified Romero as one of those who abducted her. The police officers accompanied her and her parents to Romero's house. There, she immediately pointed to him as the one who let her board the tricycle and put a foul-smelling handkerchief over her mouth and nose. She was also able to recognize the tricycle parked in front of Romero's house as the same vehicle used during her abduction.¹³

By 3:00 p.m. of July 25, 2019, AAA was brought to Dr. Lizaso-Dy for a physical and medical examination. Dr. Lizaso-Dy issued a Medico-Legal Certificate finding that she suffered hymenal lacerations at 3 and 9 o'clock positions. Dr. Lizaso-Dy also found that she had erythema or redness in her vestibule, an indication that an object was inserted in her vagina.¹⁴

The Defense's Version

The defense presented the testimonies of: (1) Romero; (2) Antonio Lopez Romero (Antonio); and (3) Danilo Sarmiento Gianan (Danilo).

Romero denied the accusations against him. He riposted that on July 24, 2019, he was with his girlfriend at the house of her sibling Danilo. They spent the better part of the day there and stayed from lunch to dinner. At around 8:30 p.m., they left Danilo's house to buy medicine at the Mercury Drug Store. Then, they went to the mall and strolled around a bit. By 11:00 p.m., she dropped him off at home using her motorcycle. When he got home, only his

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 37.

¹³ *Id.*

¹⁴ *Id.*

brother and younger sister were there. Their father, who was plying his route on the tricycle, was still out.¹⁵

On even date, prior to leaving for work, Antonio saw Romero who asked his permission to go to the house of his friend, Danilo. Antonio, who was working at the █████ Central Logistics Corporation as root crop and vegetable classifier, proceeded to work and finished his duty around 2:00 p.m. From work, he went straight home. Around 5:10 p.m., Antonio left his house again to ply his tricycle route. He came home around 2:10 a.m. of July 25, 2019 and saw Romero fast asleep.¹⁶

Later that day, the police, AAA, and her companions came to Romero's house. Romero asked the police what their purpose was.¹⁷ They answered that there was a complaint against him. He was surprised to learn of the charges and told them that he knew nothing about what they were saying. He saw AAA crying, and PCpl Molet told her, "Be, you point him and we will arrest him." At that moment, Police Officer Tubo* was beside Romero. AAA did not want to look at Romero but raised her hand to point to him. A police officer adjusted her hand to point to him and pushed AAA a bit. Romero was then arrested, brought to the police station, and placed inside a cell.¹⁸

Ruling of the Regional Trial Court

By Judgment¹⁹ dated October 15, 2020, Branch █████, Regional Trial Court, █████, █████, convicted Romero as charged, viz.:

WHEREFORE, having proven the guilt of the accused beyond reasonable doubt of the complex crime of kidnapping with rape, this Court, hereby, sentences MARK ANTHONY ROMERO [y] FLORES to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay [AAA] as follows:

- ONE HUNDRED THOUSAND PESOS ([PHP] 100,000.00) as civil indemnity;
- ONE HUNDRED THOUSAND PESOS ([PHP] 100,000.00) as moral damages; and
- ONE HUNDRED THOUSAND PESOS ([PHP] 100,000.00) as exemplary damages.

All damages awarded shall earn interest at the rate of six percent (6%) per annum from the date of finality until fully paid.

¹⁵ *Id.* at 37.

¹⁶ *Id.*

¹⁷ *Id.*

* Real name not found in the *rollo*.

¹⁸ *Rollo*, p. 38

¹⁹ *Id.* at 70-95. Penned by Presiding Judge Lelu P. Contreras of Branch █████, Regional Trial Court, █████, █████.

SO ORDERED.²⁰ (Emphasis in the original)

The trial court did not give credence to Romero's defense of denial and alibi, ordaining that the same crumbled in the face of AAA's positive identification of him as the culprit. More, she also positively identified the tricycle she boarded which was parked at Romero's house, recognizing the black curtain installed by the entrance of the side car and the small green curtain that hung inside.²¹ The prosecution's evidence duly established that Romero kidnapped AAA, and on the occasion thereof, raped her. He is thus guilty of the complex crime of kidnapping with rape. More, since he admitted having entered into plea bargaining agreement for which he was convicted by final judgment of slight illegal detention, the aggravating circumstance of recidivism may be appreciated.²²

Ruling of the Court of Appeals

By Decision²³ dated November 2, 2022, the Court of Appeals affirmed with modification, viz.:

WHEREFORE, the appeal is **DENIED**. Accordingly, the *Judgment dated October 15, 2020* of the Regional Trial Court Branch ■ of ■, ■ in Criminal Case No. 7028 is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant Mark Anthony Romero y Flores is **DECLARED GUILTY** beyond reasonable doubt of the crime of **FORCIBLE ABDUCTION**. As such, he is hereby **SENTENCED** to suffer imprisonment of twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and **ORDERED TO PAY** the victim [AAA] the amounts of [PHP] 50,000.00 representing civil indemnity, [PHP] 50,000.00 representing moral damages, and [PHP] 50,000[.00] representing exemplary damages, which shall all earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full satisfaction.

SO ORDERED.²⁴ (Emphasis and italics in the original)

The Court of Appeals affirmed the trial court's finding of credibility in favor of AAA. It ruled that Romero cannot be found guilty of kidnapping since the element of actual confinement or restraint of the victim was wanting. On the contrary, the facts show that Romero's intent was to take AAA to an unknown cottage and have carnal knowledge of her, not to deprive her of liberty. Neither may Romero be convicted of rape because there was no direct evidence thereof. Notably, there were two perpetrators in this case, one of

²⁰ *Id.* at 95.

²¹ *Id.* at 94.

²² *Id.* at 94-95.

²³ *Id.* at 34-44.

²⁴ *Id.* at 43-44.

whom was unknown and remained at-large. There was thus reasonable doubt as to which of them committed the crime of rape.²⁵

It ordained, however, that Romero may be convicted of forcible abduction since all the elements thereof were present, viz.: (1) AAA is a woman; (2) she was taken against her will; and (3) Romero abducted her with lewd designs, which was established by his conduct during the abduction.²⁶

The Present Appeal

Romero now seeks anew a verdict of acquittal. He argues that the Court of Appeals erred in convicting him of forcible abduction despite the inherent unreliability of AAA's identification of his identity as the offender. In any case, the prosecution failed to prove the existence of all the elements of forcible abduction.²⁷

In its Comment,²⁸ the Office of the Solicitor General (OSG) counters that only questions of law may be raised in a Rule 45 petition, hence, Romero may not be allowed to assail AAA's credibility in his Petition for Review on *Certiorari*. In any case, the OSG maintains that the appellate court correctly sustained his conviction as it was proved that he forcibly abducted AAA.

Issue

Based on the evidence adduced, may Romero be found guilty of the crime charged?

Our Ruling

We affirm the conviction with modification.

Settled is the rule that unlike in civil cases, an appeal in a criminal case opens the entire case for review on any question, including one not raised by the parties.²⁹ Thus, though Romero only assails his conviction for forcible abduction, nothing hinders the Court from determining the proper offense committed in this case.

²⁵ *Id.* at 41.

²⁶ *Id.* at 42.

²⁷ *Id.* at 18.

²⁸ *Id.* at 139-157.

²⁹ *Salvador v. Chua*, 764 Phil. 244, 253 (2015) [Per J. Bersamin, First Division].

To recall, Romero was charged with kidnapping with rape, a special complex crime defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659,³⁰ viz.:

Article 267. Kidnapping and serious illegal detention. – Any private individual who shall kidnap or detain another, or in any other manner deprived him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than five days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (Emphasis supplied)

The Court of Appeals, however, convicted him of forcible abduction under Article 342 of the Revised Penal Code, which states:

Article 342. Forcible abduction. – The abduction of any woman against her will and with lewd designs shall be punished by *reclusion temporal*.

The same penalty shall be imposed in every case, if the female abducted be under twelve years of age.

For a charge of forcible abduction to prosper, the following elements must be established by the prosecution: (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.³¹

We find that the appellate court correctly characterized the offense as forcible abduction instead of kidnapping. Jurisprudence has long distinguished between the two, such that when the violent taking of a woman is motivated by lewd designs, forcible abduction under Article 342 of the

³⁰ An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for That Purpose the Revised Penal Laws, As Amended, Other Special Penal Laws, and For Other Purposes.

³¹ *People v. Casim*, 288 Phil. 270 (1992) [Per J. Nocon, Second Division].

Revised Penal Code is committed; otherwise, such taking constitutes kidnapping under Article 267, as amended.³²

Here, the Court of Appeals correctly found that all the elements of forcible abduction were satisfied through the prosecution's collective evidence: **first**, the victim here, AAA, was a 16-year-old woman; **second**, Romero took her against her will when he rendered her unconscious by placing a foul-smelling handkerchief over her mouth and nose; and **third**, such taking was motivated by lewd designs.

The last element pertains to the offender's state of mind which here may be discerned from Romero's overt acts. As explained in *Amployo v. People*,³³ whether an accused was entertaining lewd or unchaste design is necessarily a mental process, the existence of which can be inferred by overt acts carrying out such intention, i.e., by conduct that can only be interpreted as lewd or lascivious.

Here, albeit Romero's acts of covering AAA's mouth and nose with foul-smelling handkerchief and taking her to a cottage are equivocal when considered alone, the subsequent situation in which AAA found herself in after regaining her consciousness clearly demonstrated that Romero's intent had been marred with lewdness all along. For she found herself, hours later, completely naked with soreness in her private parts. This leads to the incontestable conclusion that she was sexually assaulted, as confirmed by the Medico-Legal findings of Dr. Lizaso-Dy.

The Court of Appeals gravely erred, however, when it ordained that Romero may not be convicted of rape because there was no direct evidence adduced to prove that he was the one who ravished AAA.

Time and again, the Court pronounced that direct evidence is not the only means to establish guilt beyond reasonable doubt. For circumstantial evidence, if sufficient, can supplant the absence of direct evidence.³⁴ Rule 133, Section 4 of the Revised Rules of Court, in fact, recognizes that circumstantial evidence may be sufficient for conviction if:

- (1) There is more than circumstance;
- (2) The facts from which the inferences are derived are proven; and
- (3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

³² *People v. Quitan*, 99 Phil. 226 (1956) [Per J. Bengzon, *En Banc*].

³³ 496 Phil. 747, 756 (2005) [Per J. Chico-Nazario, Second Division].

³⁴ *See People v. Lignes*, 874 Phil. 530, 540 (2020) [Per C.J. Peralta, First Division].

To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime.³⁵

Here, the following series of circumstances seals the Court's conviction that Romero and/or his unknown companion raped AAA, to the exclusion of others:

- (1) On July 24, 2019, AAA boarded a yellow tricycle which Romero was riding. The same was driven by Romero's unknown companion;³⁶
- (2) Instead of dropping off AAA at her house, the tricycle driver sped off upon reaching the corner of the street leading to her house, while Romero covered her mouth and nose with a foul-smelling handkerchief;³⁷
- (3) AAA got dizzy, felt weak, and lost her consciousness;³⁸
- (4) When she woke up, it was already 3:00 a.m. of the next day. She was lying on a bamboo bench inside a cottage, fully naked, and her private part was aching;³⁹ and
- (5) When examined by Dr. Lizaso-Dy, the latter's findings show that AAA suffered hymenal lacerations at 3 and 9 o'clock positions and had erythema or redness in her vestibule, which indicated that an object was inserted in her vagina.⁴⁰

The foregoing pieces of circumstantial evidence are clearly sufficient to find Romero guilty of raping AAA. To be sure, they satisfy the standards laid down by Rule 133, Section 4 of the Revised Rules of Court, viz.: (1) there is more than one circumstance; (2) the foregoing facts were duly proven by AAA's clear, candid, and unwavering testimony which both the trial court and Court of Appeals found credible; and (3) the combination of the foregoing circumstances produces a conviction beyond reasonable doubt since AAA encountered no person other than Romero and his unknown companion before she suffered her harrowing experience. More, Romero's determinative act of rendering AAA unconscious could not mean anything else but that he is the author of the successive offense committed against her.

³⁵ *Zabala v. People*, 752 Phil. 59, 68 (2015) [Per J. Velasco, Jr., Third Division].

³⁶ *Rollo*, p. 36.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 37.

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The Court of Appeals' reasoning that Romero must be acquitted on reasonable doubt since it cannot be determined who between him and his unknown companion committed the rape is utterly misguided. To be sure, whether Romero or the tricycle driver or both sexually assaulted AAA is irrelevant. It is apparent from their collective acts that they were acting in conspiracy.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it. In terms of proving its existence, conspiracy takes two forms: express and implied.⁴¹

Express conspiracy requires proof of an actual agreement among all the co-conspirators to commit the crime. Implied conspiracy, on the other hand, exists when two or more persons are shown to have aimed to accomplish the same unlawful object through their acts, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during, and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.⁴²

A keen observation of Romero and his companion's behavior during the incident categorically shows their unified design to commit the offense charged. Though it was Romero who made AAA lose consciousness, it was apparent that his companion was not only aware but also in on the illegal plan since he did not drop off AAA in her house. Instead, he sped away and even accelerated the vehicle when they were nearing her house. More telling, the tricycle he was driving was later on found parked in front of Romero's house.

As such, whether it was Romero or his companion who actually raped AAA is of no moment. For in conspiracy, the act of one is the act of all. Each of the conspirators is liable for all of the crimes committed in furtherance of the conspiracy.⁴³ Verily, Romero may be found guilty of rape.

To be sure, the prosecution's evidence duly established the crime of rape, which is defined and penalized under Article 266-A(1) of the Revised Penal Code, as amended by Republic Act No. 8353,⁴⁴ viz.:

Article 266-A. Rape: *When And How Committed*. – Rape is committed:

⁴¹ *People v. Evasco*, 839 Phil. 612, 622 (2018) [Per J. Bersamin, First Division].

⁴² *Id.*

⁴³ *People v. Peralta*, 134 Phil. 703 (1968) [*Per Curiam, En Banc*].

⁴⁴ An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, And for Other Purposes.

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- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a. Through force, threat, or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; and
 - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The elements of rape are as follows: (a) the offender had carnal knowledge of a woman; and (b) he accomplished this act under the circumstances mentioned in the provision, e.g., when the offended party is deprived of reason or otherwise unconscious.⁴⁵

Here, it was proven that: **first**, Romero or his companion had carnal knowledge of AAA, a woman. This allegation was duly substantiated by AAA's unwavering testimony, corroborated by Dr. Lizaso-Dy's medical findings of hymenal lacerations and erythema; and **second**, this bestial act was committed after AAA fell unconscious after Romero covered her mouth and nose with a foul-smelling handkerchief.

Romero's attack against AAA's credibility and her identification of him as the perpetrator of the crime deserves scant consideration. To be sure, AAA categorically and repeatedly identified Romero in open court⁴⁶ as her abductor, who also raped her, as evinced by the fact that she was fully naked when she woke up, her vagina was aching,⁴⁷ and she sustained hymenal lacerations at 3 and 9 o'clock positions with erythema or redness in her vestibule.⁴⁸ Her testimony, in turn, was consistently upheld as credible by both the trial court and the appellate court, a finding which is binding upon the Court.⁴⁹

The question now: what offense may Romero be convicted of, i.e., the complex crime of forcible abduction with rape or rape only?

The Court ordains that Romero may be convicted of the crime of rape only. While the elements of forcible abduction were also established and rape was committed on the occasion thereof, jurisprudence clarifies that forcible abduction is absorbed in the crime of rape when the main objective of the abductor is to have carnal knowledge of the victim.⁵⁰ Settled is the rule that

⁴⁵ See *People v. Ejercito*, 834 Phil. 837, 853 (2018) [Per J. Perlas-Bernabe, Second Division].

⁴⁶ *Rollo*, p. 105.

⁴⁷ *Id.* at 36.

⁴⁸ *Id.* at 37.

⁴⁹ See *Balina v. People*, G.R. No. 205950, January 12, 2021 [Per J. Gaerlan, First Division].

⁵⁰ See *People v. Villanueva*, 847 Phil. 179, 193 (2019) [Per J. Del Castillo, First Division]; *People v. Mejorada*, 296 Phil. 748 (1993) [Per J. Davide, Jr., First Division]; *People v. Almanzor*, 433 Phil. 667

there is no complex crime of forcible abduction with rape if the primary objective of the accused is to commit rape.⁵¹ Under such circumstance, rape absorbs forcible abduction.⁵²

On the other hand, where forcible abduction is a necessary means to commit rape, there is a complex crime proper under Article 48⁵³ of the Revised Penal Code.⁵⁴ In *People v. Bohos*,⁵⁵ the accused were convicted of the complex crime of forcible abduction with rape and 16 counts of rape. They abducted the victim, boarded her inside their truck where they began abusing her sexually, and brought her to a small house along the highway where she was detained for an entire day until she was rescued. She was violated 17 times in total.

In *People v. Velasquez*,⁵⁶ the accused therein forcibly took the victim to his grandmother's house by poking a gun at her. There, he raped her. After sexually abusing her the first time, he kept her detained in his home. He again had his way with her two more times. Eventually, she was able to escape. The Court convicted the accused of forcible abduction with rape and rape.

Similarly, in *People v. Amaro*,⁵⁷ the accused abducted his seven-year-old victim and detained her for six days, during which he raped her five times. He was convicted of forcible abduction with rape.

Meanwhile, in *People v. Pingol*,⁵⁸ the accused was convicted of rape only upon the Court's determination that his main objective was to have carnal knowledge of the victim. He deceived her to come with him by making her believe that she will be brought to her workplace. Later on, she noticed that they were already heading towards Manila until she was brought to Pampanga where the accused raped her inside his car. Afterwards, he brought her to his siblings' house where she had the opportunity to escape, but she chose to stay inside the car because she was too weak to move and she was not familiar with the place.

Similarly, in *People v. Domingo*,⁵⁹ the accused therein offered to accompany the victim to her aunt's house. Both of them boarded a tricycle,

(2002) [Per J. Kapunan, *En Banc*]; *People v. Sabadlab*, 684 Phil. 269, 280 (2012) [Per J. Bersamin, First Division].

⁵¹ *People v. Domingo*, 810 Phil. 1040, 1041 (2017) [Per J. Bersamin, Third Division].

⁵² *Id.* See also *People v. Sabadlab*, 684 Phil. 269, 280 (2012) [Per J. Bersamin, First Division]; *Garces v. People*, 554 Phil. 683, 693 (2007) [Per J. Ynares-Santiago, Third Division]; and *People v. Lining*, 433 Phil. 797 (2002) [Per J. Kapunan, *En Banc*].

⁵³ REVISED PENAL CODE, 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.

⁵⁴ See *People v. Amaro*, 739 Phil. 170, 179 (2014) [Per J. Perez, Second Division].

⁵⁵ 187 Phil. 228 (1980) [*Per Curiam, En Banc*].

⁵⁶ 399 Phil. 506 (2000) [Per J. Gonzaga-Reyes, Third Division].

⁵⁷ 739 Phil. 170 (2014) [Per J. Perez, Second Division].

⁵⁸ 889 Phil. 116 (2020) [Per J. Leonen, Third Division].

⁵⁹ 810 Phil. 1040 (2017) [Per J. Bersamin, Third Division].

but the victim eventually realized that they were not proceeding to her aunt's house. The accused poked a bladed weapon against her right waist and subsequently led her to a house where he succeeded to have carnal knowledge of her against her will. After he was finished, he allowed her to go home as long as she will not tell anybody what happened. The Court also convicted the accused therein of rape, finding that his real objective was to rape the victim.

Comparing *Bohos, Velasquez, and Amaro* with *Pingol and Domingo*, it is apparent that the complex crime of forcible abduction with rape is present only where forcible abduction is committed *per se*, i.e., the victim was deprived of her liberty with lewd intentions, which is manifested by the fact of the actual rape. To recall, in *Bohos, Velasquez, and Amaro*, the victims therein were clearly detained by the accused and were prevented from leaving even after rape was already consummated. Where, however, the victim was forcibly taken by the accused only for the purpose of consummating rape like in *Pingol and Domingo*, then the proper offense committed is simply rape, *as here*.

From the totality of the facts on record, it is apparent that Romero and his companion knocked down AAA not to detain her elsewhere but to ensure that they could have their way with her. In fact, after they accomplished their goal of ravishing her, they left her alone in the cottage because they had already accomplished their goal. They even left her clothes, cellphone, and belongings with her. More telling, the cottage remained unlocked and she was free to return home, which she in fact did, after she woke up. To be sure, the facts and evidence on record are bereft of any other apparent motivation which would have impelled Romero and his companion to forcibly bring AAA to the cottage.

Clearly, having carnal knowledge of AAA appears to be their main objective. If at all, her forcible abduction was only an inevitable result of rendering her unconscious, the means chosen by Romero and his companion to ensure the consummation of rape. Notably, having carnal knowledge of the victim while she is unconscious is one of the circumstances under which rape is committed under Article 266-A(1)(b) of the Revised Penal Code. Verily, the crime of forcible abduction must be considered absorbed into the crime of rape.

All told, Romero is convicted of rape under Article 266-A(1) of the Revised Penal Code, as amended.

Penalty

Under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, rape is punished by *reclusion perpetua*, an indivisible penalty. Accordingly, the alleged aggravating circumstance of recidivism

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need not be considered and cannot be applied pursuant to Article 63⁶⁰ of the Revised Penal Code. Romero is meted with the penalty of *reclusion perpetua* regardless.

Too, pursuant to *People v. Jugueta*,⁶¹ Romero is also ordered to pay AAA the following monetary awards: PHP 75,000.00 as civil indemnity; PHP 75,000.00 as moral damages; and PHP 75,000.00 as exemplary damages. These amounts shall be subject to 6% interest per annum from the finality of this Decision until fully paid.⁶²

ACCORDINGLY, the Petition is **DENIED**. The Decision dated November 2, 2022 and Resolution dated April 18, 2023 of the Court of Appeals in CA-G.R. CR-HC No. 15062 are **AFFIRMED** with **MODIFICATION**. Petitioner Mark Anthony Romero y Flores is found **GUILTY** beyond reasonable doubt of rape and sentenced to *reclusion perpetua*. He is **ORDERED** to pay AAA the following amounts:

1. **PHP 75,000.00** as civil indemnity;
2. **PHP 75,000.00** as moral damages; and
3. **PHP 75,000.00** as exemplary damages.

All monetary awards shall earn 6% interest per annum from finality of this Decision until fully paid.

SO ORDERED.

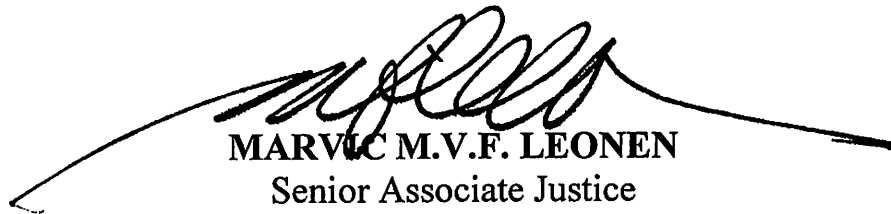

AMY C. LAZARO-JAVIER
Associate Justice

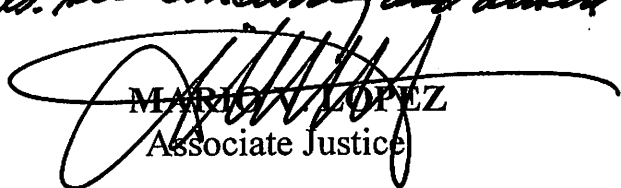
⁶⁰ REV. PEN. CODE, art. 63. *Rules for the application of indivisible penalties.* – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. . . .

⁶¹ 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

⁶² See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, *En Banc*].

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

Pls. see concurring and dissent

MARVIC M.V.F. LEONEN
Associate Justice


JHOSEP LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

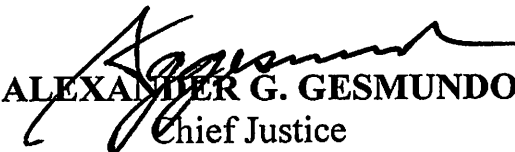
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

A

SECOND DIVISION

G.R. No. 267093 – MARK ANTHONY ROMERO y FLORES, Petitioner,
v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

MAY 29 2024

X-----X

CONCURRING AND DISSENTING OPINION

LOPEZ, M., J.:

“In order to determine whether two offenses constitute a complex crime, we should not find out whether, in accordance with their definition by law, one of them is as an essential element of the other . . . for in such cases there would be only one single offense . . . But we should take into consideration the facts alleged in [the] complaint or information and determine whether one of the two separate and different offenses charged [in it] was committed as a necessary means to commit the other offense; if it were the two offenses constitute one complex crime[.]”¹

This case raised the main issue as to what crime petitioner committed. For reference, petitioner was charged with kidnapping with rape under the following information, to wit:

That between the hours of 7:00 o'clock (sic) in the evening of July 24, 2019 until on or about 3:00 o'clock (sic) in the morning of July 25, 2019 at [REDACTED]² and within the jurisdiction of this Honorable Court, the accused MARK ANTHONY ROMERO y FLORES, with intent to deprive the 16-year[-]old minor complainant AAA³ of her liberty, conniving and confederating with an unidentified male person (JOHN DOE) who was driving a tricycle with sidecar where AAA and MARK ANTHONY ROMERO were seated, then and there willfully, unlawfully[,] and feloniously covered the mouth of AAA with a foul-smelling handkerchief which caused her to lose consciousness, while JOHN DOE continued to drive the tricycle towards the direction of [REDACTED], where they brought AAA, who was unconscious and with lewd designs, had carnal knowledge of her against her will and without her consent to her damage and prejudice.

¹ *Parulan v. Rodas*, 78 Phil. 855, 856–857 (1947) [Per J. Feria, *En Banc*].

² Supreme Court Amended Administrative Circular No. 83-2015 states that the geographical location where the crime was committed should refer only to the province where the crime occurred. References to the specific barangay or town should be blotted out from the body of the court decision if its identification could lead to the disclosure of the women or children victims.

³ The identity of the victim or any information which could establish or compromise their identity, and those of their immediate family or household members, shall be withheld pursuant to Republic Act No. 7610 (1992), An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262 (2004), An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC (2004), Rule on Violence Against Women and Their Children.

That the crime was committed with the aggravating circumstance the accused MARK ANTHONY ROMERO y FLORES is a recidivist, having been previously convicted by final judgment of the crime of Slight Illegal Detention under paragraph 3 of Article 268, which is embraced in the same title of the Revised Penal Code.

The Regional Trial Court (RTC) convicted petitioner of the “*Special Complex Crime of Kidnapping with Rape*.” However, the Court of Appeals (CA) modified the RTC’s judgment and found petitioner liable for “*Forcible Abduction*” absent intent to deprive the victim of her liberty and proof of rape. Whereas the *ponencia* held that petitioner committed “*Rape*” based on circumstantial evidence showing that his main intention is to have carnal knowledge of the victim, and that rape absorbs forcible abduction. To recall, the *ponencia* enumerated five circumstances:⁴

- (1) On July 24, 2019, [AAA] boarded a yellow tricycle which Romero was riding. The same was driven by Romero’s unknown companion.
- (2) Instead of dropping off [AAA] at her house, the tricycle driver sped off upon reaching the corner of the street leading to her house, while Romero covered her mouth and nose with a foul-smelling handkerchief.
- (3) [AAA] got dizzy, felt weak, and lost her consciousness.
- (4) When she woke up, it was already 3:00 a.m. of the next day. She was lying on a bamboo bench inside a cottage, fully naked, and her private part was aching.
- (5) When examined by Dr. Lizaso-Dy, the latter’s findings show that [AAA] suffered hymenal lacerations at 3 and 9 o’clock positions and had erythema or redness in her vestibule, which indicated that an object was inserted in her vagina.⁵

The *ponencia* concluded that “[w]hile the elements of forcible abduction were also established and rape was committed on the occasion thereof, jurisprudence clarifies that forcible abduction is absorbed in the crime of rape when the main objective of the abductor is to have carnal knowledge of the victim,”⁶

Comparing *Bohos*, *Velasquez*, and *Amaro* with *Pingol* and *Domingo*, it is apparent that the complex crime of forcible abduction with rape is present only where forcible abduction is committed *per se*, *i.e.*, the victim was deprived of her liberty with lewd intentions, which is manifested by the fact of the actual rape. To recall, in *Bohos*, *Velasquez*, and *Amaro*, the victims therein were clearly detained by the accused and were prevented from leaving even after rape was already consummated. Where, however, the victim was forcibly taken by the accused only for the purpose of consummating rape like in *Pingol* and *Domingo*, then the proper offense committed is simply rape, *as here*.

⁴ *Ponencia*, p. 10.

⁵ *Id.*

⁶ *Id.* at 12.

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From the totality of the facts on record, it is apparent that Romero and his companion knocked down [AAA] not to detain her elsewhere but to ensure that he could have his way with her. In fact, after they accomplished their goal of ravishing her, they left her alone in the cottage because they had already accomplished their goal. They even left her clothes, cellphone, and belongings with her. More telling, the cottage remained unlocked and she was free to return home, which she in fact did, after she woke up. To be sure, the facts and evidence on record are bereft of any other apparent motivation which would have impelled Romero and his companion to forcibly bring [AAA] to the cottage.

Clearly, having carnal knowledge of [AAA] appears to be their main objective. Verily, the crime of forcible abduction must be considered absorbed into the crime of rape.⁷

Foremost, I share the view that petitioner cannot be convicted of the special complex crime of kidnapping with rape absent indubitable proof of his intent to deprive the victim of her liberty. I also concur that the information sufficiently charged petitioner with the crimes of forcible abduction and rape notwithstanding the caption of the accusation. There is forcible abduction when: (1) the person abducted is any woman, regardless of her age, civil status, or reputation; (2) she is taken against her will; and (3) the abduction is with lewd designs.⁸ Meanwhile, rape is committed by having carnal knowledge of a woman by force, threat, or intimidation, or when the woman is deprived of reason or is unconscious, or by means of fraudulent machination or grave abuse of authority, or when she is below the statutory age.⁹ The actual recital of facts in the information determines the real nature and character of the criminal charge and not the caption, technical name, and provision of law alleged to have been violated.¹⁰ Thus, there is no violation of the accused's constitutional right to be fully apprised of the charge and to suitably prepare a defense. More importantly, I agree that the enumerated circumstances are sufficient to establish both the crimes of forcible abduction and rape. Admittedly, the *ponencia* discussed how these crimes were perpetrated.

Contrary to the *ponencia*, I believe that petitioner is liable for the complex crime of forcible abduction with rape. The hard facts reveal that forcible abduction was a necessary means to commit rape. Under Article 48 of the Revised Penal Code (RPC), a complex crime occurs not only when a single act constitutes two or more grave or less grave felonies, but also when an offense is a necessary means for committing the other. The words "necessary means" do not connote indispensability. Otherwise, one component crime becomes an element or ingredient of the other. The phrase merely signifies that one component crime facilitated and ensured the commission of the other.¹¹ Forcible abduction is, in general, not an essential element of rape which may be committed anywhere without the necessity of forcibly taking the victim to another place for that purpose.

⁷ *Id.* at 14.

⁸ REV. PEN. CODE, art. 342.

⁹ REV. PEN. CODE art. 266-A, as amended by Republic Act No. 8353.

¹⁰ *People v. Escosio*, 292-A Phil. 606, 620 (1993) [Per J. Padilla, Second Division], citing *People v. Mendoza*, 256 Phil. 1136, 1144 (1989) [Per J. Fernan, Third Division].

¹¹ *People v. Salvilla*, 263 Phil. 621, 631-632 (1990) [Per J. Melencio-Herrera, Second Division].

But if the offense charged is that the accused abducted or carried by force the victim from one place to another where she was raped, the crime charged would be a complex crime of forcible abduction with rape—the abduction being in such a case a necessary means to commit the rape.¹² In the following cases, the Court convicted the accused of the complex crime of forcible abduction with rape.

In *People v. Manguiat*,¹³ two men brought the woman victim to an uninhabited place, then to the woods, and later to other places where she was brutally raped by means of threats and intimidation.¹⁴ In *People v. Pineda*,¹⁵ three men abducted the woman victim from her house to another place within the same municipality where they successively raped her through force and intimidation.¹⁶ In *People v. Babasa*,¹⁷ three men poked a knife at the woman victim on board a tricycle that traversed a spillway until they reached the airport at nighttime. One of the accused inserted his hand under the victim's shirt and touched her nipples. Upon reaching the next town, the three men forced the victim out of the tricycle, undressed her, and took turns in raping her.¹⁸ The Court ruled that forcible abduction was used as a means of committing the rapes in an isolated place under the cover of night.¹⁹ In *People v. Bulaong*,²⁰ the accused pointed a gun at the woman victim and forced her to board his jeepney. The accused forced the victim to enter a hotel room and threatened to kill her if she would escape. The accused removed the clothes of the victim and succeeded in having sexual congress with her.²¹ In *People v. Paras*,²² the Court expounded that there could be no doubt that the purpose of taking the woman victim to a hotel was to satisfy the accused's lust on her. It is not denied that the accused performed the sexual act on the victim twice. The taking of the victim could not be for any purpose other than his lascivious design to savor her womanhood.²³

In *People v. Vega*,²⁴ a vehicle carrying six men blocked the taxi boarded by the woman victim. The men dragged the victim inside their car, kissed her, and touched the different parts of her body. The men took the victim to an isolated place in the vicinity of a factory and started to remove her clothes. However, a watchman blew his whistle and the men transferred to another factory where they had carnal knowledge of the victim.²⁵ In *People v. Alcantara*,²⁶ the Court reiterated that since forcible abduction was used as a means of committing the two rapes, the offenses constitute the complex crime

¹² *Parulan v. Rodas*, 78 Phil. 855, 857 (1947) [Per J. Feria, *En Banc*].

¹³ 51 Phil. 406 (1928) [Per J. Malcolm, *En Banc*].

¹⁴ *Id.* at 407.

¹⁵ 56 Phil. 688 (1932) [Per J. Ostrand, *En Banc*].

¹⁶ *Id.* at 688.

¹⁷ 186 Phil. 458 (1980) [Per Curiam, *En Banc*].

¹⁸ *Id.* at 459–460.

¹⁹ *Id.* at 467.

²⁰ 193 Phil. 515 (1981) [Per J. Aquino, *En Banc*].

²¹ *Id.* at 519.

²² 206 Phil. 704 (1983) [Per J. Vasquez, First Division].

²³ *Id.* at 711.

²⁴ 208 Phil. 221 (1983) [Per J. Relova, First Division].

²⁵ *Id.* at 222–223.

²⁶ 211 Phil. 579 (1983) [Per J. Melencio-Herrera, First Division].

of forcible abduction with rape.²⁷ In *People v. Sunpongco*,²⁸ three men forcibly abducted the woman victim and brought her from Bulacan to Tagaytay. The men poked a gun at the victim and brought her inside a hotel room where they embraced and kissed her. The victim resisted but the men consummated sexual intercourse with her.²⁹ The Court explained that the presence of the lewd design is manifested by the subsequent rape that occurred.³⁰ In *People v. Lutañez*,³¹ the accused entered a house and spotted the woman victim from among the people inside. The accused threatened the victim with a gun tucked in his waist and brought her to a deserted hut about a half kilometer away. The accused undressed the victim and had sexual intercourse with her.³² In *People v. Albuero*,³³ the accused took the woman victim against her will with lewd designs when he threatened her with a knife if she would disembark his jeepney. The accused forced the victim to submit to his lust and pushed her head against the steering wheel which rendered her unconscious. The victim regained her senses, found herself without undergarment, felt pain in her stomach, and saw blood on her vagina.³⁴

In *People v. Grefiel*,³⁵ the accused pretended to be a “*mayor ng sundalo*” to abduct the woman victim and carry out his lewd designs by performing coitus with her.³⁶ Forcible abduction was the necessary means used to commit the rape.³⁷ In *People v. Corpuz*,³⁸ the woman victim was forcibly taken at gunpoint by the accused with the use of a motorized tricycle to a secluded place. The accused used continuous threats, ordered the victim to sit down with her legs spread on the motorcycle’s seat, and then and there succeeded in unleashing his bestial lust.³⁹ The Court ruled that forcible abduction was the means to commit the crime of rape. Rape was committed when the accused had carnal knowledge of the offended party through intimidation.⁴⁰ In *People v. Espiritu*,⁴¹ the woman victim while waiting for a ride home was abducted by the accused and one unidentified person on board a tricycle. The victim was blindfolded and brought to a house. The driver went home leaving the accused and the victim. The accused removed the blindfold of the victim and he repeatedly slapped and bit her. The accused then sexually abused the victim.⁴² The Court ruled that when the accused forcibly took away the victim, for the purpose of raping her, as in fact he did rape her, lewd and unchaste designs existed since the commencement of the crime.

²⁷ *Id.* at 593.

²⁸ 246 Phil. 228 (1988) [Per J. Cortes, Third Division].

²⁹ *Id.* at 232–233.

³⁰ *Id.* at 240.

³¹ 270 Phil. 706 (1990) [Per J. Padiilla, Second Division].

³² *Id.* at 709.

³³ 263 Phil. 604 (1990) [Per J. Melencio-Herrera, Second Division].

³⁴ *Id.* at 608.

³⁵ 290 Phil. 77 (1992) [Per J. Davide, Jr., Third Division].

³⁶ *Id.* at 82.

³⁷ *Id.* at 93.

³⁸ 294 Phil. 868 (1993) [Per J. Davide, Jr., Third Division].

³⁹ *Id.* at 872.

⁴⁰ *Id.* at 885.

⁴¹ 375 Phil. 1012 (1999) [Per J. Pardo, First Division].

⁴² *Id.* at 1015–1016.

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Consequently, when the accused raped the victim, he committed the complex crime of forcible abduction with rape.⁴³

In *People v. Sapurco*,⁴⁴ the sexual intercourse with the woman victim was facilitated and ensured by her abduction. The presence of lewd intentions was also apparent from the conduct of the accused when he later defiled the victim.⁴⁵ In *People v. Delovino*,⁴⁶ while the woman victim was waiting for a ride to school, the accused placed his hand on her shoulder and poked a knife, which was covered with a handkerchief. The accused threatened to kill the victim if she would shout for help or run away. The victim was then brought against her will to a motel.⁴⁷ The Court ruled that abduction was only a means to commit the rape.⁴⁸ In *People v. Ablaneda*,⁴⁹ the six-year-old woman victim was walking to school. Along the way, the accused approached the victim and asked if he could share her umbrella because it was raining. Suddenly, the accused boarded a tri-mobile with the victim and brought her to a small hut. While inside, the accused removed his underwear and the victim's panties. The accused proceeded to have sexual intercourse with the victim.⁵⁰ The Court held that the accused committed the complex crime of forcible abduction with rape where the evidence shows that the taking of the young victim against her will was effected in furtherance of lewd and unchaste design. The lewd design in forcible abduction is established by the actual rape of the victim.⁵¹ Similar rulings were rendered in *People v. Padilla*,⁵² *People v. Calubag*,⁵³ *People v. Angeles*,⁵⁴ *People v. Corpuz*,⁵⁵ *People v. Aczon*,⁵⁶ *People v. Magpayo*,⁵⁷ *People v. Matamorosa*,⁵⁸ *People v. Rivera*,⁵⁹ *People v. Bantisil*,⁶⁰ *People v. Lo-ar*,⁶¹ *People v. De Lara*,⁶² *People v. Talo*,⁶³ *People v. Capistrano*,⁶⁴ *People v. Amaro*,⁶⁵ and *People v. Gutierrez*.⁶⁶

On the other hand, the following cases present situations where rape absorbs forcible abduction. In *People v. Godines*,⁶⁷ the woman victim tried to escape from the house where the accused caused a commotion. The accused

⁴³ *Id.* at 1020.

⁴⁴ 315 Phil. 561 (1995) [Per J. Bellosillo, First Division].

⁴⁵ *Id.* at 569–570.

⁴⁶ 317 Phil. 741 (1995) [Per J. Davide, Jr., First Division].

⁴⁷ *Id.* at 745–747.

⁴⁸ *Id.* at 754.

⁴⁹ 409 Phil. 552 (2001) [Per J. Ynares-Santiago, First Division].

⁵⁰ *Id.* at 554–555.

⁵¹ *Id.* at 557.

⁵² 217 Phil. 663 (1984) [Per J. Abad Santos, Second Division].

⁵³ 225 Phil. 323 (1986) [Per J. Cuevas, Second Division].

⁵⁴ 294 Phil. 428 (1993) [Per J. Feliciano, Third Division].

⁵⁵ 294 Phil. 868 (1993) [Per J. Davide, Jr., Third Division].

⁵⁶ 296-A Phil. 224 (1993) [Per J. Nocon, Second Division].

⁵⁷ 297 Phil. 13 (1993) [Per J. Bidin, Third Division].

⁵⁸ 301 Phil. 517 (1994) [Per J. Kapunan, First Division].

⁵⁹ 315 Phil. 454 (1995) [Per J. Vitug, Third Division].

⁶⁰ 319 Phil. 486 (1995) [Per J. Davide, Jr., First Division].

⁶¹ 345 Phil. 429 (1997) [Per J. Kapunan, First Division].

⁶² 389 Phil. 756 (2000) [Per J. Mendoza, Second Division].

⁶³ 398 Phil. 187 (2000) [Per J. Mendoza, *En Banc*].

⁶⁴ 409 Phil. 552 (2001) [Per J. Ynares-Santiago, First Division].

⁶⁵ 739 Phil. 170 (2014) [Per J. Perez, Second Division].

⁶⁶ G.R. No. 200335, September 10, 2014 [Notice, Third Division].

⁶⁷ 274 Phil. 173 (1991) [Per J. Gancayco, First Division].

saw the victim, dragged her to a nearby vacant lot while they fondled her private parts, and threatened her if she resisted their sexual advances. The accused then took turns in satisfying their carnal desires.⁶⁸ In that case, there is no evidence that the taking of the victim was a necessary means to commit the crime of rape.⁶⁹ In *People v. San Pedro*,⁷⁰ the accused made several attempts to befriend the woman victim, but she consistently snubbed him. The accused decided that drastic measures were needed realizing that a romantic relationship with the victim was a distant dream. The accused then abducted the victim at the point of a knife and raped her.⁷¹ The Court held that the crime committed is rape which absorbs forcible abduction because the accused intended at the very outset to rape the victim when he abducted her.⁷²

In *People v. Mejorada*,⁷³ the woman victim was sleeping together with the daughter of the accused. At night, the accused forcibly opened the door which awakened the victim. Suddenly, the accused hugged the victim and pressed a knife on her face. The accused brought the victim to the back of the house where he raped her.⁷⁴ The Court ruled that the accused cannot be convicted of the complex crime of forcible abduction with rape because the element of lewd designs was not alleged. In any event, it appears that the accused's real intention was to rape the victim in her room. But since the daughter of the accused was in the same room, he decided to forcibly drag the victim instead to the rear of the house. The incidental forcible abduction was absorbed in the crime of rape.⁷⁵ In *People v. Sabredo*,⁷⁶ the Court likewise refused to convict the accused of the complex crime of forcible abduction with rape because the element of lewd designs was not alleged. The crime alleged and proved was only rape.⁷⁷ In *People v. Akhtar*⁷⁸ and *People v. Rapisora*,⁷⁹ the victims were raped multiple times. As such, there is clear evidence that the main objective of the accused is to commit rape given the sheer number of sexual violations perpetrated against the victim.⁸⁰

Clearly, the crime is rape only when forcible abduction is not a necessary means to commit sexual intercourse against the victim, or when forcible abduction is merely incidental or preparatory to the crime of rape. There are other cases reiterating the principle that forcible abduction is absorbed if the initial or principal intent of the accused is to rape the victim. Yet, these cases lacked elaboration except for the generic statement that the real objective of the accused is to commit rape when they abducted the victims

⁶⁸ *Id.* at 175–176.

⁶⁹ *Id.* at 181.

⁷⁰ 291-A Phil. 419 (1993) [Per J. Cruz, First Division].

⁷¹ *Id.* at 419.

⁷² *Id.* at 423.

⁷³ 296 Phil. 748 (1993) [Per J. Davide, Jr., First Division].

⁷⁴ *Id.* at 754–755.

⁷⁵ *Id.* at 767.

⁷⁶ 387 Phil. 682 (2000) [Per J. Quisumbing, *En Banc*].

⁷⁷ *Id.* at 691.

⁷⁸ 368 Phil. 206 (1999) [Per J. Quisumbing, *En Banc*].

⁷⁹ 403 Phil. 194 (2001) [Per J. Vitug, *En Banc*].

⁸⁰ *Id.* at 206–207.

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such as in *People v. Napud, Jr.*,⁸¹ *People v. Almanzor*,⁸² *People v. Muros*,⁸³ *Garces v. People*,⁸⁴ *People v. Talan*,⁸⁵ *People v. Sabadlab*,⁸⁶ *People v. Cayanan*,⁸⁷ *People v. Domingo*,⁸⁸ *People v. Villanueva*,⁸⁹ and *People v. Pingol*.⁹⁰ Also, there are rulings to the effect that the main purpose of the accused is to commit rape given the number of sexual violations perpetrated against the victim. **However, these strings of jurisprudence must be revisited to avoid indiscriminate application of the criminal law theory on the absorption of crimes.** To be sure, the number of rapes committed will not automatically result in the absorption of forcible abduction. Case law is explicit that a complex crime of forcible abduction with rape may exist although there are multiple rapes. It is settled that the crime of forcible abduction was only necessary for the first rape. Any subsequent acts of intercourse should be treated as separate acts of rape independent from the complex crime of forcible abduction with rape. This is the thrust of the Court's decisions in *People v. Gabisay, Jr.*,⁹¹ *People v. Caraang*,⁹² *People v. Garcia*,⁹³ *People v. Velasquez*,⁹⁴ *People v. Julian*,⁹⁵ *People v. Fortich*,⁹⁶ *People v. Tami*,⁹⁷ *People v. Bacalso*,⁹⁸ *People v. Copro*,⁹⁹ *People v. Bohos*,¹⁰⁰ and *People v. Jose*.¹⁰¹

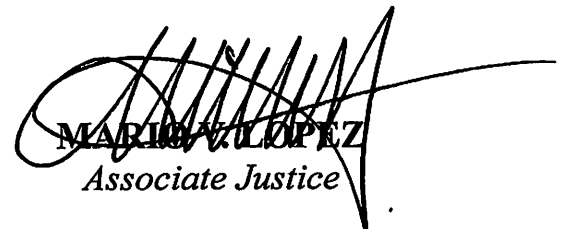
Applying these precepts, the blanket statements in the *ponencia* that the main intent of the petitioner is to have carnal knowledge of the victim, and that "*forcible abduction was only an inevitable result of rendering [the victim] unconscious, the means chosen . . . to ensure the consummation of rape*"¹⁰² are purely speculative and have no factual basis. It is likewise inaccurate to conclude that forcible abduction is deemed absorbed if the principal intent of the accused is to rape the victim or if multiple rapes were committed. As discussed above, forcible abduction is not an inherent element or an indispensable means of rape. A different stance will remove forcible abduction with rape from our criminal law books through mere invocation of the accused's intention to rape the victim. Notably, in the complex crime of forcible abduction with rape, the *actus reus* and *mens rea* of both component crimes must be present. The proper test to ascertain if the accused should be

⁸¹ 418 Phil. 268 (2001) [Per J. Quisumbing, Second Division].
⁸² 433 Phil. 667 (2002) [Per J. Kapunan, *En Banc*].
⁸³ 467 Phil. 474 (2004) [Per J. Carpio Morales, Third Division].
⁸⁴ 554 Phil. 683 (2007) [Per J. Ynares-Santiago, Third Division].
⁸⁵ 591 Phil. 812 (2008) [Per J. Carpio, First Division].
⁸⁶ 684 Phil. 269 (2012) [Per J. Bersamin, First Division].
⁸⁷ 718 Phil. 168 (2013) [Per J. Reyes, First Division].
⁸⁸ 810 Phil. 1040 (2017) [Per J. Bersamin, Third Division].
⁸⁹ 847 Phil. 179 (2019) [Per J. Del Castillo, First Division].
⁹⁰ 889 Phil. 116 (2020) [Per J. Leonen, Third Division].
⁹¹ G.R. No. 256301, March 1, 2023 [Per J. J. Lopez, Second Division].
⁹² 463 Phil. 715 (2003) [Per J. Panganiban, First Division].
⁹³ 428 Phil. 312 (2002) [Per Curiam, *En Banc*].
⁹⁴ 399 Phil. 506 (2000) [Per J. Gonzaga-Reyes, Third Division].
⁹⁵ 337 Phil. 411 (1997) [Per J. Panganiban, Third Division].
⁹⁶ 346 Phil. 596 (1997) [Per J. Romero, Third Division].
⁹⁷ 313 Phil. 665 (1995) [Per J. Kapunan, First Division].
⁹⁸ 285 Phil. 679 (1992) [Per J. Medialdea, First Division].
⁹⁹ 211 Phil. 558 (1983) [Per J. Relova, First Division].
¹⁰⁰ 187 Phil. 228 (1980) [Per Curiam, *En Banc*].
¹⁰¹ 147 Phil. 406 (1971) [Per Curiam, First Division].
¹⁰² *Ponencia*, p. 14.

liable for a complex crime is whether forcible abduction is a “*necessary means*” to commit rape, and not based merely on the intention of the accused.

On this point, the courts must examine carefully the relationship between forcible abduction and rape, anchored on the surrounding circumstances, to determine what crime the accused committed. **Here, there is nothing from the circumstantial evidence which would suggest that the forcible abduction is purely incidental or preparatory in the commission of rape, or that it is not a necessary means to commit the sexual violation.** Rather, it is evident that the accused forcibly abducted the victim from the plaza and brought her to a cottage beside the river where they perpetrated their lecherous act. **The forcible abduction facilitated and ensured the commission of rape.** Verily, the component crimes must be complexed following Article 48 of the RPC. Corollary, it is not required to show on the face of an information for a complex crime of forcible abduction with rape the manner how one offense is a “*necessary means*” to commit the other, as that is a matter of evidence at the trial. What matters is that the information alleged the elements of both component crimes. As a rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred. Moreover, reasonable certainty in the statement of the crime suffices. All that is required is that the charge be set forth with such particularity as will reasonably indicate the exact offense which the accused is alleged to have committed and will enable them to intelligently prepare a defense, and if found guilty to plead their conviction, in a subsequent prosecution for the same offense.¹⁰³

FOR THESE REASONS, I vote to DENY the petition. Petitioner should be held liable for the complex crime of forcible abduction with rape.


MARIO V. LOPEZ
Associate Justice

¹⁰³ *Balitaan v. CFI Batangas*, 201 Phil. 311, 323 (1982) [Per J. Guerrero, Second Division].