

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LIBRADO CARIAS, ET AL., ACCUSED, LIBRADO CARIAS AND
FELICISIMO MARTINEZ, ACCUSED-APPELLANTS.**

G.R. No. L-35853. June 24, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of a decision of the defunct Court of First Instance of Leyte in Criminal Case No. 558 which imposed the death penalty on FELICISIMO MARTINEZ and LIBRADO CARIAS. The same decision adjudged the two to pay solidarity Quiteria Calda the sum of P5,000.00 and another sum of P1,000.00 to Quiteria and her husband Rufino Gregorio for the value of the things stolen from them and the costs.

Originally charged were five named persons and ten John Does of the crime of robbery in band with rape and less serious physical injuries. However, the prosecution moved to dismiss provisionally the case against three of the named accused for lack of sufficient evidence so that only Felicisimo Martinez and Librado Carias were tried and sentenced as above stated.

The information in this case reads as follows:

"That on or about the 12th day of September, 1971, in the municipality of Tolosa, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together with ten (10) other JOHN DOES whose identities and whereabouts are still unknown, and mutually helping with one another, armed with boloes and firearms, with the deliberate intent and with intent of gain and by means of violence and intimidation upon RUFINO GREGORIO and QUITERIA CALDA GREGORIO, did, then and there wilfully, unlawfully and feloniously take, rob and carry away cash money in Philippine Currency, in the sum of P2.00 and machine tools, hand vise, hand drills, complete carpentry tools, plows, clothing, cooking utensils and chickens in the amount of P1,089.00 belonging to said Rufino Gregorio and Quiteria Calda Gregorio without their consent and against their will and to their damage and prejudice in the total amount of P1,091.00; that during and on the occasion of the said robbery the above-named accused, conspiring and confederating together with the aforementioned John Does, and mutually helping one another, did, then and there wilfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge with said Quiteria Calda Gregorio against her will and consent; and likewise during and on the occasion thereof, the same above-named accused, acting in the same conspiracy with their oft-mentioned co-accused, did then and there wilfully, unlawfully and feloniously attack and inflicted upon said Rufino Gregorio the following injuries, to wit:

'Abrasion, contured with lacerated edges, lower lip.

'Contusion, of the right infronorbital region.

'Abrasions, linear 2 in number at the left hypochondriac region.

'Abrasions, multilinear, multiple over the right and left scapular region.'

which required medical attendance from ten (10) to fifteen (15) days to heal and incapacitated him from performing his customary labor for the same period of time."

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

"In their house in the mountain, in Bo. San Roque, Tolosa, Leyte, while the spouses Rufino Gregorio and Quiteria Calda were resting, after having eaten their supper at 8:30 p.m. on September 12, 1971 (p. 6, tsn, Jan. 12, 1972), they heard a voice at the foot of their stairs calling, 'Manang Teria' (p. 7, tsn, *ibid*).

As the husband Rufino Gregorio was about to open the door, five men, all armed with firearms, forced their way in and entered the house (p. 7, tsn, *ibid*; pp. 26-28, tsn, Dec. 16, 1971). Forthwith, someone hit Rufino Gregorio on the right cheek with the butt of a gun, and the others hit him with a steel bar on the chest, and on the back, which sent him falling unconscious to the floor (p. 7, tsn, Jan. 12, 1972.) Then, they tied his hands at his back (p. 12, tsn, *ibid*).

Thereafter, the malefactors also tied the hands of Quiteria Calda (p. 33, tsn, Dec. 16, 1971), and brought her to a make-shift bed inside the house and started abusing her, one after the other (pp. 30-31, tsn, *ibid*). When the husband regained consciousness a few minutes later, he was lying just one meter away from his wife, and he saw the five men sexually abusing her (pp. 7-8, tsn, Jan. 12, 1972; p. 32, tsn, Dec. 16, 1971). The complaining couple recognized two of the malefactors as Librado Canales Carias and Felicisimo Martinez, appellants herein (p. 8, tsn, Jan. 12, 1972; p. 37, tsn, Dec. 16, 1971).

The five persons maltreated the husband several times. They kicked him (p. 10, tsn, Jan. 14, 1972), and hit him with a steel bar on his abdomen (p. 9, tsn, *ibid*). He fell unconscious more than once, and each time he came to, he found his wife still being abused by them (p. 8, tsn, Jan. 12, 1972). He saw the appellants actually having sexual intercourse with his wife (*Ibid*).

After the five men were through satiating their desire with Quiteria Calda, they brought the husband Rufino Gregorio downstairs and made him dig a hole in the ground (p. 12, tsn, Jan. 14, 1972). At this juncture, their companions who were waiting down-stairs, around ten of them (pp. 30-31, tsn, Dec. 16, 1971), went up the house (pp. 18-19, tsn, *ibid*) and continued abusing Quiteria Calda. No less than 15 persons had sexual intercourse with her that night (pp. 30-31, tsn, Dec. 16, 1971), and she, too, lost consciousness after she had been abused (p. 35, tsn, Dec. 16, 1971).

Meanwhile, downstairs, when her husband Rufino Gregorio had already dug a hole about four feet deep and one foot wide (pp. 17-18, tsn, Jan. 14, 1972), the men poked a dagger at the back of his neck and forced him to get inside the hole (Exh. 1, p. 6, rec. of exhs.). It was only when he begged for their mercy that they drew the dagger away and allowed him to go out of the hole (*Ibid*). They then hog-tied him and carried him upstairs on a bamboo pole (p. 17, tsn, Jan. 14, 1972), and there, they again gave him a terrible blow (Exhibit 1, p. 6, rec. of exhs.).

When the malefactors finally got tired of abusing and maltreating the complaining couple (*Ibid*), they ransacked their house and took away with them all their clothes, their kettles, plates, carpentry and mechanical tools, some 40 chickens, and also their dog, all valued at around P1,000 (p. 9, tsn, Jan. 12, 1972; pp. 38-39, tsn, Dec. 16, 1971; and Exhibit 1, p. 6, rec. of exhs.).

The following morning after the incident, the poor, unfortunate couple went to town and had themselves examined by Dr. Zenaída A. Tansingco, Municipal Health Officer of Tolosa, Leyte (p. 36, tsn, Dec. 16, 1971; and pp. 3-22, tsn, Dec. 16, 1971).

The medical certificate of Rufino Gregorio, Exhibit B, states the following findings:

'Abrasion, contused with lacerated edges, lower lip.

Contusion, of the right infra-orbital region.

Abrasions, linear 2 in number at the left hypochondriac region.

Abrasions, multilinear, multiple over the right and left scapular region.' (p. 3, rec. of exhs.)

which, under normal conditions, would require medical attendance for a period of 10-15, days (p. 3, rec. of exhs.).

The medical certificate of Quiteria Calda, Exhibit C, reveals the following:

'External Findings:

Fairly developed, fairly nourished adult, female, Filipina.

Breast fully developed, hemispherical in shape, soft in consistency. Areola brownish in color with nipples prominent and protruding.

Abrasions, multilinear scratches 2 in number at the left intraclavicular region.

Contusion of the left zygomatic region.

'Internal Findings:

Pubic hair fairly abundant and fairly distributed with some matted together. Vaginal Canal with thick mucoid discharged with fish like smell.

Abrasions, linear single of the left labia minora.' (p. 4, rec. of exhs.).

Also attached to the records is Exhibit A, the extrajudicial confession of appellant Felicisimo Martinez, the pertinent portions of which are quoted as follows:

'12. Q —

In that particular incident you made mention, do you know who were the perpetrators, or the persons responsible in this robbery case in the mountain of Bo. San Roque, Tolosa, Leyte?

A —

I know four persons and the five, I do not know them.

'13. Q —

Do you know the four persons you have mentioned?

A —

Yes sir, Brenny Canales Carias of Sitio Sawa, Bo. Opong, Tolosa, Leyte, Lucio Canales of Sitio Sawa, Bo. Opong, Tolosa, Leyte, Fernando Escarlan Advincula alias Andoy of Sitio Sawa, Bo. Opong, Tolosa, Leyte, and Rodolfo Almaden of Bo. San Roque, Tolosa, Leyte.

'14. Q —

Do you mean to say that the four you mentioned were the only persons who robbed including you?

A —

No sir, there were other five persons aside from us, the four I just mentioned and myself.

'15. Q —

Who were the names of the other persons?

A —

I do not know their names because during that incident that was the first time I saw them.

'16. Q —

Will you please narrate to me the facts surrounding the incident?

A —

Last September 12, 1971, at about 6:30 in the evening at Bo. San Roque, Tolosa, Leyte, after supper I went out to take a walk. I went to the waiting shade and there I met Brenny Canales and he requested me to go with him to Bo. Sawa, Opong, Tolosa, Leyte. I accompanied him and we passed by the National Highway. When we arrived at Sitio Sawa near the old house of Mateo Calda, Brenny brought me to the dark portion of the coconut plantation, where his companions with guns and bolos were waiting for him. Then he requested me to go with them, but I was hesitant, then they threatened me with a long gun and a revolver. Because of fear I accompanied them from Sitio Sawa near the house of Mateo Calda we crossed the road and followed a small path till we reached the house of Quiteria Calda in the mountain. While we were in the yard Brenny Carias was the first to call the husband of Quiteria saying, "BAYAW ABREHE CANI" then the husband of Quiteria opened and immediately Brenny struck the husband of Quiteria by the butt of the long gun he was bringing. The husband of Quiteria fall to the floor of the house and the other companions looked for a rope and tied the husband of Quiteria. After that the other fellow held Quiteria and layed her in a bamboo bed and they commenced there sexual intercourse with the helpless woman by turn, while the husband was tied with a rope looking at his wife being abused by our companions. After their intercourse with Quiteria they brought downstairs the husband of Quiteria and was forced to dig a hole on the ground and was told to surrender his gun. The fact that no gun was given to them, they brought and carried away chickens, utensils and carpentry tools with them when they left. (pp. 1-2, rec. of exhs.)" (Brief, pp. 5-12.)

The defense of both appellants is alibi.

Librado Carias claimed that on September 12, 1971, at about 2:00 p.m., he left Barrio Opong in Tolosa, Leyte, for Balangiga, Samar. He arrived in Balangiga at 6:00 p.m. of the same day and there fished until 5:00 a.m. of the next day.

Felicisimo Martinez said that in the evening of September 12, 1971, he was at home in Barrio San Roque, Tolosa, Leyte, where he was busy attending to the last day of prayers for his nephew Romeo Brazil who died on September 3, 1971. He claimed he signed Exhibit A by candle light as there was a blackout and he did not read its contents.

The case presents the all-too-familiar situation where the prosecution claims that the accused where in a certain place and there committed the crime while the latter claim that they could not have committed the crime because they were elsewhere. It is no surprise, therefore, that the appellants assert that the trial judge committed the following errors:

"I. THE COURT A QUO ERRED IN GIVING FULL CREDIT TO THE TESTIMONY OF QUITERIA GREGORIO AND HER HUSBAND, RUFINO.

II. THE LOWER COURT ERRED IN NOT GIVING FULL CREDIT TO THE TESTIMONY OF LIBRADO CARIAS.

III. THE LOWER COURT ERRED IN NOT GIVING FULL CREDIT TO THE TESTIMONY OF FELICISIMO MARTINEZ.

IV. ASSUMING ARGUENDO THAT BOTH ACCUSED PARTICIPATED IN THE COMMISSION OF THE CRIME, THE LOWER COURT ERRED IN METING OUT THE SUPREME PENALTY OF DEATH TO THEM." (Brief, p. 1.)

The appellants claim that they could not have been positively identified by the complaining spouses because: "Firstly, Rufino Gregorio admitted that he is a native of Nueva Ecija and has only stayed in Bo. Opong, Tolosa, Leyte, the place of the commission of the crime for one (1) year during which period of time, he seldomly goes out of the barrio on account of his work as a farmer aside from the fact that their house is isolated from the other houses. Such being the case, he has no time to make friends with the people around (t.s.n., p. 8, hearing of January 14, 1972); Secondly, it was also admitted as a fact all throughout the proceedings that the incident happened in the mountain and at night which was very dark. Thirdly, Rufino Gregorio testified that he lost consciousness several times as a result of the maltreatment he suffered in the hands of the malefactors (t.s.n., hearing of January 12 & 14, 1972; and pp. 22-23, hearing of February 2, 1972). Fourthly, their information as to the alleged culprits was only supplied to them by Pat. Advincula." (Brief, p. 9.)

This claim is rendered baseless by the following:

- Librado Carias was known to both Rufino Gregorio and his wife. This is shown by his own testimony, thus:

"Q. [ATTY. TEODORO ALIANZA, defense counsel]

Do you have any knowledge why this Quiteria Calda and Gregorio Rufino testify against you for the crime of robbery with rape?

A We have grudges with them.

Q What is the grudge you refer to?

A

On August 28, 1971, in the fiesta at Bo. San Roque, I had a bet with Quiteria Calda and Rufino Gregorio interrupted the game as he did not want Quiteria to loss.

Q What did you do?

A I boxed him.

Q Where did you hit him, on what part of the body?

A On the left shoulder." (TSN, July 26, 1972, p. 44.)

- Felicisimo Martinez was likewise known according to his own testimony:

"Q. [ATTY ALIANZA]

According to QUITERIA Calda you were positively identified by her as one of the persons who abused her and had carnal knowledge with her against her consent. What do you say to that?

A Because we had a misunderstanding.

Q But first of all, is that true or not that you abused her?

A That is not true.

Q What is that misunderstanding you stated?

A

Because they encroached on taking coconuts from our place which is beyond their land.

Q

Why? Has Quiteria Calda any property that adjoins your property?

A She has no property.

Q But whose property have they been occupying?

A Colas Calda.

Q

What relation, if you know, has Colas Calda to Quiteria Calda?

A Brother and sister.

Q

What about it? What do you have to do if they took coconuts on the land encroaching on the land of Nicolas Calda? Why did you have a difference or misunderstanding with her?

A That was . . . They also go to our land to pick up coconuts.

Q

Is your land adjoining that of Nicolas Calda the land where you are working?

A Yes, sir.

Q

You said that they are going beyond the bounds of the land of Nicolas Calda. When you say 'they' whom are you referring to by the word 'they'?

A Quiteria Calda and Rufino Gregorio.

Q

How did you come to know that this Quiteria Calda and Rufino Gregorio went beyond the bounds of Nicolas Calda's property and gathered coconuts in that land?

A I often catch them picking coconuts in our land.

Q

And what happened when you catch them picking coconuts from your land?

A

I told them not to pick up coconuts because they are no longer theirs.

Q And what else happened regarding that?

A Rufino Gregorio challenged me to a fight in the mountain.

Q Then what else happened?

A

After I admonished them not to pick up coconuts, I went home as Rufino Gregorio challenged me to a fight. (TSN, January 12, 1972, pp. 14-15.)

- On September 13, 1971, the day following the commission of the crime, Rufino Gregorio had already identified to Patrolman Napoleon L. Advincula of the Tolosa Police Headquarters the names of the perpetrators as "Librado Canales Carias, Simoy Martinez and their companions." (Exhibit 1.)

- It is true the incident happened at night but it cannot be said that it was very dark for as Quiteria testified:

"Q [THE COURT]

But you did not notice any of these two [Librado Carias and Felicisimo Martinez]? You just believed they were among those who raped you? You are not sure that these two raped you?

A I am sure.

Q Why do you say so?

A I saw them with my two eyes.

Q How did you see them?

A I saw them because there was a lamp in the house.

Q

You saw them as being among the people there but you did not see them as being the persons who actually had sexual intercourse with you?

A

Why will I not see them when we had a light inside the house?

Q

Why do you say that they are the persons who raped you? What did they do to you?

A They had intercourse with me.

Q

When those people had carnal knowledge with you did you see their faces?

A Yes, sir." (TSN, January 12, 1972, pp. 4-5.)

- Rufino did testify that he lost consciousness several times as a result of the physical injuries inflicted upon him but this circumstance precisely shows that he had periods of consciousness during which he was able to identify not only his assailants but also those who raped his wife.

The second and third assignments of error which advance the alibis of the appellants are for naught in view of their positive identification by the complainants. And anent the claim of Martinez that he signed Exhibit A which is his confession without knowing what it contained, Judge Lourdes M. Garcia testified as follows:

"Fiscal Matol:

Q Judge Garcia, do you know accused Felicisimo Martinez?

A Yes, I know him.

Q Kindly point out to him.

A

That fellow. (Witness pointing to a person who answers the name of Felicisimo Martinez)

Q In the afternoon of September 15, 1971, where were you?

A I was in my post in Tolosa, Leyte.

Q

Do you know at that time in the afternoon where Felicisimo Martinez was?

A

He was a detained prisoner at the Tolosa municipal jail. He was brought to my court or sala.

Q For what purpose was he brought before your presence?

A

He was brought by the officer in charge Palaña of the Tolosa police department for the purpose of swearing to his affidavit and for his signature.

Q

You mean to say that it was a confession of Felicisimo Martinez?

A Yes, sir.

Q

If a copy of the same will be shown to you, will you be able to recognize the same?

A Yes, I will.

Q

Showing to you a confession of Felicisimo Martinez on pages 6 and 7 of the record, and which we request that this be marked as Exhibit "A" for the prosecution, please take a look and tell us what relation it has to the one which you referred to a while ago.

A This is the same statement.

COURT: Mark the affidavit as Exhibit "A".

Q

On the right side of page of this affidavit is a signature, whose signature is this?

A

That is the signature of Felicisimo Martinez.

Q

Why do you say that it is his signature?

A

Because he signed before me.

Q

On page 2 thereof on the bottom is a signature of Felicisimo Martinez over the typewritten name Felicisimo Martinez, whose signature is that?

A

That is his signature.

Q

Why do you say that it is his signature?

A

Because he signed before me.

Q

Below the jurat is a signature Lourdes M. Garcia, whose signature is that?

A

That is my signature.

Q

Please tell the Court who were the persons present at the time when Felicisimo Martinez swore to his affidavit before you?

A

At first he was brought into the office in the afternoon, my clerk was there.

Q

Was there any other policemen?

A

Patrolman Palaña who brought him there.

Q

Who handed to you this Exhibit "A"?

A

Pat. Palaña, he was the one who handed this to me.

Q

After Pat. Palaña handed this Exhibit "A" to you, where did he go?

A

He went back to his office.

Q

Where was Felicisimo Martinez?

A

Still in my office.

Q

What did you do to him?

A

I asked him if this is his statement and he admitted.

Q

In what language did you ask him?

A

In the dialect.

Q

Please tell the Court whether Felicisimo Martinez understands the waray-waray dialect.

A

Yes, he understands the waray-waray dialect because I asked him, Felicisimo Martinez whether he understands waray-waray and he said 'yes'. I asked him if he understands English, he said that he does not fully understand

English and I said that I will translate it into waray-waray.

Q

What questions did you translate into waray-waray dialect?

A

These questions in the sworn statement.

Q

After translating the questions and answers in this Exhibit "A", what did you do?

A

I told him to sign the sworn statement. He swore before me and he signed it. After he signed it, I signed my name.

Fiscal Matol:

That will be all." (TSN, October 18, 1971, pp. 2-4.)

The repudiation of the confession is a crude attempt by Martinez to exculpate himself. The confession is full of details which he alone could have supplied and it even contains exculpatory statements, e.g. that he went with Brenny Canales and his group out of fear and that it was "they" who raped Quiteria.

The court a quo imposed the death penalty on the appellants because it relied on *People vs. Obtinalia*, G.R. No. L-30190, April 30, 1971, 38 SCRA 651, and accordingly applied Art. 335 of the Revised Penal Code with the aggravating circumstances of dwelling and ignominy. But the appellants assert that Art. 294 (2), not Art. 335 of the R.P.C. should have been applied.

There used to be a debate in this Court whether robbery with rape should be classified as a crime against property penalized by Art. 294 (2) of the R.P.C. or as a crime against chastity penalized by Art. 335 of the same Code. The debate was not pointless because before P.D. No. 767 amended Art. 294 (2) of the R.P.C. on August 15, 1975, said article was more favorable to the accused by providing for a lower penalty. The debate was resolved in *People vs. Cabural*, G.R. No. L-34105, February 4, 1983, where ten members of the Court held, in the words of Chief Justice Fernando, "it is Article 294 (2) not Article 335 of the Revised Penal Code that calls for application in the crime of robbery with rape."

When the crime in this case was committed, the imposable penalty under Art. 294 (2), R.P.C., was reclusion temporal in its medium period to reclusion perpetua. Considering the two aggravating circumstances, the appropriate penalty is reclusion perpetua.

WHEREFORE, the judgment under review is hereby affirmed with the sole modification that the appellants shall suffer the penalty of reclusion perpetua instead of death. Cost against the appellants.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Makasiar, J., death penalty should be imposed.

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