

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNIDO DETUYA, GREGORIO LOZANO, AND FELICIANO NAVALES,
ACCUSED-APPELLANTS.**

G.R. No. L-39300. September 30, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal from the decision of the then Court of First Instance of Zamboanga del Sur, Branch II, in Criminal Case No. 94, promulgated on July 17, 1974, the dispositive portion of which reads:

In view of all the foregoing, the Court hereby finds the accused BERNIDO DETUYA and FELICIANO NAVALES guilty beyond reasonable doubt of the crime of robbery with rape (there were eight rapes committed) penalized under the provision of Article 294, paragraph 2.

WHEREFORE, appreciating the aggravating circumstances of band, dwelling, nighttime and ignominy, without having been off-set by any mitigating circumstance, the Court hereby sentences both the accused BERNIDO DETUYA and FELICIANO NAVALES to LIFE IMPRISONMENT, to be served as the National Penitentiary, Muntinglupa, Rizal with the accessory penalties prescribed by law, to indemnify, jointly and severally, offended parties Indin Subana and Graciana Jumalon in the sum of Twelve Thousand (P12,000.00) Pesos for each and Bernaldo Jumalon in the total sum of Five Hundred Eighty-Four (P584.00) Pesos, representing the total amount robbed; to acknowledge and support the off-spring of Graciana Jumalon should there be any, and to pay proportionate costs.

The accused, being detention prisoners, shall be credited with four-fifths (4/5) of the preventive imprisonment already undergone by them.[1]

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In an Information dated September 16, 1970, Bernido Detuya, Feliciano Navales, Gregoria Lozano, Patricio Rafols, and Rolando Rafols were charged as follows:

That on March 4, 1970 at about 2:00 o'clock dawn, in the barrio of Ditulan, Municipality of Dumingag, Province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a revolver and hunting knives, taking advantage of the nighttime in order to facilitate the commission of the crime, conspiring, confederating and helping one another, with intent of gain, by force, did, then and there wilfully and feloniously enter the house of one BERNARDO JUMALON, once inside, with violence and intimidation, hogtied Bernardo and his children, kick them, stab them, demanded for money, and with force and intimidation have carnal knowledge with Indin Subana a 14-year old wife of Bernardo and Graciana Jumalon a 17-year old daughter of Bernardo, taking turns one after the other against their will, then, take, steal and carry away cash money in the amount of P500.00, 2 gold rings worth P45.00, a lady's wrist watch costing P30.00, 3 chickens worth P7.50 all belonging to Mr. and Mrs. Bernardo Jumalon without their consent

and against their will to the damage and prejudice of the latter in the total amount of P583.50 Philippine Currency.

CONTRARY TO LAW.[2]

In the court a quo, all of the five accused pleaded “not guilty” to the crime charged in the information. However, the accused Patricio Rafols and Rolando Rafols escaped from detention while the trial was still underway, and are still at large. Of the three remaining accused, only Gregorio Lozano was actually acquitted due to the failure of the prosecution to prove his culpability beyond reasonable doubt.[3]

Subsequent to the aforementioned judgment of conviction, Bernido Detuya and Feliciano Navales appealed to this court.

On February 7, 1984, a Motion to Withdraw Appeal was filed by Feliciano Navales thru his counsel de officio officially manifesting his voluntary decision to withdraw his appeal in full awareness of his legal rights and the import of such a withdrawal. We granted the motion in our resolution dated February 29, 1984.[4] Therefore, as to him, the judgment has become final.

On the other hand, Bernido Detuya submitted his brief, as well as his reply brief, (both prepared by his counsel de officio, Atty. Jejomar C. Binay), therein reciting the errors allegedly committed by the lower court, to wit:

1. THE TRIAL COURT GRAVELY ERRED IN GIVING UNDUE AND UNDESERVED CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S WITNESSES, PARTICULARLY BERNARDO JUMALON, ALEJANDRO LABANG AND GRACIANA JUMALON, REGARDING THE IDENTIFICATION OF ACCUSED-APPELLANT BERNIDO DETUYA AND THE COMMISSION OF THE ALLEGED RAPE, WHICH ARE REplete AND SHOT THROUGH WITH GLARING INCONSISTENCIES, CONTRADICTIONS AND IMPROBABILITIES.

2. THE LOWER COURT SERIOUSLY ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT BERNIDO DETUYA'S DEFENSE OF DENIAL AND ALIBI IN THE FACE OF THE WEAK, UNRELIABLE, INCONCLUSIVE AND DOUBTFUL EVIDENCE OF THE PROSECUTION ON SAID ACCUSED-APPELLANT'S IDENTIFICATION AND ON THE COMMISSION OF THE RAPE.

3. THE COURT A QUO COMMITTED SERIOUS ERROR IN CONVICTING ACCUSED-APPELLANT BERNIDO DETUYA OF THE CRIME OF ROBBERY WITH RAPE AND SENTENCING HIM TO LIFE IMPRISONMENT.[5]

After a careful assessment of all the evidence on record, we are impelled to affirm, as we hereby affirm, the judgment of the trial court.

The following facts are established by the evidence on hand:

At about 2 o'clock in the morning of March 4, 1970 in Barrio Ditulan, Dumingag, Zamboanga del Sur, Bernardo Jumalon was roused from his sleep by the barking of dogs. He then lighted two lamps, one inside his room and another in the living room, and proceeded to an adjoining portion of his house to relieve himself. Upon reaching this extension of his house, Bernardo felt the presence of somebody in the kitchen which made him nervous so that he returned to his room, lighted a cigar, cleared his throat, and made some sounds. Feeling a bit braver, he went back to urinate, but on the way he was met by five persons, the accused in this case, four of whom were armed with hunting knives and one with a revolver. Bernardo immediately recognized two faces -- those of Bernido Detuya and Feliciano Navales. The accused pointed their knives at Bernardo, at the same time demanding to know where his money was hidden. Denying that he had any money, Bernardo retreated towards his room but he was blocked by Bernido Detuya. He stumbled and fell on the floor. Thereupon he was made to lie flat on his

stomach; his two hands were tied at his back; and he was placed in a corner of the house.[6]

Thereafter, the accused went inside the room where Bernardo Jumalon's common-law wife, Indin Subana, and his four children were sleeping. After blindfolding Indin, then only fourteen years young, appellant Bernick Detuya Feliciano Navales proceeded to rape her. Graciana Jumalon, a daughter of Bernardo Jumalon, who at that time was only 15 years of age, was also raped by all five of the accused.[7]

Subsequently, Graciana Jumalon was brought downstairs where a companion of the accused also raped her.[8]

Finally, the accused ransacked the house, getting 500 from the trunk, a wristwatch worth P30.00, two rings worth P45.00, and three hens valued at P3.00 each.[9]

Before fleeing, they warned Bernardo and his family not to shout otherwise they will come back to kill all of them.[10]

After the accused had gone, Bernardo wasted no time in reporting the incident to the barrio captain, who promptly inspected the scene of the crime.

Upon the latter's advice, Bernardo proceeded to the town proper and reported the incident to the police authorities, who, after investigations, ordered the arrest of Bernido Detuya and Feliciano Navales who were both identified to the police authorities by the victims.

On that same day, Graciana Jumalon and Indin Subana were accompanied by Bernardo Jumalon and Police Lt. Felipe Robles to the house of Dr. Tagaloguin where both women underwent physical examination. The findings disclosed some contusions in Graciana's vaginal wall and bleeding lacerations in her hymen. Moreover, Dr. Tagaloguin was able to gather a whitish substance from her vagina but which he was not able to examine under the microscope.

Like in the case of Graciana Jumalon, Dr. Tagaloguin also found some contusions and whitish substance in Indin's vaginal wall.[11]

Anent his first assignment of error, the appellant argues that the testimonies of Bernardo Jumalon, Alejandro Labang, and Graciana Jumalon are replete and shot through with glaring inconsistencies, contradictions, and exaggerations and because their testimonies constitute the only proof linking him to the crime charged, accordingly, he deserves to be acquitted.

We do not agree.

Contrary to the appellant's claims, he was categorically and unequivocally identified by the three principal witnesses for the prosecution as being one of the five persons who robbed and raped the victims.

The testimony of Graciana Jumalon reveals not only the fact of Bernido's presence at the scene of the crime on that fateful morning but, even more importantly, the extent of his participation therein. She explained that it was the appellant, in particular, who tied her and demanded for their money; it was the appellant who removed her panty and sexually abused her; and after all the other malefactors had finished raping her, it was the appellant who brought her downstairs where she was again raped by another of his companions; it was also the appellant who brought her back upstairs and who warned her not to shout, otherwise she would be killed.[12]

Bernardo Jumalon's testimony complements and confirms the declarations of his daughter Graciana. His recognition of the appellant as one of the perpetrators of the crime is positive and absolute. He testified that the appellant, specifically, blocked his path while he was retreating towards his room, and minutes later raped his wife and daughter.[13]

Confirming further the statements of Graciana and Bernardo, Alejandro Labang, who was only eleven years old when he witnessed the commission of the dastardly crime, testified that he recognized the appellant as being one among those who entered his uncle's house in the early morning of March 4, 1970. According to him, the appellant and his companions took turns in raping Graciana after which the appellant and Feliciano Navales raped Indin.[14]

All these principal witnesses testified that after raping the women, the appellant and his cohorts robbed them of cash and other belongings. All of them likewise testified that even prior to the incident in question the appellant and Feliciano Navales were already quite known to them by face as well as by name.

As explicitly stated by Alejandro Labang:

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FISCAL FERNANDEZ: Since when did you come to know Bernido Detuya and Fely Navales?

A I know two of them for a long time already.

Q Why do you know them?

A They usually go to the mountain because they have a farm there.[15]

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The appellant would want to impress upon us that it was impossible for these prosecution witnesses to make an accurate identification of him because firstly, the place was not illuminated, as shown by the absence of proof as to what kind of lamps were used and when the lights were put out, and secondly, the culprits admittedly blackened their faces.

There is no basis for these assertions. On the contrary, the testimony on cross-examination of Graciana Jumalon, which were corroborated by that of Alejandro Labang during his own cross-examination, dispels any doubt on this score. Thus:

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ATTY. RAFOLS: Did you say that at the time you woke up and went out of your room whether there was light in your room at that time?

GRACIANA: I can tell.

Q Please tell.

A Inside our house and inside our room there were lights.

Q What was that light inside your room when you said you woke up and stood up?

A It was a 'lamparahan'.

Q And will you describe before this court what what do you mean by 'lamparahan'?

A I can.

Q Please tell the court.

A That is made of tube with wick.

Q Will you tell this court what was that tube made of?

A It is an empty can.

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Q After the robbers left and they were already away, what did you do?

A Just before they left they put out the lights.[16]

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Admittedly, the culprits blackened their faces but apparently this camouflage did not preclude the recognition of the appellant by his victims, who were already accustomed to his facial features and mannerisms.

Beside, as aptly described Graciana Jumalon: "I was able to recognize because their faces were not so painted with dirt." [17]

Equally without merit is the appellant's contention that the commission of rape was impossible under the facts narrated by the prosecution witnesses so that, in truth, it was not satisfactorily established.

Although the room where the rapes were committed is quite small, around five meters, it is, however, sufficient to accommodate four or five people herded in one corner, plus two persons sprawled on the floor, and five others standing. As stated by Graciana Jumalon:

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ATTY. RAFOLS: And that you would like to impress upon this court that all these persons concentrated at you without going to other places of your room, am I right?

A When they took turns, (in raping me) I noticed that some of them were also going around.[18]

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The appellant would have us believe that with this number of people inside the room it is impossible to have sex with anybody because one would naturally feel too self-conscious to have any erection, much less libido. But while that may be true to a normal person, one with a criminal mind is so bereft of inhibitions or of any sense of modesty or propriety as to be able, even if he wanted to, to depress a compelling sexual urge for then he turns into a craving animal. The matter of decency would surely be the least of the concerns of one who is capable of committing such despicable crimes as robbery with force upon persons and multiple rape.

Neither is it so inconceivable for five men to rape single woman in twenty-five minutes, as argued by the appellant. As a matter of fact, it is quite possible for a man in similar circumstances to consummate rape in one minute.

Additionally, the appellant insists that rape could not have been committed because the legs of Graciana and Indin were tied as allegedly admitted by them. This assertion is completely belied by the responses of Graciana to the questions propounded by the court a quo, one of which would suffice to illustrate:

COURT:

Q What do you mean, do you want to tell this court that at the time when Detuya had sexual intercourse with you, your eyes were blindfolded and your legs were tied together?

A No.[19]

In the case of Indin, she explained how her legs were tied in a manner that could not hinder, but could in fact facilitate, the commission of rape against her:

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FISCAL CADELINIA: Were your legs tied?

A They held my legs apart.

Q By the way, you feel it - how many persons held your legs apart?

A My legs were tied with piece of cloth like this. (The witness demonstrated by placing her legs apart whereas her feet are together.)

COURT:

Q What part of your legs were tied?

A My legs were tied to the bench.

Q Were your legs tied together or only one to the bench?

A Only one.[20]

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As pointed out by the appellant, there are, indeed, a few discrepancies and inconsistencies in the testimonies of the witnesses for the prosecution. Nevertheless, these are not of a nature and magnitude that would impair the credibility of the said witnesses. The alleged inconsistencies refer to minor details and "do not, in actuality, touch upon the basic aspects of who, the how and the when, of the crimes committed." [21] On the contrary, minor discrepancies in the testimonies of two or more witnesses are but natural and would even enhance their credibility as witnesses, because these indicate that the responses given were honest and unrehearsed. [22]

Furthermore, it is hard to believe that a woman would undergo the expense, trouble, and inconvenience of a public trial, not to mention the scandal, embarrassment, and humiliation it inevitably entails, and allow an examination of her private parts, if her motive was not to bring to justice the person(s) who had abused her. [23]

Besides, the contusions and lacerations found inside Graciana and Indin's sexual organs confirm vividly their testimonies on their being raped. [24]

The other eyewitness, fourteen-year old Alejandro Labang, (he was eleven years of age when the crime was committed) had no reason to testify falsely against the appellant, explicitly and implicitly accusing him of a capital offense. No ulterior motive was imputed to him, and thus, the presumption is that he was not actuated by improper motive and his testimony is entitled to full faith and credit. [25]

Everything considered, there is no doubt in our mind of the truthfulness of the testimonies of the three eyewitnesses. Equally, we are morally certain of the guilt of the appellant from the evidence on record. Verily, the quantum of proof -- beyond reasonable doubt -- has been fully satisfied in this case.

The second assignment of error pertains to the supposed error of the trial court in not giving credence to the appellant's defense of denial and alibi in the face of the weak, unreliable, and inconclusive evidence of the prosecution. In the words of the trial court:

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The evidence for the accused Bernido Detuya shows that on March 4, 1970, the said accused was in his house located at Mahayahay, Dumingag, Zamboanga del Sur, with his wife and other persons whom they invited to attend the house warming of their house which was newly finished; that after the house warming, there was a

dance and merry making in the house; that among the guests present were Nap Nazareno, Gonzalo Gutano, Dalmacio Egot, Tunang Ebarle, Erenio Manada, Dodo Rosal, Mrs. Rosal, Gerning Maglasan, Santos Salcedo, Pastor Hinoguin, Berting Maglasan, Mrs. Maglasan, Jesus Baulos, Margarita Detuya, Pedro Manada and others; that they served food to their visitors at about 9:00 o'clock in the evening and they finished eating at about 10:00 o'clock; that the party ended at about 12:00 o'clock at night and thereafter the accused Bernido Detuya who has drunk more than enough asked permission to go to bed and left his wife to attend to his guests; the accused further maintained that his wife is a school teacher and that he is a farmer and it is impossible for him to have committed the crime charged at 2:00 o'clock in the morning of May 4, 1970, considering that he was in the house at Mahayahay asleep, which house is approximately three (3) kilometers Ditulan where the incident complained of took place; that the reason why he is charged as an accused in this case is because sometime about the end of the year 1969, he was about to box Bernardo Jumalon when Bernardo Jumalon and others were about to box Feliciano Navales.[26]

Well-settled is the rule that alibi as a defense is weak and that it cannot prevail over the positive identification by the prosecution's witnesses of the accused as the perpetrator of the crime especially when there was no physical impossibility for the accused to be at the scene of the crime at the time of its commission.[27]

It is not at all improbable that after the appellant excused himself from the party, presuming *arguendo* that there really was one, he then proceeded with his companions to the house of Bernardo Jumalon in Ditulan. Even if they travelled by foot, it would not have taken them an hour to reach Ditulan which is only around three kilometers from Mahayahay.

Furthermore, the motive that the appellant ascribes to Bernardo Jumalon -- which is revenge, because sometime in 1969 the appellant was about to punch Bernardo who, together with some others, were about to hit Feliciano Navales -- is too shallow to be accorded credence. In the first place, the alleged "feud" was between Bernardo and Feliciano, not the appellant -- he merely intervened. In the second place, there were no actual exchange of blows. Since no harm came to Bernardo, there is no reason to expect any kind of retaliation on his part, especially revenge by falsely accusing the appellant of a very grave crime. The absurdity of such a motive is only too apparent especially if we consider that by so falsely accusing the appellant of said crimes Bernardo would be putting his own wife and daughter to great shame and scandal before the public.

The two witnesses, himself excluded, presented by the appellant contribute practically nothing to strengthen his case. Rather, they succeeded only in weakening his already weak alibi. The first witness is his wife; naturally, human nature being what it is, she is expected to come to her husband's aid; hence, her testimony, if at all, carries very little weight. The appellant's second witness, Dalmacio Egot, similarly testified on the facts constituting his alibi. However, in the course of Dalmacio's cross-examination, the prosecution was able to establish the witness' marked propensity to testify in all kinds of cases where he was not himself directly involved as a party or as one who might suffer substantial injury from the decision of the court. For this reason, Dalmacio's credibility as a witness as well as the "believability" of his testimony has been considerably impaired.

Further, "alibi is at best a weak defense and easy of fabrication especially between parents and children, relatives, and even those not so related." [28]

At any rate, these witnesses' testimonies alone cannot overcome weight of the prosecution evidence clearly pointing to the appellant as one of the culprits.

The appellant's third assignment of error is a mere consequence of the first and second.

From the facts established, we find the appellant guilty beyond reasonable doubt of the crimes of robbery with

rape penalized under the provisions of Art. 294, paragraph 2 of the Revised Penal Code, attended by the aggravating circumstances of dwelling, nighttime, and ignominy. Band has been correctly appreciated by the trial court only as a generic aggravating circumstance.

Nighttime is appreciated as an aggravating circumstance in that it facilitated the commission of the crime.[29] As previously shown, the appellant and his companions blackened their faces so that they could easily blend with the darkness thereby making them even more indistinguishable.

Additionally, the aggravating circumstance of ignominy is present in this case inasmuch as firstly, Indin Subana was raped in the presence of her husband, Bernardo Jumalon, and secondly, Graciana Jumalon was successively raped by five men -- these circumstances made the effects of the crime more humiliating.[30] Present, likewise, is the aggravating circumstance of dwelling, considering that the crimes were committed in the home of the victims who have not given provocation to the appellant and his cohorts.

In view of the presence of four aggravating circumstances without any mitigating circumstance, the penalty imposed should have been death, which is the greater penalty. However, in the light of the provisions of the 1987 Constitution[31] abolishing the death penalty, the imposable penalty on the appellant is reclusion perpetua.

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the MODIFICATION that the indemnity is increased to TWENTY-FIVE THOUSAND (P25,000) PESOS each to Indin Subana and to Graciana Jumalon. With costs against the appellant.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Penned by Judge Asaali S. Isnani, Decision, 20-21; Rollo, 31-32.

[2] Decision, 1-2; Rollo, 12-13.

[3] Id., 16, Rollo, 27.

[4] Rollo, 324.

[5] Appellant's Brief, 7; Rollo, 311.

[6] T.s.n., session of January 29, 1973, 6-7, 9-10.

[7] T.s.n., session of February 20, 1973, 8-9.

[8] T.s.n., session of January 29, 1973, 101.

[9] Id., 18.

[10] Id., 103.

[11] T.s.n., session of September 18, 1973, 166-168, 174.

[12] T.s.n., session of January 29, 1973, 88-103.

[13] Id., 7-20.

[14] T.s.n., session of February 20, 1973, 5-11.

[15] Id., 6.

- [16] *Id.*, 19-20; T.s.n., session of January 29, 1973; 109-110, 103-104.
- [17] *Id.*, 115.
- [18] *Id.*, 137.
- [19] *Id.*, 134-135.
- [20] T.s.n., session of October 11, 1973 265-266.
- [21] *People vs. Cabeltes*, Nos. L-38145-48, June 29, 1979; 91 SCRA 208 (1979).
- [22] *People vs. Agudo*, No. L-43796, July 15, 1985; 137 SCRA 516 (1985).
- [23] *People vs. Tuando*, No. L-47720, May 20, 1987, citing: *People vs. Macatangay*, No. L-40726, June 29, 1982; 114 SCRA 743.
- [24] *People vs. Reyes*, No. L-62387, June 19, 1985; 137 SCRA 99 (1985).
- [25] *People vs. Canamo*, No. L-62043, August 13, 1985, 138 SCRA 141 (1985), citing: *People vs. Alcantara*, No. L-49693-94, December 29, 1983; 126 SCRA 425.
- [26] Decision, 6-8; Rollo, 17-19.
- [27] *People vs. Pecato*, No. L-41008, June 18, 1987, citing: *People vs. Trawon*, No. L-51387, February 24, 1981, 103 SCRA 170 (1981); *People vs. Canamo*, No. L-62043, August 13, 1985, 138 SCRA 141 (1985); *People vs. Gani*, Nos. L-54812-84, October 15, 1985, 139 SCRA 301 (1985).
- [28] *People vs. Pecato*, No. L-41008, June 18, 1987, citing: *People vs. Cabanit*, Nos. L-62030-31, October 4, 1985, 139 SCRA 94 (1985).
- [29] *People vs. Lorenzo*, No. L-54414, July 9, 1984; 130 SCRA 311 (1981).
- [30] *U.S. vs. Iglesia, et al.*, No. 6868, December 14, 1911, 21 Phil. 55 (1911); *U.S. vs. Camiloy*, No. 12693, August 11, 1917, 36 Phil. 757 (1917).
- [31] Article III, sec. 19(1).

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