

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN CAYAGO @ “BOY”, RICARDO MACARAEG @ “CARDING” AND JUAN CAPITLE @ “TONING”, ACCUSED, MARTIN CAYAGO, APPELLANT.

G.R. No. L-47398. March 14, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

The decision of the Court of First Instance of Dagupan City, Branch 8, in Criminal Case No. D-1072, finding appellant Martin Cayago guilty of triple rape and imposing three (3) death penalties upon him, is before us on automatic review.

On the basis of a sworn complaint filed by Nancy Mamaril, the accused Martin Cayago, Ricardo Macaraeg and Juan Capitle were charged with rape in an information which read as follows:

“That on or about high noon of November 18, 1974, at Barangay Bawer, Municipality of Malasique, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, all the three accused, conspiring and mutually helping each other, did then and there, willfully, unlawfully and criminally, with the use of gun, bolo and a piece of wood, have sexual intercourse, one after the other with NANCY MAMARIL y MARTINEZ, who is seventeen years of age and a virgin, against her will.”

“Offended party, Nancy Mamaril y Martinez suffered moral, exemplary and actual damages in the sum of THIRTY SIX THOUSAND PESOS (P36,000.00).”

“Contrary to Article 335 of the Revised Penal Code.”[1]

The accused denied the charges in separate sworn statements during preliminary investigation. Warrants for their arrest were issued on 17 April 1975, but were returned unserved. On 19 May 1975, appellant Cayago was arrested by relatives of Nancy Mamaril in Manila, and was immediately surrendered to the police authorities. In June of the same year, appellant was transferred from the Manila Police Department lock-up to the Pangasinan Provincial Jail.

Upon arraignment on 9 January 1976, appellant Martin Cayago, aided by counsel, pleaded not guilty. He thereafter stood trial alone, the two other accused were and continue to be at large and have not to date been brought to trial.

The facts so established by the People’s evidence — culled from the composite testimonies of the complainant Nancy Mamaril, her parents, Francisco and Maria Mamaril, Dr. Fe Cruz Manaois of the Pangasinan Provincial Hospital and PC/Sergeant Eustino Maure — are as follows:

Nancy Mamaril, then 17 years old, was a resident of Barrio Polong, Malasiqui, Pangasinan. From November 1974, she started living at her brother Reynaldo’s house in Bawer, a small barrio of Malasiqui and about a kilometer away from Polong, to stay with her niece Evelyn who was then attending school in the barrio’s poblacion. Nancy’s father was also staying in his son’s house. Reynaldo and his wife, who were both working,

had already established their residence in Angeles City.

At around 12:00 noon, on 18 November 1974, Nancy was alone in the house, her niece Evelyn being in school, while her father was a sponsor at a wedding held nearby (about 50 meters away from Reynaldo's house). Nancy was then taking her nap on one of the bamboo beds (papag) near the window, when Ricardo Macaraeg, Juan Capitle and Boy Cayago, all armed, suddenly entered the house through the backdoor, the only entrance to the house. Startled, Nancy immediately rose up and asked "Why are you here?" Cayago holding a wooden club answered, "None". "Carding naiibegan to ka" (Carding is in love with you) remarked Capitle who had a bolo tucked along his waist. Sensing danger, Nancy tried to leave but Ricardo Macaraeg, armed with a hand gun, went near her, shut the window near the papag and pushed Nancy down the bed face up. Capitle then forcibly removed Nancy's undergarments leaving only her upper shirt on. Nancy tried scream for help, but Macaraeg stuffed her mouth with a handkerchief, while threatening her with his hand gun. Macaraeg then unzipped his pants, took out his sex organ and climbed on top of Nancy. During the coerced coitus, Capitle was on one side and Cayago on the other side of Nancy, each holding one of her arms down beside her head and her legs were pulled apart. Macaraeg stood up three minutes later and Cayago took his turn; he removed his pants and brief, went on top of Nancy, and copulated with her while Macaraeg and Capitle pinned down Nancy's legs and arms, Capitle followed suit and, like his co-accused, succeeded in ravishing Nancy. The accused, before leaving, warned Nancy not to discuss the incident with anyone, else they would kill her and her parents as well. Nancy Mamaril passed out and when she regained consciousness, she felt her private part bleeding profusely.[2]

Francisco Mamaril, father of Nancy, testified that when he arrived home at around 1:00 p.m., he saw his daughter Nancy lying on one of the bamboo beds. He did not notice anything unusual, except a sudden change of behavior in Nancy. Nancy was unusually silent and absent minded. When asked what was wrong, she remained silent and wept. On 26 November 1974, Francisco went to Barrio Polong, where his wife was, and advised her to go to Bawer and find out what was wrong with their daughter.[3]

Nancy's mother, Maria Mamaril, declared that after she heard of her daughter's strange behavior, she immediately proceeded to Bawer in the afternoon of 26 November 1974. At Reynaldo's house, she found Nancy alone and alarmingly silent and unmindful of her arrival. She asked her casual questions but Nancy refused to say a word. She then decided to bring Nancy with her to Barrio Polong. There, after supper, Nancy broke her silence and narrated, between sobs, what had happened to her. Early next morning, Maria went back to Bawer and informed her husband about the rape of their daughter. Having personally confirmed the terrible story from his daughter, Francisco Mamaril, with Maria and Nancy, immediately went to Bayambang and reported the matter to the Philippine Constabulary there stationed.[4]

Sgt. Eustino Maure, then PC investigation officer, testified that in the early morning of 27 November 1975, the Mamarils reported a rape case to him. He took Nancy's sworn statement on the matter. Upon his suggestion, Nancy was brought the next day to the Pangasinan Provincial Hospital in Dagupan City for physical examination.[5]

Dra. Fe Manaois, obstetrician-gynecologist and senior resident-physician of Pangasinan Provincial Hospital, deposed that she had examined Nancy physically on 28 November 1974, and thereafter, submitted the following findings:

"—External genitalia — apparently normal except for old healed lacerations of the hymen at 1:00, 3:00 and 6:00 o'clock slight reddish discoloration about the base of the hymen."

"—Internal examination —Vagina admits one (1) finger easily and two (2) fingers with slight difficulty; cervix closed, firm and non-tender on wiggling, body of uterus, Vulva not enlarged, anaxae, negative, slight white

muroid vaginal discharge;”

“—Vaginal smear for spermatozoa — negative.”[6]

The evidence for the defense, on the other hand, consisted principally of the combined testimonies of appellant Martin Cayago, Ildefonso Cayago, Lilia Fabianes, Rodolfo Centeno and Modesto Cabardo which, in brief, is set forth below.

Martin Cayago testified that in the morning of 18 November 1974, he was harvesting palay with his two elder brothers and friends in a ricefield in Ingalagala, which was about a kilometer away from Bawer. At around 11:00 a.m., they walked back to Bawer and immediately proceeded home. At 11:30, he attended the wedding and there took his mid-day meal. He left at 12:30 p.m., to rest at home. Around 1:30 p.m., he resumed working in the ricefields and stayed there till late afternoon. Cayago also testified that while he was in the provincial jail, Francisco Mamaril paid him a visit and told him that if he revealed “Carding” Macaraeg’s whereabouts, he (Cayago) would “be excluded from this case.”[7]

Ildefonso Cayago, father of appellant, was, at the time of the commission of the offense, Barangay Captain of Bawer. He testified that during the months of November and December 1974, he did not hear of nor receive any complaint for rape. No one among his constituents, not even the members of Nancy’s family and their immediate relatives living in Bawer, had reported to him that Nancy Mamaril had been assaulted. At around 11:00 in the morning of 18 November 1974, he was at the wedding with one Primo Macaraeg. At the reception, he saw his son “Boy” Cayago and his friend “Carding” Macaraeg, but had not seen his son-in-law, “Toning” Capitle. When he and Primo left at exactly 12 noon, he saw Macaraeg still chatting with friends, but his son was no longer around. On their way home, they passed along the footpath east of the bungalow house of Reynaldo Mamaril but did not notice nor hear anything unusual taking place inside the house.[8]

Lilia Fabianes, then 22 years old, was a neighbor of the Mamarils. She lived in a house almost directly behind that of Reynaldo’s. She testified that on 18 November 1974, between the hours of 12:00 and 1:00 p.m., she was at home taking care of her baby sister; that between 1:00 and 2:00 p.m., she and her baby sister were at the balcony where she could very well see the backdoor of the Mamarils home. While there, she did not notice any person entering the house of the Mamarils. Neither did she see “Boy” Cayago, “Carding” Macaraeg and “Toning” Capitle, nor anyone of them, passing thru the house’s backdoor. She also testified that Nancy had once informed her that she (Nancy) was attracted to “Carding” Macaraeg.[9]

Rodolfo Centeno, Chief of Barangay Police and Modesto Cabardo, a Member of the Barangay Polong Sur Police Force, testified that during the months of November and December 1974, they did not receive any complaint that rape had been committed within the barrio of Bawer.[10]

On 10 November 1977, the trial court rendered a decision finding accused-appellant Cayago guilty of three (3) distinct offenses of rape. The dispositive part of the decision read as follows:

“WHEREFORE, the Court finds the accused MARTIN CAYAGO, alias “Boy”, guilty beyond reasonable doubt as principal in three (3) separate and distinct offenses of rape, as defined and penalized in par. 1, Article 335 of the Revised Penal Code, as amended by Rep. Acts Nos. 2631 and 4111, as charged in the information, with three aggravating circumstances of dwelling, abuse of superior strength and either participation of two or more accused or use of deadly weapons, attending their commission, without any mitigating circumstance, and hereby sentences the accused to suffer THREE (3) DEATH PENALTIES, to indemnify the offended party, Nancy Mamaril, the sum of P12,000.00 in each case for a total of P36,000.00 and to pay the costs.”[11]

Accused-appellant Martin Cayago, now seeking acquittal, assails the trial court’s decision for —

I

“X x x GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT, INSPITE OF INHERENT IMPROBABILITIES, MATERIAL CONTRADICTIONS AND INCONSISTENCIES INFIRMING IT.

II

X x x NOT CONSIDERING IN FAVOR OF THE APPELLANT THE PROSECUTION’S MEDICO-LEGAL EVIDENCE THAT THE OLD HEALED LACERATIONS WERE INFLICTED PRIOR TO THE DATE OF THE ALLEGED RAPE OF THE COMPLAINANT WHO CLAIMED TO BE A VIRGIN.

III

X x x IN FAILING TO CONSIDER THE MOTIVE OF THE COMPLAINANT IN INCLUDING APPELLANT IN THE CHARGE.

IV

X x x DISREGARDING THE TESTIMONY OF THE APPELLANT AND THOSE OF HIS WITNESSES, INSPITE OF THEIR COHERENCE AND CONSISTENCY, AS AGAINST THE VACILLATING TESTIMONY OF THE COMPLAINANT AND THOSE OF HER WITNESSES.

V

X x x FINDING THAT THE GUILT OF THE APPELLANT HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

VI

ASSUMING ARGUENDO THAT THE THREE (3) CONVICTIONS AND THE THREE (3) DEATH PENALTIES ARE PROPER, X x x NOT APPLYING P.D. 603 TO APPELLANT, THEN BELOW 21 YEARS OF AGE AT THE TIME OF THE ALLEGED COMMISSION OF THE CRIMES IMPUTED TO HIM.”

In an effort to destroy the credibility of Nancy Mamaril — as conviction or acquittal of the accused in rape cases usually depends on the sole testimony of the complainant — the defense underscored heavily supposed inconsistencies pervading her testimony at the trial below.

Appellant pointed out in his brief the allegedly inconsistent statements made by Nancy during her direct and cross-examinations. The most notable of these were: (a) although she had earlier testified that when the accused arrived, she was sitting on a bamboo bed, she claimed later that she was standing; (b) while she had testified on direct that after the accused entered the house, they all sat on the bamboo bed, on cross, she claimed that they pushed her down the bed as soon as they got inside; (c) while she had testified that after the accused had entered the house, Macaraeg closed the window and immediately removed his pants and brief, on cross, she claimed that the accused pushed her down the bed, closed the window and removed his pants and brief; and (d) although she had first declared that while Macaraeg was on top of her, appellant Cayago was holding her left foot and Capitle her right foot, on cross, it was her two arms which Capitle held.[12]

The inconsistencies pointed out by appellant can hardly affect the complainant’s credibility. They refer to matters of minor detail or to the precise sequence of events that do not detract from the central fact of rape, on which complainant had consistently and candidly testified. The testimonial discrepancies could have been caused by the natural fickleness of memory, which tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony. It would, perhaps, have been more suspicious if complainant had been able to pinpoint with clarity or described with precision the exact sequence of events. Put simply, a young girls (who was

somewhat slow-witted to begin with) under multiple sexual assault and frightened almost out of her wits can hardly be expected to note the exact details surrounding the criminal act.[13] Additionally, the fact that the trial of the case was held almost two years after the commission of the crime may well explain any lack of definiteness. As noted by the trial court, Nancy's conflicting statements in respect of the details of the multiple rape had apparently resulted from the length and tedium of her cross-examination at the hands of appellant's seasoned counsel, as well as from the involved and ambiguous character of some of the questions put to her. Needless to say, when the issue is one of credibility of witnesses, the findings of the trial court are generally accorded a high degree of respect, the trial court having observed — which opportunity is not afforded us — the demeanor and deportment of the witnesses. After a careful review of the records, we find no compelling reason to deviate from this settled rule.[14]

The defense further assails the testimony of complainant that she was abused at 12:00 noon — when some of the guests from the wedding reception, within sight and shouting distance, may have passed by the footpath east of Reynaldo's house — as highly improbable. Appellant insists that rape could not have been committed in a place where people usually pass by. We are not persuaded by this argument, charged as we are with notice of the fact that rape has been committed even in vicinities or places where people usually gather or pass by, such as in parks and by a roadside.[15] Besides, as pointed out by the trial court, there was no evidence that the footpath east of the bungalow, at the time the crime was committed, was frequently used. About a hundred guests attended the wedding but not one was presented to show that that path was indeed used in going to and from the wedding. Apparently, only appellant and his father had claimed to have passed along that footpath throughout the day on 18 November 1974. Indeed, it appears that that particular footpath was seldom used there being two other narrow paths which the barrio folks frequently used.

The defense also attacks as incredible the complainant's statement that the accused had continually loitered around the Mamaril's house — pointedly exhibiting their weapons (hand gun, bolo and a wooden club) — for several days after the multiple rape. We believe otherwise. Such acts on the part of the accused do not appear inherently unbelievable, considering that appellant Cayago is the son, and accused Capitle the son-in-law, of the then Barangay Captain, a position of moment in the little town of Bawer.

The defense also makes much of complainant's failure, for eight days after commission of the crime, to report the incident to anyone. We do not believe that a negative implication should be drawn from such failure. The threats on her life and those of her family, coupled with menacing acts of the accused exhibiting their will and ability to make good their threats, undoubtedly created a reasonable fear on the offended girl's mind, which led to the modest delay in reporting the crime.

Appellant's counsel also emphasized, as may be expected, the medico-legal finding of "old healed lacerations of the hymen — and the statement of Dra. Manaois on cross-examination that such lacerations could have been inflicted prior to November 18, 1974, the date on which the multiple rape was committed. The physical examination of the complainant took place on 28 November 1974. We note that Dr. Manaois did not state that the hymeneal lacerations were necessarily more than ten (10) days old and could not have been inflicted on 18 November 1974. The probative value of medico-legal evidence must, of course, be assessed in the light of all the other evidence submitted to the trial court. There is nothing to prevent a trial court from reaching a judgment of conviction for rape even in the absence of a positive medical report, if the other evidence before the court reaches the required quantum of proof beyond reasonable doubt.[16]

Appellant's principal theory was that Nancy Mamaril had fabricated her story of multiple rape. The defense sought to establish that Nancy, who was allegedly attracted to "Carding" Macaraeg must have been disheartened by his sudden departure for Mindanao and that appellant who had been a close friend of Macaraeg, was

deliberately included in the charge when he refused to comment on Macaraeg's whereabouts. We cannot subscribe to the theory of the defense. It is anchored on too frail and insubstantial grounds. It is very difficult to suppose that a simple barrio girl like Nancy, then barely 17 years old, could or would weave a story of gang rape and suffer the severe embarrassment of a public trial, if her only motive was adolescent disappointment. The records of this case do not show that the complainant had any motive other than a desire for justice and redress for a terrible wrong inflicted on her.

As a final defense, appellant interposed alibi. Alibi, however, is not only a defense that is inherently weak but also one that cannot prevail against the positive identification of the accused, like appellant Cayago herein, by the complainant. It is common learning that, for an alibi to succeed, the accused must be shown to have been at some place other than the situs of the crime and that it was impossible for him to have been at such situs at the time of the commission of the crime. In the instant case, in addition to the positive identification by the complainant of appellant Cayago, it was clearly not physically impossible for him to have been at the Mamarils' residence at 12:00 noon on 18 November 1974. The wedding, where he claimed to have been at that particular time, was only about fifty (50) meters away from the scene of the crime. Appellant could have traversed that distance in a few minutes. Furthermore, appellant sought to establish his alibi by his own testimony and that of his father, and not by testimony of independent persons who, in the natural course of things, would have been able to support his alibi had it been true.[17]

In his final assignment of error, appellant Cayago argued that:

"if at all, the appellant could only be convicted of one (1) rape. His co-accused were never arraigned, hence, the trial court never acquired jurisdiction over them. Trial in absentia does not avail. That being so, there can never be a finding of guilt as against them until they are apprehended, or voluntarily appear, to face trial. And, until they are convicted for their alleged individual and direct acts (direct participation.) It is submitted that the appellant cannot be held liable as a principal by indispensable cooperation, or even by conspiracy by concert of action, for said acts. There simply is no logic in convicting a person for an alleged participation in an act that is yet to be established."[18] (Underscoring supplied)

In respect of this matter, the trial court had held that:

"Three offenses are charged in the same information. In one, accused CAYAGO is charged as principal by direct participation. In the other two, accused CAYAGO is charged as principal by indispensable cooperation. In one, accused CAYAGO performed the act of intercourse while Macaraeg and Capitle were holding the girl. In the second, Macaraeg performed the act while accused CAYAGO and Capitle held the girl. In the third, Capitle performed the act while CAYAGO and Macaraeg held the girl. In all these three, accused CAYAGO is found guilty beyond reasonable doubt. When an information or complaint violates the rule against duplicity, but the accused fails to object to it before the trial, the court may convict the accused of as many offenses as are charged and proved and impose on him the penalty for each and every one of them (Sec. 3, Rule 120).

Accused CAYAGO is liable not only for the act of rape personally committed by him, but also for the rape committed by his co-accused because he cooperated in the consummation of the rape by the others without which the rape could not have been accomplished. So it is that a person who throws the offended girl to the ground and holds her while another is having sexual intercourse with her is a co-principal of the crime of rape. (People vs. Villa, et al., 81 Phil. 193; People vs. Alfaro, et al., 91 Phil. 404).

Moreover, from the individual acts performed by the three accused from the time they entered the dwelling of the offended party up to the consummation of the offenses of rape, it may be seasonably deduced that they had a common plan to rape the victim. Indeed, how could the three accused have arrived simultaneously at the scene of the crimes and left together at the same time if they had not agreed to commit the felonies and to pursue their commission?"[19] (Italics supplied)

The trial court invoked *People v. Villa, et al.*,^[20] and *People v. Alfaro, et al.*^[21] the doctrine of which may be summed up as follows: Where the several accused, conspiring with each other, take turns in having carnal knowledge of the offended party against her will while the others held down her arms and legs, each of the accused is guilty of as many crimes of rape as there are accused. Each accused is responsible not only for the acts of rape committed by the others, because each of them cooperated in the consummation of the rape successively committed by the others, by acts without which such rape could not have been accomplished. They are at once, in other words, each a principal by direct participation in respect of their own act and a principal by indispensable cooperation^[22] in respect of the acts of the others; they are not merely accomplices^[23] of each other.

We observe that the appellant does not question the correctness of *Villa* and *Alfaro*. What appellant seeks to suggest is that *Villa* and *Alfaro* are not to be applied where, as in the instant case, only one of the accused has been arrested, arraigned, tried and convicted. Here, we agree with the trial court which convicted appellant Cayago of three (3) crimes of rape although his co-accused have not been brought to trial and similarly convicted. The trial court found as a fact that appellant and two others, having conspired with each other, successively raped the offended party while the other two held down the victim. This is adequate basis for convicting appellant Cayago of three (3) crimes of rape. The judgment of the trial court does not purport to convict Macaraeg and Capitle and would not, of course, bind them should they ever be arrested and brought to trial; they may plead any defense to which they might feel entitled, such as insanity or mistaken identity, etc.

Appellant's argument that P.D. 603 should have been applied to him below being then a minor, is without merit. It is too late in the day to raise this defense in this forum for the first time.

We find the accused's guilt to have been proven beyond reasonable doubt.

ACCORDINGLY, the judgment of conviction is hereby AFFIRMED. With respect, however, to the penalty imposed, the same is hereby MODIFIED, in view of the constitutional mandate abolishing the penalty of death, to three (3) penalties of reclusion perpetua. The award of damages stands.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin and Cortes, JJ., concur.

[1] Decision, p. 1.

[2] Original Record, pp. 139-161; TSN of 22 June 1976, pp. 2-22.

[3] *Id.*, pp. 117-138; TSN of 3 August 1976, pp. 2-6.

[4] *Id.*, pp. 308-322; TSN of 21 June 1976, pp. 1-16.

[5] *Id.*, pp. 163-182; TSN of 5 April 1976, pp. 2-21.

[6] *Id.*, pp. 199-204; TSN of 5 April 1976, pp. 38-43.

[7] *Id.*, pp. 18-60; TSN of 7 March 1977, pp. 2-20.

[8] *Id.*, pp. 523-524; TSN of 20 December 1976, pp. 168-179.

[9] *Id.*, pp. 540-552; TSN of 20 December 1976, pp. 185-197.

[10] *Id.*, pp. 501-508 and 515-519; TSN of 20 December 1976, pp. 146-153.

[11] Decision, p. 56; Rollo, p. 59.

[12] Appellants Brief, pp. 29-30.

[13] *People v. Malate*, 117 SCRA 401 (1982)

[14] *People vs. Secules*, 132 SCRA 653 (1984).

[15] *People vs. Vidal*, 127 SCRA 168 (1984); *People vs. Mesias*, 127 SCRA 192 (1984); and *People vs. Lopez*, 141 SCRA 385 (1986).

[16] *People vs. Pielago*, 140 SCRA 418 (1985).

[17] *People vs. Bumantas*, 28 SCRA 764 (1969); *U.S. vs. Oxiles*, 23 Phil. 587.

[18] Appellant's Brief, pp. 57-58.

[19] Decision, pp. 53-55; Rollo, pp. 56-58.

[20] 81 Phil. 192 (1948).

[21] 91 Phil. 404 (1952).

[22] Art. 17 (1) and (3), Revised Penal Code.

[23] Art. 18, Revised Penal Code.

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