

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TIMOTEO CABURAL, CIRIACO YANGYANG, BENJAMIN LASPONIA,
AND LEONIDE CABUAL, ACCUSED, TIMOTEO CABURAL AND
CIRIACO YANGYANG, D...**

G.R. No. L-34105. February 04, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal from the decision of the Court of First Instance of Lanao del Norte, dated June 4, 1970, convicting Timoteo Cabural of the crime of Robbery with Rape and sentencing him to suffer the penalty of Reclusion Perpetua; and, convicting Leonide Cabual, Benjamin Lasponia and Ciriaco Yangyang of the crime of Robbery and sentencing each of them to suffer imprisonment of six (6) years and one (1) day of Prision Mayor, as minimum, to ten (10) years of Prision Mayor, as maximum; to indemnify the offended party in the sum of P9,435.50, without subsidiary imprisonment in case of insolvency and to pay proportionately the costs of the proceedings.

The statement of facts in the brief filed by the People of the Philippines is as follows:

"... [A]t about 2:00 o'clock in the morning of September 14, 1960, three masked men entered the building of the Kim San Milling in Palao, City of Iligan, thru an opening of the roof above the kitchen that was being repaired and forced themselves inside a room where Pua Lim Pin, Bebencio Palang, Sy Chua Tian and Siao Chou were sleeping (tsn, pp. 78-82, May 31, 1965; tsn, pp. 141-148, June 13, 1961). The masked men, at gunpoint, hogtied the four occupants of the room and after commanding them to lie on the floor, face down, were all covered with blankets (tsn, pp. 82-83, *ibid*). The inmates of the room heard that the cabinets were being ransacked (tsn, p. 82, *ibid*). As this was going on, one of the men approached Pua Lim Pin to ask him if he could open the safe to which he answered in the negative as he was a mere employee of the firm (tsn, p. 83, May 31, 1961). An hour later, one of the men approached Sy Chua Tian (also See Chou Kian, tsn, p. 89, *ibid*) and told him: 'now is 3:30, if by 4:00 the safe is not open we will kill you.' (tsn, p. 94, *ibid*.)

"As this was going on, another episode was taking place inside the next room where the maids were sleeping (tsn, p. 91, May 31, 1961). Restituta Biosano, Panchita Maghanoy and Agripina Maglangit have retired at about 10:00 o'clock in the evening of September 13, 1960, after their chores were performed (tsn, p. 91, *ibid*; tsn, p. 10, May 7, 1961; tsn, p. 13, May 29, 1961; tsn, p. 25, *ibid*). At about 2:00 o'clock the following morning, they were awakened by two persons, one holding a pistol and the other holding a hunting knife. Like the fate of the four inmates of the other room, the maids were all hogtied, made to lie on the floor, face downward, and were all covered with blankets (tsn, pp. 25-29, May 29, 1961). The two then left the room (tsn, p. 29, *ibid*). After two hours later, one of the two men re-appeared in the room and after discovering that Agripina Maglangit had freed her hands, he showed anger and remarked that he would separate her from the rest. With his pistol pointed at her, he took her outside the building to a secluded place within the Kim San Compound (tsn, pp. 30-33, *ibid*). Here, with her hands tied, she was made to lie down flat on the ground face upwards. He then raised her skirt, pulled down her panties, and had sexual intercourse with her. She was

unable to resist him and fight back because at the time she had lost her strength not to mention the fact that she was deprived of the use of her hands that were both tied together. The rape having been consummated, he pulled her left arm so she could stand up. He then left her (tsn, pp. 33-35, *ibid.*).

"Agripina Maglangit recognized the features of the man that raped her. She identified her rapist to be the accused Timoteo Cabural (tsn, pp. 36-39, *ibid.*).

"At about four o'clock that morning (September 14, 1960) all the intruders must have left because the four men that were hogtied in the other room noticed complete silence. They each struggled to free themselves which they succeeded. Maghanoy lost her 'Alosa' 15-jewel watch costing her P65.00 (tsn, p. 22, May 29, 1961); Sy Chua Tian (See Chou Kian) lost his Omega automatic wrist watch valued in the amount of P385.00 that was snatched from his wrist by one of the robbers, besides his wallet containing P264.00 in paper currency (tsn, p. 85 and p. 95, May 31, 1961). After the robbers left, the inmates discovered that cash and some personal belongings in the total amount of P9,435.50 were asported by the robbers (tsn, pp. 29-36, Oct. 23, 1961; tsn, pp. 120-125, June 13, 1961).

"The accident having been reported, both the local police as well as the Philippine Constabulary stationed in Iligan conducted their investigation. In the course of the investigation, members of the Philippine Constabulary found a .30-caliber carbine with 4 magazines and a .45 caliber pistol well wrapped in a banca at the shore behind the house of the accused Benjamin Lasponia. This led to the investigation of Lasponia who subsequently admitted the crime and pointed to his companions that night. On September 18, 1960, Benjamin Lasponia signed a confession before Assistant Fiscal Leonardo Magsalin, Exhibits B, B-1, B-2, and B-3, at the PC headquarters in Iligan (pp. 1025-1028, Vol. III Rec.). He confessed to the last detail his participation in the crime. On September 19, 1960, the accused Leonide Cabual subscribed to an affidavit before the same Fiscal Magsalin regarding his participation and that of his co-accused in the robbery of Kim San Milling in the early morning of September 14, 1960, Exhibits C, C-1, C-2, C-3 and C-5 (pp. 1029-1034, Vol. III, Record). Ciriaco Yangyang followed. He subscribed his confession before Special Counsel Dominador Padilla in the Office of the City Fiscal of Iligan on September 26, 1960, Exhibits H, H-1 and H-2 (pp. 1036-1038, Vol. III, Record, See complete testimony of Eustaquio Cabides, tsn, pp. 52-72, July 17, 1969)."

On September 21, 1960, (1) Timoteo Cabural, alias Romeo alias Tiyo; (2) Benjamin Lasponia; (3) Leonide Cabual alias Eddie; (4) Ciriaco Yangyang; (5) William Tate alias Negro; (6) Fausto Dacera, and, (7) Alfonso Caloy-on, alias Pablo, were charged before the Court of First Instance of Lanao del Norte of the crime of Robbery in Band with Rape, in an information filed by the City Fiscal of Iligan City. The crime charged was allegedly committed as follows:

"That on or about September 14, 1960 in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in company with one Fred Ybañez alias Godofredo Camisic and one John Doe, who are still at-large, conspiring and confederating together and mutually helping one another, and armed with deadly weapons, all unlicensed, to wit: carbines, revolvers, tommy guns, garand rifles and knives, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of violence against and intimidation of persons, and with the use of force upon things, to wit: by passing through an opening not intended for entrance or egress, enter the main building and office of the Kim San Milling Company, an inhabited building, and once inside, did then and there willfully, unlawfully and feloniously take, steal, rob and carry away therefrom, the following personal properties, to wit:

"Cash money

P5,972.00

Wrist watch 'Technos'

100.00

Gold Ring

20.00

Sunglasses

30.00

Four pieces of golden bracelets

1,400.00

Chinese gold ring with dark blue stone

90.00

One gold ring with brilliant stone

400.00

One Chinese gold necklace with red stone

150.00

One pair of earrings Chinese gold with red stone

60.00

Three pairs of earrings with pearls

120.00

Four Chinese gold rings with stones of different colors

140.00

Sweepstake tickets

45.00

One American gold Lady's ring with dark pink stone

30.00

Four men's rings

32.00

One and a half dozens handkerchiefs

34.50

Lady's wrist watch

30.00

Three ladies watches

69.00

One Men's watch

60.00

One Chinese gold necklace

58.00

One Lady's wrist watch

15.00

One Chinese gold necklace

58.00

One Men's wrist watch

60.00

One Men's wrist watch 'Tugaris'

65.00

Knife

12.00

One Men's wrist watch 'Omega Seamaster'

385.00

with a total value of P9,435.50, belonging to the Kim San Milling Company, Bebenicio Palang, Agapito Tan, Restituta Biosano, Panchita Maghanoy, Catalina Boisano, Pua Lim Pin, and Sy Chua Tian, to the damage and prejudice of the said owners in the said sum of P9,435.50, Philippine currency; and that on the occasion or by reason of the said robbery, the above-named accused except William Tate alias Negro, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Agripina Maglangit, a woman, by means of violence and intimidation and against her will.

"Contrary to and in violation of Article 294 paragraph 2 of the Revised Penal Code as amended by Republic Act No. 18 and Article 296 of the Revised Penal Code as amended by Republic Act No. 12, Section 3, with the following aggravating circumstances, to wit: that the said offense was committed during night time and by a band; that it was committed with the use of disguise; and that it was committed with the use of a motor vehicle."

Upon arraignment, the defendants pleaded not guilty. However, during the course of the trial, three (3) of the accused, namely: William Tate, Fausto Dacera and Alfonso Caloy-on were dropped on petition of the City Fiscal and trial proceeded against the four (4) remaining accused, namely: Timoteo Cabural, alias Romeo Cabural; Benjamin Lasponia, Leonide Cabual and Ciriaco Yangyang. As aforesaid, Cabural, Lasponia, Cabual and Yangyang were convicted. Benjamin Lasponia did not appeal; however, Cabural, Yangyang and Cabual did and claimed that the trial court erred:

I.

"IN HOLDING THAT THE AFFIDAVITS OR EXTRA-JUDICIAL CONFESSIONS OF ACCUSED BENJAMIN LASPONIA, LEONIDE CABUAL, AND CIRIACO YANGYANG WHICH WERE NOT OBTAINED THROUGH FORCE, VIOLENCE, INTIMIDATIONS AND THREATS AND SERIOUS MALTREATMENTS ARE ADMISSIBLE AS EVIDENCE AND THEREFORE COULD BE A LEGAL BASIS FOR THE CONVICTIONS OF ACCUSED.

2.

"IN HOLDING THAT EVEN IF IN THE EXECUTION OF SAID AFFIDAVITS OF CONFESSIONS BY THE THREE ACCUSED SOME PERSONAL INCONVENIENCE WERE MADE BY THE PC SOLDIERS BUT BECAUSE THE CONTENTS OF SAID CONFESSIONS ARE TRUE SAID EXTRA-JUDICIAL CONFESSIONS ARE ADMISSIBLE AS EVIDENCE AND COULD BE MADE A LEGAL BASIS FOR THE CONVICTIONS OF ALL ACCUSED.

3.

"IN HOLDING THAT THE THREE EXTRA-JUDICIAL CONFESSIONS BY THREE ACCUSED BEING

INTERLOCKING CONFESSIONS IS ENOUGH AND SUFFICIENT TO SUSTAIN THEIR CONVICTIONS ON PROOF BEYOND REASONABLE DOUBT;

4.

"IN HOLDING THAT THE THREE EXTRA-JUDICIAL CONFESSIONS OF THREE ACCUSED INTERLOCKED WITH EACH OTHER EVEN IF INADMISSIBLE AS EVIDENCE BECAUSE OBTAINED THROUGH FORCE, VIOLENCE, INTIMIDATION, ETC. IS ENOUGH TO SUSTAIN THE CONVICTION OF ACCUSED TIMOTEO CABURAL BECAUSE HE WAS SUFFICIENTLY IDENTIFIED BY VICTIM AGRIPINA MAGLANGIT AS HER RAPIST;

5.

"IN HOLDING THAT THE PROSECUTION EVIDENCE FOR THE CONVICTIONS OF ACCUSED REACHED THE LEGAL STANDARD OF PROOF BEYOND REASONABLE DOUBT AS REQUIRED BY LAW."

On October 14, 1971, this Court granted the motion of Leonide Cabual to withdraw his appeal (p. 60, rollo).

Appellant Cabural declared that from 2:00 in the afternoon of September 13, 1960 to 3:00 in the early morning of September 14, 1960, he was playing mahjong with Virginia Cruz Maruhom and one Gomer in the store of Ason in Maigo, Lanao del Norte which is about 37 kilometers from Iligan City and would take about two (2) hours by bus or about one (1) hour by car to negotiate the distance between the two places; that he could not have been present at complainant's place at 2:00 in the morning of September 14, 1960 when the robbery took place; that he was brought to the Philippine Constabulary Headquarters in Iligan City by PC soldiers on September 15, 1960 and was subjected to all kinds of torture; and that after he was severely maltreated, including the 7-Up treatment and threatened with pistol, he was asked to sign an affidavit. Despite his insistence that he was innocent he was induced to sign a statement after he was told: "if you obey us you may get free" and that "if you confess we will protect you."

Ciriaco Yangyang also denied participation in the commission of the crime considering that at that time he was in Barrio Mentering attending the counting of votes for the muse of the barrio fiesta. He was reading the ballots cast for each candidate at the microphone. It was only in the following morning of September 14, 1960 when he returned to Maigo.

The identity of appellant Timoteo Cabural as the rapist of Agripina Maglangit is established in the testimony of the latter as follows:

"Q

After that man had told you that you would be separated from the rest, what happened next, if any?

A I was brought outside.

Q What do you mean by 'outside?'

A I was brought outside of the office of the Kim San.

Q After you have been taken outside, what happened, if any?

A I was threatened and I was forced.

Q How were you threatened?

A He pointed to me his pistol and let me lie down.

Q

This place where he threatened you and made you lie down outside, was this place near to the place where you had slept?

A It is very far but it is within the compound of the Kim San.

Q After he had threatened you and made you lie down, what, if any, did you do?

A He raised my skirt.

Q At the time he was raising your skirt, what was your position?

A I was lying down with face upward.

Q After he had raised your skirt, what happened next, if any?

A

When my skirt was raised and since I have no more strength because (as demonstrated by the witness), her laps were numb, he took off my pantie.

Q How did your laps happen to be numb?

A Because my laps were pushed so that I cannot move.

Q What particular part of your body did he push to numbness?

A My laps.

Q After he had taken off your pantie, what, if any, did he do?

A I feel that he had what he wants.

Q What do you mean by that?

A To disgrace my honor.

Q How did he disgrace your honor?

A He had sexual intercourse.

Q How long did he have that sexual intercourse with you?

A I do not remember how long because of my fear.

Q Did he finish having sexual intercourse with you?

A Yes, sir.

Q After he had that sexual intercourse with you, what happened next, if any?

A (As demonstrated by the witness, her left arm was pulled to stand up)

Q Were you able to stand up?

A Yes, sir.

Q After you have stood up, that man where, if any, did he go?

A I did not notice where the man go but I went back to our room.

Q Upon your arrival to your quarters, what, if any, did you do?

A I told my companions.

Q Who were they?

A They were Restituta Biosano, Pena Maglangit, Catalina Biosano.

Q That man who had sexual intercourse with you, is he here now in the courtroom?

A Yes, sir.

Q Will you please point him out?

A

(Witness went down from the stand and went to the accused seated in the courtroom and pointed to the accused Timoteo Cabural)." (tsn, pp. 32-35, May 29, 1961 hearing)

We agree with the lower court that Cabural alone was responsible for the rape on Agripina. There is no evidence that his co-appellant Yangyang and the other malefactors made advances on her. Besides, the extra-judicial

confessions of Lasponia (Exhibits B, B-1, B-2 and B-3), Leonide Cabual (Exhibits C, C-1 to C-5), and Ciriaco Yangyang (Exhibits H, H-1 and H-2) point to appellant Cabural as the mastermind and the role each of them would play (as in fact they did) in the commission of the crime. Their interlocking confessions indicate how they would go to the scene of the crime, the manner by which they would enter into the premises of Kim San Milling Company and, as aptly observed by the trial court, the details which only the participants could amply give.

Further, accused Cabual and Lasponia were sworn by Fiscal Leonardo Magsalin who instructed the PC investigators to leave the room so that they (Cabual and Lasponia) would be able to speak their minds freely. Fiscal Magsalin testified that said accused readily and without hesitation signed their respective extra-judicial confessions.

Finally, We find no merit in the alibis interposed by appellants Cabural and Yangyang. As pointed out by the Solicitor General in his brief:

"The fact that Cabural played mahjong with Virginia Cruz Maruhom and a certain Gomer at the store of Ason in Barrio Maigo, from 2:00 P.M. of September 13, 1960 to 3:00 A.M. of September 14, 1960 is no guarantee that he could not be at the scene of the crime (Kim San Milling Company, situated in Palao), a 37-kilometer stretch which could be negotiated in one hour by car (tsn., p. 8, Sept. 20, 1966). Considering the confessions of Lasponia, Cabual and Yangyang all pointing to Cabural as the one in control of the vehicle utilized in the commission of the crime, the conclusion is not hard to reach that his presence at the scene of the crime is much likelier than at Maigo."

Otherwise stated, appellants failed to show the plausibility and verity of their alibis and the crime is aggravated by dwelling and nighttime.

As aforesaid, the trial court convicted Timoteo Cabural of the crime of robbery with rape, which is penalized by Article 294 (2) of the Revised Penal Code, by reclusion temporal medium to reclusion perpetua. Effective August 15, 1975 (or subsequent to this date), Presidential Decree No. 767 imposes the penalty of reclusion perpetua to death "when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons."

In *People vs. Perello, Jr.*, 111 SCRA 147, it was mentioned that "[t]he Chief Justice and the herein ponente (Justice Ramon C. Aquino) are of the opinion that article 335 cannot be applied to robbery with rape and that that offense should be penalized under article 294 (2) in which case reclusion perpetua should be imposed. As the accused was charged with a crime against property, he should not be convicted of a crime against chastity, a private offense. (See *People vs. Olden*, L-27570-71, September 20, 1972, 47 SCRA 45)." However, also in the same case, "Justices Teehankee, Barredo and Makasiar believe that article 335 should be applied to this case. (See *People vs. Carandang*, L-310102, August 15, 1973, 52 SCRA 259; *People vs. Mabag*, L-38548, July 24, 1980, 98 SCRA 730; *People vs. Arias*, L-40531, January 27, 1981, 102 SCRA 303; *People vs. Boado*, L-44725, March 31, 1981, 103 SCRA 607; *People vs. Cañizares*, L-32515, September 10, 1981; *People vs. Pizarra*, L-35915, October 30, 1981)."

The writer of this decision is of the opinion that robbery with rape, the accused should be penalized under Article 294(2) of the Revised Penal Code because it is a crime against property and not a crime against chastity, a private offense.

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto. With costs against both appellants.

SO ORDERED.

Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., concurs in a separate opinion.

Teehankee, J., files a brief concurrence.

Makasiar, J., accused Cabural should be sentenced to death under Art. 335, R.P.C.

Melencio-Herrera, J., I vote for the application of Art. 335 of the Revised Penal Code and the imposition of the death penalty.

Plana, J., on official leave.

CONCURRING OPINION

FERNANDO, C.J.:

My concurrence in the opinion of the Court penned by Justice Relova is full, entire, and complete. Nonetheless, I wish to express my gratification that this Court by a decisive vote^[1] sustains the basic postulate in both civil law and common law jurisdictions, expressed in the maxim *Nullum crimen nulla poena sine lege*. It is undoubted, therefore, that unless there be a radical change in the thinking of the Court, it is Article 294(2) not Article 335 of the Revised Penal Code that calls for application in the crime of robbery with rape.^[2] As noted in the opinion of the Court penned by Justice Aquino in *People v. Perello*:^[3] "Effective August 15, 1975 (or subsequent to this case) Presidential Decree No. 767 imposes the penalty of reclusion perpetua to death 'when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons.' That increased penalty cannot be retroactively applied to this case."^[4] As such offense of robbery was committed before that date, it is Article 294(2), before its amendment, that supplies the governing rule. The applicable law then is clear and explicit. It defined the offense and prescribed the penalty. The doctrine announced in *Lizarraga Hermanos v. Yap Tico*^[5] by Justice Moreland, in categorical language comes to mind. Thus: "The first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them."^[6] There is relevance too to this excerpt from *Kapisanan ng mga Manggagawa sa Manila Railroad Company Credit Union, Inc. v. Manila Railroad Company*:^[7] "The applicable provision of Republic Act No. 2023 quoted earlier, speaks for itself. There is no ambiguity. As thus worded, it was so applied. Petitioner-appellant cannot therefore raise any valid objection. For the lower court to view it otherwise would have been to alter the law. That cannot be done by the judiciary. That is a function that properly appertains to the legislative branch."^[8]

Nothing more appropriately appertains to the legislative branch than the definition of a crime and the prescription of the penalty to be imposed. That is not a doctrine of recent vintage. It is traceable to *United States v. Wiltberger*,^[9] an 1820 American Supreme Court opinion. No less than the eminent Chief Justice Marshall spoke for the Court. To quote his exact language: "The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment."^[10] That ruling was followed in the Philippines in a 1906 decision, *United States v. Almond*.^[11]

So it has been in the Philippines since then. It was the same Justice Moreland who in *United States v. Abad Santos*^[12] promulgated in 1917, gave expression to a variation of such a fundamental postulate in this wise: "Criminal statutes are to be strictly construed. No person should be brought within their terms who is not clearly within them, nor should any act be pronounced criminal which is not clearly made so by the statute."^[13] The

same year, Justice Carson in *United States v. Estapia*[14] in rejecting the contention that the application of a penal provision even if not covered by its terms should be viewed by the judiciary as commendable, conducive as it is "to the repression of a reprehensible practice" pointed out: "To this it should be sufficient answer to say that neither the executive nor the judicial authorities are authorized to impose fines and prison sentences in cases wherein such fines and prison sentences are not clearly authorized by law, and this without regard to the end sought to be attained by the enforcement of such unauthorized penalties." [15]

It is to be admitted that from the standpoint of logic alone, there is much to be said for the view that since rape under certain circumstances is penalized with death, it is an affront to reason if robbery with rape carries with it a lesser penalty. The latter offense is far more reprehensible, ergo it must be punished at least with equal if not more severity. It is from that perspective that in *People v. Carandang*[16] while the penalty imposed is that of reclusion perpetua, there were two separate opinions one from Justice Teehankee and the other from the late Chief Justice, then Justice, Castro. They would apply Article 335 of the Revised Penal Code. Retired Chief Justice Makalintal, now Speaker of the Batasan Pambansa, then Acting Chief Justice, concurred in the separate opinion of the late Chief Justice Castro. Less than a year before, however, in September of 1972, Carandang being a 1973 decision, he penned the unanimous opinion in *People v. Olden*[17] affirming the joint judgment of a Court of First Instance of Davao in two cases, one of which was robbery in band with multiple rape. It was not the death sentence that was imposed but reclusion perpetua.[18] That case is certainly later than *People v. Obtinalia*[19] decided in April of 1971, where, in a per curiam opinion, Article 335 of the Revised Penal Code was applied, although the offense for which the accused were found guilty was robbery with rape. It is, therefore, reassuring that with the decision of this case, the uncertainty which has beclouded the issue of the appropriate imposable penalty has been removed.

One last word. The maxim *Nullum crimen nulla poena sine lege* has its roots in history. It is in accordance with both centuries of civil law and common law tradition. Moreover, it is an indispensable corollary to a regime of liberty enshrined in our Constitution. It is of the essence then that while anti-social acts should be penalized, there must be a clear definition of the punishable offense as well as the penalty that may be imposed—a penalty, to repeat, that can be fixed by the legislative body, and the legislative body alone. So constitutionalism mandates, with its stress on *jurisdictio* rather than *gubernaculum*. The judiciary as the dispenser of justice through law must be aware of the limitation on its own power.

Such a concept calls for undiminished respect from the judiciary. For it is the department by which the other branches are held to strict accountability. It sees to it, in appropriate cases of course, that they are held within the bounds of their authority. Certainly, the judiciary is not devoid of discretion. It can, to paraphrase Cardozo, fill in the gap and clear the ambiguities. To that extent, it is free but, to recall Cardozo anew, it "is still not wholly free. [A judge] is not to innovate at pleasure. He is not a knighterrant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles." [20]

Tersely stated, the judiciary administers justice according to law. This is by no means to imply that in the case at hand, justice according to law is at war with the concept of justice viewed from the layman's standpoint. The system of criminal law followed in the Philippines, true to the ways of constitutionalism, has always leaned toward the milder form of responsibility, whether as to the nature of the offense or the penalty to be incurred by the wrongdoer.[21] Where, as in this case, the law speaks in clear and categorical language, such a principle is impressed with greater weight.

[1] There are ten votes for the ponencia of Justice Relova and three dissents from Justices Teehankee, Makasiar and Melencio-Herrera. Justice Plana was on official leave.

- [2] Article 335 was first amended by Republic Act No. 2632 which took effect on June 18, 1960 and then by Republic Act No. 4111 which took effect on June 24, 1964.
- [3] L-33064, January 27, 1982, 111 SCRA 147.
- [4] Ibid, 157.
- [5] 24 Phil. 504 (1913).
- [6] Ibid, 513.
- [7] L-25316, February 28, 1979, 88 SCRA 616.
- [8] Ibid, 620. Cf. Banawa v. Mirano, L-24750, May 16, 1980, 97 SCRA 517.
- [9] 5 Wheaton 76.
- [10] Ibid, 95.
- [11] 6 Phil. 306.
- [12] 36 Phil. 243.
- [13] Ibid, 246.
- [14] 37 Phil. 17.
- [15] Ibid, 24. Cf. Director of Lands v. Abaja, 63 Phil. 559 (1936); People v. Purisima, L-42050-66, November 20, 1978, 86 SCRA 542.
- [16] L-31012, August 15, 1973, 52 SCRA 259.
- [17] L-27570 & 27571, September 20, 1972, 47 SCRA 45.
- [18] Barredo, J., did not take part.
- [19] L-30190, April 30, 1971, 38 SCRA 651.
- [20] Cardozo, The Nature of the Judicial Process, 141 (1921).
- [21] Cf. People v. Tamayo, 44 Phil. 38 (1922).

CONCURRING OPINION

TEEHANKEE, J.:

I concur with the judgment at bar which affirms the trial court's decision convicting the accused-appellant Timoteo Cabural alone of the crime of robbery with rape and imposing upon him the proper penalty of reclusion perpetua under Article 294, par. 2 of the Revised Penal Code. The record and testimony of the victim of the rape show quite clearly that Cabural alone was responsible for and committed the rape on the victim, so that his companions were likewise properly sentenced for the crime of robbery alone. There is, therefore, no room for the application of my separate opinions in the cited cases of Perello, Carandang, Mabag, etc., that where robbery with rape is committed but the rape is qualified by the use of a deadly weapon or is committed by two persons, either of these two factors is singled out by the amendatory Act, R.A. 4111, as supplying the controlling qualification and mandates the imposition of the death penalty for the crime of qualified rape under Art. 335 of the Penal Code

(and not the lesser penalty of reclusion perpetua under Art. 294 for the complex crime of robbery with rape).

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