

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EFRENIANO BALANE, ALIAS EFREN, ROMEO GIBA, ERIBERTO GIBA,
ALIAS BERTING AND INOCENTES BALANE (AT LARGE),
ACCUSED-APPELLANTS.**

G.R. Nos. L-48319-20. July 25, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This case is before us on automatic review of the decision rendered by the Court of First Instance of Sorsogon, Branch II at Gubat, Sorsogon. The dispositive portion of the decision reads:

"WHEREFORE, the Court is convinced beyond reasonable doubt of the guilt of the accused Efreniano Balane, Eriberto Giba and Romeo Giba in Criminal Case No. 411, for 'Robbery with Multiple Rape', and the guilt of the accused Inocentes Balane and Efreniano Balane for 'Rape with Homicide' and of Eriberto Giba and Romeo Giba for Murder, in conspiracy with the accused Inocentes Balane and Efreniano Balane, both in Criminal Case No. 412, and hereby renders judgment:

IN CRIM. CASE NO. 411

[a] Sentencing the accused Efreniano Balane and his co-conspirators Eriberto Giba and Romeo Giba to DEATH for the crime of Multiple Rape with Robbery committed by the accused Efreniano Balane; and ordering them to indemnify, jointly and severally, the offended party Estrella Camo in the amount of Twelve Thousand (P12,000.00) Pesos;

[b] Sentencing the accused Eriberto Giba and his co-conspirators Efreniano Balane and Romeo Giba to DEATH for the crime of Multiple Rape with Robbery committed by the accused Eriberto Giba; and ordering them to indemnify, jointly and severally, the offended party Estrella Camo in the amount of Twelve Thousand (P12,000.00) Pesos;

[c] Sentencing the accused Romeo Giba and his co-conspirators Efreniano Balane and Eriberto Giba to DEATH for the crime of Multiple Rape with Robbery committed by the accused Romeo Giba; and ordering them to indemnify, jointly and severally, the offended party Estrella Camo in the amount of Twelve Thousand (P12,000.00) Pesos; and

[d] Ordering the accused Efreniano Balane, Eriberto Giba and Romeo Giba to indemnify, jointly and severally, the offended party Juan Camo in the amount of Sixty-Two and 80/100 (P62.80) Pesos for the Robbery committed against the latter; and in all the foregoing instances, to suffer the accessory penalties provided by law, and for each of the accused to pay one-third (1/3) of the costs;

IN CRIM. CASE NO. 412

[a] Sentencing the accused Inocentes Balane and Efreniano Balane to DEATH for the crime of Rape with Homicide and ordering them to indemnify Adelina Sambajon, jointly and severally, in the sum of Twelve Thousand (P12,000.00) Pesos for the crime of Rape committed against her; and

[b] Sentencing the accused Eriberto Giba and Romeo Giba to Death for the Murder of Noli Grajo and ordering them to indemnify the heirs of the aforesaid victim in the amount of Twelve Thousand (P12,000.00) Pesos jointly and severally with the accused Inocentes Balane and Efreniano Balane; and in both of the foregoing instances, to suffer the accessory penalties provided by law, and for each of the accused to pay one-fourth (1/4) of the costs."

The amended information in Criminal Case No. 411 charged the accused as follows:

"That on or about the 10th day of April, 1974, in the barrio of Dolos, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court the said accused conspiring, confederating and mutually helping one another and armed with bolos and with intent of gain and by means of violence and intimidation did then and there wilfully, unlawfully and feloniously take, steal and carry away from JUAN CAMO the amount of P61.80 Philippine Currency, to the damage and prejudice of JUAN CAMO in the aforesaid amount; and on the occasion of the said robbery the above-named three accused, with lewd designs and by means of violence and intimidation did then and there wilfully, unlawfully and feloniously have sexual intercourse, one after the other, with ESTRELLA CAMO DAUGHTER OF JUAN CAMO AGAINST her will and without her consent."

The information in Criminal Case No. 412 reads:

"That on or about the 10th day of April, 1974, in the Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another and armed with bolos and by means of violence and intimidation upon persons did then and there wilfully, unlawfully, and feloniously broke [sic] into the house of one NOLI GRAJO and with intent of gain take, steal and carry away cash money in the amount of ONE THOUSAND (P1,000.00) PESOS, Philippine Currency, without the consent of the owner thereof, NOLI GRAJO, and to his damage and prejudice in the aforesaid amount; and on the occasion of the said robbery the above-named accused likewise conspiring, confederating and mutually helping one another and with intent to kill and with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously hack NOLI GRAJO inflicting upon him various injuries on different parts of his body which injuries caused his instant death; and likewise on the same occasion the above-named accused conspiring, confederating together did then and there wilfully, unlawfully and feloniously by means of force and intimidation have sexual intercourse with ADELINA SAMBAJON wife of the deceased NOLI GRAJO against her will and without her consent."

The crimes covered by the two informations were committed by the same group of persons, in the same locality, and on the same date, one offense after the other.

The prosecution presented evidence separately for each case but the defense chose to submit its evidence jointly. The trial court rendered one decision for the two cases. The accused-appellants in the two cases filed a joint brief.

In Criminal Case No. 411, the facts established by the prosecution and synthesized in the People's brief are as follows:

"At about 9:00 o'clock in the evening of April 10, 1974, Juan Camo, his wife Socorro Camposano, their five children and his mother-in-law were already asleep in their house in the barrio of Dolos, Bulan, Sorsogon, when he was awakened by a loud pounding on their door. As he was afraid, he did not immediately open the door. However, there followed another pounding on the door with a threat to kill him and so he got up despite the efforts of his wife to restrain him. When he opened the door, Efreniano Balane pulled him outside to the porch where Berting Giba also was. Efreniano was wearing a black veil over his mouth, but he recognized him from the light coming from the gas lamp hanging on the rafter over the place where Juan Camo was sleeping. Besides, the veil of Efreniano was very thin, and Juan had known him since the latter's childhood, they being from the same barrio. Efreniano demanded money from him and when he said he had no money, he was threatened to be killed. Seeing that both Efren and Berting were carrying what seemed to be long weapons

wrapped in sack, Juan went inside, to the room where his mother-in-law and daughters were, to get the money. On his way to the room, he saw Romeo Giba already inside, having passed through the window, also holding an elongated object wrapped in a sack and pointing the same at his wife. Juan opened the trunk and got out his money amounting to P40.00 as well as the piggy-bank of his mother-in-law, which when opened yielded P22.80. After the money was counted, Efren and Romeo made a grab for it with both succeeding in getting something from the pile. Eriberto stood guard.

"After having gotten the money, Efren caught sight of Estrella, 16-year old daughter of Socorro by a former husband, and dragged her downstairs with the help of Romeo. Her mother pleaded to them not to touch her because she was sick. Romeo answered that they just wanted to relieve themselves, using the Tagalog words 'maparaos kami'. Estrella was brought by Efren and Romeo to the back of the house at the edge of the yard where abaca plants begin to grow. Efren struck Estrella when she offered resistance, as a result, she fell on the ground. Afterwhich, Efren laid himself on top of her after removing her panty and succeeded in having carnal knowledge of her. At that time, Romeo and Eriberto guarded Juan and the family. After raping Estrella, Efren went back to the house, whereupon Romeo came down and went to where Estrella was and succeeded in having sexual intercourse with her despite her pleadings to spare her. After Romeo was through, he went back to the house. Then Eriberto came down and took his turn in raping Estrella. In all these attacks on Estrella, she protested and begged to be spared, even offering resistance, but to no avail. Her mother heard her cry for help. After Eriberto was through raping her, he no longer went back to the house and the three accused left without saying any word.

"Soon afterwards, Estrella came back to the house and crying, she narrated the abuse committed on her by Efren, Romeo and Eriberto. On examination by Municipal Health Officer Gloria C. de Vera of Bulan, her findings were as follows:

- '1. Pubic hair scanty
- '2. Contusion of both labia majora and minora
- '3. New laceration of the hymen at 3, 7, 9 and 12 o'clock.'

"As testified to by Dr. De Vera, the lacerations were new because they were still oozing with blood. These lacerations, according to the doctor, would have been due to the entrance of any hard instrument thru the hymen, which in her opinion could have been the penis of a man. (tsn., Sept. 10, 1974; tsn., Sept. 13, 1974, pp. 2-4; tsn., Sept. 19, 1974)."

In Criminal Case No. 412, the facts established by the prosecution and synthesized in the People's brief are as follows:

"At about 10:00 o'clock in the evening of April 10, 1974, Adelina Sambajon, her husband Noli Grajo and their four children were already resting for the night. When they were about to sleep, Inocentes Balane and Efreniano Balane suddenly entered their house, the door thereof consisting merely of a mat, with each carrying and pointing something wrapped in a piece of cloth at Noli. They said, 'Mr. 'wag kang kikilos pagkat kung kikilos kayo babarilin kita.' Inocentes face was covered with a thin black veil, while Efreniano's was covered by a handkerchief from his nose down. Adelina recognized them because of the light coming from their gas lamp and their faces were only partially covered. Besides she knew them well even before. Inocentes then brought Noli to the ground. When she peeped out of the room, Adelina saw others, whose faces were covered with a cloth from the nose down, but whom she recognized as Romeo Giba and Berting Giba, as it was full moon. Inocentes ordered Romeo to tie up Noli. Then Inocentes and Efreniano went back to the house and Inocentes told her in Tagalog, 'Mrs. bigyan mo ako ng isang bagay, kung hindi ay papatayin kita'. She understood what he meant and refused, telling him he was not her husband, but he pushed her on the shoulder causing her to fall. Inocentes pressed her arm down with the weapon he was carrying, spreading out her arms so she could not move, while Efreniano held her feet. In this position, Inocentes succeeded in removing her

panty and having sexual intercourse with her. After he was through, Inocentes went to where their trunk was and got their money amounting to P1,000.00 which they had accumulated from the sale of a pig and abaca. After getting the money, Inocentes and Efreniano went down and proceeded to kill her husband. She heard sounds like thuds coming from about three armlengths from the stair-way. She peeped through the wall and saw the four accused attacking Noli. She then lifted a floor board which was not nailed down, crept under the house and ran to the nearby house of her parents-in-law. Upon reaching the latter's house, she told Noli's father, Luis Grajo, to get up because Noli has been tied up and was being killed. Luis immediately went to his son's house, together with his wife Soledad, followed by Adelina. When they reached the house, they found the accused no longer there, and the children crying. So they all returned to Luis' house and spent the rest of the night there. Next morning, accompanied by Noli's uncle Inggo, they returned to look for Noli and Adelina found his dead body in the thicket about 20 armlengths away from the house. After which, she and her mother-in-law went to the poblacion to inform the police about the incident. The cadaver was later brought to the town and examined."

The necropsy report of Dr. Gloria C. De Vera (Exhibit "A") contained the following findings:

- "1. Incised wound 8 inches long, semi-lunar in shape, cutting temporal region of the scalp, skull and muscles of right neck, brain tissue protruding.
- "2. Incised wound 4 inches long cutting right elbow joint;
- "3. Stab wound 1-1/2 inches wide right supra clavicular region;
- "4. Incised wound 5 inches long right lateral neck cutting muscles and big blood vessels;
- "5. Multiple incised wounds numbering three (3) at posterior portion of right hand and lower 3rd of right forearm;
- "6. Incised wound cutting left small finger, right finger and middle finger.

CAUSE OF DEATH—Hemorrhage severe secondary to multiple stab wounds."

On the other hand, the accused-appellants in their joint brief presented their own versions of the facts:

"On April 10, 1974, at around 5:00 o'clock in the afternoon in Barrio Dolos, Bulan Sorsogon, accused-appellant Efreniano Balane, on his way home from work, dropped by at the store of Jaime Borromeo to buy some cigarettes. The said accused-appellant was invited for a drink of a bottle of sio hoc tong by accused-appellant Inocentes Balane. Accused-appellant Efreniano Balane obliged and drunk with Inocentes. The said two accused-appellants also invited accused-appellants Romeo Giba and Eriberto Giba, who were likewise on their way home from work and who dropped by the said store to buy some cigarettes. (t.s.n., August 20, 1975, p. 5)

"At around 9:00 o'clock in the evening, accused-appellants Romeo and Eriberto Giba, who are brothers, excused themselves from the company of the Balanes and proceeded home. Accused-appellant Inocentes Balane proceeded to one of the hills. Accused-appellant Efreniano Balane followed him (Inocentes) because he knew that accused-appellant Inocentes Balane was going to visit his girlfriend, complaining witness Adelina Sambajon, on invitation from the latter, as was related to him earlier on that evening by accused-appellant Inocentes Balane. (t.s.n., August 18, 1975, p. 15). Previous to this evening, at least on two occasions, accused-appellant Efreniano Balane was invited by accused-appellant Inocentes Balane to watch the latter and his girlfriend, complaining witness Adelina Sambajon, have carnal relationship. (t.s.n., August 18, 1975, p. 28). When the two accused-appellants (Efreniano and Inocentes) reached the house of Noli Grajo, common-law husband of complaining witness Adelina Sambajon (also the girlfriend of accused-appellant Inocentes Balane), accused-appellant Inocentes Balane requested accused-appellant Efreniano Balane to hide, while accused-appellant Inocentes Balane went to the door. At this juncture, complaining witness Adelina

Sambajon was pushed out of the house by common-law husband Noli Grajo and she fell on the ground, Noli Grajo was very angry.

"Q. Now, while Noli Grajo was pushing Adelina Sambajon out of the house, what else happened?

"A. Then, Noli Grajo said, 'So, you are here, traitor.'

"Q. To whom was he referring?

"A. To Inocentes Balane.' (t.s.n., August 18, 1975, p. 17).

"Considering that Noli Grajo was at the peak of his anger, accused-appellant Inocentes Balane ran away but Noli Grajo pursued him. When accused-appellant Inocentes Balane was already at a distance, he warned Noli Grajo not to come near because he (Inocentes Balane) was armed with a bolo. Despite the warning, Noli Grajo continued to pursue him. Later, they hacked each other with their bolos. As a result, Noli Grajo lay prostrate on the ground.

"In the meantime, accused-appellant Efreniano Balane ran home. While he was running about 300 meters away already, he heard that complaining witness Adelina Sambajon shouted that her husband was killed.

"Q. Will you quote exactly what Adelina was shouting?

"A. Acoderi man comi coy pinatay an asawa co'. (Please help us because my husband had been killed).' (t.s.n., August 18, 1975, p. 37).

Upon reaching home, accused-appellant Efreniano Balane told his father, Liberato Balane, that accused-appellant Inocentes killed the son of Luis Grajo. His father advised him to return to the poblacion the following morning, where he was arrested at about 11:30 o'clock by members of the Bulan Police Department.

"At around 6:00 o'clock in the morning of April 11, 1975, accused-appellant Inocentes Balane likewise went to the house of Liberato Balane (father of accused-appellant Efreniano), and confessed to him that he killed Noli Grajo, so Liberato Balane advised Inocentes Balane to surrender. Accused-appellant Inocentes Balane was also arrested in the poblacion and he implicated all the other three accused-appellants Efreniano Balane (who was arrested after Inocentes), Eriberto and Romeo Giba (who were likewise arrested on that same afternoon) for the robbery case committed.' . . ."

After trial on the merits and submission of respective memoranda by both the prosecution and defense, on December 16, 1975, the trial court rendered the decision with the judgments earlier mentioned.

Accused-appellants now alleged:

I

THE LOWER COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF PROSECUTION WITNESS ADELINA SAMBAJON IN CRIMINAL CASE NO. 412.

II

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED APPELLANTS OF THE CRIME CHARGED IN CRIMINAL CASE NO. 412 WHERE THE EVIDENCE FOR THE PROSECUTION IS NOT ONLY CLOUDY AND UNCERTAIN, BUT VERY INSUFFICIENT.

III

THE LOWER COURT ERRED IN HOLDING THAT THE EXTRAJUDICIAL CONFESSIONS, EXHIBITS 'C', 'D', 'E' AND 'F' OF THE ACCUSED-APPELLANTS WERE VOLUNTARILY MADE.

IV

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANTS IN CRIMINAL CASE NO. 411 ON THE GROUND THAT THEIR GUILT HAVE NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

The first and second assignments of errors being intertwined may be discussed jointly.

In finding the appellants Inocentes Balane and Eriberto Giba guilty beyond reasonable doubt with the crime of rape with Homicide in Criminal Case No. 412, the lower court relied mainly on the testimony of the prosecution's lone eyewitness, Adelina Sambajon. She testified to the killing of her husband by the four appellants herein as well as the rape committed against her by accused Inocentes Balane with the participation of Efreniano Balane.

The accused-appellants maintain that the testimony of the expert witness Dr. Gloria C. De Vera, who examined Adelina Sambajon immediately after the alleged rape, renders doubtful the prosecution's theory on the alleged rape when she testified that there was no important finding in the sexual organ of Adelina Sambajon. The accused-appellants argue that if there was really sexual intercourse, much more rape, it would be the height of improbability, that nothing unusual was found, not even a smear of spermatozoa in the vagina of the victim by the examining physician.

We ruled in *People v. Selfaison* (1 SCRA 235) that such a defense lacks merit. This Court stated: "The absence of such spermatozoa, however, does not necessarily mean that the complainants had not in fact been raped. The very authority cited states that such absence does not necessarily mean that the girl subject of examination has not had any sexual intercourse. It need hardly be said here that in the crime of rape, the slightest penetration is enough."

Resolving a similar issue in *People v. Carandang* (52 SCRA 259) and *People v. Ytac* (95 SCRA 644) this Court ruled that the absence of spermatozoa in the vagina is no legal obstacle to holding that rape has been committed.

As to who are liable for this crime of rape in Criminal Case No. 412, the lower court ruled:

"The liability for this crime must attach both to Inocentes Balane, who actually committed it, and to Efreniano Balane who lent cooperation to the former by holding the feet of Adelina Sambajon while Inocentes was satisfying his lecherous urge. In a case directly in point it was held that the persons holding the legs and shoulders of the victim of rape are guilty not merely as accomplices in the commission of the crime but as co-principals with the one who actually committed the rape (*People vs. Amit, et al.*, L-30102, February 27, 1971, 37 SCRA 793)." (Rollo, p. 104)

The following testimony of Adelina Sambajon is relevant:

"FISCAL PERALTA:

"Q-

Now, after bringing Noli Grajo to the ground from your house, what happened next?

"A-

Inocentes went up the house again.

"Q-

Inocentes only?

"A-

And also Efreniano.

"Q-

What did they do when they came back?

"A-

Inocentes said to me, 'Mrs. give me one thing. If you do not, I will kill you.' and right away pushed me on my shoulder." (t.s.n., February 5, 1975, p. 12)

.....

"FISCAL PERALTA:

"Q-

And what did you feel?

"A-

After my fall and with the pressure applied by Inocentes, he then removed my panties and then he was able to accomplish what he wanted of me.

"Q-

You mean to say that Inocentes had sexual intercourse with you?

"A-

Yes, sir. He really was able to accomplish.

"Q-

What was Efreniano or Efren doing also?

"A-

He was holding on to my feet while Inocentes was on top of me." (t.s.n., February 5, 1975, p. 13)

The records show convincingly and beyond reasonable doubt that appellant's guilt with respect to the crime of rape as charged in Criminal Case No. 412 has been proved.

With respect to the liability of Romeo and Berting Giba, the following testimony of Adelina Sambajon is pertinent:

"COURT:

"q

You are sure that only two of these accused went up your house on the evening in question?

"a

Yes, sir.

"q

And these two are ...?

"a

Inocentes and Efreniano went up the house.

"q

The other two accused stayed outside of the house and never entered it?

"a

Yes, sir." (t.s.n., February 19, 1975, p. 5)

This Court agrees that the accused Eriberto and Romeo Giba cannot be held responsible for the rape committed by Inocentes Balane and Efreniano Balane. The records show that from the very start, they did not know of the rape which took place inside the house, nor were they informed that Inocentes Balane and Efreniano Balane had rape in mind when these two entered the house. Eriberto and Romeo's attention was centered on Noli Grajo, whose hands they tied, brought some distance away from the house, and guarded until Inocentes and Efreniano came down from the house to join them there.

With respect to the killing of Noli Grajo, the lower court found the existence of conspiracy between all the four accused sufficiently proven. The following facts stated by the lower court support this conclusion:

.....

". . . Inocentes Balane and Efreniano Balane entered Noli Grajo's house, and with the use of force and intimidation brought Noli outside. Once there, Inocentes, who appears to be the leader of the group, ordered the two Gibas to tie up Noli Grajo and guard him. Then, while Inocentes and Efreniano went back to the house to commit still another reprehensible deed, Romeo and Eriberto, entirely on their own and without further instructions from their leader, tied the hands of Noli, brought him some distance away from the house, and stood guard over him. Shortly thereafter, when Inocentes and Efreniano emerged from the house, Inocentes commenced the attack on Noli, participated in, according to Inocentes, by Efreniano and the two brothers."

.....

Although no previous agreement to kill Noli was evidently proven, the existence of conspiracy may be inferred from the acts of appellants tending to show a community of criminal purpose. Conspiracy need not be proved by direct evidence and may be deduced from the mode and manner in which the offense was committed. As correctly stated by the lower court the rule is that for an accused to be held liable as conspirator:

.....

". . . it must be established that he performed an overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to

move them to executing the conspiracy. . . ." (People v. Peralta, 25 SCRA 759)

This principle—all too evidently applicable in this case—sustains the finding that all the four accused-appellants must be held liable for the killing of Noli Grajo.

The lower court summarized the circumstances of the killing as follows:

"As to the killing of Noli Grajo, we find an appreciable degree of significance in the character of the wounds sustained by the deceased. Also, we consider of much help the opinion given by the medico-legal officer on how these wounds could have been inflicted, and on the possibility of the number of attackers that may have been involved, especially considering the admissions made by the accused in their sworn statements. Thus, Eriberto Giba's and Romeo Giba's admissions are corroborated by findings Nos. 2, 5, and 6. Finding No. 2 is an incised wound, 4 inches long, cutting the right elbow joint, which Dr. De Vera characterized as a defense wound, or inflicted while the victim was in the act of defending himself. Finding No. 5 refers to three wounds at the back of the right hand and the lower portion of the right forearm. And finding No. 6 describes wounds cutting the left small finger, right finger and middle finger. In other words, in defending himself Noli Grajo necessarily had to raise both arms to his front, since these were tied together, thus receiving the wounds on the parts of the hand where they should really be if the two arms are raised upward in front of the victim's body.

"Now, the question is: Who dealt these injuries on Noli Grajo? Inocentes Balane, in Exhibit 'C', admits that all the four of them had bolos in going to Noli Grajo's house, but that he hacked Noli Grajo only once at the right side of the body near the ribs. He also avers that Berting (Eriberto Giba), Romeo and Efren (Efreniano Balane) also helped in killing Noli Grajo. The accused Eriberto Giba denied having had a bolo with him on the occasion although, as previously stated, he admitted having tied the hands of the deceased in front, with his brother Romeo helping him. On the other hand, Romeo Giba admitted that all the four of them had bolos and that he tied Noli Grajo and brought him some distance away from the house where he and his brother guarded him while Inocentes was up the house, but that except for this he and his brother did not lift any finger against Noli Grajo. However, he saw Inocentes strike the victim with his bolo four times; on the neck, the head, the shoulder and the body. For his part, Efreniano Balane testified that after he and Inocentes had gotten inside the house Noli Grajo was brought out by them and thereafter held by Eriberto Giba and Romeo Giba and brought to a dark place behind the house with Berting and Romeo guarding him. Afterwards he and Inocentes went down, found Noli Grajo already tied and guarded by Berting and Romeo, while Noli was begging Romeo not to kill him. He also saw Inocentes hacked Noli on the neck. As to where else Noli was hit and who struck him further, Efreniano could not tell because he claimed to have turned his head away 'for one hour' before leaving the scene.

"Lending support to the theory of the prosecution that more than one of the accused cooperated in the killing of Noli Grajo is the testimony of Noli's father, Luis Grajo. He declared that he was awakened by Adelina Sambajon who pleaded, 'Please help us, Father, because Noli is being tied up and being attacked' (TSN, February 19, 1975, p. 11). While this declaration of Luis Grajo given on the direct examination is a significant piece of evidence, yet it is not as pregnant with meaning as that which he gave on cross-examination when asked on the same point by the defense counsel Luis Grajo said that Adelina awakened him by saying, 'Pay, pag mata kay si Noli yadto guinapos nan inpara baraodan nira Centes' (TSN, *ibid*, p. 18). As translated, this means, 'Father, please get up because Noli has been tied and being repeatedly clubbed by Centes and companions.'

"Finally, we have the mute but incontestible evidence offered by the piece of wood (Exh. 'C') measuring about 1-1/8 inches in diameter at one end, and 1-1/8 inches in diameter at the other end and 34-1/2 inches long, as well as a length of rope, 15-1/2 feet long, and 5/8 of an inch thick (Exh. 'H'). This piece of rope is actually made up of two pieces knotted together at the center. These were found about five armlengths away from the house. And on the surface of the piece of wood can be clearly seen spots of blood practically all along its entire length. The rope is also discolored, although one cannot tell whether it is because of its age or bloodstains."

The killing of Noli Grajo was characterized by the qualifying circumstance of treachery. There is treachery when the offenders employ means, methods, and forms in the execution of the crime which tend directly and specifically to ensure its execution, without risk to themselves arising from the defense which the offended party might make. Noli Grajo, when he was subjected to attack, was entirely defenseless and his attackers were totally unexposed to any risk that might have come from him since he was not at all in a position to retaliate.

Nocturnity is absorbed in treachery and cannot be separately appreciated as an aggravating circumstance. Furthermore, the prosecution failed to prove that it was especially sought for to facilitate the commission of the crime.

Although there were four persons cooperating against Noli Grajo, we disregard this numerical superiority because it is absorbed in treachery.

Relative to the third assignment of error, the accused-appellants contend that it is error for the lower court to hold that their extrajudicial confessions were made voluntarily. The accused-appellants maintain that all of them were subjected to physical punishment and that their constitutional rights guaranteed by Section 20, Article IV of the Constitution were violated and that Exhibits "C", "D", "E", and "F" are inadmissible as evidence for the prosecution.

This contention was answered by the appellee in the People's brief:

"The records show that each of the appellants first made statements and declarations upon investigation by members of the Bulan Police Force. Thus, Pat. Raul Gabad took the sworn statement of Inocentes Balane; Pat. Rodolfo Deduque took the sworn statement of Berting Giba and Pat. Serafin Gibas took the sworn statement of Romeo Giba. In the case of accused, Efren Balane, his statements were taken anew before Judge Avelino Deyto, upon the former's declaration that some of the statements contained in his first declaration were not true. In all the above cases, the appellants were rightfully informed of their constitutional rights, . . . Thus, Pat. Raul Gabad testified, as follows:

"FISCAL PERALTA:

"Q.

Who were present when you took this sworn statement of Inocentes Balane?

"A.

The accused, and Pat. Legronio, Jr.

.....

"Q.

Before taking his testimony, what did you do?

"A.

Well, I just informed him of his constitutional rights, and told him about the constitutional rights.

"Q.

What rights did you tell him?

"A.

The right to have an attorney as his counsel, and that he cannot be forced to answer the question which will incriminate him.

.....

"Q.

After explaining to you your rights under the law, that you cannot be forced to give answers to question being asked you if you think it will prejudice your interests; that you have a right to counsel because everything that you say might be used for or against you. Now will you swear to tell only the truth in this investigation?

"A.

Yes, sir.' (tsn., December 16, 1974, pp. 5-7).

Pat. Rodolfo Deduque for his part gave the following testimony, to wit:

"Q.

Mr. Deduque, you investigated the accused Berting Giba. In what particular place did you take his statement?

"A.

At the Office of the Chief of Police, Bulan Police Dept.

"Q.

And who were present, if any, when you took his statement?

"A.

Chief Raymundo and M/Sgt. Ascaño.

"Q.

Before you propounded to him the questions what did you tell him?

"A.

I informed Giba of his constitutional rights that he may not answer questions which may incriminate himself, and that he may avail himself of the services of counsel.

"Q.

Did you tell him that before asking questions?

"A.

Yes, sir.

"Q.

And what was his answer?

"A.

He said that he is willing to give the statement. (tsn., December 16, 1974, pp. 18-20)

Patrolman Serafin Gilbas who examined accused Romeo Giba testified, thus:

"Q.

Besides you and the accused Romeo Giba, who else was present, if any during the investigation that you conducted?

"A.

I remember, one Sgt. Escaño of the Philippine Constabulary was present.

"Q.

Now, before taking the statement of accused Romeo Giba, what did you do, if anything?

"A.

Before taking the statement of the accused Romeo Giba, I told him of his constitutional rights, his right not to answer any question or to give any statement if he does not like, and his right also to be represented by any counsel.

.....

"Q.

Now, having informed Romeo Giba that it is his right under the law and under the constitution that if he chooses not to speak or give any statement he can and that he is entitled to counsel if he wants a counsel, what did he say to you?

"A.

The moment he submitted for investigation. He voluntarily submitted for investigation. (tsn., December 17, 1975, pp. 3-5)

On the claim of the appellants that their constitutional right to counsel was not adequately respected, we also quote the ruling of the trial court:

"Finally, even in their claim attempting to show involuntariness in the giving of their statements as well as irregularity in the execution of their declarations the accused are shown to have entangled themselves in contradictions. Thus, in the face of their claim that they were not apprised of their constitutional rights, Efranio Balane admitted that the judge asked him whether he wanted to be assisted by a lawyer and that if he

chose to, he could be given a lawyer to assist him. In fact upon the repudiation by Efreniano of the prepared statement made by the police, Judge Deyto discarded it altogether and investigated him all over again. Yet, according to Eriberto Giba, this was the same judge who did not inform him of his right to counsel and his right against self-incrimination, or advised him that the statement would be used in evidence against him. This, too, was the same judge who, according to Romeo Giba, read to him his statement in the English language, explained to him also in English the contents of his statement, and likewise asked him in English whether the answers he gave were correct, to which query Romeo also replied in English, 'yes'.

Judge Deyto testified during the trial and stated that not only did he inform the accused of their constitutional rights but he even suggested the names of lawyers who were around and who could be called if the accused wanted them. The Judge testified that he informed the accused that the services of these lawyers would be free of charge. The accused, however, told the judge there was no need for these. Judge Deyto, when the statements taken by the police were brought to him, asked the affiants whether the same were voluntarily given. They also swore to the truth of their statement. Only then were the oaths administered by the Judge.

We agree with the trial court that the constitutional requirements were satisfied.

We find no merit in the contention of the accused-appellants that they were subjected to physical punishment during the custodial investigation. We apply the rule stated in *People v. Mada-I Santalani*, (93 SCRA 317), that where the defense did not present any evidence of compulsion or duress nor violence on their persons; where they failed to complain to the swearing officers; where they did not institute any criminal or administrative action against their alleged torturers for maltreatment; where they showed no mark of violence in their bodies; where they did not have themselves examined by a reputable physician to buttress their claim, all these were considered by this Court as factors indicating voluntariness.

Furthermore, at the trial, not one of the accused-appellants could indicate which part of his body had been hurt or injured.

The exculpatory tone which pervaded each of the confessions and the appellants' testimonies, with the declarants pointing to the other as the real culprit in the commission of the crime, is also an index of voluntariness (*People v. Compacion*, 93 SCRA 334).

Thus, while Inocentes Balane admitted having raped Adelina Sambajon with the assistance of Efreniano Balane, he limited his participation in the slaying of Noli Grajo to one stroke of the bolo delivered on the right side of the body, and pointed to Eriberto Giba and Romeo Giba as the persons who killed Noli. On the other hand, Inocentes denied having taken money from Noli Grajo's house or having been with the three accused-appellants in going to the house of Juan Camo. Eriberto Giba while admitting that he guarded Noli Grajo upon the orders of Inocentes Balane, denied having done anything else or having knowledge of any robbery in the house of Noli or of what happened in the house of Juan Camo. He instead pointed to Inocentes Balane as the one who boloed Noli Grajo. Furthermore, Eriberto Giba disclaimed any participation in what happened in the house of Juan Camo. He instead pointed to Inocentes Balane as the only person who forcibly abused Estrella Camo. Romeo Giba, while minimizing his complicity in the binding of the hands of Noli Grajo, squarely laid the killing on Inocentes Balane. While admitting that there was robbery in the house of Noli Grajo and that Inocentes had forcibly committed sexual intercourse with Adelina Sambajon aided by Efreniano Balane, Romeo disclaimed any knowledge of any robbery in the house of Juan Camo and also denied having touched Estrella Camo after Inocentes Balane had ravished her. While Efreniano Balane admitted having helped Inocentes while the latter raped Adelina Sambajon, he denied having struck Noli Grajo and put the blame on Inocentes alone for the murder of Noli Grajo.

In their fourth assignment of error, the three accused-appellants, Efreniano Balane, Eriberto Giba and Romeo

Giba, argue that while complaining witness Estrella Camo testified that the crime of rape charged in Criminal Case No. 411 was allegedly committed with the use of force, failed to present the alleged bloody and torn panty and dress. They argue that the alleged struggle between Estrella Camo and the three accused-appellants is belied by the prosecution's own expert witness, Dra. De Vera, when she testified that she did not find any signs of injury on the body of Estrella Camo. Appellants, however, forgot the lacerations in the hymen. The expert witness for the prosecution found the following injuries:

- Pubic hair scanty
- Contusions on both labia majora and labia minora
- New lacerations of the hymen at 3, 7, 9, and 12 o'clock.

(Exhibit "A", Rollo, p. 4).

There was a purplish discoloration on both the labia majora and labia minora. The lacerations were new and still oozing blood during the examination.

As to the non-presentation of the blouse and the panty of the complainant which were allegedly torn, the omission is not fatal to the case of the prosecution because their case had already been built up firmly, unshaken by the evidence presented by the accused-appellants.

Furthermore, this Court has, time and again, observed that it is hard to believe that an artless and guileless barrio girl, a mere teenager would publicly disclose that she had been raped by three men, one after the other, thereby practically foreclosing the probability of a blissful married life, exposing herself to the ordeal and embarrassment of public trial, subjecting her private parts to examination, allowing her honor and reputation to be sullied, and heaping upon herself untold humiliation, unless she is motivated by a strong desire to bring to justice the culprits who had grievously wronged her. As correctly stated by the lower court, ". . . We have here the case of a sixteen-year old barrio lass, a virgin, unschooled and uninitiated to the ways of the world, who finds herself by force of necessity compelled to lay bare in a public trial matters that would subject her to humiliation. Without any compelling reason a girl of her kind would not have the courage to come to court as a complainant in a charge involving a sordid offense".

With respect to the robbery charged in Criminal Case No. 411, the appellants argue that there are inconsistencies in the testimonies of both Juan Camo and Socorro Campasano, such as (1) the amount taken varying from P61.80 to P62.80; (2) the number of trunks from which Juan Camo got the money; (3) the number of lights inside the house; and (4) exactly what places they were at the time of the commission of the robbery.

The above inconsistencies refer only to minor and collateral matters that do not impair the credibility of Juan Camo and Socorro Campasano. As correctly pointed out in the People's brief, more important than these inconsistencies, Juan Camo, his wife Socorro, and daughter Estrella, affirmatively testified to the unlawful taking of their money by the accused, particularly Efren and Romeo who struggled for the money after the same was counted. Furthermore, the victims herein were caught by surprise and frightened. Possessed with different capacities for observation, the witnesses cannot be expected to recall with accuracy or uniformity matters connected to the main overt act (*People v. Cabiling*, 74 SCRA 285).

We apply the rule reiterated in *People v. Reyes* (69 SCRA 476) that inconsistencies in minor and collateral matters with respect to the testimonies of two witnesses may signify that the two witnesses did not deliberately pervert the truth in their narrations. The discordance in their testimonies on collateral matters heightens their credibility and shows that their testimonies were not coached nor rehearsed. Far from being evidence of falsehood, they could justifiably be regarded as indices of telling the truth.

Under the facts of these cases, the trial court correctly imposed the penalty of death for the offenses as charged but for lack of the necessary votes to impose the death penalty, we are constrained to reduce the penalty to reclusion perpetua.

WHEREFORE, the judgments appealed from are MODIFIED in that the penalty of DEATH is REDUCED to RECLUSION PERPETUA. In all other respects, the judgments are AFFIRMED.

SO ORDERED.

Fernando, C.J., Concepcion Jr., Guerrero, Abad Santos, Plana, Escolin and Relova, JJ., concur.

Teehankee, Makasiar and Melencio-Herrera, JJ., in the result.

Aquino, J., see dissent.

De Castro and Vasquez, JJ., on leave.

DISSENTING IN PART

AQUINO, J.:

With all due deference to the opinion of Mr. Justice Gutierrez, I dissent as to the penalty.

In Criminal Case No. 411, the conspirators Efreniano Balane, Eriberto Giba and Romeo Giba are guilty of robbery with multiple rape, the crime charged, and should be sentenced to reclusion perpetua under article 294(2) of the Revised Penal Code before it was amended by Presidential Decree No. 767 effective on August 15, 1975.

The trial judge, Hon. Aquilino P. Bonto, imposed the death penalty in said cases because he applied article 335 of the Revised Penal Code. He convicted the three accused of qualified rape, following *People vs. Obtinalia*, L-30190, April 30, 1971, 38 SCRA 651.

The charge, being a crime against property, Judge Bonto cannot convict the accused of a crime against chastity. The majority has abandoned the *Obtinalia* ruling (*People vs. Cabural*, L-34105, February 4, 1983).

In Criminal Case No. 412, the charge was robbery in band with homicide and rape. The facts recited by the Solicitor General in his brief show the commission of robbery in the sum of P1,000 and, on the occasion of such robbery, the killing of Noli Grajo and the rape of his common-law wife, Adelina Sambajon.

But Judge Bonto found that no robbery was committed (p. 60, Appendix to Appellants' Brief).

So, Judge Bonto convicted Inocentes Balane and Efreniano Balane of "rape with homicide" under article 335 of the Revised Penal Code most probably because on the occasion when Adelina was raped Grajo was killed. He imposed the death penalty pursuant to the last paragraph of article 335.

Judge Bonto then convicted Eriberto Giba and Romeo Giba of murder for the killing of Grajo "in conspiracy with the accused Inocentes Balane and Efreniano Balane" and sentenced the Gibas to death under article 248 of the Revised Penal Code because the murder was aggravated by dwelling.

Since the Solicitor General in Criminal Case No. 412 found that the crime committed is robbery with homicide and rape, the four accused, the Balanes and the Gibas, as conspirators, should be held guilty of this offense and sentenced to death.

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