

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUGENIO OLDEN, ALIAS “DO”; JAIME SA-ANG, AGAPITO
ALAGASE AND PRUDENCIO POLISTICO, ALIAS
“NONOY”; DEFENDANTS-APPELLANTS. TH...**

G.R. Nos. L-27570 & L-27571. September 20, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On 30 October, 1966 the Court of First Instance of Davao (Branch I, Davao City) rendered a joint judgment in two cases, as follows:

* * * * *

"WHEREFORE, the Court finds the accused Eugenio Olden, Prudencio Polistico and Agapito Alagase guilty beyond reasonable doubt as principals of the crime of robbery in Criminal Case No. 9354, defined and penalized under Article 294 of the Revised Penal Code, with the aggravating circumstance of nighttime, without any mitigating circumstance, and hereby sentences each of them to FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as maximum, with the accessories of the law, to indemnify Virgilio Varquez in the amount of Three Hundred Pesos (P300.00), representing the value of the properties robbed from him without subsidiary imprisonment in case of insolvency by reason of the penalty imposed, and to pay the costs proportionately.

The accused Jaime Sa-ang is hereby acquitted for lack of evidence against him.

And the accused Eugenio Olden, Prudencio Polistico, Jaime Sa-ang and Agapito Alagase likewise guilty beyond reasonable doubt as principals of the crime of robbery in band with multiple rape in Criminal Case No. 9355, defined and penalized under Article 294, in relation to Article 296, of the Revised Penal Code, with the aggravating circumstances of nighttime and band, without any mitigating circumstance, and hereby sentences each of them to RECLUSIONPERPETUA, with the accessories of the law, to indemnify Leoncio Maranga in the amount of Five Hundred Pesos (P500.00), representing the value of the properties robbed from him, without subsidiary imprisonment in case of insolvency by reason of the penalty imposed, and to pay the costs proportionately.

SO ORDERED".

The two cases are before Us on appeal, the case of robbery with rape (No. 9355 below) having been docketed here as No. L-27570, and the case of robbery in band (No. 9354 below) as No. L-27571.

There is no question as to the commission of the robberies for which the appellants have been prosecuted and convicted. The evidence is clear and conclusive on the point. The issues raised in this appeal are: (1) whether or not the appellants were the ones who committed the crimes; and (2) whether or not multiple rape was likewise committed by them on the same occasion. The resolution of these issues hinges principally on the sufficiency of the evidence of identification, and with respect to the charge of rape, corollarily on the presence or absence of

force or intimidation. Parenthetically, it should be stated that under Article 294, in relation to Articles 295 and 296 of the Revised Penal Code, the proper denomination of the offense in Criminal Case No. 9355 should be robbery with rape, not robbery in band with multiple rape.

The facts, as disclosed by the evidence for the prosecution, are as follows:

In Binoling,[1] municipality of Samal, province of Davao, there were two houses close together — one owned by Leoncio Maranga and the other by his son-in-law, Virgilio Varquez. The houses were only some two meters apart, and between them, on the second floor, was a connecting passageway. At about 8:30 in the evening of 15 August 1965 Leoncio Maranga was in his room upstairs, lying beside a small grandchild of his. Down below on the first floor, part of which was used as a store, were Leoncio's wife Numeriana, their two grown-up children, Alma and Oriel, and their daughter-in-law, Edwina, married to Sarobable Maranga. Edwina was 20 and had two children, the younger one a baby of three months. A noise was heard near the door leading to the store, and immediately three men barged in. One of them a "big fellow", according to Edwina dimmed the light of the petromax lamp in the room, tied the hands and feet of her three companions and told them to lie on the floor, face down. In the meantime the other two intruders proceeded to ransack the store and gather the goods that were there for sale. Another man then came down from upstairs, went to the place where the money was kept and after helping himself to the contents approached Edwina where she was seated near a sewing machine, held her by the neck and took her to the kitchen. In the kitchen the man, whom Edwina identified at the trial as Agapito Alagase, showed her the bolo and the revolver with which he was armed, ordered her to lie down on the floor, "undressed" her, spread her legs apart and succeeded in having carnal intercourse with her. After he finished, one of his companions, whom she did not know by name and who she saw standing by the door, took his own turn with her.

When the second man had finished Alagase tied Edwina's hands and took her upstairs, where still another armed man was posted as guard. This man likewise abused her inside her parents-in-law's room. The act done, the man walked away, leaving the woman alone. She then climbed out of the window and hid on the overhanging roof beyond. After sometime, however, she noticed that the men were looking for her, searching the place with a flashlight. When she heard one of them threaten to kill her if she did not show herself, she opened the window from outside and revealed her presence. She was taken to her own room, adjoining that of her parents-in-law, and there subjected to the same carnal treatment as before. This time the culprit was Eugenio Olden. Then, in succession, Jaime Sa-ang and Prudencio Polistico took their respective turns.

Six men were thus able to have carnal intercourse with Edwina, two of whom she said she did not know but could identify by their faces if she should see them again. Prudencio Polistico was the last of the six, and after he had finished he took Edwina to the house of Virgilio Varquez through the connecting passageway on the upper floor, and there saw the others — Leoncio and Numeriana Maranga, Alma, Oriel, Virgilio himself and his wife Medina — all gathered together with their hands tied, except Medina, who was holding her baby. One of the men tied Edwina in the same manner and made her lie on her side.

Leoncio Maranga, as earlier stated, was in his room on the upper floor of the house. All of a sudden a man, whom he identified at the trial as Prudencio Polistico, came in through the dividing curtain and, pointing a gun at him, demanded the sum of P300.00, saying that he needed the money because his mother was sick in the hospital. Leoncio's answer was that the money was in the store downstairs, whereupon Prudencio took him to the house of Virgilio Varquez, where he was made to lie on the floor with his hands tied behind him. It was dark, but by the flashlight of one of the robbers he noticed Virgilio similarly tied on the floor. His daughter Alma was brought in later, but in the darkness he did not notice the presence of his wife Numeriana or of his son Oriel.

Virgilio's version dovetails with that of the other victims. He was about to go to sleep when he heard a shout. He

asked the maid what it was about, but when she proceeded to the adjoining house to inquire somebody stopped her. The next thing he noticed was that a man was already inside his room and pointing a pistol at him. The man told him to lie down on the floor and tied his hands behind him. That man he later on identified as Agapito Alagase. After some twenty minutes his father-in-law, Leoncio Maranga, was herded inside, followed by his mother-in-law, Numeriana and his brother-in-law Oriel, and later on by Edwina. Three of the intruders were in the room, including Alagase, who ransacked the place and took more than P200.00 inside a wooden container.

The details of the robbery at Leoncio Maranga's house were recounted by his daughter Alma, a college student of 22. She was engrossed in her studies when suddenly the door leading to the kitchen opened and three men came in. One of them pointed "something" at her, while the other two ran upstairs. Her hands were tied behind her, but after 10 minutes the man untied her and told her to show him where the money was being kept. One of the two men who had gone upstairs, whom she identified at the trial as Prudencio Polistico, came down and insisted that she tell them where the money was. He took her to Virgilio's house, where she saw her father and mother lying on the floor, both of them tied. Then she was taken back to her parent's house, inside the store, and asked if there was any money, even only P300, because they needed it very badly. Remembering that she had P6.00 of her own, she gave it to them. They told her to stay in the house and nothing would happen to her, but she asked that she be taken back to Virgilio's house. Prudencio Polistico then took her there, via the connecting passage upstairs. On the way it occurred to Polistico to open the curtain of one of the rooms. He turned on the flashlight inside and there was the "fat person", Jaime Sa-ang, on top of Edwina in the act of gratifying his sexual lust. Sa-ang, it may be recalled, was the fifth of the six men to do so. Alma Maranga was positive about his identity at that moment, since they had been classmates in the primary grades in the Peñaplata Central School in Davao. Polistico left Alma in Virgilio's house and then went back, and it must have been upon his return that he took his turn with Edwina, as she testified at the trial.

Maximo Sagarino was a close neighbor of the Marangas. He was at his house that night of 15 August 1965 when a maid of Virgilio Varquez came and informed him of the robbery that was going on. He thereupon ordered two persons who were with him at the time — Rodolfo Gonzales and a certain Loloy — to get some policemen from the town a little over a kilometer away. Gonzales boarded a truck and proceeded directly to the police station. In a short while the Chief of Police, Bernardo Ho, together with two patrolmen, were on their way to Binoling. They deployed in front of the two houses where the crimes were being committed, but evidently the robbers noticed their presence and in the darkness were able to slip outside. There was some firing which ensued between the two groups, but no one was injured. The Chief of Police made an on-the-spot investigation, but the occupants of the two houses said that they would reveal to him the identity of the malefactors later on since there were then plenty of people present. Edwina did not relate what had happened to her personally, and it was only the next day, 16 August, that her sister Medina, the wife of Virgilio Varquez, revealed it to the Chief of Police, and explained that Edwina's silence was due to the fact that her husband was then still unaware of the incident. A few days afterwards, Edwina went to the Chief of Police, complaining of pains in her abdomen and difficulty in urination. He took her to the Davao General Hospital for medical examination, and it was found that she was positive for gonorrhea. Inculpatingly enough, Eugenio Olden and Agapito Alagase were also found, upon examination, to be positive for the same disease.

The identity of the four appellants was sufficiently established by the combined testimonies of the witnesses for the prosecution. Edwina could not but recognize them, they having been known to her for a long time. Eugenio Olden had been her schoolmate at the Mindanao Colleges in Peñaplata, and for sometime before the incident had been working as a copra weigher for Virgilio Varquez. Agapito Alagase was also a resident of Binoling, although he disappeared for about a year, returning to the place only some five days before the commission of the crimes; and it was he who pointed a pistol at Virgilio Varquez and then hogtied him. Prudencio Polistico was also a

former hired hand of Leoncio Maranga and Virgilio Varquez, while Jaime Sa-ang was, as already noted, a former classmate of Alma Maranga. Against the positive identification made by these witnesses, no motive for them to falsely implicate the appellants having been shown, the alibis respectively alleged by them in defense cannot stand.

Appellants point out that even assuming that they had sexual intercourse with Edwina Maranga there is no evidence that they employed force or intimidation. It is true that she could have shown greater physical resistance to their advances than she actually did. Another woman would probably have tried to fight them off, even to the jeopardy of life or limb. But not all women are of the same mettle. What is clear and indisputable here is that Edwina was far from being a willing victim; and if her protestations lacked vigor and vehemence it was obviously because of the fact that some of the men who took turns with her were armed with guns and others with bolos which they displayed to cow her into submission. If there was no appreciable force employed, there was definitely intimidation. The evidence, however, does not show clearly that there was conspiracy among the appellants to commit rape, or that they cooperated with each other to facilitate the commission thereof by each one of them. Each, therefore, was properly penalized for his own individual act.[2]

We find no error on the part of the court a quo in its appreciation of the evidence. However, the said court failed to provide for civil indemnity in favor of Edwina Maranga. In a number of cases the amount awarded has varied.[3] We believe that in the present case each of the culprits should be held liable for P5,000.00.

WHEREFORE, the judgments appealed from are affirmed, with the sole modification that in Case No. L-27570 (No. 9355 below, for robbery with rape) each of the appellants should indemnify Edwina Maranga in the aforesaid amount of P5,000, with costs in both cases.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Barredo, J., took no part.

[1] The record does not show whether Binoling is a sitio or a barrio.

[2] *People vs. Dueñas*, 2 SCRA 221; *People vs. De la Cerna*, 21 SCRA 569; *People vs. Ompad*, 26 SCRA 750.

[3] P12,000.00 - *People vs. Cañete*, 21 Jan. 1972, 43 SCRA 14; P5,000.00 - jointly and severally upon a principal and accomplices - *People vs. Pastores*, 31 Aug. 1971, 40 SCRA 498; P12,000.00 - *People vs. Amiscua*, 27 Feb. 1971, 37 SCRA 813; P6,000.00 - *People vs. Amit*, 27 Feb. 1971, 37 SCRA 793.

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