

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CAMSA OTTO, JAPAR OTTO, LIWALIG CONDE AND MAGUNDADAY
BETTI, DEFENDANTS-APPELLANTS.**

G.R. No. L-29631. January 31, 1973

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of First Instance of Davao, the dispositive part of which reads:

"WHEREFORE, the guilt of all the accused has been duly established beyond reasonable doubt and conformably to Articles 294, par. 2 in relation to Art. 296 of the Revised Penal Code as amended by Republic Act No. 18, the following accused are hereby duly sentenced:

"Accused CAMSA OTTO, JAPAR OTTO, LIWALIG CONDE, AND MAGUNDADAY BETTT are hereby sentenced each of them to suffer a penalty of RECLUSION PERPETUA, and to indemnify the offended party Ong Chan Yap Ang in the sum of P1,822.00 with no subsidiary imprisonment in case of insolvency by reason of the penalty imposed.

"The three other accused, Camsa Otto, Japar Otto, and Magundaday Betti are likewise ordered to indemnify the offended party Susana Ortega in the sum of P1,000.00, to acknowledge the offspring should there be any and/or in any case to support the offspring."

Appellants Camsa Otto, Japar Otto, Liwalig Conde and Magundaday Betti are accused of the crime of "robbery in band with rape." It is alleged in the information -

"That on or about July 10, 1959, in the Municipality of Panabo, Province of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with deadly weapons and in band, through force and violence, did then and there enter the house owned and inhabited by Ong Chan Yap and his family, and once inside with intent of gain, did then and there wilfully, unlawfully and feloniously take, steal and carry away cash money, jewelries, dry goods, .22 caliber pistol and two (2) boxes of ammunition with the total value of P1,822.00, to the damage and prejudice of the said Ong Chan Yap Ang and his family in the sum of P 1,822.00; that on the occasion of the said robbery the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Susana Ortega, a maid employed by the said Ong Chan Yap Ang against her will.

"The commission of the foregoing offense was attended by the aggravating circumstances of (1) superior strength, (2) use of firearms, (3) use of mask, and (4) dwelling.

"Contrary to law."

It is not disputed that, on July 10, 1959, at about 5:00 p.m., four (4) men entered the store and residence of Ong Chan Yap Ang, near the seashore, in the barrio of Cagangohan, municipality of Panabo, province of Davao (now Davao del Norte), and stole therefrom, by means of violence and intimidation, money and goods valued in the

aggregate sum of P13822.00, and allegedly raped a housemaid by the name of Susana Ortega. The issues raised in this appeal may be reduced to two (2), namely: 1) Was Susana ravished on that occasion? 2) Has the identity of appellants herein as the thieves and/or rapists been duly established?

There can be no doubt about the fact that Susana, a 20-year old housemaid, was ravished by three (3) men on the aforementioned occasion. She said so to the authorities immediately after the occurrence, and this was corroborated by her condition at that time and over a week later, during which time her mental balance appeared to have been impaired, and by the physician who examined her about four (4) hours after the commission of the crime charged and found that her hymen had a fresh laceration, caused probably from four (4) to five (5) hours before.

As regards the second issue, defendants-appellants Camsa Otto, Japar Otto, Liwalig Conde and Magundaday Betti were identified positively by Mrs. Ong Chan Yap Ang, wife of the store owner, their housemaid, Susana Ortega, Cpl. Liberato Ople and Pat. Jesus Fauna, both of the local police force, and Alberto Bacalla, who were corroborated by Macario Borbon and Honorio Gozon, among others.

Indeed, it appears that, on July 10, 1959, at about 5:00 p.m., while Alberto Bacalla, Lourdes Demeterio, Marcelo Cesar and Dolores Garde were on the roadside, in front of the house of Lourdes, in the aforesaid barrio, about 10 meters away from the store of Ong, discussing plans in connection with the forthcoming barrio fiesta, four (4) suspicious looking persons passed by, going eastward. Apart from having plasters on their faces, two of them had the lower portion of their faces covered by handkerchiefs, whereas one wore colored eyeglasses and another carried a sack slung on his shoulder. Bacalla, forthwith, recognized the latter as appellant Camsa Otto and one of his companions as Magundaday Betti, both of whom he had seen before. Bacalla saw the four men stop in front of the store of Ong Chan Yap Ang, hereinafter referred to as Ong, for short. Putting down the aforementioned sack, Camsa took therefrom - a Thompson submachine gun and stood guard by the gate of Ong's wired fence. As the former's three companions entered the store, about 4 meters from said gate, one Trinidad Cesar ran out of the building. Immediately, Camsa fired a shot of warning and said, "Nobody runs." Then, Camsa beckoned Bacalla to come closer, with both hands raised, he having been left by Lourdes Demetrio, Marcelo Cesar and Dolores Garde, who scampered away frightened by the gunshot. Bacalla approached Camsa and inquired what he had against him (Bacalla) when, it seemed, he (Camsa) was merely after or against the Chinaman. Camsa replied that he (Bacalla) might, otherwise, have called the police, and then ordered him (Bacalla) to enter the store. As Bacalla obeyed, Camsa noticed his (Bacalla's) wrist watch, which, thereupon, he (Camsa) snatched and took away from Bacalla.

Furthermore, Camsa was known to Mrs. Ong and Susana Ortega. The latter had met him several times in the streets. Then, too, in the morning of July 10, 1959, he and Japar Otto bought cigarettes in the aforementioned store, while Susana and Mrs. Ong were there. The latter had even talked for a while to Camsa, beside whom Japar stood. That afternoon, however, neither Mrs. Ong nor Susana recognize Japar, at first, because the lower portion of his face was covered by a handkerchief as a mask, and he wore colored eyeglasses. Japar Otto and Magundaday Betti—the first wielding two (2) guns and the second one only — were the first to enter the store and approach Susana. They were followed by Liwalig Conde, who, pointing his gun at Mrs. Ong, bade her to lead him to her room, followed by Japar, who demanded money from her, threateningly placing his gun closer to her. Mrs. Ong gave him, therefore, her savings in the sum of P800; but, not satisfied with it, the malefactors demanded more money. And Japar even boxed her several times, in view of which she delivered to them several pieces of jewelry valued at P510. They, likewise, took her husband's .22 cal. gun worth P400, and two boxes of ammunitions costing P240. While Mrs. Ong was thus being maltreated, the mask of Japar fell off, thereby enabling her to recognize him. After a while, Japar Otto, Magundaday Bern' and Liwalig Conde left her. Subsequently, Camsa Otto came and, as she could not deliver more money, hit her with a flashlight on different

parts of the body; but, then, a shot rang, whereupon he ran out of the building.

Prior thereto, the housemaid, Susana Ortega, who carried Mrs. Ong's baby in her (Susana's) arms, had tried to run away, but, upon reaching the door, Camsa blocked her way and kicked her back into the store. He ordered her to put the baby down and inquired, in vain, where her employers kept their money. Then, he took her to a store room, bade her at gun point to lie down and began to pull of fher skirt. As she offered resistance, Camsa fired his gun to frighten her, thereby succeeding in pushing her down, and, by means of violence and intimidation, managed to have carnal knowledge of her. After satisfying his lust, Camsa called Japar Otto and Magundaday Betti, who, similarly, abused her, one after the other. When Japar did so, the handkerchief and the colored eyeglasses no longer covered his. face. Hence, Susana recognized him. No sooner had Magundaday Betti ravished her than another gunshot rang. Thereupon, Magundaday walked out of the store room.

We have not overlooked the fact that, the next day, when Susana was told to identify the malefactors, who were lined up, together with some detention prisoners, in the municipal building, she was positive as to Camsa only, since she had seen him several times before. She was not quite sure then as regards the other malefactors, whom she had seen for the first time when they abused her the day before. Besides, she had not, as yet, recovered from the traumatic effects of the criminal assaults visited upon her. In fact, it took her about two (2) weeks to pull through said condition; but, she identified appellants herein, without the slightest hesitation, during the trial in the lower court. Moreover, several factors, hereinafter pointed out, leave no room for doubt about their identity as the culprits.

Thus, Macario Borbon — whose house is, also, by the side of the same road leading to the store and house of Ong, about 150 meters away from that of Lourdes Demeterio — who knew Camsa Otto since 1949, and was, on July 10, 1959, a rural policeman of Cagangohan, saw, from his yard, Camsa Otto, carrying a sack on his shoulder, followed by Liwalig Conde, together with two other persons whom he (Macario) did not know then, pass by walking eastward. Soon after, as he (Macario) proceeded to walk on the road in the same direction, he heard gunshots coming from the place where the store of Ong was and saw Camsa, about 5 0 meters away, in front of said store, holding a Thompson submachine gun in a manner indicative of his readiness to shoot Sensing something wrong, he proceeded to the house of barrio lieutenant Inciong Develleres to report the incident. Develleres was out then, but he arrived five minutes later, together with Ong, Lt. Bienvenido Lozada, Cpl. Liberato Ople and Pat. Eduardo Bendijo, all of the local police force. Borbon informed them of the presence of Camsa, holding a Thompson submachine gun, in front of Ong's store. Then, passing by a coconut grove, away from the road, he brought them (Lozada, Ople and Bendijo) to a well, from which he, Ople and Bendijo moved to a place about 30 meters from Ong's store, whereas Lozada posted himself beside a coconut tree, a short distance behind them. Liwalig Conde was then standing guard inside the wire fence enclosing Ong's lot. Minutes later, Camsa Otto emerged from the store and relieved Liwalig, who entered the same. Then, Camsa fired his submachine gun, whereupon Cpl. Ople responded with his service gun. As Camsa returned the fire, his companions came out of the store and ran away eastward, followed by Camsa, who covered their retreat with his submachine gun.

Prior thereto, or between 9:00 and 10:00 a.m. of July 10, 1959, Japar Otto and Liwalig Conde had gone to the house of Honorio Gozon offering nipa shingles for sale. Camsa Otto, likewise, accompanied them. Said appellants had come to Cagangohan aboard a banca, which was moored at the shore, 6 to 7 meters from Gozon's house. From that place, Camsa and Japar Otto went to Ong's store, from which they came out, soon after, smoking cigarettes. That afternoon, Honorio Gozon was resting in his house, about 20 meters away from Ong's store, when he (Gozon) heard a gunshot, followed by the voice of some people making reference to a robbery. Going to his window, he saw Camsa Otto holding a submachine gun near the gate of Ong's premises. Gozon knew Camsa

since 1953. Having noticed Gozon in the window of his house, Camsa bade him to close the window. Gozon obeyed, but, thereafter, he peeped through a hole or a small crack in the wall, and saw Camsa's companion, Magundaday Betti, as he entered the store of Ong, as well as later on, when he ran away the Tefrom.

The testimony of Macario Borbon was corroborated by Cpl. Liberato Ople, who, likewise, recognized Camsa as he stood guard in front of Ong's store. Ople knew Camsa since 1953, having often seen him in the cockpit. When Ople, together with Borbon, Lozada and Bendijo, observed the movements of Camsa and his companions in the store of Ong, between 5:30 and 5:45 p.m., the daylight was still clear, at that time of the year (July 10, 1959), and it was not difficult to recognize Camsa whom he had known long before. The malefactors ran out of the store — just after. Ople had fired his gun — and escaped in a north _ eastward direction, Thereupon, Ople and his companions went to the store, where they found, aside from Mrs. Ong, Susana Ortega and Alberto Bacalla, several carpenters who were working in a building under construction, within the lot of Ong, the malefactors having herded them under the stairs of his house. Susanawas then crying and, upon inquiry, she revealed that three (3) malefactors had ravished her, after which she collapsed. Mrs. Ong, in turn, complained about her maltreatment by the thieves, and showed the injured parts of her body, The authorities, likewise, found two empty .45 cal. shells, two .45 cal. slugs, one live .45 cal. bullet and one magazine, with 6 rounds of ammunition, in the area where Camsa had stood guard.

Later that evening, Capt. Araneta of the PC arrived with several soldiers. He organized a group composed of policemen and PC soldiers, who, early the next morning, proceeded to the barrio of La Paz, Panabo, where the suspects had reportedly been seen in the house of Liwalig Conde's father. The group found herein appellants in said house and forthwith brought them to the office of the Mayor at the municipal building of Panabo. An outboard motorboat, reportedly used by appellants in going to and escaping from Cagangohan the day before, was found tied near said house. Later that morning, appellants were lined up with some detention prisoners in said municipal building, for identification by some witnesses for the prosecution. Appellants were submitted, also, to paraffin tests, with positive results in the case of Camsa and Japar Otto.

As above-stated, appellants set up an alibi. Camsa and Magundaday would have Us believe that, on July 10, 1959, at about 5:00 p.m., they were in the store of Ico (or Francisco) Gitgitin, located across the river from the house of Liwalig Conde's father, buying cigarettes; that at about 5:30 p.m., they returned to said house where they stayed (and were later apprehended); that, thereupon, they cooked their food and then took their dinner at 6:00 p.m., after which Camsa went down and strolled for a few minutes; that, thereafter, he, together with Japar and Magundaday, went out to watch for logs that might be drifting on the flooded Bingcungan River, because they earned P5.00 for every log recovered by them; and that they returned home and went to bed at past 11:00 p.m.

Liwalig Conde and Japar Otto, in turn, testified that, after the alleged departure of Camsa and Magundaday, to buy cigarettes, at about 5:00 p.m., both Japar and Liwalig visited and laid out their fish traps; that when they returned home, at about 6:00 p.m., Camsa and Magundaday were already there; that they cooked the fish caught in the fish traps and took their dinner at 6:00 p.m., that Camsa, Japar and Magundaday, subsequently, left the house to look for floating logs, whereas Liwalig remained in the house and soon went to sleep; that, early the following morning, a group of policemen and PC soldiers came and apprehended them, as well as brought them to the municipal building of Panabo, where they were lined up with some detention prisoners for identification purposes; that Camsa Otto was the only one then identified by Mrs. Ong and Susana Ortega; and that the other persons identified by said witnesses were detention prisoners Ramon Longno, Juan Morales and Felipe Ira.

Francisco Gitgitin tried to corroborate the testimony of Camsa and Magundaday, to the effect that both were in his (Francisco's) store on July 10, between 5:00 and 5:30 p.m., whereas Ramon Longno and Felipe Ira declared that they were among those identified by Mrs. Ong and Susana Ortega in the line-up at the municipal building of

Panabo, on July 11, 1959.

The defense introduced, also, the testimony of Antonio Campos, a resident of the barrio of Bantugan, Panabo, who affirmed that, after hearing gunshots coming from the barrio of Cagangohan, on July 10, 1959, at 5:00 p.m., more or less, he saw four suspicious looking persons who passed near his house; that two of them were armed, one with a Thompson submachine gun, and another with a pistol; and that appellants herein were none of them.

Again, Pat. Eduardo Bendijo, who was with the group headed by Lt. Lozada watching the malefactors in Ong's store, about 30 meters away, at the time of the occurrence, declared that the person who stood guard at the gate of Ong's lot was not Camsa Otto, and that neither was Liwalig Conde among those who ran away from said store when Cpl. Ople fired his gun. Lastly, Camsa and Japar Otto tried to explain the presence of gunpowder on their hands, stating that, on July 4, 1959, they had exploded firecrackers to celebrate independence day.

His Honor, the Trial Judge, however, found the testimony of the aforementioned witnesses for the defense unworthy of credence, and, as pointed out earlier in this decision, convicted appellants herein as charged.

Upon a review of the records, We find that appellants' guilt has been established beyond reasonable doubt. In this connection, it should be noted that their identity as the malefactors was established positively by the testimony of Mrs. Ong, Susana Ortega, Alberto Bacalla, Cpl. Liberato Ople and Honorio Gozon; by the presence of powder burns in the hands of Camsa and Japar Otto; by the fact, borne out by the evidence for the defense, that these appellants were together with Liwalig Conde and Magundaday Betti, on July 10 and 11, 1959; that the witnesses for the prosecution had no possible motive to falsely incriminate any of them; and that said witnesses had had a reasonable opportunity to recognize the culprits. The defense relies heavily upon alleged discrepancies or contradictions in the testimony of some witnesses for the prosecution, but these alleged discrepancies and contradictions are more apparent than real, and refer to minor details not affecting the merits of the case. Instead of adversely affecting the credibility and weight of said testimony, they tend to bolster up the same, for experience has time and again shown that persons who witness the same occurrence seldom, if ever, have identical impressions about the details thereof.[1]

The next question demanding our attention is the characterization of the crime or crimes committed by appellants herein and, consequently, the determination of the penalty or penalties to be imposed upon them.

To begin with, it is manifest that appellants had acted in concert with each other. In other words, there was conspiracy among them, and, hence, each is responsible for the acts of the others.[2] At this juncture, it is noteworthy that there was conspiracy, not only in the commission of the crime of robbery, but, also in that of rape, for, after forcibly having carnal knowledge of Susana Ortega, appellant Camsa Otto called his co-defendants, two (2) of whom — Japar Otto and Magundaday Betti — ravished her. Accordingly, each one of appellants herein is clearly guilty of the crime of robbery with rape, punishable under subdivision (2) of Article 294 of the Revised Penal Code, with reclusion temporal in its medium period to reclusion perpetua. Although appellants constituted a band, Art. 296 of said Code (as amended by Rep. Act No. 18) is not applicable to the case at bar, for, as construed by Us in *People vs. Apduhan*,[3] this legal provision creates a special aggravating circumstance for cases covered by Article 295 of the same Code, which, as amended by Rep. Acts Nos. 12 and 373, refers only to crimes falling under "subdivisions three, four and five" of Art. 294, whereas the present case is covered by subdivision two thereof. Instead of being the qualifying or special aggravating circumstance contemplated in Art. 296 of said Code, the participation of the band in the case at bar constitutes merely a generic aggravating circumstance, aside from the other aggravating circumstances of dwelling, use of masks and firearms, and abuse of superior strength, present in the commission of the offense. Independently of the existence and intervention of the band, it is clear, therefore, that the aforementioned penalty should be imposed, as the lower court did, in its maximum period or

reclusion perpetua.

As regards, however, the indemnity of P1,000 awarded by the lower court to Susaria Ortega, the same should — pursuant to Our latest decisions thereon^[4] — be increased to P12,000. In short, appellants should be sentenced to jointly and severally indemnify her in the aforementioned sum of P12,000.

Thus modified, the decision appealed from should be, as it is hereby affirmed in all other respects, with costs against the appellants.

IT IS SO ORDERED.

Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Antonio, J, did not take part.

[1] People v. Ordonio, 82Phil324,333;Peoplev. Limbo, et al.,49 Phil. 94, 99; People v. Amante,49 Phil. 679, 687; Glover v. United States, 147 Fed. Rep. 426,428;IIMooreonATreatise onFacts 783-784 (Section724),967(Section 841), 970 (Section 843).

[2] People v. Espejo, et al., L-27708, Dec. 19, 1970; People v. Fontillas, L-25298, April 16, 1968; People v. Atencio, L-22518, January 17, 1968; People v. Pelagic, et al., L-16177, May 24, 1967.

[3] L-19491, Aug. 30, 1968.

[4] People v. Amiscua, L-31238, Feb. 27, 1971; People v. Amit, L-29066, March 25, 1970.

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