

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO MARQUEZ, DEFENDANT, FRANCISCO FORNESTE AND SAMUEL JACOBO, DEFENDANTS-APPELLANTS.

G.R. No. L-32860. September 30, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Renato Marquez, Francisco Forneste and Samuel Jacobo were charged with the crime of robbery with multiple rape before the Court of First Instance of Quezon, Ninth Judicial District, Branch III in an amended information filed on June 3, 1964.

In the course of the proceedings in the lower court, Renato Marquez died. Pursuant to the lower court's order dated October 1, 1968, Renato Marquez was dropped as defendant, and the case as against him, dismissed.

After trial, the lower court found Francisco Forneste and Samuel Jacobo guilty of the crime of robbery with rape as defined under Article 294, paragraph 2 of the Revised Penal Code and sentenced them as follows:

"WHEREFORE, the Court finds the accused FRANCISCO FORNESTE and SAMUEL JACOBO guilty beyond reasonable doubt of the crime of robbery with rape as defined and punished under Article 294, paragraph 2, of the Revised Penal Code, and hereby sentences each of the accused to suffer the penalty of LIFE IMPRISONMENT, to indemnify Francisca Marquez, jointly and severally, in the amount of P1 ,760.00 and to pay the costs."

In their statement of facts on appeal, the appellants do not dispute the factual findings of the lower court on the commission of the crime and the circumstances of its commission. They, however, take exception to the lower court's finding that the accused were positively identified as the perpetrators of the crime by the prosecution witnesses. Hence, their lone assignment of error is:

"THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED WERE IDENTIFIED BEYOND REASONABLE DOUBT THAT THEY WERE THE PERPETRATORS OF THE ROBBERY."

To establish the guilt of the accused, the prosecution presented the testimonies of: 1) Francisca Marquez; 2) Leticia Tan; 3) Dr. Lina C. Habito and 4) Emilio Luna with accompanying documentary evidence.

Francisca Marquez related the incident as follows:

"x x x on November 16, '1966' between seven and seven-thirty in the evening while she was in their house in barrio Dahican, Catanauan, Quezon together with her seven children and maid Rufina Martinez, somebody called in front of their window who identified themselves as PC soldiers looking for contraband. She replied that they did not have any contraband and that her husband, Angel Tan, was in the poblacion at that time. The men ordered her to open up otherwise they will shoot up their house. Afraid, she opened the window shutter when, suddenly, a man whom he (sic) later on recognized as Renato Marquez jumped inside. She was able to recognize Renato Marquez as the light was bright. Renato held her by the nape and pushed her towards the

door and at gunpoint ordered her to open the same. She was not able to shout as she was caught by surprise and besides, she was afraid. When she opened the door, accused Samuel Jacobo and Francisco Forneste, both armed with guns, entered and ordered her to put out their contraband and when she told them that they did not have any, the intruders demanded for money. She pointed at the table which Renato Marquez pried open and took P300 therefrom. Samuel Jacobo also pried open their aparador where he got P200. Jacobo also dispossessed her of her ring worth P15.00 and a pair of earrings worth also that much. At that instant, the other accused Francisco Forneste was upstairs guarding her children and helper. Samuel Jacobo asked her why they have only a small amount of money when they are copra-buyers and she replied that they were just starting on their business. Whereupon, Jacobo demanded: 'kuarta o buhay' so that she put out her pillow which Jacobo grabbed and ripped open and took therefrom P820.00. Afterwards, Samuel Jacobo raped her at gunpoint while Renato Marquez ransacked their store and took merchandise therefrom. After five minutes, Jacobo took her upstairs and tied both her arms and made her lie face down on the floor together with her children. Subsequently, her daughter Leticia and helper Rufina Martinez downstairs by Francisco Forneste. Shortly thereafter, she heard Leticia shout: 'Nanay' while Rufina Martinez screamed 'Nanang Kikay, Nanang Kikay.' Afterwards, both Leticia and Rufina were taken upstairs by Francisco Forneste, tied and also made to lie face down on the floor. After the men had left and they did not hear any noise anymore, Leticia was able to untie Rufina by biting the rope. Rufina, in turn, untied her and the others. After they had freed themselves, both Leticia and Rufina cried. She asked them what happened and both of them confessed that they were abused respectively by Renato Marquez and Francisco Forneste. Aside from cash, they lost also the following: radio worth P125.00; radio- phono worth P135.00; a ten-battery flashlight valued at P10.00; an P85.00 wrist watch; Leticia's necklace worth P15.00; and Rufina's earrings worth P40.00 as well as her ring." (Decision, pp. 18-20, rollo)

Leticia Tan corroborated the foregoing testimony of her mother. She further testified that both she and Rufina Martinez, their housemaid, were raped by Renato Marquez and Francisco Forneste respectively. The rapes, according to her were committed in the following manner: when her mother, Francisca Marquez was taken upstairs, Renato Marquez brought her downstairs, to their store. Inside the store Renato Marquez told her "to give something and if I refused I would be killed" (T.S.N., December 12, 1968, p. 19). Simultaneously Renato Marquez "poked a gun and also a balisong" at her causing her to be afraid. (T.S.N., December 12, 1968, supra, p. 20) She called for her mother but then she was told not to shout because "I am going to be killed." (T.S.N., December 12, 1968, supra, p. 20) Thereafter, she was forcibly made to lie down and Renato Marquez committed the act on her. (T.S.N., December 12, 1968, supra, p. 22) Leticia related that during the time that she was with Renato Marquez, Rufina Martinez was with Francisco Forneste and that immediately after the departure of Renato Marquez, Francisco Forneste and Samuel Jacobo, Rufina Martinez told her that she was also raped by Francisco Forneste. (T.S.N., December 12, 1968, supra, pp. 22-23).

Dr. Lina C. Habito testified regarding Leticia's allegation that she and Rufina Martinez were raped. Dr. Lina C. Habito, resident physician of the Bondoc Peninsula General Hospital at Catanauan, Quezon stated that she examined the injuries sustained by Francisca Marquez, Leticia Tan and Rufina Martinez on 20 November 1963 and issued the corresponding medical certificates (Exhibits "A", "B" and "C"). Thus: 1) The medical certificate issued to Francisca Marquez stated:

"DIAGNOSIS:

- Linear abrasion #4, diagonal along the wrist left posterior
- Abrasion supraclavicular area right.
- Abrasion linear #2 – anterior diagonal along the wrist right.

Refused to further examination.

"DURATION: 1 to 9 days excluding complications."

(Exhibit A)

2) The medical certificate issued to Leticia Tan stated:

"DIAGNOSIS:

- Abrasion with hematoma at the postero lateral side wrist right.

- Internal Examination:

Has slight bloody discharge.

Contusion at 12 and 6 o'clock

Vagina admits 2 fingers with difficulty.'

(Exhibit C)

3) and the medical certificate issued to Rufina Martinez stated:

"DIAGNOSIS:

- Abrasion antero medial side wrist left.

- Abrasion postero medial area wrist right.

- Internal Examination:

Semicircular contusion at 3, 4, and 5 o'clock

Vaginal canal admits two fingers freely."

(Exhibit B)

Dr. Habito testified that the injuries sustained by Leticia Tan and Rufina Martinez on their sex organs could have been caused by the entry of a male organ.

Rufina Martinez was not placed on the witness stand. Atty. Uy, the private prosecutor informed the court that she could not be located because she was only a househelp. (T.S.N., March 12, 1969, p. 12) The crime was committed in 1963 and the manifestation on her absence was made in 1969. Nevertheless, the lower court through the evidence presented, ruled:

"As to the accused Francisco Forneste, the fact that Rufina Martinez had confessed to Francisca Marquez and Leticia Tan right after the commission of the crime about her being sexually violated by the accused could be considered as a part of the res gestae and, therefore, the same is removed from the operation of hearsay rule. Besides, the medical certificate is a telltale evidence of the commission of rape on the person of Rufina Martinez." (Decision, p. 31, rollo)

Furthermore, the appellants admit in their brief that Rufina Martinez was raped. Their defense consists of denials that they were the culprits who committed the crime.

The identity of Renato Marquez, Francisco Forneste and Samuel Jacobo as the perpetrators of the crime was positively established by the victims themselves, Francisca Marquez and Leticia Tan.

Francisca Marquez testified:

"Q Do you know who were those persons responsible for the rape and robbery committed in your house?"

"A Yes, sir.

"Q If you could see those persons, will you be able to point them out?

"A Yes, sir.

"Q Will you please look around this courtroom and see if those persons you alleged to be responsible are here?

"A The two are here, sir.

"Q Will you please point them out to the Court?

"A That man in white polo shirt (Who, when asked for his name, responded to the name Francisco Forneste and pointed to a man who, when asked for his name, responded to the name Samuel Jacobo).

"Q You said only two are here in court. Are there other persons responsible?

"A Yes, sir.

"Q Who is that person or who are those persons?

"A Renato Marquez, sir.

"Q The Court noticed that the other person you just mentioned has the family name of Marquez. Do you have any relation with this Renato Marquez?

"A He is my distant relative, sir."

(T.S.N., April 4, 1966, pp. 5-6)

"ATTY. UY:

"Q Is this Renato Marquez the same person who jumped into your house on the same date whom you said is related to you?

"A Yes, sir.

"COURT:

"Q You recognized him right then and there?

"A Yes, Your Honor. I know him already because our light was bright, sir.

"ATTY. UY:

"Q What happened after he get into the house?

"A He approached me and he held my nape and then he pushed me towards the door with his gun being poked at me and he told me to open the door, sir.

"Q Did you open the door?

"A Yes, sir.

"Q When you opened the door, what happened?

"A The two entered, sir.

"Q Who entered?

"A Francisco Forneste and Samuel Jacobo , sir.

(T.S.N., April 4, 1966, supra, pp. 10-11)

"ATTY. UY:

"Q After Samuel Jacobo had taken the eight hundred twenty pesos from your pillow, anything more happened?

" A Because I could not do anything, ' kinuha ang aking pagkababae', sir.

"Q Who?

"A Samuel Jacobo, sir.

"Q Where did that particular incident happen?

"A In the place where I sleep near the aparador , sir.

"Q And while this incident was being perpetrated, where is this Renato Marquez?

" A He was there in our store ransacking the place and even our goods for sale were taken, sir.

(T.S.N., April 4, 1966, supra, pp. 17-18)

"Q And it was on the bed from where your pillow containing eight hundred twenty pesos was taken by Samuel Jacobo?

"A Yes, sir.

"Q And afterwards you were made to lie on that same bed near the window?

"A Yes, Your Honor.

"Q And the pillow was still there?

"A It was already destroyed, sir.

"Q And Renato Marquez was not there?

"A He was ransacking the other part of the house, sir.

"Q So nobody was there except you and Samuel Jacobo?

"A Yes, sir.

"Q And you willingly consented to the act committed by Samuel Jacobo?

"A What could I do, sir, when a gun was being poked at me?

"Q Why? Were they armed?

"A Yes, sir, and they were armed and they had fan knife also.

"Q What was Samuel Jacobo carrying with him when he was committing all these acts to you?

"A He was holding a gun as short as this (Witness indicating the length of about one (1) foot).

"Q What was Samuel Jacobo carrying at that time?

" A A gun, sir.

"Q No balisong ?

"A He had a balisong on his left waist, sir (Witness pointing to her left waist).

"Q When he entered the house after ordering you to open up, was he already carrying a gun and knife?

"A Yes, sir. They were already holding gun." (T.S.N., April 4, 1966, supra, pp. 19-20

The records sustain the following findings of the lower court:

"As her husband failed to return home that evening, she went to the poblacion the following day to look for him. She found her husband and, together, they reported the matter to the Chief of Police. Aside from the police, the PC also investigated the incident. They were made to identify the accused Francisco Forneste and Renato Marquez at the municipal building on November 20th. During the second time that they went to the municipal building, they were asked to identify the accused Samuel Jacobo. On that occasion, all the three accused were present. On November 20, 1963, the PC took down her affidavit. There were many persons in the office where they confronted the accused. She pointed the accused secretly to the PC as she was afraid that if she will do it openly, the accused might take revenge against them. In that confrontation, she pointed to accused Francisco Forneste as one with the 'bigote'. Before the occurrence of the crime, she already knew Renato Marquez and Francisco Forneste. She can recognize them anywhere, anytime and anyplace that she will meet them. Renato is her distant relative while Francisco Forneste is known to her as he is also from Catanauan. She knows his parents and she used to see him in the poblacion. She recalls that Francisco Forneste was at their house on election day, November 14. Before the incident, she saw Forneste for about five times and she knows him for a long time already. She knows Samuel Jacobo by face only but she frequently sees him as the jeep they used to take in going to the poblacion passes by the house of Samuel which is near a bakery where people buy bread. The usual hangout of Samuel Jacobo is the store where 'Liwayway' is sold. Before she was called to the confrontation meeting, she already revealed the names of the culprits to the PC officers except one whom she does not know the name. During the commission of the crime in question, their house was brightly lighted. She did not mention the fact that she was raped in her affidavit because at that time, she was still worried as they were threatened that if ever they will report the matter to the authorities, they will be killed. She did not submit to a medical examination because anyway she was a married woman already." (Decision, lower court, pp. 20-21, Records)

On the other hand, Leticia Tan who was only thirteen years old when she was raped positively identified the three accused as the persons who robbed and abused them. During the November 12, 1968 hearing, Tan was suffering from emotional strain and the hearing had to be postponed. In fact, during the December 12, 1968 hearing, her testimony was as follows:

"ATTY. UY:

"Q Will you please tell the Court or rather relate to the Court how you were abused?

"A Yes, sir. When my mother was brought up the house, we were told to go down.

"Q Who brought you down?

"A Renato Marquez.

"Q Do you know where you were brought, to where you were brought?

"DEPUTY CLERK:

"Q "Witness at this stage is crying.

"WITNESS:

"A To our store.

"ATTY. UY:

"Q And while you were in your store what happened if anything happened?

"COURT:

"Answer.

"WITNESS:

" A I was told to give something and if I refused I would be killed.

"ATTY. UY:

"Q Did you understand what was that something he was asking?

"A Yes, sir.

"Q Will you please tell the Court what was it?

"ATTY. CADAG:

"Witness refused to answer.

"COURT:

"Q You cannot answer?

"A (No answer).

"ATTY. UY:

"Q In short did you give that something that he was asking from you?

"ATTY. CADAG:

"We will object., Your Honor, because that 'something' is vague. What is That something?

"ATTY. UY:

"Q Will you please answer what was that something that he was asking?

"ATTY. CADAG:

"Witness, Your Honor, refused to answer.

"ATTY. UY:

"Q Did anything happen after he asked you to give him that something?

"A Yes, sir. A gun was poked at me and also a ' balisong' and so I became afraid.

"Q And what happened?

"ATTY. CADAG:

"Witness, your Honor, refused to answer.

"WITNESS:

" A I was calling for my mother but I was told not to shout because I am going to be killed.

"ATTY. UY:

"Q And what happened?

" A I was told to lie down.

"COURT:

"Q Did you lie down?

" A I was forcibly made to lie down.

"Q And after you were forcibly made to lie down what did the accused do?

"A (no answer).

"Q You answered that a gun was pointed to you and a ' balisong', who pointed to you a gun and ' balisong'.

"A Renato Marquez?

"Q What did Renato Marquez point to you?

" A A gun.

"Q How about the ' balisong ', who pointed to you?

"A He also. He was carrying two weapons.

"Q Now, there were only the two of you inside the store at that time?

"A Yes, Your Honor.

"Q All right, you were forcibly laid down by Marquez?

"A Yes, Your Honor.

"Q After that, when you were already lying down what did he do to you? Are you ashamed to answer? Do not be ashamed, because the persons in front of you are all married.

"Q Did he do something to your person?

"A Yes, sir.

"Q What particular act did he do to you? Nakuha ba ang iyong pagkababae ?

"A Yes, Your Honor.

"Q After that what happened?

" A I was brought upstairs and we were tied."

(T.S.N., December 12, 1968, pp. 18-22)

Again, the records sustain the lower court's summary of Leticia Tan's testimony:

"x x x They reported the incident to the police authorities who investigated her, her mother and Rufina Martinez. They were taken by the police to the hospital where she was examined. She pointed Francisco Forneste to the PC after the PC had asked them who committed the robbery. Her mother, Rufina and herself were together in going to the office of the Chief of Police in the company of PC soliders. She was thirteen years old when the incident happened. After Renato Marquez and Samuel Jacobo had taken the money from her mother, the two accused entered her room. At that time, there was a gasera lamp in the ground floor as well as in the upper floor. Although afraid, she looked at the robbers. One of them had a moustache, the other was

short and had a slender body and the third was tall and big-bodied. It was Francisco Forneste who had a moustache. She signed her affidavit (Exhibit D) in the municipal building. She made the identification of the accused at the municipal building on November 20, 1963. Before they went to the municipal building, she did not know yet the names of the accused." (Decision, pp. 22-23, rollo)

The accused, in refuting the lower court's finding that they were positively identified by the complaining witnesses, stress that these witnesses stated on three occasions that they did not know the identity of the persons who perpetrated the crime. These occasions were: (1) During the investigation conducted by the Chief of Police of Catanauan immediately after the incident at about 9:00 in the evening of November 16, 1963, the complaining witnesses, when asked by the former if they recognized the robbers answered in the negative; (2) On November 17, 1963 or the day after the incident, Leticia Tan, when asked about the identity of the robbers at the house of Goding Tan by Sgt. Lastimoso, a member of the Catanauan Police Force, answered that she did not know them; (3) When the complaining witnesses were brought to the office of the Chief of Police of Catanauan on November 17, 1963, to identify the suspects, among them Renato Marquez and the appellants herein, the complaining witnesses were not able to identify the robbers, much less the accused who were directly pointed to them by Patrolman Mariano Yuson, a member of the police force of Catanaun who took over the investigation of the incident.

These circumstances do not affect the credibility of the complaining witnesses as regards their identification of the accused as the perpetrators of the crime. The silence of the complaining witnesses on the identity of the accused immediately after the incident was explained by the ordeal they had just suffered at the hands of the accused. The accused were armed during the incident and the complaining witnesses were threatened with death. Francisca Marquez expressed fear that the accused might take revenge in case she would divulge their identity. Thus, during the first investigation conducted by the PC authorities where there was a confrontation between Renato Marquez and Francisco Forneste on one hand and the complaining witnesses on the other, Francisca Marquez pointed out secretly to the PC that the accused were the perpetrators of the crime "x x x because I am afraid they might revenge against me, sir. I cannot do that openly." (T.S.N., April 4, 1966, p. 42) We pointed out in *People v. Rendora*, G.R. No. L-14356, September 30, 1959; *People v. Elizaga*, 73 SCRA 524, citing *People v. Sanchez*, G.R. No. L-13335, November 29, 1960 that: "Experience, x x x has shown that witnesses are reluctant to divulge the identity of their assailants except to the proper authorities or until they feel safe enough from any probable harm."

Moreover the complaining witnesses who were initially silent on the identity of the accused, gave descriptions instead. According to defense witness German Averia, then Chief of Police of Catanauan who initially investigated the incident: "I asked them if they knew the identity of the suspects. They did not name names. They only . . . I remember they gave the description and I remember one of the suspects has been described as very similar to my hair and weight." (T.S.N., May 5, 1970, p. 22) These descriptions given by the complaining witnesses were never questioned as not applicable to the accused, hence it may be safely concluded that the same jibe with the descriptions of the accused.

Finally, as the lower court correctly said:

"x x x it was not shown why the complaining witnesses would testify in the manner that they did against the accused. The accused failed to ascribe any improper motive on the part of said complaining witnesses. Nei-ther was it shown that said witnesses were obsessed with bias or prejudice against the accused." (Decision, p. 30, rollo)

Since, in the commission of the crime, the following aggravating circumstances alleged in the information were proved by the prosecution: (1) nighttime; (2) unlawful entry; (3) dwelling of the offended parties; (4) by disguise,

that is by pretending to be PC officers: and (5) by utter disregard due to victims' age and sex with no mitigating circumstances to offset the same, the lower court was correct in imposing the maximum penalty pursuant to Article 294 paragraph 2 of the Revised Penal Code. However, the sentence of life imprisonment should be denominated reclusion perpetua considering that this is the technical term of the penalty which carries with it the imposition of accessory penalties. (People v. Mobe, 51 Phil. 88; People v. Pilonas, 84 SCRA 167; People v. De Jesus, 85 SCRA 686; People v. De la Cruz, 85 SCRA 285.)

We notice that the lower court did not award indemnity for the rape victims. Hence, pursuant to Articles 21, 2216, 2219, 2229 and 2230 of the Civil Code We hereby award indemnity (People v. Amiscua, 37 SCRA 813) and fix the same in the sum of P12 ,000.00 (People v. Amit, 32 SCRA 95; People v. Otto, 49 SCRA 306; People v. Gonzales, 58 SCRA 265; and People v. Abay, 70 SCRA 521) for each of the rape victims.

The evidence adduced is not sufficient to show any conspiracy among the accused in the commission of the crime of rape against the persons of Francisca Marquez, Leticia Tan and Rufina Martinez. Therefore, the lower court was correct in concluding that the crime committed by the accused-appellants was robbery with rape not robbery with multiple rape as alleged in the information. Accordingly, the award for indemnity should be as follows: Francisco Forneste to indemnify his rape victim Rufina Martinez and Samuel Jacobo to indemnify his rape victim Francisca Marquez

WHEREFORE, We find the accused-appellants FRANCISCO FORNESTE and SAMUEL JACOBO guilty beyond; reasonable doubt of the crime of robbery with rape pursuant to Article 294 paragraph 2 of the Revised Penal Code. The judgment appealed from is modified as follows:

1. The term life imprisonment should be changed to reclusion perpetua;
2. Accused-appellant FRANCISCO FORNESTE shall indemnify RUFINA MARTINEZ in the sum of TWELVE THOUSAND (P12,000.00) PESOS with no subsidiary imprisonment in case of insolvency by reason of the penalty imposed; and
3. Accused-appellant SAMUEL JACOBO shall indemnify FRANCISCA MARQUEZ in the sum of TWELVE THOUSAND (P12 ,000.00) PESOS with no subsidiary imprisonment in case of insolvency by reason of the penalty imposed.

In all other respects, the judgment appealed from is hereby affirmed with costs against the appellants.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Relova, JJ.,concur.

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