

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE TAPALES Y VARGAS AND PEDRO CORAÑEZ Y TATUALLA, DEFENDANTS-APPELLANTS.

G.R. No. L-35281. September 10, 1979

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PER CURIAM:

This is an automatic review of the judgment of the Circuit Criminal Court of Manila, dated April 21, 1972, finding accused-appellants, Jessie Tapales y Vargas and Pedro Corañez y Tatualla, guilty of the crime of Robbery with Homicide, with the mitigating circumstance of plea of guilty offset by the aggravating circumstances of multiple Rape, use of motor vehicle and nighttime, and sentencing both said accused to the extreme penalty of death.

The Information filed against the accused charged them with the crime of Robbery with Homicide and Rape as follows:

"That on or about October 28, 1971, at nighttime purpose-ly sought to better accomplish their ends, in the City of Manila, Philippines, the said accused, conspiring and confederating together with another, whose identity and whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation to wit: by boarding the taxi being then occupied by Eugenio Calaykay y Baldonado and Diana Ang y Navales while said vehicle was at a stop position at Jones Bridge, in said City and pointing a balisong knife at Diana Ang y Navales and a gun at Eugenio Calaykay y Baldonado, take, steal and carry away against their will and consent, one (1) men's wrist watch, "Rado" brand, gold plated and one (1) brown wallet with cash money of undetermined amount belonging to said Eugenio Calaykay y Baldonado, and Mexican money worth P2.00 and one (1) Parker ball pen valued at P10.00 or a total value of P12.00 belonging to said Diana Ang y Navales, to the damage and prejudice of said owners in the aforesaid respective amounts; that by reason of and on the occasion of the said robbery, the said accused, in furtherance of their conspiracy, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of Eugenio Calaykay y Baldonado, by then and there shooting him twice with the gun and stabbing him with the balisong knife on the chest, thereby inflicting upon him mortal wounds which were the direct cause of his death thereafter; that by reason of and on the occasion also of the said robbery, the said accused, in furtherance of their conspiracy, did then and there wilfully, unlawfully and feloniously and by means of force, violence and intimidation, to wit: by threatening to stab and kill the said Diana Ang y Navales with said balisong knife and firearm, which they were holding then at the time, succeed in having sexual intercourse with her, one after the other, all against her will and consent.

"Contrary to law and with the generic aggravating circumstances of the use of motor vehicle and employment of craft in the commission of said offense."

Upon arraignment, appellants, through their counsel de officio, manifested their desire to enter a plea of guilty. The trial Court duly informed them of the gravity of the offense and the imposable penalty therefor of life imprisonment or death. When asked by the Court whether they understood the full consequences of a plea of

guilty, both answered affirmatively. They admitted to the Court that they robbed Eugenio Calaykay and Diana Ang and that they killed the former when he shouted, "hold-up". However, both of them denied having raped Diana Ang contending that she had consented to have carnal knowledge with them. The Court below, citing the case of *People vs. Mongado*,^[1] where Rape was considered a generic aggravating circumstance to the crime of Robbery with Homicide, considered appellants to have entered an unconditional plea of guilty to the offense of Robbery with Homicide,^[2] and proceeded to receive evidence to ascertain not only the existence of rape but also of attendant modifying circumstances that could affect criminal liability.

Diana Ang narrated the incident as follows: On October 27, 1971 at around 11:00 o'clock in the evening, Diana Ang, 20 years old, married but estranged from her husband, Valentin Katigdas, was in the company of her boyfriend of six months, Eugenio Calaykay, 32 years old, single, at the Jai Alai Bamboo Room, Taft Avenue, Manila. After some betting, Eugenio invited Diana for a snack at the International House at Ongpin, Binondo. They left the Jai Alai at around 11:45 P.M. They then hailed a taxicab parked in front of the Keg Room of Jai Alai. Both sat at the rear of the taxi, Diana sitting at the left side and Eugenio sitting at the right side. When they were at the middle of Jones Bridge, the driver stopped and said, "Pare, just a while, the right door of the taxi is open." He opened and closed the right front door four times. At this juncture, two men alighted from a taxicab immediately behind. One armed with a knife, identified by Diana as Pedro Corañez, approached the taxi from the left and the other, armed with a gun, identified by Diana as Jessie Tapales, approached the taxicab from the right. As they entered the taxicab they said "this is a hold-up, we only need money." Inside the taxicab, Jessie Tapales divested Eugenio of his "Rado" wrist watch, while Pedro Corañez ransacked Diana's bag and took her "Parker" ball pen worth P10.00 and Mexican money worth P2.00. While Diana and Eugenio were being robbed, the taxicab driver continued driving down to the foot of Jones bridge where he made a "U" turn, proceeded up the bridge, made a right turn on Bonifacio Drive, went straight ahead until they reached the Fire Department at Intramuros. At this point, Eugenio shouted, "hold-up, hold-up". Instantly, Eugenio was stabbed by Corañez and shot by Tapales. A commotion ensued inside the taxicab prompting the driver to tell Eugenio, "pare, tumalon ka na lamang." Diana then grappled with Corañez for the possession of the knife while Eugenio, already wounded, squeezed himself out of the right window. Eugenio fell in the middle of Del Pan bridge. With Diana still inside the taxicab, Tapales ordered the driver to proceed to Quezon City. Tapales then pulled down Diana's pants and panty, mashed her breasts and inserted his fingers into her private parts. While Tapales was abusing Diana, Corañez was also kissing her, his right hand around Diana's shoulders and his left hand poking a knife at her left side. Scared and trembling, Diana pleaded that she be spared as she was pregnant but said pleas were in vain. On the way to Quezon City, Diana noticed that they took the Tondo, Balintawak and Highway route. Tapales introduced himself as "Fernando" and Corañez as "Johnny". Before reaching Quezon City, Corañez suggested to Tapales that they proceed to the place of Tapales' "kapatid" at Kamuning which, however, was objected to by Tapales. Tapales opted to look for a vacant lot in Quezon City. When they found one, they ordered the driver to stop. Diana was ordered to alight, followed by Corañez. After apparently taking instructions from Tapales, the driver left the place. About six meters from where they alighted, Corañez forced Diana to lie on the wet cogon grass. Tapales then placed his jacket on the grass where Diana was made to lie down. There and then Corañez and Tapales took turns in raping her. Although Diana admitted that Tapales and Corañez did not make use of their weapons when they reached the vacant lot, she claimed that she submitted to their bestial acts as she was too weak and terribly scared to resist the appellants. After that, Diana asked appellants to get another taxicab but Tapales told her that the taxi they took would return, as in fact, it did. The three of them boarded the taxi and they cruised around the other street. Diana was finally dropped off behind the Carbungco restaurant. Before alighting from the taxi, appellants gave Diana P8.00 and threatened to kill her if she reported the matter to the police. Despite the threats, Diana told the people around of her dread-ful experience. One took pity on her and took her to a policeman in a restaurant near the Center Theatre. The policeman instructed them to proceed to Precinct 8 where

she reported the incident to Pat. Libao. An Advance Information or Alarm Report[3] was forthrightly issued. While in the precinct, Diana saw the shoes of Eugenio. Later, Diana was taken by the police to the morgue where she identified the dead body of Eugenio. The next morning Diana was physically examined by one Dr. Lucero at Precinct 2.[4]

After some sleuthing, the police apprehended appellants, but the two taxicab drivers remained at large. Appellants admitted culpability in their sworn statements.[5]

In open Court, Jessie Tapales declared that he was invited by Pedro Corañez to commit Robbery and admitted the commission of that crime as well as Homicide and Rape.[6] For his part, Pedro Corañez, while admitting the commission of Robbery with Homicide, denied having raped Diana Ang contending that it was she who suggested that they look for a vacant lot. Pedro Corañez even testified that he was constrained to have carnal knowledge with Diana Ang despite the fact that the place was stinking with human excreta. On cross examination, Pedro Corañez admitted that he and Jessie Tapales conspired with two taxi drivers known as Pintong (driver of the taxi taken by the victims), and Bruno Borja (driver of the taxi used by appellants in following the taxi of the victims) in the commission of robbery.[7]

The trial Court gave full credence to the spontaneous and straight-forward testimony of Diana Ang, and held:

"The Court cannot subscribe to the claim of the accused that Diana Ang voluntarily agreed to have carnal knowledge with them and was even the one who invited them. It is indeed highly inconceivable how Diana Ang, who was already robbed and who, by reason or on the occasion of the robbery her boyfriend died would still have the sexual urge. x x x "

On April 21, 1972, the trial Court handed down its Decision, the decretal portion of which reads:

"WHEREFORE, both accused are hereby found guilty beyond reasonable doubt as principals of the crime of robbery with homicide and there being proved the aggravating circumstances of multiple rapes, the use of motor vehicle and nighttime offset only by the mitigating circumstance of their plea of guilty, the court sentences each one of them to DEATH; to jointly and severally indemnify the heirs of the victim Eugenio Calaykay the sum of P12,000.00 for the death of the latter; the sum of P10,000.00 for moral damages; the sum of P10,000.00 for exemplary damages; and to return to the heirs of victim Calaykay the Rado watch and the black wallet with cash taken from Calaykay.

"The Court further orders the said accused to jointly and severally indemnify the victim Diana Ang, the sum of P12,000.00 for moral damages; the sum of P10,000.00 for exemplary damages; and to return to her the cash and articles taken from her or to jointly and severally indemnify her in the amount of P12.00 representing the value therefor if they fail to do so and to pay the costs."

Hence, this mandatory review.

Appellants, through counsel de officio ascribe the following errors to the trial Court, to wit:

"I. THE TRIAL COURT ERRED IN CONSIDERING RAPE AS AN AGGRAVATING CIRCUMSTANCE IN THIS CASE;

"II. THE TRIAL COURT ERRED IN CONSIDERING NIGHTTIME AS AN AGGRAVATING CIRCUMSTANCE IN THIS CASE;

"III. THE TRIAL COURT ERRED IN SENTENCING APPELLANTS TO DEATH."

We find the errors assigned bereft of merit.

1. This Court has consistently held that the legal definition of the crime committed herein is Robbery with

Homicide, with Rape being considered an aggravating circumstance.

"It is the uniform jurisprudence of the Supreme Court that where the crime charged is robbery with homicide and rape, the legal definition of the crime is robbery with homicide punishable under paragraph 1, Article 294 of the Penal Code; and the rape committed on the occasion of that crime is considered an aggravating circumstance (People vs. Ganal, 85 Phil. 743, 751; People vs. Bacsá, 104 Phil. 136, 142; and People vs. Tarrayo, 27 SCRA 953 (1969). See also: People vs. Carillo, 85 Phil. 611, 635). Instead of ignominy, therefore, it is the rape itself that aggravates (People vs. Mongado, 28 SCRA 642, 651-652, (1969)).

The defense argues, however, that the foregoing doctrine should be re-examined and abandoned considering that there is no law that makes Rape an aggravating circumstance nor one that classifies it as a generic aggravating circumstance.[8]

Article 294 of the Revised Penal Code provides:

"Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

"1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

x x x x"

Indeed, the special complex crime contemplated in the foregoing provision does not include Rape. However, there can be no question, and this appellant admits in his Brief, that Rape committed on the occasion of Robbery with Homicide increases the moral evil of the crime. Moreover, it is incorrect to state that there is no law which considers Rape as an aggravating circumstance simply because it is not specifically enumerated in Article 14 of the Revised Penal Code as an aggravating circumstance. As enunciated in the case of People vs. Racaza, 82 Phil. 623, (1949),

"x x x Rapes, wanton robbery for personal gain, and other bans of cruelties are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately augmenting unnecessary wrongs to the main criminal objective, under paragraphs 17 and 21 of Article 14 of the Revised Penal Code. x x"

Said paragraphs read thus:

"Art. 14. Aggravating circumstances. - The following are aggravating circumstances:

"xxx

"17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

"xxx

"21. That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission."

This Court's consistent ruling, therefore, which holds that when Rape and Homicide co-exist in the commission of Robbery, it is paragraph 1 of Article 294 which applies, the Rape to be considered as an aggravating circumstance (People vs. Ganal, et al., 85 Phil. 743 (1950); People vs. Carillo, 85 Phil. 611 (1950); People vs. Bacsá, 104 Phil. 136 (1958); People vs. Tarrayo, 27 SCRA 953 (1969); People vs. Mongado, 28 SCRA 643 (1969)), should be upheld, for a settled judicial construction put upon a statute has almost the same authority as the statute itself, and

this Court will not disregard or overrule it except for the most cogent reasons.[9]

Alternatively, appellants contend that even if the ruling that Rape is an aggravating circumstance in Robbery with Homicide be upheld, the crime of Rape herein should be considered, by time and distance, as a separate and distinct offense from that of Robbery with Homicide because while the Robbery was committed at Jones Bridge, the Homicide in Intramuros, both in Manila, the Rape was committed in Quezon City.[10]

While there may have been an appreciable interval of time between the robbery and the killing, on the one hand, and the rape, on the other, there can be no question but that there was a direct relation, an intimate connection between them such that it can be stated, without fear of contradiction, that it was by reason or on occasion of the Robbery that Homicide and Rape were committed.[11]

2. Appellants' contention that the trial Court erred in considering nighttime as an aggravating circumstance is neither well taken. The crime was committed between the hour of 11:45 P.M., and 1:00 A.M. As early as 6:00 P.M. of October 27, 1971, both accused had already planned the robbery. It is evident that they purposely sought nighttime and took advantage of it to facilitate the commission of the offense and to avoid discovery.[12] In fact, when the victim Eugenio Calaykay shouted "hold-up, hold-up", no one responded to his call because of the lateness of the night. When he forced himself out of the taxi and fell on Del Pan Bridge, no one saw or noticed it. Again, because of the wee hours of the morning, appellants were able to cruise around leisurely from Manila to Quezon City looking for a vacant lot. In the meantime, both appellants, taking advantage of the darkness of night inside the taxicab, were able, with impunity, to take liberties with the person of Diana Ang.

"In itself nighttime is not an aggravating circumstance, and becomes one only where it is specially sought by the offender or taken advantage of by him to facilitate the commission of the crime or to avoid discovery and thus minimize the risk of capture"[13]

3. Considering, therefore, that the commission of Robbery with Homicide was attended by the circumstances of multiple rape, use of motor vehicle, and nighttime, in aggravation, which overwhelmingly offset the lone circumstance of plea of guilty, in mitigation, the accused-appellants, by the law, must be meted out the extreme penalty of death.[14]

WHEREFORE, finding no error in the judgment automatically elevated to this Court for review, the same is hereby affirmed.

Costs against accused-appellants, Jessie Tapales y Vargas and Pedro Corañez y Tatualla.

SO ORDERED.

Teehankee, Antonio, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Barredo and Aquino, JJ., in the result.

Fernando, C.J., no part.

Makasiar and Santos, JJ., on leave.

[1] 28 SCRA 642 (1969).

[2] T.s.n., pp. 8-10, April 7, 1972.

[3] Exhibit "C", p.12, Folder of Exhibits.

[4] T.s.n., pp. 11-23, April 7, 1972.

[5] Exhibits "B" & "D".

[6] T.s.n., p. 31, April 7, 1972.

[7] T.s.n., pp. 32-34, April 7, 1972.

[8] Pp. 7-8, Appellant's Brief.

[9] Gonzaga, Statutes and their Construction, 1958 ed., p. 71.

[10] Pp. 9-10, Appellant's Brief.

[11] see *People vs. Hernandez*, 46 Phil. 48 (1924); *People vs. Libre, et al.*, 93 Phil. 5 (1953).

[12] Article 14(6), Revised Penal Code.

[13] *People vs. Flores*, 40 SCRA 230 (1971); *People vs. Sumayo*, 70 SCRA 488 (1976).

[14] Article 294 (1) in relation to Art. 63, Revised Penal Code.

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