

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIANI ARARAO, DEFENDANT-APPELLANT.

*G.R. No. L-35354. April 05, 1982*

Ponente: CONCEPCION JR., J.

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### CONCEPCION JR., J.:

In the evening of February 26, 1970, at Barrio Bansarvil, Municipality of Kapatagan, Lanao del Norte, three persons, armed with daggers, entered through a window of the house of Julia G. Mariquit, caused physical injuries to the 65 years old woman, stole and carried away personal properties. On the occasion of the said robbery two of the malefactors, by the use of force and intimidation, raped Julia G. Mariquit and her 41 years old daughter, Jovencia Tesio.[1]

As a result, on March 13, 1970, a complaint was filed against Liani Ararao and two others, John Doe and Richard Doe, for robbery with rape, in the Municipal Court of Kapatagan.[2]

An information dated September 21, 1970 was filed by the Provincial Fiscal against Liani Ararao, as follows:

"The undersigned Provincial Fiscal accuses LIANI ARARAO of the crime of ROBBERY WITH RAPE committed as follows:

That on or about the 26th day of February, 1970, in the barrio of Bansarvil, Municipality of Kapatagan, Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with daggers, conspiring together, confederating and mutually helping with other John Doe and Richard Doe who are still at-large and with intent of gain, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously enter the house of JULIA G. MARIQUIT thru the window and once inside, boxed Julia G. Mariquit, hitting her mouth, held her two hands and pushed her to the floor and choked her neck and told her not to shout and demanded money from her; while accused Liani Ararao met JOVENCIA TESIO and covered her mouth with his right hand and told her not to shout, pointed his dagger towards her; while Richard Doe went inside the room looking for the money after which the said accused took, stole and carried away without the consent and against the will of the owner, the following personal properties belonging to said Julia G. Mariquit, to wit:

1. P280.00 in paper bills, P37.50 in coins with a total of P317.50 in cash;
2. Three (3) Corsican T-shirt worth P22.00 each or a total of P66.00; and
3. Two (2) credentials of a carabao, and on the occasion of the said robbery, the above-named accused, by the use of force and intimidation, have sexual intercourse with Julia G. Mariquit and Jovencia Tesio against their will.

"Contrary to and in violation of Art. 294, par. 2 of the Revised Penal Code as amended, with the aggravating circumstances of nighttime, use of superior strength and dwelling of the offended party."[3]

After arraignment, plea of not guilty on March 2, 1971, and trial,[4] the Trial Court, in its Decision dated March 20, 1971, convicted the accused, with dispositive part as follows:

"WHEREFORE, this Court finds the accused Liani Ararao GUILTY beyond reasonable doubt of the crime of Robbery with Rape under Article 294, Par. 2, of the Revised Penal Code, with the aggravating circumstances of night time and use of superior strength and with no attending mitigating circumstances, and hereby sentences him to suffer a penalty consisting of life imprisonment (reclusion perpetua). Further, the accused is hereby sentenced to indemnify the offended parties; Julia Mariquit and Jovencia Tesio, in the amount of P383.50, the value of the good stolen, for actual damages and the amount of P6,000.00 (P3,000.00 for each of the victims) for moral and exemplary damages. Finally, the accused is hereby sentenced to pay the costs of the proceedings.

**SO ORDERED."**[5]

The version of the prosecution is:

When Julia Mariquit testified on March 2, 1971, she was sixty-five (65) years old, while her daughter Jovencia Tesio, was forty-one (41) years old. Julia Mariquit was in the "buy and sell" business. Both mother and daughter stayed since 1948, in a one-storey house in Bansarvil, Kapatagan, Lanao del Norte.[6]

At night, Jovencia Tesio used to sleep in her room. Julia Mariquit slept on a sofa in the dining room, with a lighted gas lamp beside her throughout the night. That gas lamp was capable of illuminating the dining room and sala of the house, even the room of Jovencia Tesio, when its door was left open.[7]

On February 26, 1970, at around eleven in the evening, Julia Mariquit was awakened when the window of their dining room was pushed and opened. Immediately thereafter, three men, each armed with a hunting knife, entered the house through that window.[8]

Both occupants of the house did not find it difficult to identify appellant Liani Ararao because the latter rented and stayed in the very room of Jovencia Tesio, from October, 1969, up to the last day of January, 1970. The other two companions of Ararao were unknown to and not identified by the two victims. Liani Ararao and one of his companions wore hats on that night, while the other companion had a cloth around his forehead.[9]

As soon as the three men were inside the house, appellant Liani Ararao said: "Hala", as if to signal the start of operations. He proceeded straight to the room of Jovencia Tesio. The two companions confronted Julia Mariquit. One of them "boxed" Julia Mariquit on her left cheek, causing a cut wound thereon.[10] Julia was held by the shoulders, pushed down the floor, with a knife pointed at her neck, and asked where she kept her money.[11] Julia told the two that her money was in a box near the place where she slept in the dining room.[12]

Upon hearing this, the second companion of Liani Ararao took the box, opened it, and got the money inside, consisting of paper bills, amounting to P280.00 and coins, totalling P37.00.[13] This man went back to Julia Mariquit, who was still pinned down the floor by his companion and complained "Is that the only money you have?" Apparently irked, he stabbed Julia on the left foot.[14]

The man who took her money then placed himself on top of Julia Mariquit. He opened her dress, inserted his organ into her vagina and had a "one minute" sexual intercourse with her, leaving his semen inside her vagina, while the other companion held her down the floor.[15]

When the two companions of appellant Ararao attacked Julia, Liani Ararao met Jovencia Tesio at the door of her room as she was about to go out and determine the cause of the commotion that woke her up.[16] Ararao held Jovencia by the mouth and pointed a knife at her stomach, stating: "Do not shout because if you do, we will kill

you all!"[17] Ararao asked Jovencia to bring him to "the place where the money was kept by her mother".[18]

As Jovencia was about to lead Ararao to the dining room where the box containing the money could be found, Ararao pulled Jovencia inside the room. He pushed her down in her bed, tore her panty away, went on top of her, and inserted his organ into her vagina.[19] Jovencia could not do anything but say: "Intawon dili ka ba maluoy" (Please, will you not pity me?)[20]

After having sexual intercourse with Jovencia, "which did not take long," appellant Ararao brought Jovencia to the dining room where she saw her mother being abused by one of his companions.[21]

Afterwards, the trio ransacked the place, scattered the belongings of the two victims, including "land papers and credentials of the carabao." They took in addition to the money they got from the box, three (3) "Corsican" T-shirts worth P22.00 each, and two certificates of ownership of large cattle.[22]

After warning the two victims not to report to anybody or "they will come back and kill them," they left.[23] The trio pretended to be Maranaws and even tried to talk in that language but Julia Mariquit who can speak that language noticed that they spoke Maranaw incorrectly.[24]

The next day, February 27, 1970, the two victims were medically examined by Dr. Gregorio Cardona, Municipal Health Officer of Lala, Lanao del Norte. However, only Jovencia Tesio was examined on her private part.[25]

Julia Mariquit was treated for a small plain cut wound on the "left angle of her mouth," "two slit wounds over the left wrist," a slit wound "over the dorsal portion of her left hand at the base of the thumb," a "slit wound at the dorsal aspect of the left foot," and "swelling of the left leg." The wounds were caused by a sharp instrument.[26]

Julia was further treated for subjective injuries, those not seen by the naked eye: pain over the anterior portion of the neck, pain over the nape, and pain in swallowing.[27]

Jovencia Tesio was found to be a virgin because she screamed with pain upon the insertion of a finger into her vagina. There were blood stains over the "left xinguinal region of her body, between the thigh and the main trunk", and a fresh "laceration at five o'clock of her vagina." [28]

The defense of denial and alibi was interposed by the appellant, supported by his testimony and that of the witnesses Juanito Ohagan, Valeriano Guimbao, and Fortunato Tagalogon, all members of the Barrio Council of Bansarvil, Kapatagan, Lanao del Norte.[29]

The alibi claimed by the defense may be summarized as follows:

"Ohagan, Guimbao and Tagalogon testified among other things that on the 3rd week of February, 1970, the Municipal Mayor of Kapatagan called all the members of the Barrio Council of Bansarvil to a conference. They were ordered to form the so-called Carabao Assembly which means that all the carabaos of Bansarvil will be gathered together in one place where the owners and volunteers from the barrio inhabitants will have to watch them at night due to the rampant cattle rustling then going on in the said barrio. After the conference these members of the Barrio Council organized the Carabao Assembly. They have observed that Liani Ararao have been one of the active member who always attended the nightly carabao assembly as envisioned by the Municipal Mayor; that on February 26, 1970, when the alleged robbery with rape was committed on the persons of Julia Mariquit and Jovencia Tesio, the accused Liani Ararao could not be one of the three robbers as suspected by the complainants for all the time on that evening he was with the group at the carabao assembly held at the Barrio Chapel about only 40 meters away from the house of said accused. As a matter of fact the accused was the one serving them the coffee and all the time they were telling stories one after the other so they could avoid getting sleepy the whole night. It was only at 5:00 o'clock the following day when they dispersed. When they came to know that the complainants were robbed and raped, they together with the

accused went to the house of the alleged victim and inquired as to who robbed and raped them, Jovencia Tesio who was then in the house at the time of their visit told them that they could not identify the intruders except that one have a long hair and scar on the face. (TSN, Jove, pp. 68; Dulay-2-94)."[30]

Appellant's first contention that the prosecution in this case failed to prove the material jurisdictional fact and consequently the trial court erred in exercising jurisdiction over it,[31] is completely devoid of merit. The assault on the two victims was committed at their residence. Clearly that residence was located at Bansarvil, Kapatagan, Lanao del Norte, within the territorial jurisdiction of the Court of First Instance of Lanao del Norte that tried and decided this case.[32]

Appellant contends that victim Jovencia Tesio was able to identify him at the time of the crime through his voice only, by the very testimony of Jovencia.[33] Although in a portion of her testimony, Jovencia stated that she identified appellant by his voice, Jovencia also testified that she saw the appellant and that was the reason she identified him.[34]

Appellant also argues that an inconsistency exists between the testimonies of Julia Mariquit and Jovencia Tesio, because while Julia heard Jovencia moan and say "Please, will you not pity me," Jovencia testified that she was not able to talk because when she met the appellant at the door, the latter covered her mouth. Examining the testimonies of both Julia Mariquit and Jovencia Tesio,[35] We find no inconsistency in those versions. Clearly, Jovencia was not able to shout when she met the appellant at the door of her room because the latter "grabbed her mouth." However, Julia heard her daughter Jovencia moan and shout, when the appellant was raping her, and not when Jovencia met the appellant at the door of her room.

It is fundamental that an alibi, especially if it is as weak and hardly credible as the present one, cannot stand against the positive identification made by the victims in this case. Both Julia and her daughter Jovencia had no problem identifying the appellant because he stayed with the victims as lessee for a time and he entered the house of the victims on the night of February 26, 1970 while it was lighted inside. The two victims were candid in admitting they could not identify the companions of appellant during that incident because the two were not known to them.

Thus, Jovencia Tesio clearly identified the appellant:

"Q - While having opened the door on your way to the comedor, what happened, if any?

"A - Liani Ararao met me and held my mouth."[36]

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"Q - Do you keep a lamp in your room during night time?

"A - Only my mother is using a lamp and I am not using a lamp everytime to sleep.

"Q - So, inside your room in the absence of a lamp, since you do not keep any lamp, it is dark?

"A - It is not dark, it is very near and the light will also penetrate.

"Q - Where did the light come from?

"A - From the dining room, from my mother who was sleeping.

"Q - Do you want to convey that the light from the lamp in your mother's side reached inside your room?

"A - Yes, sir, it will reach to the room where I was sleeping."[37]

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"Q - You met the accused while you were still inside the room or while you were still outside the room?

"A - The time that I opened the door, Liani Ararao met me right at the door.

"Q - How did you know that it was Liani Ararao?

"A - Because there was a lamp light and he met me at the door of my room.

"Q - Did you actually see his face at its entirety?

"A - Yes, sir. I saw him because it was lighted."[38]

In the same manner, Julia Mariquit positively identified the appellant, thus:

"Q - Could you tell this Honorable Court whether you used light the whole night or not?

"A - Yes, sir.

"Q - Is it for the whole night?

"A - Yes, sir every night.

"Q - How many gas lamp do you use every night?

"A - Only one.

"Q - And where do you usually place this gas lamp during night time?

"A - Near me.

"Q - What is the area practically, if you know that can be lighted by that gas lamp you said?

"A - Dining room and the sala of my house."[39]

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"Q - So you have already awakened when the intruders entered the house, did you see personally the said robbers in their entrance?

"A - Yes, sir, I saw them personally.

"Q - During this incident, did you actually see the faces of these intruders?

"A - I saw personally Liani Ararao and his companions."[40]

It is also a fundamental rule, that for alibi to succeed as a defense, it must be clearly established that it was physically impossible for the accused to have been at the scene of the crime when it was committed. In this case, such physical impossibility does not exist. The accused-appellant during that night of February 26, 1970, by his own evidence, was within the immediate vicinity of the place where the crime was committed. From the chapel where they were supposed to be guarding carabaos, up to the victim's house is only about 60 meters. From the house of the victims up to the house where appellant Ararao was staying on February 26, 1970, is also about 60 meters. From either place, appellant Ararao could have easily gone to the house of victims on that night.

The trial court correctly concluded that the testimonies of the Chief of Police Rafael Balatero and Sergeant Sacaben of the Kapatagan Police Force, to the effect that Julia Mariquit and Jovencia Tesio stated during the investigation of the crime that both did not recognize the three robbers on the night of February 26, 1970, deserve no consideration. Both these police officers admitted that during the alleged investigation, there was nothing reduced to writing. These officers of the law never testified during the preliminary investigation of this case in the

Municipal Court of Kapatagan nor in the Provincial Fiscal's Office. Their testimonies before the trial court were attempts to cast doubt on the identification of the appellant. No proper investigation of this case was conducted by the Chief of Police of Kapatagan. There was negligence, if not intentional wrong committed by the police force of Kapatagan in its failure to investigate this criminal case. The trial court committed no error in that conclusion.[41]

On June 1, 1972, the National Bureau of Investigation reported by letter to the Secretary of Justice that the two "John Does" mentioned in this case were arrested and identified as Dioscoro Pongkol, 27 years old, and Magnesio Pongkol, 44 years old. The two suspects executed affidavits; confessing to the crime and implicated one Gabriel Aqui, 28 years old. But, the latter died on December 5, 1970 at Balaring, Aloran, Misamis Occidental, in an encounter with the P.C.

Dioscoro Pongkol, Magnesio Pongkol, and Gabriel Aqui were claimed to be the real perpetrators of the crime, and not Liani Ararao, the appellant in this case.[42]

At the instance of the N.B.I., an information for Robbery with Rape was filed against Magnesio and Dioscoro Pongkol, because at that time Gabriel Aqui was at large. That information again implicated appellant Liani Ararao, as it stated that the two Pongkols, "armed with daggers, conspiring together, confederating and mutually helping with Liani Ararao, who was already tried and convicted of the same crime in Criminal Case No. 18, x x x," committed that robbery with rape.[43]

That case docketed as Criminal Case No. IV-241, assigned to Branch IV of the C.F.I. of Lanao del Norte, Iligan City, under the same trial Judge in this case, was terminated by an order dated October 18, 1972, acquitting Magnesio and Dioscoro Pongkol. Both accused were acquitted because the victim Julia Mariquit could not identify the accused during the trial. The extrajudicial confession of the accused were disregarded.[44]

In the interest of justice, the Secretary of Justice, in reply to the request for assistance by the wife of appellant Liani Ararao, suggested that in view of the acquittal of the Pongkols, "it may be advisable to suggest to your husband's counsel de oficio to file a motion for new trial with the Supreme Court." [45]

No motion for new trial was filed, hence it can be presumed that appellant's counsel has chosen to rely on the merits of his defense in the case pending an appeal before this Court.

The positive identification of the appellant by the two victims who had no reason to falsely implicate him in this case completely demolishes his weak alibi. We consider it unnatural for two old women, one 65 years old and the daughter 41 years old, to voluntarily submit themselves to a shameful public narration of how they were raped on the occasion of a robbery by three men, including the appellant, on February 26, 1970, if it were not true. The appellant and his two companions were so depraved they were not contented with robbing the two helpless old women. They had to inflict physical injuries on Julia Mariquit and then defile both victims, without regard to their ages.

The requirements of moral certainty are sufficiently met and no reasonable doubt exists to defy a judgment of conviction.

WHEREFORE, and upon recommendation by the Solicitor General, the decision dated March 20, 1972 in Criminal Case No. IV-18 (formerly 62) by the Court of First Instance of Lanao del Norte, Branch IV, Iligan City, is **AFFIRMED** in toto, with costs against appellant.

Barredo, (Chairman), Abad Santos, De Castro, and Escolin, JJ., concur.

Aquino, J., see concurring opinion below.

Ericta, J., see dissent.

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- [1] pp. 22-23, rollo.
- [2] pp. 2-3, Original Record, Criminal Case No. 62, CFI of Lanao del Norte, Branch IV, Iligan City.
- [3] p. 29, Original Record.
- [4] p. 229, Original Record.
- [5] p. 242, Id.
- [6] pp. 4, 5, 46-47, t.s.n., March 2, 1971.
- [7] pp. 32-33, 35-36, 57-58, t.s.n., March 2, 1971.
- [8] pp. 8-11, t.s.n., March 2, 1971.
- [9] pp. 6, 27, 29, 31, 38, 42, 56, 69-70, t.s.n., March 2, 1971.
- [10] pp. 5-6, t.s.n., April 1, 1971; Exhibit "A", p. 9, Record; pp. 12-13, 37, 49, t.s.n., March 2, 1971.
- [11] pp. 12-13, 37, t.s.n., March 2, 1971.
- [12] pp. 13, 51, t.s.n., March 2, 1971.
- [13] pp. 13-14, t.s.n., March 2, 1971.
- [14] p. 15, t.s.n., March 2, 1971.
- [15] pp. 15, 17-18, 23-24, t.s.n., March 2, 1971; Exhibit "A", p. 9. Record; pp. 4-6, t.s.n., April 1, 1971.
- [16] pp. 48-49, t.s.n., March 2, 1971.
- [17] pp. 50-51, t.s.n., March 2, 1971.
- [18] pp. 51, t.s.n., March 2, 1971.
- [19] pp. 51-52, t.s.n., March 2, 1971.
- [20] pp. 35, 52, t.s.n., March 2, 1971.
- [21] pp. 53-54, t.s.n., March 2, 1971.
- [22] pp. 16, 54-55, t.s.n., March 2, 1971.
- [23] p. 24, t.s.n., March 2, 1971.
- [24] p. 27, t.s.n., March 2, 1971.
- [25] pp. 2, 4, 12-13, t.s.n., April 1, 1971.
- [26] Exh. "A", p. 9, Record; pp. 5-7, t.s.n., April 1, 1971.
- [27] pp. 5, 7-8, t.s.n., April 1, 1971; Exh. "A", p. 9, Record.
- [28] pp. 11-12, 10-11, t.s.n., April 1, 1971; Exh. "B", p. 10, Record.
- [29] pp. 20-21, t.s.n., May 24, 1971; p. 6, t.s.n., June 16, 1971; p. 40, t.s.n., June 16, 1971.
- [30] pp. 5-7, Appellant's Brief.

- [31] pp. 10-11, Appellant's Brief.
- [32] pp. 4, 5, 44, 47, 48, t.s.n., March 2, 1971.
- [33] p. 56, t.s.n., March 2, 1971; pp. 11-12, Appellant's Brief.
- [34] pp. 49, 57-58, 60, t.s.n., March 2, 1971.
- [35] pp. 62-63, 65-66, t.s.n., March 2, 1971; p. 52, t.s.n., March 2, 1971.
- [36] p. 49, t.s.n., March 2, 1971.
- [37] pp. 57-58, t.s.n., March 2, 1971.
- [38] p. 60, t.s.n., March 2, 1971.
- [39] pp. 32-33, t.s.n., March 2, 1971.
- [40] p. 37, t.s.n., March 2, 1971.
- [41] pp. 13-14, Decision; pp. 240-241, Original Record.
- [42] pp. 22-23, Appellee's Brief.
- [43] pp. 24-25, Appellee's Brief.
- [44] pp. 26-29, Appellee's Brief.
- [45] p. 29, Appellee's Brief.

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### CONCURRING OPINION

#### AQUINO, J.:

I concur but wish to invite attention to the fact that robbery with rape cases are controversial cases which have been decided by the Banc. They are controversial because some Justices believe that robbery with rape committed by two or more persons or with the use of a deadly weapon should be penalized as qualified rape under article 335 of the Revised Penal Code.

See *People vs. Arias*, 102 SCRA 303; *People vs. Mabag*, 77 O. G. 3870, *People vs. Pizarra*, L-35915, October 30, 1981 and *People vs. Boado*, 103 SCRA 607. Note, however, that *People vs. Cañizares*, L-32515, September 10, 1981, also a robbery with rape case, was decided by the Second Division. Reclusion perpetua was imposed in that case.

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### CONCURRING OPINION

#### DE CASTRO, J.:

I concur. Commenting, however, on the separate opinion of Justice Erica holding that the crime committed is the complex crime of robbery with force upon things and robbery with rape, not simply robbery with rape as held in the main opinion, citing the case of *Napolis vs. Court of Appeals*, 43 SCRA 301, I believe that the ruling cited applies only when to hold the robbery committed as one with violence against or intimidation of persons would call for a lesser penalty than what should be imposed if We were to hold the robbery as one with force upon

things. The reason given in the Napolis case is in order to avoid the illogical proposition that the former is the "graver offense," but yet punished with a lighter penalty than the latter. But, if the penalty for the robbery is higher when it is categorized as one with violence than when classified as one with force upon things, it is the violence against or intimidation of person that supply the "controlling qualification," as held in earlier cases (U.S. vs. Turla, 38 Phil. 346; U.S. vs. Baluyot, 40 Phil. 89), and the crime would simply be robbery with violence against or intimidation of persons. In the instant case, the crime would be robbery with rape under Art. 294, par. 2 of the Revised Penal Code.

Personally, I cannot see how there can be a complex crime of robbery with force upon things and robbery with violence against or intimidation of persons when the property stolen constitutes a common element of the two kinds of robbery. It cannot be said that the "single act" of taking the money results in two or more grave or less grave offenses, the taking of the money being generally posterior to the use of violence or intimidation or illegal entry, two separate acts, followed by the taking of property.

I am, therefore, not prepared to apply in this case the Napolis doctrine of complexing robbery with force upon things and robbery with violence against or intimidation of persons where I fail to see a "single act" resulting in two or more grave or less grave offenses within the meaning of Art. 48, defining "complex crimes" of the Revised Penal Code, much less that one offense is a necessary means of committing the other. Hence, my concurrence with the majority opinion that the crime committed is robbery with rape, as defined in Art. 294, paragraph 2 of the Revised Penal Code, but with the additional aggravating circumstance of dwelling, to take also into account the illegal entry into the house where the crime was committed.

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### CONCURRING AND DISSENTING OPINION

#### ERICTA, JR., J.:

I agree with the penalty imposed but not with the nature of the crime committed.

The information charges the complex crime of robbery with force upon things in an inhabited house defined in Art. 299 of the Revised Penal Code and robbery with rape defined in Art. 294 of the Revised Penal Code. The allegation that the accused did then and there "wilfully, unlawfully and feloniously enter the house of Julia G. Mariquit through the window and once inside x x x x x x x took, stole and carried away without the consent and against the will of the owner" personal properties valued at more than P300.00 is sufficient to describe robbery with force upon things in an inhabited house; and the further allegation that "on the occasion of said robbery, the above-named accused, by the use of force and intimidation, had sexual intercourse with Julia G. Mariquit and Jovencia Tesio against their will" sufficiently describes robbery with rape.

The evidence sufficiently proves the allegations in the information. Hence, the defendant Liani Ararao should be convicted not of the crime of robbery with rape, which is a "single, special and indivisible (not complex)" crime (People vs. Labita (unreported) 99 Phil. 1068; People vs. Moro Sarabi (unreported) 99 Phil. 1070) but of the complex crime of robbery with force upon things under Art. 299 and robbery with rape under Art. 294, paragraph 2, in relation to Art. 48 of the Revised Penal Code (Napolis vs. Court of Appeals 43 SCRA 301).

The resulting penalty, which is the maximum period of the penalty for the more serious offense, namely, robbery with rape, is reclusion perpetua.

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