

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO PIZARRAS Y ASOMBRADO, ACCUSED-APPELLANT.

G.R. No. L-35915. October 30, 1981

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/65ef48c36f91/>

MELENCIO-HERRERA, J.:

This is an automatic review of the death sentence imposed on accused-appellant Maximo Pizarra y Asombrado by the Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, in Criminal Case No. 1048 entitled "People of the Philippines vs. Maximo Pizarra y Asombrado, Virgilio Acojido y Granada (both in jail), Romeo Quijano y Gustilo alias Romy, Edmundo Obispo y Garcia (both at large)" for Robbery in Band with Multiple Rape.

The Information filed against them on May 18, 1972 alleged:

"That on or about the 17th day of May, 1972, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Maximo Pizarra y Asombrado, Virgilio Acojido y Granada, Romeo Quijano y Gustilo alias Romy and Edmundo Obispo y Garcia, all four of them armed with bladed weapons and sharp-pointed instruments, conspiring and confederating together and mutually helping one another, by means of force, threats and intimidation, with intent of gain and against the will and consent of the owner, Asuncion Sigua, did then and there wilfully, unlawfully and feloniously take, rob and carry away from said Asuncion Sigua the following articles, to wit:

One (1) men's wrist watch -----P120.00

Cash money -----160.00

One (1) lady's gold necklace ----- 30.00

P310.00

which articles have a total value of P310.00 to the damage and pre-judice of the owner thereof in the aforesaid amount of P310.00; the said accused, with the exception of Virgilio Acojido y Granada, in accordance with and pursuant to their conspiracy and in order to carry out their avowed purpose, with lewd design and by means of the same force, threats and intimidation did then and there wilfully, unlawfully and feloniously take turns, one after the other and in the presence of one another, in lying with and having carnal knowledge of the said Asuncion Sigua against her will and consent.

That in the commission of the offense, the following aggravating circumstance was present:

(1) Nocturnity, a circumstance deliberately sought to insure the commission thereof.

Contrary to law."

On July 10, 1972, the trial Court rendered judgment as follows;

"WHEREFORE, finding the accused, MAXIMO PIZARRAS Y ASOMBRADO and VIRGILIO ACOJIDO Y GRANADA, GUILTY beyond reasonable doubt, of the crime of Robbery in Band with Multiple Rape, as

defined under Article 294, paragraph 2 of the Revised Penal Code, in relation to Republic Act No. 4111, as charged in the Information, the Court hereby sentences each one of them to suffer the penalty of DEATH; to indemnify the offended party, Mrs. Asuncion Sigua y Marlen the amount of P310.00; to pay moral damages in the amount of P10,000.00 and exemplary damages in the amount of P10,000.00; and to pay their proportionate share of the costs."

This automatic review pertains to PIZARRAS alone as the appeal of Virgilio Acojido, who was also sentenced to death in the same decision, was dismissed on July 22, 1976 in view of his demise. The records also show that Romeo Quijano was never apprehended and has remained at large. Edmundo Obispo was tried separately as he was arrested later than PIZARRAS, but sentence was suspended due to his minority and because of his drug addiction, he was ordered committed to DARE Foundation for rehabilitation. However, said Obispo escaped from DARE Foundation and has since evaded pronouncement of judgment.

The defense does not dispute that ASUNCION Sigua was a victim of the crime of Robbery with Rape. It maintains, however, that the accused did not take part in the commission thereof, and that the testimonies of prosecution witnesses, particularly ASUNCION and the passerby Ernesto Villanueva, relied upon by the trial Court, are full of inconsistencies and improbabilities that they should not have been given full faith and credence.

We shall examine those testimonies as well as those of the defense witnesses.

ASUNCION SIGUA-MARLEN, the offended party, 37, married, mother of eight (8) children, market vendor selling fruits, and resident of 788 Cabrera St., Pasay City, narrated the incident thus:

At around 3:00 o'clock in the early morning of May 17, 1972, she was walking along Cabrera St., Pasay City, on her way to the public market at Libertad St., when she met four men (two of whom she recognized in a confrontation later at the Pasay City Police Department as PIZARRAS and Acojido). From a distance of about 2 meters, the men poked sharp weapons at her (an icepick and a knife) blocking her way "ako ay kinupkop at hinarang". Two of the men cupped her mouth with their hands, one asking "Where is your money?" and she pointed to her basket. She was then and there divested of her money in the amount of P160.00. (in P20.00 denominations) and jewelry consisting of a Seiko watch worth P120.00 and necklace worth P30.00. Thereafter, she was brought to a dark spot beside a sand and gravel truck where they removed her panty and each of them fingered her private part. She was then laid against the truck and in a semi-reclining position she was raped by the first man, who was wearing blue, who told her "Do not shout: otherwise I'll kill you." After the first assault, she was dragged under the truck where she was raped successively by the second and third man. She identified the third man as PIZARRAS as he was the one whose left arm encircled her neck and whose right hand held a knife against her while being raped by the first two men. While she was being ravished by the three men, Acojido was holding her legs apart and was about to take his turn in assaulting her when a person, (who turned out to be Ernesto Villanueva) passed by. The passerby helped in taking her to the Pasay City Police Department. ASUNCION further stated that she did not fight off the four attackers as they were pointing sharp weapons at her but she pleaded to them crying "Please do not do this to me; I've many children and I'm already old". She declared that the houses in the vicinity of the incident were closed but lighted. She admitted that it was the first time that she met the four men but that she recognized them because she kept on staring at them.[1]

On cross-examination, ASUNCION identified a dagger in a sheath, shown to her (Exhibit "B"), as the weapon poked at her by PIZARRAS and describing it as "gilet-gilet".[2]

ERNESTO VILLANUEVA, 39, married, foreman in a construction firm and resident of 164 Dolores, Pasay City, declared that at the time of the incident, he and Dan Saguil were riding in a car on their way home from a party when they passed by Cabrera St. where he saw people milling around. When he alighted from the car to inquire,

somebody told him that a woman had been raped and that they were holding a male person (who turned out to be Acojido). He then saw the victim, ASUNCION, crawling from under the truck, assisted by someone, crying, and with hair disarranged. ASUNCION sought help from him and he brought her and Acojido to police headquarters. Thereat, the witness observed that the back of the head of ASUNCION and her dress were dirty. Ernesto Villanueva further declared that the place of the incident was well lighted as there was a Meralco post.[3]

Patrolman OSCAR de la CRUZ, 30, single, resident of 958 Quezon Boulevard, Quezon City, assigned to the Secret Service Division of the Pasay City Police Department, testified that at about 3:00 o'clock in the morning of May 17, 1972, ASUNCION, the accused Acojido, and a civic minded citizen, arrived at police headquarters. In a confrontation between ASUNCION and Acojido, the former pointed to the latter saying "Iyan ang isang kasama sa nangholdup at gumahasa sa akin", to which accusation Acojido did not comment. After ASUNCION informed the police officers that Acojido was not alone, and upon investigation, Acojido revealed the names of his companions. Thereafter, Patrolmen de la Cruz, Chua, and others, accompanied by Acojido, apprehended PIZARRAS at Vergel St. From there, Pat. de la Cruz proceeded to the scene of the crime where he recovered the knife with a scabbard (Exhibit "B") under a tire of the truck. Pat. de la Cruz then looked for the other two accused, Quijano and Obispo, before re-turning to police headquarters, but without success. On his return, Pat. de la Cruz took the voluntary state-ment of Acojido,[4] who also admitted his culpability. While Pat. de la Cruz was taking Acojido's statement, Patrolmen Leyva and Chua took the statements of ASUNCION and PIZARRAS, respectively. Pat. de la Cruz also iden-tified the Booking Sheets and Police Reports signed by Acojido and PIZARRAS.[5] Assistant City Fiscal Gebana, before whom Acojido and PIZARRAS were taken, recommended no bail. Pat. de la Cruz noted that when Acojido was taken to headquarters he smelled of liquor and had a slight injury on the face allegedly caused by fist blows by civic-minded citizens. At the Fiscal's Office, Pat. de la Cruz also noted that PIZARRAS had a plaster on his upper brow.[6]

Patrolman ERNESTO CHUA, 32, single and resident of 242-C, P. Villanueva, Pasay City, testified that at the time of the incident, he was assigned at the Theft and Robbery Section, Investigation Division, Pasay City police Department, his tour of duty being from 8:00 p.m. of May 16, 1972 to 8:00 a.m. of May 17, 1972. He was the officer who apprehended PIZARRAS at the latter's house at Vergel St., Pasay City. After apprehending PIZARRAS the patrolman, accompanied by said accused and Acojido went to Apelo Cruz St. to apprehend Romeo Quijano but the latter was not around. From there, Pat. Chua took PIZARRAS and Acojido to the Pasay City Police Department for investigation. Pat. Chua took the voluntary statement of PIZARRAS[7], who admitted his participation in the commission of the crime charged. Pat. Chua effected a confrontation between ASUNCION and PIZARRAS and the former unerringly pointed to the latter saying "iyan ang pangatlong gumahasa sa akin", after which identification ASUNCION fainted. Thereafter, Pat. Chua took PIZARRAS to the Fiscal's Office at Pasay City.[8]

On cross-examination, Pat. Chua disclosed that when he took PIZARRAS to police headquarters he had a bandage on his head which had stains of fresh blood. He further declared that PIZARRAS' mother was present during the investigation and even gave her son coffee and sandwiches. He overheard the mother muttering over and over again "iyan ang bunga ng barkada mo kay Romy", referring to Romy Quijano, a co-accused.[9]

Dr. RODOLFO SURATOS, 27, married, Medico-Legal Officer of the NBI, resident of 22-B Bulacan St., Quezon City, testified that ASUNCION was brought to him for examination on May 17, 1972 at around 11:30 a.m. in a stretcher with intravenous fluid, weak, apprehensive and in "shock-like condition" but not suffering from psycho-neurotic attack. He identified Living Case Report No. MG-72-363[10] as the one he prepared after physical and genital examination of ASUNCION, which showed:

"Abrasion with reddish scab formation; knee, anterior aspect, right 4.0 x 3.0 cms. and left, 5.0 x 2.0. cms. (linear);

foot, dorsal aspect, left, near medial malleolar region, 2.0 x 1.0 cms; big toe, left, 1.0 x 1.0 cms and right, 1.0 x 1.0"

x x x x x

"Pubic hairs, fully grown, moderate in number. Labia majora and minora, both gaping. Fourchette, lax. Vestibule, pinkish. Hymen, reduced to tags (hymenal caruncles). Hymenal orifice, admits tube 3.1 cms. in diameter with moderate resistance. Vaginal walls, lax, rugosities, obliterated."

Dr. Suratos explained that the genital examination indicated that ASUNCION had multiple sexual intercourse and that she was positive for human sperm indicating recent sexual intercourse with a man or a number of men. Dr. Suratos further opined that force was applied on the victim due to the presence of "gasgas" on her knees.[11]

On the other hand, the evidence for the defense consisted of denials and alibi. Testimonial evidence was presented by PIZARRAS, Virgilio Acojido, Zosima Pizaras, Patrolmen Ernesto Chua and Oscar de la Cruz, the latter two as hostile witnesses.

MAXIMO PIZARRAS, 25, single, jobless and resident of 210 Vergel St., Pasay City, alleged that at the time of the incident, he and Virgilio Acojido were eating pancit, drinking beer, telling stories and listening to juke box music at the Pacita Restaurant. They were in said restaurant since 11:00 o'clock in the evening of May 16, 1972. At around 3:00 o'clock in the morning of May 17, 1972, they decided to go home and walked to Cabrera St. where they met two acquaintances Romy and Bondying (co-accused Romeo Quijano and Edmundo Obispo). Romy was an old acquaintance, having once been a neighbor, but he had known Bondying for only one day. PIZARRAS did not mind the latter two as he was sleepy and took a jeep for home at Zamora. At around 6:00 o'clock in the morning of May 17, 1972, he was apprehended by Pat. Ernesto Chua still sleeping under a mosquito net with his wife (common-law) and his son. He was about to change into long pants as he was wearing shorts but was not allowed by Pat. Chua who, instead, kicked him. He was brought to police headquarters where he was maltreated as evidenced by a 1 1/2 inch scar above the eyebrow. After being maltreated, he saw a statement being prepared. He was told to read and sign the statement but was unable to do so as blood was oozing from his forehead. However, when he could not endure the pain any longer he admitted the charge. His hand was trembling when he signed the statement (Exhi-bit "A"). He denied having carried any sharp weapon but the police insisted that he admit ownership of the knife (Exhibit "B"). He asserted that when he was brought to the scene of the crime, a man took a knife from the cabinet of the truck and handed it to the police.

On cross-examination, PIZARRAS admitted that Pacita Restaurant was near Cabrera St. and that he and Acojido met Romy and Bondying a few meters away from the scene of the crime. When shown his signature on his statement (Exhibit "A") PIZARRAS admitted that the strokes were straight because his hands were "not so trembling". In the confrontation between himself and ASUNCION, the latter allegedly did not say anything. Lastly, PIZARRAS emphasized that his purported statement was prepared before he was maltreated by two police officers. However, he did not report their acts of violence for fear that he would be shot or that they may take vengeance.[12]

ZOSIMA PIZARRAS, mother of PIZARRAS, 52, jobless and resident of 210. Vergel St., Pasay City, was presented as witness for co-accused Acojido. She testified that her son was at their house the whole day of May 16, 1972. In the evening of said day, at around 7:00, she saw her son lying down in their "silong" but did not know whether he had left the house between 11:00 P.M. and 3:00 A.M. of May 17, 1972. Then at around 6:00 A.M. of May 17, 1972, the police, accompanied by Acojido, arrived and told her that her son had committed a crime. When asked for her son's whereabouts she said "I do not know." Despite her protestations, the police entered the "silong", pulled her son, without pants and slippers, and brought him to police headquarters. Zosima

then went to look for Rene Gementina (allegedly a P.C. investigator) to seek his help but the latter was not around. She then proceeded to the police headquarters where her son was investigated and maltreated. She saw her son hit on the mouth once. Zosima admitted knowing Acojido as he used to visit her son at their house where they played the guitar, but denied knowing accused Obispo and Romeo Quijano. However, when shown the knife encased in a cardboard scabbard, she asserted that said knife did not belong to them but to her son's friend Romy. She specified that she saw said knife tucked under the waistline of Romy when he, Acojido and Obispo and others were at their house.[13]

Patrolman ERNESTO CHUA was presented by the defense as a hostile witness. He declared that he was among the investigators who went to the scene of the crime but was not around when Pat. de la Cruz recovered the knife. At headquarters, Pat. Chua did not bother to test said knife for fingerprints as it had a rough surface and because PIZARRAS admitted that it was the knife used in the commission of the crime. PIZARRAS admitted that said knife was given to him by accused Romy Quijano. When he was at the scene of the crime, Pat. Chua neither bothered to look for fingerprints around the truck because it was muddy and dirty.

On cross-examination, Pat. Chua denied that PIZARRAS was maltreated when he was investigated. Said investigation was conducted in the presence of about 30-40 people including ASUNCION's relatives, onlookers, Zosima Pizaras and some members of mass media (Pilipino Star). Pat. Chua stated that he investigated PIZARRAS as if he were a brother as the latter sought his help "because if I will be left alone, I will be maltreated by other persons outside the headquarters". Pat. Chua declared that PIZARRAS sustained injuries when he left the scene of the crime. Pat. Chua also denied PIZARRAS's charge that he just prepared the latter's statement without the latter's knowledge when, in fact, he had asked the latter if he had a lawyer and PIZARRAS informed him that his father was in Bohol. Pat. Chua asserted that PIZARRAS' statement was voluntarily given by him. With respect to the accused Acojido, Pat. Chua averred that he noted a black-eye when Acojido was investigated by Pat. de la Cruz.[14]

In his testimony as hostile witness for the defense, Pat. Oscar de la Cruz affirmed the fact that he recovered the knife at the scene of the crime but did not test the same for fingerprints for lack of facilities. He, however, looked around the sides of truck but could not find any fingerprints because the truck was dirty. Pat. de la Cruz denied ever maltreating Acojido stating that when he took the statement of said accused he had already a slight injury on his face. Pat. de la Cruz averred that he did not find any money in Acojido's possession.[15]

The accused VIRGILIO ACOJIDO, 20, single, helper of his father in carpentry, and resident of 2192 Tramo St., Pasay City, declared that at around 3:00 o'clock in the morning of May 17, 1972, he was with PIZARRAS at the Pacita Restaurant eating and narrating stories. Between 3:00 and 3:30, PIZARRAS led him to the corner of the highway and Cabrera St. where they parted ways. Since his house was about 300 meters away from Pacita Restaurant, Acojido just walked home passing by Cabrera St. where he met two men whom he did not recognize but would be able to identify if he sees them again. Then, a woman just appeared and the two men took hold of her by the neck and pulled her towards the truck. He heard the woman plead "mga anak ko, huwag ninyong gawin ito, huwag ninyo akong patayin, marami akong anak". Acojido wanted to shout but the two men (one tall and the other short) held him and delivered fist blows on him. He was taken inside a car where the men continued maltreating him and even removed his clothes. While inside the car, he saw the woman crying in the middle of the street. He was then taken to police headquarters and there the two men took his wallet containing P10.00 for merienda. Acojido confirmed that he accompanied the police officers to the house of PIZARRAS, who was his companion at the Pacita Restaurant and his best friend. However, he denied knowing the accused Quijano and Obispo. He stated that the place of the incident was lighted. Acojido also averred that he and PIZARRAS were investigated at the same time in the same room by different officers; that while he was being investigated two

police officers rained fist blows on him, pulled his neck and bumped his head against the wall about ten times. PIZARRAS' mother was outside the door of the room which was ajar a little. When he signed the prepared statement, he was trembling for fear that he would be maltreated again. Acojido further alleged that when he was brought before the Fiscal before whom he subscribed his statement the Fiscal merely asked him to raise his right hand and did not say anything. He did not complain of maltreatment to the Fiscal because the police officers were there.[16]

After assessing the evidence, the trial Court gave full credence to the evidence of the prosecution, stating: "The defense of denial and alibi interposed by accused Maximo Pizarra and Virgilio Acojido must yield to the positive identification made by the complainant-victim Asuncion Sigua."

PIZARRAS now alleges:

- "1) That the lower court erred in giving credence to the testimony of the witnesses for the prosecution despite its inconsistencies, flaws and improbabilities;
- 2) That the lower court erred in not giving credence to the denial and alibi of accused-appellants;
- 3) That the lower court erred in not acquitting accused-appellants on the grounds that their guilt were not proved beyond reasonable doubt;
- 4) That assuming arguendo that accused-appellants are guilty of the charge, the lower court erred in imposing the death penalty to them when it applied Republic Act No. 4111 to Article 294(2) of the Revised Penal Code;
- 5) That the lower court erred in finding that the crime of robbery with multiple rape was committed by a band and in applying Article 295 to paragraph 2 of Article 294 of the Revised Penal Code."

The principal issues may be condensed into two:

- 1) Whether or not the trial Court erred in giving full credence to the evidence of the prosecution and in disregarding the defense of denial and alibi presented by PIZARRAS; and
- 2) Whether or not the trial Court erred in convicting the accused of the crime of Robbery in Band with Multiple Rape as defined in Article 294(2) of the Revised Penal Code but imposing the penalty as prescribed in Article 335 of the Revised Penal Code, as amended by RA 4111.

I

The credence given by the trial Court to the prosecution evidence, particularly, ASUNCION's positive identification of PIZARRAS as one of the four men who robbed and abused her in the early morning of May 17, 1972, has not been misplaced. In assailing ASUNCION's credibility, PIZARRAS contends 1) that ASUNCION could not have possibly recognized the culprits as the place of occurrence was dark and 2) that his identification by ASUNCION in the confrontation conducted by the police authorities was unreliable considering that she was in a state of shock. Said contentions are untenable.

It must be remembered that the crime charged was not executed in a few seconds. ASUNCION was first divested of her money and jewelry and then raped by three of the four men. While it may be true that ASUNCION declared that she was dragged to a dark place near a parked truck, she averred that the houses in the vicinity of the place of the incident were lighted.[17] That testimony was corroborated by Ernesto Villanueva (the passerby from whom ASUNCION sought help and who brought her to police headquarters), who stated that the place of the incident was lighted as there was a Meralco post, and even by Acojido, who alleged that he met the two men in a lighted place.[18]

The fact that ASUNCION may have been in a state of near-shock although "not quite suffering from a psycho-neurotic attack", as opined by Dr. Rodolfo Suratos, does not diminish her credibility. A close scrutiny of her testimony reveals her unwavering stand that PIZARRAS was one of the four men who robbed and ravished her. She declared categorically that PIZARRAS was the third man who raped her and that while she was being abused by the first two men, PIZARRAS' left arm encircled her neck while his right arm was pointing a knife against her.[19]

In the light of such positive, categorical, and convincing evidence, PIZARRAS' defense of alibi and denial must fail, as held by the trial Court. The legal yardstick is that alibi is unavailing once the accused is positively identified by one without motive to charge falsely said accused especially with a grave offense that could bring death by execution on the culprit.[20] Furthermore, PIZARRAS' admission that the Pacita Restaurant is near Cabrera St., the place of the incident, militates against his defense of alibi. Well-entrenched is the rule that for alibi to prosper, the evidence must show that the accused was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[21]

In sum, we concur with the trial Court's finding of moral certainty as to PIZARRAS' guilt.

II

As the law now stands, and as contended by the defense and concurred in by the Solicitor General, the proper denomination of the offense should be Robbery with Rape and not Robbery in Band with Multiple Rape as held by the trial Court. The element of "in band" may now only be appreciated as a generic aggravating circumstance.[22]

Contrary to the defense contention, "in band" has been sufficiently proven. Although ASUNCION mentioned only two kinds of weapons - an icepick and a knife with "gilet-gilet", she positively stated that when she met the four men they were all armed and while they took turns in abusing her they were aiming their sharp instruments at her.[23] Thus, the element of "in band", that is, "whenever more than three armed malefactors shall have acted together in the commission of an offense", has been satisfied.

Nocturnity as an aggravating circumstance, however, has not been proven. It has not been shown by the pro-secution that it was specially sought by the offender or taken advantage of to facilitate the commission of the crime or to avoid discovery and thus minimize the risk of capture.[24]

In imposing the death penalty, the trial Court applied Article 335 of the Revised Penal Code and not Article 294(2) of the same Code. Article 294(2), prior to its amendment by Presidential Decree No. 767 which took effect on August 15, 1975, reads:

"Article 294. Robbery with violence against or intimidation of persons - Penalties. –

1. x x x

2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of article 263 shall have been inflicted." (Italics supplied)

While Article 335, as amended by Republic Act No. 4111, provides:

"Article 335. When and how rape is committed. –

1. x x x

Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the

penalty shall be reclusion perpetua to death. (Italics ours)

For Robbery with Rape, this Court imposed reclusion perpetua, as prescribed by Article 294(2), in *People vs. Olden*[25] and *People vs. Otto*[26]. However, in *People vs. Corpin*,[27] and *People vs. Obtinalia*,[28] this Court imposed for the same crime the graver penalty provided for in Article 335, as amended by RA No. 4111.

In the more recent cases of *People vs. Mabag*[29] and *People vs. Arias, et als.*,[30] the majority of this Court adhered to the doctrine in the *Obtinalia* case, which gave the rationale for the imposition of the graver penalty, as follows:

"x x if a rape alone, when committed by two or more persons, is penalized with death, it would be highly illogical and irrational to hold that when such rape is committed with the addition of a robbery, the offense should only be punishable with life imprisonment. Thus the reclusion perpetua prescribed by Article 294(2) of the Revised Penal Code, for robbery with rape, must be understood as limited to cases where there is a single rapist, and that in those cases where the rape on occasion of the robbery is committed by two or more persons, the death penalty provided by Republic Act No. 4111 must apply. All the more so because the crime was committed with the aggravating circumstances of its being perpetrated in the dwelling of the complainant victims, and with attendant ignominy, since the rapes were done in the presence of the woman's husband (p. 661)."

At this juncture, it should be pointed out that if the crime were committed after August 15, 1975, the issue would be moot as Article 294(2) was amended by Presidential Decree No. 767 specifically providing that when the robbery accompanied by rape is committed with the use of a deadly weapon or by two or more persons the penalty shall be reclusion perpetua to death.

As earlier stated, the commission of the crime herein was attended by the aggravating circumstance of "in band" without any mitigating circumstance. The rape was qualified by the use of deadly weapons and was committed by four persons, thereby warranting the imposition of the death penalty pursuant to Article 335 of the Revised Penal Code.

As in the *Mabag* and *Arias* cases, Chief Justice Enrique M. Fernando, following his opinion in *People vs. Carandang*,[31] believes that the appropriate penalty is reclusion perpetua pursuant to Article 294(2) of the Revised Penal Code prior to its amendment. Justice Ramon C. Aquino, who dissented in the *Mabag* and *Arias* cases, was of the opinion that reclusion perpetua should be imposed pursuant to Article 294(2) of the Revised Penal Code prior to its amendment, and not by virtue of Article 335 of the same Code. As the Chief Justice and Justice Aquino maintain their previous stand, for lack of the required number of votes, the penalty in the instant case is reduced to reclusion perpetua.

PIZARRAS should be convicted of three separate crimes of Robbery with Rape because, during the robbery, he, Romeo Quijano and Edmundo Obispo cooperated with one another in successively abusing ASUNCION.[32] Virgilio Acojido held her legs apart while she was being ravished by the three and would have taken his turn in committing the vile act were it not for a passerby who appeared at the scene.

WHEREFORE, the judgment appealed from is hereby modified in that Maximo Pizaras y Asombrado shall suffer three (3) reclusion perpetua for three separate crimes of Robbery with Rape, but affirmed in all other respects. With one-fourth (1/4) of the costs.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Teehankee, J., votes for imposition of the death penalty in line with his separate opinions in the cited cases of Arias (102 SCRA 303, 329) and Mabag (98 SCRA 730, 750) and in *People vs. Cabatlao*, G.R. No. L-42149, scheduled for release also in this month of October, 1981.

Makasias, J., nocturnity should be appreciated as aggravating and death should be imposed.

Aquino, J., the crime committed is robbery with multiple rape, one special complex offense. Hence, only one reclusion perpetua should be imposed.

[1] T.s.n., May 22, 1972, pp. 2-7.

[2] T.s.n., May 25, 1972, pp. 14-15.

[3] T.s.n., June 2, 1972, pp. 2-8.

[4] Exhibit "F", p. 140, Original Records.

[5] Exhibits "G" and "H", pp. 141-142, Original Records.

[6] T.s.n., May 29, 1972, pp. 2-31.

[7] Exhibit "A", p. 135, Original Records.

[8] T.s.n., May 23, 1972, pp. 19-21.

[9] T.s.n., May 23, 1972, pp. 21-22.

[10] Exhibit "C", p. 137, Original Records.

[11] T.s.n., May 25, 1972, pp. 15-17.

[12] T.s.n., June 2, 1972, pp. 11-29.

[13] T.s.n., June 5, 1972, pp. 2-21.

[14] T.s.n., June 6, 1972, pp. 2-7.

[15] T.s.n., June 5, 1972, pp. 20-26.

[16] T.s.n., June 8, 1972, pp. 2-14; T.s.n., June 9, 1972, pp. 2-5.

[17] T.s.n., May 22, 1972, p. 6.

[18] T.s.n., June 2, 1972, p. 24; June 8, 1972, p. 5, respectively.

[19] T.s.n., May 22, 1972, p. 3; T.s.n., May 25, 1972, p. 13.

[20] *People vs. Estante*, 92 SCRA 122, 1979; *People vs. Cabeltes*, 91 SCRA 208, 1979.

[21] *People vs. Lengenos Peñañiel*, 3 SCRA 911, 1961; *People vs. Beralde*, 91 SCRA 125, 1979.

[22] *People vs. Otto*, 49 SCRA 306, 1973.

[23] T.s.n., May 22, 1972, p. 2; May 25, 1972, p. 13.

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

[25] 47 SCRA 45, 1972.

[26] 49 SCRA 306, 1973.

[27] 31 SCRA 354, 1970.

[28] 38 SCRA 651, 1971.

[29] 98 SCRA 730, 1980.

[30] G.R. No. L-40531, January 27, 1981.

[31] 52 SCRA 259, 1973.

[32] People vs. Aleman, et al., G.R. No. L-39776, February 20, 1981.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.