

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN NOPIA AND ESTANISLAO SATPARAM, ACCUSED-APPELLANTS.*G.R. Nos. L-36297-99. April 26, 1982*

Ponente: AQUINO, J.

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Juan Nopia and Estanislao Satparam appealed from the decision of the Court of First Instance of Camarines Sur in three criminal cases (tried jointly), (1) convicting them of robbery in band and sentencing each of them to life imprisonment and to restore to the owners the proceeds of the crime or, if that is not possible, to pay to them solidarily the sum of P191.50 (Criminal Case No. 9439); (2) convicting Nopia of rape, sentencing him to life imprisonment and ordering him to pay moral damages of P12,000 to the offended woman, Romana S. Rabusa, and to recognize the offspring, if any, resulting from the rape (Criminal Case No. 9440) and (3) convicting Satparam of rape, sentencing him to life imprisonment and ordering him to pay moral damages amounting to P12,000 to Tessie Moreno and to recognize the offspring, if any, resulting from the rape (Criminal Case No. 9442).

Roberto Avila, the third accused, who pleaded guilty, did not appeal from the separate decision convicting him of robbery and sentencing him to an indeterminate penalty of ten years and one day of prison mayor as minimum to fourteen years, eight months and one day of reclusion temporal as maximum and to restore the goods taken, or their value if restitution is not possible (p. 147, Record of Criminal Case No. 9439).

The prosecution's evidence shows that in the evening of September 28, 1968, while Carlos Relos, 17, was about to close the ricemill of Placides Quirino located at Sitio Buri, Barrio San Vicente, Bato, Camarines Sur, he was forced at gunpoint by Juan Nopia, 38, Estanislao Satparam, 32, and Roberto Avila, 30, to accompany them to the house of Maximino Moreno which they intended to rob. Moreno and his wife had gone to Barrio San Ramon, Nabua, Camarines Sur.

The three malefactors were not residents of Barrio San Vicente. Relos, who was a classmate of Moreno's son in the Bato elementary school, accompanied Nopia and his two companions to Moreno's house. On nearing that place, three other men, not known to Relos, joined the group.

At that time, in the small store (tienda) in Maximino Moreno's house, which was lighted by a Petromax lamp, Salvador Moreno, 24 (Maximino' s brother), Gualberto Moreno (Maximino's son) and Domingo Quiapo, 20, were engaged in conversation. Suddenly, Nopia and his armed companions appeared at the store, told the three persons not to move and ordered them to lie down. Their hands were tied. Relos guarded them. The other three men acted as guards around the house.

Nopia, Satparam and Avila, whose faces were partly covered with pieces of cloth, went upstairs and entered a room occupied by Nelly Moreno, Tessie Moreno, Fidela Rabusa and Romana S. Rabusa who were asleep. They were awakened. The three intruders demanded money, ransacked the cabinet (aparador) and took three wrist watches valued at P75 and cash amounting to P60.

Satparam tried to rape Tessie Moreno, 12. He gave up when he could not insert his penis into her vagina.

Nelly Moreno, 15, was raped but her rapist was not identified. She felt pain in her private organ which was bleeding. She became unconscious.

Romana S. Rabusa, 20, whose hands were tied, was raped by Nopia in the storeroom in spite of her resistance. He took her earrings valued at P45. The medical examination two days later revealed that there was a fresh laceration in her hymen. Spermatozoa was found in her organ. Her vaginal orifice admitted two fingers (Exh. A in Crim. Case No. 9440).

After the rapes had been committed, Nopia, Satparam and Avila went downstairs, took merchandise from the store, carried the kettle with cooked rice and ate supper in the yard after removing their disguise. They took sardines, cigarettes and soft drinks valued at P6.50.

The malefactors left after warning the inmates of the house that they would be killed if they reported the incident to the authorities.

On October 8, 1968 a criminal complaint for robbery in band was filed in the municipal court of Bato against Nopia, Satparam, Avila, Relos, Marcial Palisa, Rudy Munda and one Ramon Doe (Criminal Case No. 862).

The complaint was supported by the seven-page extrajudicial confession of Avila dated October 8, 1968 wherein he admitted that at about nine o'clock in the evening of September 28, 1968 he and his companions named Satparam, Juan, Ramon, Rudy and two other persons whose names he did not know committed robbery and rape (nagsalakay at nanggahasa) in the house located at Sitio Buri, Bato (pp. 6-12, Record of Criminal Case No. 9439, CFI and No. 862, Municipal Court).

Nopia admitted in his sworn extrajudicial confession dated October 8, 1968 that in the evening of September 28, 1968, Avila invited him to Buri to find a "means of livelihood" (" maghanap lamang nin pagca buhay"). He admitted having sexual intercourse with a woman on that occasion (" quinayo co man si sarong babaye duman sa cuarto") (Exh. C, Record of Crim. Case No. 9439, pp. 13-14).

Satparam revealed in his extrajudicial confession dated October 3, 1968 that Nopia took three wrist watches from the cabinet in the house of Moreno ("pig abrihan ni Juan an aparador ta may quinoang rilo y na heling co na duang rilong sa babaye asin sarong rilong sa lalaqui an quinoa ni Juan y dai co aram con iguang na cuang cuarta"). He confessed that he tried to have sexual intercourse with a young woman but was not able to consummate the coition (" guinoyod co man si sarong joven pang daraga asin ta quinayo co man" and " dai man po naca laog gabos an sacoya ta piot pang marahay alagad naca tadom man nin siguro sarong polgada alagad linuasan man aco.") (Exh . D, Record of Criminal Case No. 9439, p. 17).

Tessie Moreno, 12, filed a separate charge of rape against Satparam while Romana S. Rabusa filed her own complaint for rape against Nopia (Criminal Cases Nos. 858 and 859). Nelly Moreno did not file any complaint for rape.

After the records of the three criminal cases were elevated to the Court of First Instance, the provincial fiscal filed an information for robbery in band against Nopia, Satparam, Avila and Relos and two separate informations for rape against Satparam and Nopia (Criminal Cases Nos. 9439, 9440 and 9442). Relos was discharged and utilized as a State witness. The three cases were tried jointly.

Thus, the robbery and rapes committed on a single occasion, instead of being covered by a single information for the special complex crime of robbery with multiple rape, gave rise to three separate informations. The fiscal and the trial court justified that procedure by assuming that robbery in band under article 295 of the Revised Penal

Code does not apply to homicide and rape.

The evidence shows that the conspiracy among the accused covered only the crime of robbery and that the rapes were committed on the spur of the moment. Nopia, Avila and Satparam were impelled by their libidinous impulses to commit rape when they saw four girls in the bedroom.

It may be noted that homicide may unavoidably be committed in the course of the robbery, as when the victim fights the robbers or it becomes necessary to liquidate the witness to the robbery. But robbery may be consummated without necessarily committing rape. The two crimes are not interlinked.

As already stated, the trial court convicted Nopia and Satparam of robbery in band and the separate offenses of rape. Their counsel de oficio contends that the trial court erred in rendering the three judgments of conviction and in giving credence to the prosecution's evidence.

Nopia's alibi was that on the night of September 28, 1968, when the incident occurred, he was at the Reagan Barracks in Legaspi City waiting for Sergeant Jose Fuellas of the Albay Constabulary Command. Nopia allegedly went with Fuellas to the latter's cottage located at the Enlisted Men's Barrio. Nopia and his wife attempted on that same night to return to Camalig, Albay where they resided but, as there was no available public transportation, they slept at the residence of Federico Naños.

Satparam's alibi was that on the night of the incident he was in Libon, Albay trying to sell his pig so that he could pay his debts. He was able to sell the pig to Leopoldo Sardeña at midnight of September 28, 1968. Sardeña had gone to Satparam's residence located at Barrio San Jose, Libon.

Avila, who had incriminated Nopia and Satparam in his extrajudicial confession, took the witness stand and assumed responsibility for the robbery with rape. His alleged companions were two persons named " Carlito"and " Trojas".

The trial court rejected the alibi of the accused. It noted that they were unmistakably identified because when they ate supper in the yard of Moreno's house they removed their disguise.

The decisive issue in this case, as in similar cases where alibi is interposed as a defense, is the issue of identification. We are satisfied upon a painstaking review of the record that the identity of appellants Nopia and Satparam as members of a gang of robbers who burglarized Maximino Moreno's house and committed rape and attempted rape on Romana S. Rabusa and Tessie Moreno was established beyond shadow of doubt.

Their own extrajudicial confessions and the confessions of their co-accused Avila, the testimony of their co-accused Relos, a State witness, and the testimonies of the eyewitnesses Domingo Quiapo and Salvador Moreno who saw the appellants at the scene of the crime before the Petromax lamp was snuffed out, leave no room for doubt as to their complicity in the commission of the offenses charged.

Despite the darkness of the bedroom, Romana and Tessie, by means of the light from the flashlight used by the appellants were able to see their facial features.

Robbery in band with homicide. - The trial court manifestly erred in imposing "life imprisonment" for the robbery in band. It did not explain why it imposed such a grave penalty. The proper penalty under articles 294(5) and 295 of the Revised Penal Code is the maximum period of prision correccional maximum to prision mayor medium, or prision mayor medium, since the qualifying circumstance of band raises the penalty to the maximum period of that three-degree penalty. Disguise, dwelling and nocturnity may be appreciated as generic aggravating circumstances.

Rape of Romana S. Rabusa . - Since Nopia raped her with the use of his firearm, pointing it at her breast and later

at her neck, while he was trying to have sexual congress with her, the rape committed by him is qualified rape punishable by reclusion perpetua to death. As dwelling and disguise are aggravating, the death penalty should be imposed.

However, for lack of necessary votes, the lower penalty or reclusion perpetua should be imposed. (The use of the term "life imprisonment" is not correct because it is reclusion perpetua that carries with it the accessory penalties.) It may be noted that Nopia has been detained since 1968 or for more than thirteen years now.

Rape case against Satparam. - He was charged with having raped Tessie Moreno by having sexual intercourse with her "against her will and with the use of a firearm".

But the evidence shows that he was not able to consummate the sexual intercourse with Tessie. Thus, at the preliminary examination, when Tessie was asked if there was any penetration of the penis into her private organ, she answered: "No, sir, because it could hardly enter but I feel (felt) that his penis touched already my vagina several times" (p. 2, Record of Criminal Case No. 858).

At the trial, Tessie testified that Satparam tried three times to insert his penis "but there was no penetration" because she was resisting and moving her hips (81 tsn Sept. 29, 1970; 42 tsn Sept. 30, 1970). She declared that Satparam aimed his gun at her while he was abusing her (82).

Hence, the crime committed by Satparam against Tessie Moreno is attempted qualified rape aggravated by dwelling. The trial court erred in convicting him of consummated rape, sentencing him to "life imprisonment" and appreciating in his favor the mitigating circumstance of lack of instruction simply because he is illiterate. "No one is so ignorant as not to know that the crime of rape is wrong and in violation of the law" (U.S. vs. Gamilla, 39 Phil. 234).

The penalty imposable on Satparam for the attempted qualified rape is two degrees lower than reclusion perpetua to death (Art. 335, as amended).

WHEREFORE, the trial court's judgment in the three cases is modified. In Criminal Case No. 9439, L-36297, Juan Nopia and Estanislao Satparam are convicted of robbery in band under articles 294(5) and 296 of the Revised Penal Code and, in lieu of "life imprisonment", they are sentenced to an indeterminate penalty of four years and two months of prision correccional as minimum to ten years of prision mayor as maximum and to pay solidarily to the owners of the things taken the value thereof as set forth in the information and proven during the trial.

In Criminal Case No. 9440, L-36298, Juan Nopia is convicted of rape, sentenced to reclusion perpetua and ordered to indemnify Romana S. Rabusa in the sum of twelve thousand pesos.

In Criminal Case No. 9442, L-36299, Estanislao Satparam is convicted of attempted rape, sentenced to an indeterminate penalty of six years of prision correccional as minimum to twelve years of prision mayor as maximum and ordered to indemnify Tessie Moreno in the sum of five thousand pesos. Costs against the appellants.

SO ORDERED.

Fernando, C.J., Barredo, Fernandez, Guerrero, De Castro, Melencio-Herrera, Plana, and Escolin, JJ., concur.
Teehankee, Concepcion, Jr., and Abad Santos, JJ., no part.
Makasiar and Ericta, JJ., vote for death penalty in L-36298.

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