

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGUINALDO REANA ALIAS PORTILLANO, DEFENDANT-APPELLANT.

G.R. No. L-32106. February 14, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision, dated March 17, 1970, of the Court of First Instance of Quezon finding Aguinaldo Reana, alias Portillano, guilty beyond reasonable doubt of the crime of robbery with rape and sentencing him to Reclusion Perpetua and "to restitute the things stolen from Pio Pereda failing in which the accused is ordered to indemnify Pio Pereda in the amount of P1,622.60 representing the value thereof and to pay the costs."

On March 15, 1969, the Provincial Fiscal of Quezon Province filed an information for robbery with double rape against appellant Aguinaldo Reana, alias Portillano, and five (5) others as follows:

"That on or about the 27th day of August 1968, at Barrio Matataja, Municipality of Mulanay, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, said Accused AGUINALDO REANA or PORTILLANO, together with his other co-accused who are still at large, armed with knives and revolvers, conspiring and confederating together and mutually helping each other, with intent to gain and to rob by means of violence against and intimidation upon persons, taking advantage of the night time to better accomplish their purpose, forcibly enter the closed door of the house owned by PIO PEREDA in the said barrio of the said municipality and once inside at the point of their knives and revolvers cover the mouth of CONCEPCION RED and JOCELYN RED who are sleeping inside the house and threatened with the said revolvers and knives if the latter would dare to shout for help and then and there searched the premises, took, stole and carried away with them without the consent of the owner the following properties, to wit:

'Fourteen (14) pieces pant for sewing material valued

P210.00

Twelve (12) canned goods (carne norte)

21.60

One (1) Radio Phono

240.00

One (1) Sewing Machine

350.00

Five (5) Packages Cigarette Old Gold

30.00

Two (2) Handbag Plastic

6.00

One (1) T-shirt Banlon

25.00

One (1) Sweater Banlon

40.00

and Cash Money

700.00

T o t a l

P1,622.60'

of the total amount of ONE THOUSAND SIX HUNDRED TWENTY TWO PESOS AND SIXTY CENTAVOS (P1,622.60) to the damage and prejudice of the said owner PIO PEREDA in the said total amount, and with intent to rape by means of force, violence, threats and intimidation, wilfully, unlawfully and feloniously have sexual intercourse with CONCEPCION RED and JOCELYN RED against their will and consent.

"That in the commission of the above described crime, the aggravating circumstances of night time, superior strength and dwelling of the aggrieved are present."

Upon arraignment, Aguinaldo Reana pleaded not guilty, hence trial on the merits proceeded.

The evidence for the prosecution as synthesized by the Solicitor General in the People's brief, are as follows:

"It is undisputed that three persons broke into the house of Pio Pereda and his wife, Eufemia Red, in barrio Matataja, Mulanay, Quezon, at about 12 o'clock midnight of August 27, 1968 by tearing off a portion of the wall of the house locally known as 'sasag' (bamboo sheets) and taking therefrom various articles consisting of textile, canned goods, radio phono, sewing machine, cigarettes, clothing and cash with a total value of P1,622.60 (pp. 2-6, 10, 18, 21, tsn, October 30, 1969). Concepcion Red, sister of Eufemia, and her niece, Jocelyn Red, who were sleeping on the same bed were awakened by the intruders and their hands and mouths were tied after which one sexually assaulted the former and another, the latter (pp. 6-8, 9, 11, 15, 17, 20, 21, 22, tsn, id.). After the robbers left, Concepcion and Jocelyn roused Eufemia who was asleep in the adjacent room and revealed what had happened (pp. 10, 17, 26, tsn., id.). They reported the matter to the Chief of Police of Mulanay who took their affidavits, Exhibits 1 & 2 (pp. 12, 24, tsn., id., pp. 4, 6, rec.).

"On August 29, 1968, Concepcion and Jocelyn submitted themselves to a physical examination by Dr. Renato Gonzales of the Bondoc Peninsula General Hospital and both were found to have hymenal laceration. Tie marks and contusion were also noted on both wrists of Concepcion (pp. 3, 5, 6, tsn., Nov. 18, 1969; Exhs. A & B, pp. 90, 91, rec.)

"Aguinaldo Reana was subsequently arrested and when brought before Concepcion and Jocelyn Red was identified by both as the one who raped the former (p. 14, tsn., Oct. 30, 1969)."

Appellant vehemently denied the accusation against him and claimed that he was in another place that night in question where he was then engaged in a gambling game, far from the house of Pio Pereda. He denied any complicity in the robbery with rape.

The lower court rendered decision, subject of this review, following which Aguinaldo Reana interposed his appeal, contending that the lower court erred (1) in holding that complaining witness has positively identified the accused; (2) in holding that the prosecution was able to prove the elements of the crime of robbery beyond reasonable doubt; and (3) in ordering appellant to restore the things stolen.

These contentions do not deserve serious consideration and do not warrant a reversal of the judgment of conviction.

With respect to the first assigned error, re alleged failure of the complaining witness to positively identify the appellant, Concepcion Red testified that there was a lamp burning in the adjacent room of her sister Eufemia, which illuminated as far as the place where they were. Hereunder, is the testimony of Concepcion Red, as follows:

"DIRECT EXAMINATION

FISCAL MARASIGAN:

.....

Q

How were Aguinaldo Reana and his companions able to enter your house?

ATTY. TIERRA:

Objection, your Honor. The question is vague, immaterial.

COURT:

Answer.

WITNESS:

A They destroyed the wall.

.....

Q

Upon the accused Aguinaldo Reana gaining entry inside your house what did he do together with his companions, if any?

A They ransacked the place.

.....

Q What did they do with the things they ransacked in the house?

A They took those things which they liked.

Q What things did they take?

A They took a sewing machine.

Q Sewing machine?

A One, Your Honor.

Q You know the trade mark?

A Yes, Your Honor, Special.

Q Do you know the value?

A Three hundred pesos (P300).

Q Aside from that, what else?

A Radio-phono.

Q How many?

A One, Your Honor.

Q What else?

A Cigarettes for men.

Q How many?

A I do not remember how many packages.

Q What more?

A Clothing.

Q Consisting of what?

A Clothing materials, suiting materials.

Q What else?

A Corned beef.

Q No more?

A Cash money.

Q How much?

A Seven hundred pesos (P700) daw po.

Q

When they were able to take these articles that you mentioned what did they do?

A I was abused.

Q Who abused you?

A Aguinaldo Reana.

Q Where did the accused abuse you?

A On the floor inside our dwelling house.

Q Who were present, if any, when the accused abused you?

A Another man who abused my niece.

Q How many times were you abused by the accused?

A One time, Your Honor.

Q Why did you say that you were abused by the accused?

A That was what he did to me.

Q What was the thing he did to you?

A He deflowered me.

Q How did he deflower you?

A He tied my hands and my mouth.

Q After tying your hands and your mouth what did he do?

A He abused me.

Q What do you mean by 'abuse'?

A He had sexual intercourse with me.

Q

In the course of his sexual intercourse with you did anything happen to you?

A Yes, Your Honor.

Q What happened to you, did you feel dizzy, did you bleed or what?

ATTY. TIERRA:

I would like to make of record, Your Honor please, that the witness does not answer the question.

COURT:

Q Do you understand the question?

A Yes, Your Honor.

Q

What is your answer to the question that when he had sexual intercourse with you what happened to you?

A I bled.

Q What part of your body bled?

A My vagina.

Q Aside from that what happened to you?

A No more, Your Honor.

Q

Before the accused had sexual intercourse with you were you provided with a pantie?

A Yes, Your Honor.

Q Who removed your panties?

A He was the one.

Q How did he remove your pantie?

A He took it off.

Q How?

A He used his two hands in pulling it down.

.....

CROSS-EXAMINATION

ATTY. TIERRA:

.....

Q And what time was it approximately when this incident happened?

A Twelve o'clock in the evening.

Q

And you were then soundly sleeping together with your niece Jocelyn and your sister, is that correct?

A Yes, sir.

Q And there was, of course, no light inside the house?

A There was.

Q What kind of light was it?

A A lamp.

Q What kind of lamp?

A The one with glass tube (gasera).

COURT:

Q Where was this lamp located?

A It was on a small table where my sister was sleeping.

ATTY. TIERRA:

Q So that light was inside the room of your sister Eufemia?

A

Yes, sir, but the light is also reaching as far as the place where we were sleeping.

Q Do you use mosquito net when sleeping?

A None, sir.

Q How about your niece Jocelyn?

A None also. We were sleeping together.

Q Do you sleep on bed or on the floor?

A We were sleeping on the bed.

Q And Jocelyn was sleeping side by side with you?

A She was beside me."

(TSN., October 30, 1969 hearing, pp. 4, 5, 6, 7, 8, 10, 11)

On this point, the trial court had observed that "although it may be conceded that at the time of the commission of the offense, the complaining witnesses did not know the name of the accused Aguinaldo Reana, nevertheless they were able to recognize him. In fact, at the confrontation which followed after the arrest of the accused Reana, Concepcion Red positively identified and pointed to said accused as the one who raped her. There was sufficient basis for the identification made because the prosecution has clearly established that on the occasion of the commission of the crime, there was a light (gasera) inside the house of Pio Pereda and said light although placed in another room reaches as far as the place where the complaining witnesses Concepcion and Jocelyn Red were sleeping as the wall was made only of bamboo sheets (sasag) which contain slits where rays of light may go through. It is not surprising that the place where the complaining witnesses were sleeping was within illuminating distance from the adjacent room of Eufemia Red as the house of Pio Pereda, like any ordinary house in a remote barrio, is but a small one."

The defense of alibi cannot prevail over the positive identification of witnesses. Besides, it is a question of fact best determined by the trial court. Obviously, the lower court did not believe this defense of appellant because it was not shown that it was physically impossible for him to be at the scene of the crime.

On the claim of appellant that the elements of the crime of robbery with force upon things have not been proved, suffice it to say that Concepcion and Jocelyn Red testified that appellant and his companions gained entry into the house of Pereda by tearing off a portion of the wall and carrying away the articles described in the information. Immediately thereafter, the matter was reported to the police. The fact that Pio Pereda and/or his wife did not testify is of no moment considering the pronouncement of the trial court that Pio Pereda's testimony would be merely cumulative, as shown in the transcript of stenographic notes of the hearing held on October 30, 1969:

"FISCAL MARASIGAN:

The next witness is Pio Pereda.

COURT:

How about the doctor, are you not going to present the doctor?

FISCAL MARASIGAN:

He was not subpoenaed, Your Honor, so I request . . .

COURT:

. . . What will be the nature of the testimony of Pio Pereda?

FISCAL MARASIGAN:

The articles stolen from his house, only that.

COURT:

But he was not at the house.

FISCAL MARASIGAN:

Yes, but he has an inventory of things.

COURT:

It is only cumulative.

FISCAL MARASIGAN:

In that case, I will not present him anymore." (tsn., pp. 26-27)

Finally, there is no merit in the third assigned error that the lower court ordered the restitution of the things stolen since said articles were already in the possession of the Municipal Court of Mulanay, Quezon. If appellant is referring to Exhibit 4, the same is merely a certification by the municipal judge that he had received from the Chief of Police of Mulanay, Quezon one (1) sewing machine, abaca rope, radio antenna, bra, bandana and medical certificates of the rape victims, none of which formed part of the things reportedly stolen from therein complainants.

It is alleged in the information that Concepcion and Jocelyn Red were victims of rape. However, evidence shows that it was only appellant Aguinaldo Reana who forcibly had sexual intercourse with Concepcion. One of the accused who are still at-large performed the bestial assault on the person of Jocelyn.

The writer of this decision joins Chief Justice Fernando, Justices Aquino, Fernandez, Guerrero, De Castro and Escolin in their opinion expressed in the case of *People vs. Perello, Jr.*, 111 SCRA 147, that Article 335 of the Revised Penal Code cannot be applied to robbery with rape and that that offense should be penalized under Article 294(2) where the imposable penalty is reclusion temporal medium to reclusion perpetua. As the accused was charged with a crime against property, he should not be convicted for a crime against chastity; although, in the same case Justices Teehankee, Barredo, Makasiar, Melencio-Herrera, Plana and Ericta voted for the

application of Article 335 of the Revised Penal Code.

WHEREFORE, the decision appealed from is **AFFIRMED** with the modification that appellant Aguinaldo Reana, alias Portillano, is hereby ordered to further indemnify Concepcion Red in the sum of P5,000.00 by way of moral and exemplary damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., concurs and reiterates the view expressed by him in his separate opinion in L-34105, *People vs. Cabural*.

Teehankee, J., files a brief concurrence.

Makasiar, J., Art. 335, R.P.C., should be applied.

Melencio-Herrera, J., votes to apply Article 335 of the Revised Penal Code.

Plana, J., is on official leave.

CONCURRING OPINION

TEEHANKEE, J.:

I concur with the judgment which affirms the trial court's decision convicting the accused-appellant of the crime of robbery with rape and imposing upon him the proper penalty of reclusion perpetua under Art. 294, par. (2) of the Revised Penal Code.

The record and testimony of the rape victim show, as stated in the decision, that the accused-appellant alone was responsible for and committed the rape on Concepcion Red and that none of the qualifying circumstances of use of a deadly weapon or commission of rape by two or more persons provided in Art. 335 of the Revised Penal Code, which would warrant the imposition of the death penalty, was present in the commission of the crime. There is, therefore, no room for the application of my separate opinions in the cases of *Perello* (111 SCRA 147), *Carandang* (52 SCRA 259), *Mabag* (98 SCRA 730) or the latest case of *Porcare* (G.R. No. L-37235, Feb. 5, 1983) that the presence of these qualifying circumstances in the commission of robbery with rape supplies the controlling qualification and mandates the imposition of the death penalty for the crime of qualified rape under Art. 335 and not the lesser penalty of reclusion perpetua under Art. 294 of the Revised Penal Code since, as we held in *People vs. Obtinalla* (38 SCRA 651), "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." Parenthetically, it may be noted that after the promulgation on August 15, 1975 of P.D. 767, the disparity of penalties in the two Articles of the Penal Code had been removed so that all such robberies with rape qualified by either of the aforesaid circumstances committed after said date now are punishable by the same and more severe penalty provided in Art. 335.

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