

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAYMUNDO BOADO, ET AL., ACCUSED, RAYMUNDO BOADO AND
FEDERICO RIVERA, ACCUSED-APPELLANTS.**

G.R. No. L-44725. March 31, 1981

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

On the night of September 20, 1974, at Barrio Rabon, San Fabian, Pangasinan, three armed persons held-up a Ford Fiera Pick-Up (Plate No. NR OJ-923, T-Phil. 74), robbed the passengers Crispina Sanidrin Belvis, Tomas Sino Cruz, Ernesto Zulueta and Amado Paulino of their cash and personal belongings, and subsequently all three malefactors took turns in raping Mrs. Crispina Belvis.[1]

The authorities immediately conducted an investigation as a result of which accused Raymundo Boado and Federico Rivera were apprehended, and identified by the victims among several suspects. The third person in the group was not identified nor arrested. As a result, an information for "Robbery With Multiple Rape" was filed against Boado and Rivera, to wit:

"Information

"The undersigned Assistant Provincial Fiscal after conducting the preliminary investigation in accordance with Presidential Decree No. 77, here-by accuses Raymundo Boado, Federico Rivera and John Doe of the crime of Robbery With Rape, committed as follows:

"That on the 20th day of September, 1974, in the barrio of Rabon, municipality of San Fabian, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, conspiring, confederating and mutually helping one another and with the use of force and violence, did, then and there, wilfully, unlawfully and feloniously rob and take away cash and personal belongings from the herein offended party, Crispina Sanidrin Belvis, cash amounting to P5.00; a ring worth P120.00 and a meter costing P15.00; Tomas Sino Cruz, a wrist watch valued at P120.00 and P20 cash; Ernesto Zulueta, a watch costing P145.00, a ring costing P120.00 and P20.00 cash; and Amado Paulino was divested with P5.00 cash to their own damage and prejudice and on the occasion of such robbery, by means of force and intimidation, the said accused, one after the other, did, then and there, wilfully, unlawfully and feloniously lie and have sexual intercourse with one of the offended parties, Crispina Sanidrin Belvis against her will and consent.

"Contrary to Article 294 (No. 2) of the Re-vised Penal Code."[2]

After trial, the Court of First Instance of Pangasinan, Branch II, Lingayen, (Judge Wilhelmo C. Fortun) rendered a judgment of conviction in the decision dated July 13, 1976, with dis-positive portion to wit:

"WHEREFORE, the Court finds the accused Raymundo Boado and Federico Rivera, Guilty beyond reasonable doubt of the crime of Robbery With Double Rape (aggravated by the circumstances of nighttime, evident pre-meditation, abuse of superior strength, uninhabited place, and aid of armed men), and pursuant to the

above-quoted provision of Art. 294 (2) of the Revised Penal Code, as amended by P.D. No.767, hereby sentences each of said accused to suffer two (2) penal-ties of Death, to idemnify jointly and severally the victim, Crispina Belvis, in the sum of P12,000.00 plus P140.00, to Ernesto Zulueta P285.00, to Tomas Sino Cruz P190.00, and to Amado Paulino P5.00, value of the stolen articles and cash, without subsidiary imprisonment in case of insolvency, and to pay the costs. x x x."[3]

The version of the prosecution is:

Complainant Crispina Belvis was an interior decorator. In September, 1974, she made some draperies for the Beautycraft in Dagupan City which were to be used for the interior decoration of the Bureau of Lands Office in San Fernando, La Union. Vic-tims Ernesto Zulueta, Amado Paulino and Tomas Sino Cruz were the Secretary, driver, and carpenter, respectively, of the Beauty-craft.[4]

At about 2:00 p.m. of September 20, 1974, complainant and the three employees of the Beautycraft went to deliver the dra-peries to the Bureau of Lands Office in San Fernando, La Union. They rode a Ford Fiera panel of the Beautycraft. After their work was accomplished, the four left San Fernando for Dagupan City at about 9:30 p.m., passing thru the municipality of San Fabian, Pangasinan. Crispina was in the front seat, middle side, with Paulino driving at her left and Zulueta sitting to her right. Sino Cruz was lying at the back seat of the panel.[5]

When they reached Barrio Rabon, San Fabian, Pangasinan, the panel had to stop because the road was blocked by two trunks of Caimito trees and big stones were on the side of the road.[6]

Paulino, the driver, was about to go down the Ford panel to remove the road blocks, when a gunman armed with a .38 caliber re-volver appeared suddenly and pointed the gun at the temple of Paulino. The gunman said, "This is a hold up." As the gunman took the key of the panel, another gunman pointed a shotgun at the right temple of Zulueta, also stating that it was a hold up. This second gunman snatched the bag of Crispina. A third gunman appeared in front of the panel and pointed his shotgun at the vic-tims.[7]

The gunmen ordered complainant and her three companions to get down the Ford panel and to proceed towards the railroad track about six meters away. Near the railroad track, on a deepened portion planted with palay, the four were ordered to lie down and were hogtied with rubber strips taken from the panel. Their pockets were searched.[8] From the complainant, the trio got P5.00, a sapphire ring worth P120.00 and a meter valued at P15.00.[9] They got from Ernesto Zulueta a watch valued at P190.00, a ring worth P60.00,[10] From Tomas Sino Cruz the accused Raymundo Boado got a watch worth P200.00.[11] From Amado Paulino the trio got P5.00.

Complainant remembered accused Boado because when he was placing the stolen items in the bag of complainant, he was holding a lighted flashlight and his face was illuminated.[12]

After the victims have been robbed, one of the malefactors who had a short arm (not arrested and tried in court) took the complainant to a place about 10 meters from her three companions. He ordered her to lie down and remove her panty. When Crispina refused, he removed her panty and had sexual intercourse with her. She did not and could not refuse because he had a gun pointed at her and he threatened to kill her if she refused to yield. As she was raped, the other accused with a long firearm stood guard.[13]

Accused Raymundo Boado, positively identified by the com-plainant, took his turn and raped Crispina. Raymundo removed his army hat, his pants together with his drawer. He pulled Crispina's feet to force her to lie down from a sitting position and snatched her panty which she again placed back after she was raped by the first malefactor. Her panty was torn and thrown away by Boado who then "inserted his penis into my vagina" and "he began raising his buttocks up and down." [14]

Complainant could not resist Boado because he pointed a gun at her; and threatened her by saying - "Papatayin

kita kung hindi mo ibibigay" (I will kill you if you will not give it). She trembled from fright.[15]

Accused Federico Rivera was positively identified by Crispina as the third malefactor who raped her. Crispina pleaded with Rivera not to touch her because she has children. He pointed a gun at her head and threatened to kill her if she did not yield to his desire. Then, "he just opened the zipper and put out his penis and, inserted into my vagina" and "he moved his buttocks up and down," according to Crispina.[16]

Afterwards, accused Boado and Rivera took Crispina to the Ford panel, while the third malefactor brought the three other vic-tims near the seashore. As Boado and Rivera were putting the stolen things inside a bag with the use of a flashlight, the com-plainant saw their faces. When Boado noticed her watching the two, he ordered her to lie down. Rivera took Crispina to her compa-nions near the seashore. While accused Rivera guarded the victims, Boado and the other still unidentified culprit drove the Ford panel towards the direction of San Fabian. After a while, the two returned in the Ford panel, and the three brought the victims to the panel. They were untied and the companions of Crispina were boxed. The trio then told them to ride the panel and proceed on their way. They were warned that they should not report the incident otherwise they would be liquidated.[17]

The four victims reached Dagupan City at about midnight of September 20, 1974. They immediately reported the incident to the city police authorities who in turn called up the San Fabian police to investigate. That same night Crispina went to the Pangasinan Provincial Hospital in Dagupan City for vaginal and internal examination.[18]

Dr. Fe Cruz Manaois who conducted the examination issued a certificate of her findings, to wit:

"I.E. Parous outlet; no evidence of contusion, hematoma.

-No pubic hair seen, other than that of patient's.

- Cervix firm and closed, uterus anteverted; speculums:-

- Cervix closed with some transparent viscid secretions from and around the external os,

- No pubic hair seen.

- LMP?

- Vaginal smear for spermatozoa - positive

- Absence of any contusion, hematoma, bruises in other portion of the body.

x x x x x x x x."[19]

Dr. Fe Cruz Manaois testified that her findings on the vaginal smear taken from Crispina was positive for spermatozoa. Male sperm was found in complainant's vagina. The doctor also declared that complainant had already given birth.[20]

On September 21, 1974, the very next day after the crime, the victims went to the P.C. Headquarters in Lingayen, Pangasinan, to report the incident. Their sworn statements[21] were taken. Investigation was conducted by Sgt. Maximo Galsim of the P.C.[22]

On September 23, 1974, the four victims again appeared at the P.C. Headquarters in Lingayen, Pangasinan, for a possible identification of the malefactors. In a line-up of eight persons, complainant Crispina pointed to the accused Federico Rivera and Raymundo Boado as two of the three who robbed them and raped her.[23] In the same line-up, victims Zulueta and Sino Cruz identified Boado as one of the trio.[24]

The version of the defense is:

Accused Raymundo Boado presented the defense of denial and alibi. He claimed that on September 20, 1971, he was at his house with his parents and his sisters and he slept from 7:00 p.m. till the next morning. He resided at Barrio Tiblong, a former portion of Barrio Rabon where the crime took place. Boado did not know the complainant Crispina Belvis. He denied participation in the crime. Barrio Tiblong is about one kilometer from Barrio Rabon and there is a good road connecting the two barrios. Boado admitted that on September 23, 1974, he and accused Rivera were included in a line-up, together with others, at the P.C. Headquarters in Lingayen and complainant Belvis pointed to Boado as one of those who participated in the crime. When Boado was pointed as one of the malefactors, he did not say anything. He remained silent.[25]

Camila Boado corroborated the alibi of her son, accused Boado, and stated that her son was taken by the P.C. on September 23, 1974, together with two neighbors.[26]

Andres Genese, a former resident of barrio Rabon, also corroborated the alibi of Boado, by narrating how on September 20, 1974; at about 9 p.m., he, with companions, went fishing, passed by the house of accused Raymundo Boado and saw Raymundo sleeping inside the house.[27]

Likewise, accused Federico Rivera interposed the defense of denial and alibi. Rivera claimed that on the night of September 20, 1974, he was in their house at barrio Tiblong, watching his stepfather Inocencio de Guzman, ill with tuberculosis, who vomited blood on that night. He was very close to his stepfather as he considered the latter as his legitimate father. He admitted that barrio Tiblong is very near barrio Rabon where the crime took place. He denied participation in the crime. He stayed beside his sick stepfather the whole night of September 20, 1974, up to the following morning. Prior to the crime, Rivera did not know complainant Crispina Belvis. He never had any misunderstanding with Crispina. The complainant pointed to Rivera and Boado as the malefactors and that was why they were detained.[28]

Inocencio de Guzman, the stepfather of Rivera, corroborated the latter's alibi, narrating how Rivera stayed with him the whole night of September 20, 1974, when De Guzman vomited blood.[29]

Soledad Basallo, wife of Inocencio de Guzman, likewise corroborated Rivera's alibi, by her narration of how Rivera stayed with them watching her sick husband the whole evening of September 20, 1974.[30]

Gaudencio Genese, farmer and resident of barrio Tiblong, San Fabian, Pangasinan, likewise corroborated the alibi of accused Federico Rivera.[31]

The evidence for the prosecution sufficiently established the positive identification of both accused Boado and Rivera by the complainant Crispina Belvis and the victims Tomas Sino Cruz, Ernesto Zulueta and Amado Paulino. Crispina Belvis pointed to accused Raymundo Boado as the second man who raped her and she identified him because his face was illuminated by the flashlight he was holding when he placed the stolen things in a bag.[32] Crispina also remembered the accused Federico Rivera because of his square shaped face and his wide opened nose. Raymundo Boado wore an army hat.[33] Complainant Belvis identified accused Boado and Rivera in a line up of eight persons on September 23, 1974, in the P.C. Headquarters in Lingayen, Pangasinan and pointed to the two as members of the three men group who raped her and who robbed them.[34] She had undoubtedly ample time to identify her assailants during that night because of proximity to them for a sufficient period when they perpetrated the crime. Victims Ernesto Zulueta and Tomas Sino Cruz also positively identified the accused Boado as one of the malefactors.[35] Said witnesses clearly identified Boado because his face was illuminated by the flashlight he was holding and by the headlight of the Ford panel.[36]

There is nothing on record and the defense never alleged nor proved any ulterior motive of the witnesses for the prosecution as to why they would falsely impute such a despicable crime on the accused if they did not really

commit it. The testimony of complainant Crispina Belvis is strongly indicative of an honest motivation to have the real offenders punished.[37] Her testimony on how she was raped by the three malefactors was straightforward, simple and logical, and therefore presumed embedded in sincerity. It is very difficult to believe that a married woman like the complainant Crispina, with children, would willingly submit to sexual abuse by three total strangers, one after the other, as the defense would like this Court to accept as a fact.

Although the medico-legal examination of complainant's private part does not conclusively establish that she was raped because of the absence of injury, (Exh. "E") it is however proven that complainant was not able to resist the three who raped her because she was threatened with death if she did not give in and the three had guns pointed at her. Being a married woman, with several children, and unable to resist because of the threat on her life, there would naturally be no physical signs of injury on her private part even if three persons had successively raped her. The presence, however, of sperm in her vagina as found out in the medical examination conducted almost immediately after the crime was committed strongly indicate that she was really raped. Complainant was emphatic when she testified that the three male-factors successfully put their penis into her vagina. No more eloquent evidence of rape is necessary in the light of that narration coming from a completely credible source - the victim Crispina.

The defense of alibi put up by both accused Boado and Rivera cannot stand against their positive identification by witnesses for the prosecution. Besides, the houses of both accused, where they claimed to be during the night of the crime, are in Barrio Tiblong, only about 1 kilometer from barrio Rabon, where the crime occurred, and it was very easy for them to travel in a few minutes the distance between the two places.

The defense questions the finding of the trial court that the aggravating circumstances of uninhabited place and nighttime attended the commission of the crime. The crime took place at about 9:00 p.m. on September 20, 1974, and during the almost two hours that it occurred, there is no evidence of any vehicle or pedestrian that passed the portion of the national highway where the crime happened. The prosecution was able to establish that there were no houses near the scene of the crime.[38] The possibility of any help or assistance to the victims during the crime in such place is almost nil. It is clear that the malefactors selected that uninhabited place as the scene of the crime to prevent any interference with their evil act.

Likewise, nighttime was deliberately sought by the culprits because they prepared a block on the national road with tree trunks and stones, and in effect, ambushed the victims when their Ford panel was forced to stop. Said malefactors, under cover of darkness, suddenly appeared near the vehicle to perpetrate the robbery. The cover of darkness facilitated the commission of the crime and was taken advantage of by them.[39]

It is clearly proven that three armed men committed the robbery and the rape. The mere fact that the third malefactor was not apprehended and brought to trial cannot alter that proven event. There is no error, therefore, for the trial court to consider the aggravating circumstance of aid of armed men.

This Court concurs in the trial Court's finding of moral certainty in the guilt of both accused for the crime of robbery with double rape and the sentence of death.

WHEREFORE, the decision under review, being in accordance with the law and the evidence is hereby affirmed in toto. However, for lack of the necessary number of votes for the imposition of the death penalty, the accused is hereby sentenced to suffer the penalty of reclusion perpetua, with costs.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Aquino, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., filed a separate opinion.

[1] pp. 25-45, rollo.

[2] p. 1, Original Record, Crim. Case No. D-1044, Court of First Instance of Pangasinan.

[3] p. 213, Id.

[4] p. 3, t.s.n., Sept. 17, 1975; pp. 14-15, 17, t.s.n., Nov. 4, 1975.

[5] pp. 4-8, t.s.n., Sept. 17, 1975.

[6] p. 6, Id.; pp. 69-71, t.s.n., Feb. 18, 1976.

[7] pp. 6-8, t.s.n., Sept. 17, 1975; pp. 71-73, t.s.n., Feb. 18, 1976.

[8] pp. 9-10, t.s.n., Sept. 17, 1975; pp. 16-17, t.s.n., March 24, 1976.

[9] p. 11, t.s.n., Sept. 17, 1975.

[10] p. 78, t.s.n., Feb. 18, 1976.

[11] pp. 29-30, t.s.n., March 24, 1976.

[12] p. 19, t.s.n., Sept. 17, 1975.

[13] pp. 11-18, t.s.n., Id.

[14] pp. 19, 21, 22-23, t.s.n., Sept. 17, 1975.

[15] pp. 20-24, t.s.n., Id.

[16] pp. 24, 25-26, t.s.n., Id.

[17] pp. 27-33, t.s.n., Sept. 17, 1975; p. 97, t.s.n., Feb. 16, 1976.

[18] pp. 35-36, t.s.n., Sept. 17, 1975; pp. 52-43, t.s.n., Id.

[19] Exhibit "E".

[20] pp. 5-8, t.s.n., Nov. 4, 1975.

[21] Exhs. "B", "C", "F", "G".

[22] pp. 37-39, t.s.n., Sept. 17, 1975; pp. 107-109, t.s.n., Feb. 19, 1976; pp. 37-38, t.s.n., March 25, 1976.

[23] pp. 45-52, t.s.n., Sept. 17, 1975.

[24] pp. 111-117, t.s.n., Feb. 19, 1976.

[25] pp. 150-174, t.s.n., July 1, 1976.

[26] pp. 175-187, t.s.n., Id.

[27] pp. 37-40, t.s.n., June 10, 1976.

- [28] pp. 43-57, July 13, 1976.
- [29] pp. 2-18, t.s.n., Id.
- [30] pp. 200-205, t.s.n., July 1, 1976.
- [31] pp. 189-198, t.s.n., Id.
- [32] p. 19, t.s.n., Sept. 17, 1975.
- [33] pp. 28-29, t.s.n., Id.
- [34] pp. 45-52, t.s.n., Id.
- [35] pp. 111-117, t.s.n., Feb. 19, 1976; p. 41, t.s.n., March 25, 1976.
- [36] pp. 73-83, t.s.n., Feb. 18, 1976; p. 14, t.s.n., March 24, 1976.
- [37] *People vs. Francisquite*, 56 SCRA 764.
- [38] p. 55 t.s.n., Sept. 17, 1975; p. 85, t.s.n., Feb. 18, 1975
- [39] *People vs Ong*, 62 SCRA 174, 212.

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SEPARATE OPINION

TEEHANKEE, J.:

I vote for the affirmance of the death penalty. Here, the three armed robbers took turns one after the other in raping at gunpoint the hapless victim on September 20, 1974. The supreme penalty is therefore properly imposed, pursuant to the Court's ruling in *People vs. Obtinalia*, 38 SCRA 651 (1971) 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 [amending Article 355 of the Revised Penal Code] must apply" and not the lesser penalty of reclusion temporal in its medium period to reclusion perpetua provided under Article 294 (2) of the Revised Penal Code for the crime of robbery with rape, since "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."

This is but in consonance with my separate opinions in *People vs. Carandang*, 52 SCRA 259, 277 (1973) and *People vs. Mabag*, G.R. No. L-38548, July 24, 1980, that "where robbery with rape is committed, but the rape is qualified by the use of a deadly weapon and is committed by [at least] two persons, either of these two factors (which the law considers abhorrent and has expressly singled out as warranting imposition of the death penalty) supplies the controlling qualifications, so that the law to apply is Article 335 and not Article 294 of the Penal Code." Here, both qualifying elements were present in the commission of the rape, namely, the use of deadly weapons and its perpetration by the three robbers.

The discrepancy and illogic between the two cited articles of the Penal Code have now been removed since

August 15, 1975 through Presidential Decree No. 767 which amended Article 294 (2) of the Revised Penal Code by providing the same increased penalty of reclusion perpetua to death "when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons." But as already stressed, during the intervening period between June 20, 1964 when amendatory R. A. 4111 imposed the death penalty for qualified rape and the issuance on August 15, 1975 of P. D. 767 which finally updated the law to catch up with the Court's ruling in *Obtinalia*, supra, qualified rapes that were committed by robbers - with the use of a deadly weapon and/or by two or more persons - should be meted the amendatory death penalty under R. A. 4111, as held in *Obtinalia*.

It is sheer technicality to contend that since accused-appellant was charged in the information with robbery with rape under Article 294 (2), he could be convicted only under said article with the lesser penalty of reclusion perpetua and could not be meted the capital penalty provided for the duly charged and proven crime of qualified rape under Article 335, as amended by Republic Act 4111, which was enacted on and has been in force since June 20, 1964.

It is, after all established doctrine, as stressed in the Court's decision and in my separate opinion in *Carandang* that the real nature of the crime charged is determined not by the title of the information nor by the specification of the provision of the law or specific article of the Penal Code alleged to have been violated but by the facts recited in the information and duly proven at the trial. The courts are the final authority to adjudge what crime has been committed and penalty to impose therefor, and the prosecution's erroneous designation or determination thereof (as robbery with rape Under Article 294 [2] instead of rape committed with or on the occasion of a robbery under Article 335 is of no binding effect.

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