

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. MARIANO OBTINALIA, TEOLY UBALDE ALIAS "JORGE", AND JIMCE UBALDE, ACCUSED.

G.R. No. L-30190. April 30, 1971

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PER CURIAM:

Automatic review of the decision of the Court of First Instance of Pangasinan (in its Criminal Case No. 23133) imposing upon therein accused Mariano Obtinalia, Teoly Ubalde alias "Jorge", and Jimce Ubalde the supreme penalty of death.

In the information filed in the Court of First Instance of Pangasinan, Mariano Obtinalia, Teoly Ubalde alias "Jorge", and Jimce Ubalde, together with three other persons referred therein as "Gaudia", "Freddie" and "John Doe" who remained at large, were accused of the crime of robbery in band with rape, allegedly committed as follows:

"That on or about the 5th day of June, 1968, in the municipality of Agno, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who were also charged of the same offense before the Municipal Court of Agno, this province, but that their identities are still unknown, conspiring together and mutually helping one another, armed with guns and bolos, taking advantage of the nighttime and of their superior strength, entered the house of the spouses Clemente Fontanilla and Rufina Pitalbero, and once inside, with violence against and intimidation of persons, with intent of gain and against the will of the owners thereof, and in band, did, then and there, wilfully, unlawfully and feloniously take, rob and carry away therefrom, the following:

Cash money in the amount of

P180.00

Two (2) pants, maong and green Borlington with trademark "Neypes", five (5) chicken, three layers and two roosters, valued at.....

50.00

Total

P230.00

all valued at TWO HUNDRED THIRTY (P230.00) PESOS Philippine Currency and all belonging to the said spouses, Clemente Fontanilla and Rufina Pitalbero, to their damage and prejudice in the aforesaid amount of P230.00; and that on the occasion of the above-mentioned offense and under the same circumstances aforecited, conspiring together and mutually helping one another, by means of violence and intimidation of persons, did, then and there, with lewd designs, wilfully, unlawfully and feloniously have carnal knowledge of

Rufina Pitalbero, against the latter's will and consent.

"Contrary to Art. 296 in relation with Art. 335 of the Revised Penal Code, as amended by Republic Act No. 4111."

The accused having pleaded not guilty to the charge, the prosecution tried to establish its case through the testimonies of complainants Clemente Fontanilla and Rufina Pitalbero.

CLEMENTE FONTANILIA declared in court that at about 8 o'clock in the evening of 5 June 1968, six men entered their house in sitio Pateng, barrio Macaboboni, municipality of Agno in Pangasinan. Of the group, he recognized Mariano Obtinalia, who was carrying a .22 caliber paltic, Teoly Ubalde and Jimce Ubalde, who were both armed with bolos more than 1 foot long.[1] The three other men, equally armed with 2 firearms and a bolo, were unknown to him. Once they were inside the house, the intruders beat Fontanilla and tied his hands with a rope, tore his undershirt and used a piece thereof for gagging him. Then the group confronted Fontanilla's wife, Rufina Pitalbero, and demanded money from her. Rufina delivered to them the proceeds of the sale of a carabao, in the amount of P180.00, which she extracted from between the bamboo slits holding the cogon roofing of the house[2]. Thereafter, the accused Mariano Obtinalia, Teoly Ubalde and Jimce Ubalde held Rufina and one after the other criminally abused her. Fontanilla witnessed the outrageous violation of his wife because the house was lighted by a kerosene lamp and there was no obstruction between where he lay and the part of the house where his wife was dishonored, first, by Mariano Obtinalia, followed by Teoly Ubalde and then by Jimce Ubalde[3]. Witness had known the accused Mariano Obtinalia, Teoly and Jimce Ubalde for about 5 years before the incident because they used to go fishing in their place. Fontanilla further declared that he also heard one of those who abused his wife address their other companions as "Gaudia" and "Freddie". Thereafter, the group left but not before they had taken two pairs of his pants worth P30.00 and five chickens worth P20.00. That same evening, when the robbers had gone, he went to the Chief of Police to report the incident.[4]

RUFINA PITALBERO testified that in the evening of 5 June 1968, while her family was inside their dwelling in sitio Pateng, Macaboboni, Agno, Pangasinan, six men armed with firearms and bolos entered the house. Some of them beat her husband, bound his hands and feet, and stuffed his mouth with a piece of cloth torn off his (the husband's) own undershirt.[5] Then the men took their P180.00, the proceeds of the sale of a carabao, 2 pairs of pants belonging to her husband worth P30.00 and 5 chickens worth P20.00. Afterwards, by means of force, Mariano Obtinalia, Teoly Ubalde and Jimce Ubalde were able to have sexual intercourse with her, one after the other.[6] Immediately after the incident, her husband went to the Chief of Police to report the matter. On the following day, she and her husband executed sworn statements about the incident before the Municipal Judge of Agno.[7]

The defense of the accused was alibi.

MARIANO OBTINALIA took the witness stand and declared that between 5 and 6 o'clock in the afternoon of 5 June 1968 he went to his father's place in barrio Ranao to tether his carabao, and left the place at past 7 o'clock.[8] He admitted having known Clemente Fontanilla for a long time, because they used to go diving at sea. He believed Clemente and his wife were implicating him in the alleged robbery and rape, because about a year before that incident he had refused to sell for Fontanilla a carabao that did not have a cattle certificate.

VICENTE OCHAVEZ, a neighbor, tried to corroborate the above declaration of Mariano Obtinalia. He testified having seen the accused Mariano Obtinalia between 5 and 6 o'clock in the afternoon of 5 June 1968 walking toward the direction of the house of Mariano's father; that he saw Mariano again returning from his father's place at about 7:30 in the evening;[9] that they even talked about the forthcoming marriage of his (the witness') daughter. While this witness could seem to remember 5 June 1968 and his seeing Obtinalia walking toward his

father's house, he could not recall the date when his daughter's marriage took place.[10]

BENJAMIN DARAGAY, a neighbor of the father of Mariano Obtinalia, declared in court that at about 6 o'clock in the evening of 5 June 1968 he was in the house of Toring Obtinalia, Mariano's father, when the latter arrived; that he and Mariano left the place at about 6:30 in the evening, with Mariano going to the direction of his house; that he remembered 5 June 1968 because in the morning of that day he plowed his field and at 5 o'clock in the afternoon he went to the house of Toring Obtinalia to ask for tobacco leaves for smoking. He admitted, however, that he had planted several days that season, and of those days, he remembered only 24 May and 5 June.[11]

TEOLY or JORGE UBALDE, for his defense, testified that in the evening of 5 June 1968 he had a stomach ache; that his wife called on her father for help, and the latter brought to their house Silvestre Cariño, a "quack" doctor. He was made to take hot water that was previously boiled with scraped roots of a plant; that he never went out of the house that evening; that Cariño, his father-in-law, his father and mother, his wife and children were all in the house with him. This accused proclaimed ignorance why Clemente Fontanilla and his wife would point to him as one of those who committed robbery and rape in their house when he (the accused) was then having stomach ache. He even denied knowing the couple.[12]

PETRONILA GAMBOA, Teoly's wife, JOSE UBALDE, his father, and the "quack" doctor, SILVESTRE CARIÑO attempted to corroborate his declarations. They declared in effect that the accused Teoly Ubalde was in the house, suffering from stomach ache, between 7 and 9 o'clock in the evening of 5 June 1968. It was brought out, however, that Teoly had had several attacks of stomach ache and the wife, Petronila, could hardly remember the other dates when he had them.[13] Silvestre Cariño, who declared having treated Teoly Ubalde on 5 June 1968 and leaving the latter's house only at about 9:30 in the evening, could not remember the dates when he treated his other "patients".[14]

Accused JIMCE UBALDE stated in court that on 5 June 1968 he was in Manila (Barangka, Marikina, Rizal) looking for a job; that in the evening of 6 June 1968 he was accompanied by his brother-in-law, Leocadio Olivo, to the Pantranco station to get a ride back home; that he actually got a ride and arrived in Bani at about 4 o'clock in the morning of the following day (7 June). He declared he was never at odds with Clemente Fontanilla, neither with his wife nor with the Agno Municipal Judge, or with the Chief of Police of Agno. In fact, he did not even know the complainants Clemente Fontanilla and Rufina Pitalbero.[15]

LEOCADIO OLIVO was presented in court and testified that from 1 June to 6 June 1968 Jimce Ubalde was staying with him in Marikina, Rizal; that having failed to land a job, Jimce took a bus for Pangasinan at the Pantranco station at 8:30 in the evening of 6 June 1968; that he remembered 6 June because that was the day after their payday.[16]

The defense also presented the municipal judge of Agno, Pangasinan, who declared that Rufina Pitalbero subscribed before him two affidavits, one executed between 9 and 10 o'clock in the morning of 6 June 1968, wherein she denied having recognized the men who robbed them and abused her (Exhibit "3"), and another, executed between 11:30 and 12 o'clock noon, wherein she gave the identity of the offenders (Exhibit "D");[17] that after Rufina had executed the first statement, feeling that she was withholding the identity of the malefactors because of fear, he told her to go back to the chief of police and give the real statement and to request also for protection.[18] This accounted for the second statement, Exhibit "D", executed on the same day by complainant Rufina Pitalbero.

JUANITO PECSON, the Chief of Police of Agno, was placed on the witness stand, and this witness testified that he took two statements of Rufina Pitalbero, one after the other that there were investigators who went to the scene of the crime in the early morning of 6 June 1968;[19] and that Exhibit "3", the statement wherein Rufina appeared

to have failed to identify her tormentors, was not kept by him, but was with the municipal judge all along.[20] The municipal health officer was likewise presented to establish that Rufina Pitalbero submitted to a physical examination on 8 June 1968, and the sample of her vaginal secretion was found without evidence of sperm.[21]

In its decision of 18 January 1968, the court found the charges against the accused proved by the positive testimonies of the victims. Consequently, said accused were declared guilty of the crime of robbery with triple rape, and each of them sentenced to the penalty of death; to pay, jointly and severally, to Clemente Fontanilla and Rufina Pitalbero the sum of P230.00, to indemnify Rufina in the amount of P2,000.00, and to pay the costs.

It is now contended for the accused in this proceeding that the lower court erred (1) in finding them guilty of the crime of robbery in band with rape based alone on the testimonies of complainants Fontanilla and Pitalbero; (2) in giving due course to the information without including the other culprits; and (3) in finding them guilty of "robbery with triple rape" pursuant to Article 296 in relation to Article 335 of the Revised Penal Code, although they were charged in the information with the crime of "robbery in band with rape" under Article 296, in relation to Article 335, of the same Code.

With his Honor, the trial judge, We find the charge of robbery with rape proved beyond reasonable doubt. Not only the victim, Rufina Pitalbero, testified on her being dishonored by the three accused after being compelled to deliver the P180.00 paid for the sale of a carabao, but her declaration was corroborated by the husband, Clemente Fontanilla, who had witnessed the outrage committed on Rufina, and their testimonies withstood the extensive cross-examination by counsel for the accused as well as the questionings by the court. It has also been shown that immediately thereafter, Clemente Fontanilla reported the incident to the Chief of Police; that investigators repaired to the scene of the crime early morning of the following day (6 June 1968); that on that same morning complainants executed their sworn statements naming Mariano Obtinalia, Teoly and Jimce Ubalde as among the group of armed men that forced their way into their dwelling the night before and had abused Rufina; that as a result of the police investigation the corresponding criminal complaint against the three named individuals was filed by the Chief of Police of Agno on 6 June 1968. The fact that Mariano Obtinalia was known to the complainants, which could have enabled his recognition by the couple as one of the intruders, was admitted by him. Of course, Mariano claimed that Clemente and Rufina might have pointed to him as one of the offenders because about a year prior to the incident, he refused to sell for the couple a carabao that had no covering certificate of ownership.[22] Such motive appears to be flimsy and unbelievable. There is nothing on record to indicate that Clemente Fontanilla is such a vindictive and ruthless person that he would stop at nothing, even to the extent of exposing his own wife to shame and ridicule, just to get even with a supposed enemy. On the other hand, while Teoly and Jimce Ubalde (who were represented by another counsel) made no similar admission -- in fact, they denied knowing Clemente and Rufina at all -- no reason has been given why the latter would implicate them in the commission of the crime if indeed they were not so involved. Furthermore, the Municipal Judge and the Chief of Police of Agno, who appeared to have no personal motive to testify falsely against the accused, attested to the spontaneity and voluntariness of their identification by the complainants as perpetrators of the crime. Certainly, the defense of alibi, the weakest of defenses, put up by the accused and their witnesses, who were close relatives and friends, can not overcome the aforementioned positive evidence of the accused's liability.

In its decision, the court below explained why it disbelieved the alibis of herein accused-appellants, saying:

"Our Supreme Court has repeatedly held that a defense of alibi is the weakest defense because it can easily be concocted. And in this particular case, this Court cannot believe the alibi interposed by each one of the three accused as they are only supported by oral testimony of witnesses who are either their neighbors or the relatives. And against this alibi of the accused, we have the strong evidence in favor of the prosecution to the effect that immediately after the incident on the early morning of 6 June 1968, the said Clemente Fontanilla

went to report the matter to the office of the Chief of Police, and then, he and his wife went to the Chief of Police who, after conducting an investigation, filed the corresponding complaint with the municipal court. This Court has no reason to doubt the testimony of the two offended parties, for they are rural folks, practically, unsophisticated, and they would not be courting trouble, and engaging in a litigation if they have not been the victim of a crime of mischief. Most especially is this true with respect to Rufina Pitalbero, because a woman who is already attached to a man would not dare to expose her dishonor and reputation, and tell to the public that she has been abused three (3) times.' (pages 191-192, Record)"

To which it can only be added that the witnesses for the accused, while allegedly remembering clearly where the accused were on the 5th of June 1968, were unsure as to the dates of other events and experiences, a peculiarity that must adversely affect their credibility.

The defense challenges the testimony of the complainants by pointing out that in their affidavits sworn to before the Municipal Judge Noguera, it is only stated that they were robbed and "abused" but sexual intercourse is not mentioned. It should be noted in the first place that the witnesses only knew Ilocano and not English, and were not responsible for the use of the vague term "abuse". That the corresponding word actually employed by the complainants indicated that Rufina was raped, and that the Chief of Police so understood it, is proved by the terms of the complaint filed by him in the municipal court, wherein he charged that the "accused took them (turns) abusing Rufina Pitalbero by having sexual intercourse with her against her will" (Record, page 4, emphasis supplied).

Furthermore, in her first affidavit (marked as Exhibit "3" for the defense) Rufina clearly showed that she was raped:

"Q How many abused you?

A Three, sir."

XXXXX XXXXX XXXXX

"Q What did you do to defend your honor at the time they were abusing you?

A I moved and struggled to get free, but two of them held my hands, one of my hands each, and one of them said, "Don't move or I will make your ear fly". I crossed my legs but they tore my half slip and placed the point of a bolo on my leg. They were able to subdue me when my strength give in." (Record, page 122)

True it is that in this first affidavit Rufina claimed she recognized only one of the robbers and did not know his name. At the trial, however, she explained that she was then afraid to give the names of the accused because they had threatened to come back and kill her and her husband if they reported to the police; and this version was confirmed by the testimony of judge Noguera, that he believed she knew who raped her, for he told her to return to the Chief of Police and give the names of the accused and to request for protection (v. ante, page 5). As a result, Rufina executed her second affidavit, naming the accused-appellants (Exhibit "D", Record, page 26).

The defense also stresses that in the certificate issued on 23 June 1968 by the Municipal Health Officer, Dr. Sison (Exhibit "E", also marked Exhibit "4"), on the result of his examination of complainant Rufina Pitalbero on 8 June, it was certified that there was no evidence of spermatozoa in her vagina. But the doctor also declared that if the woman washed her organ or if her natural secretion was strong, the spermatozoa could be washed out in two days' time, and the rape had occurred on the 5th of June. Hence the absence of sperm on 8 June was not incompatible with the rape three days previously.

To contradict Rufina's testimony why she could not be examined in 6 June, the defense offered to prove that Dr. Sison was in Agno, Pangasinan, on that day, but the court refused to allow the proposed testimony to be given.

We think this issue is of no moment, for the doctor could have been in Agno on 6 June and Rufina be unable to contact him on that day.

Finally, it has also been shown through the declarations of both complainants, that the three accused, with three other unidentified companions, entered together and left the house of the victims in a group; that the three accused raped Rufina Pitalbero one after the other -- two of them holding her hands and feet, while the third was committing the vile act. The actions of the accused sufficiently point to unity of their purpose and to their collective and common design; in short, to a conspiracy to commit the crime[23], making each and all of them collectively responsible for the acts thus perpetrated.

The accused challenge the correctness of the lower court's judgment sentencing each of them to the penalty of death. It is claimed that having been accused of the crime of robbery in band with rape, which is penalized by reclusion temporal in its medium period to reclusion perpetua by Article 294(2) of the Revised Penal Code, they can not be sentenced to the penalty provided under Article 335 of the same Code, as amended by Republic Act 4111.[24]

There is no merit in the contention. As pointed out by the trial Court, 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.

WHEREFORE, the accused Mariano Obtinalia, Teoly Ubalde alias Jorge Ubalde, and Jimce Ubalde are declared guilty of the crime of triple rape, aggravated by the circumstances of commission in the dwelling of the victims and ignominy; and each of them is sentenced to the penalty of death. The accused are also ordered, jointly and severally, to pay the victims P230.00, value of the things stolen, as well as to indemnify Rufina Pitalbero in the sum of P5,000.00, and to pay the costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur. Fernando, J., did not take part.

[1] Page 22, t.s.n., hearing of 16 September 1968.

[2] Page 24, *ibid.*

[3] Page 27, t.s.n., hearing of 16 September 1968.

[4] Pages 23, 35-36, t.s.n., *ibid.*

[5] Page 10, *ibid.*

[6] Page 39, *ibid.*

[7] Pages 40-41, *ibid.*

[8] Pages 82-83, t.s.n., hearing of 10 December 1968.

[9] Pages 74-76, *idem*.

[10] Pages 80, *idem*.

[11] Pages 25-26, t.s.n., hearing of 20 November 1968.

[12] Pages 25-26, t.s.n., hearing of 20 November 1968.

[13] Pages 95-96, t.s.n., hearing of 12 December 1968.

[14] Pages 57-58, t.s.n., hearing of 28 November 1968.

[15] Pages 99-101, t.s.n., hearing of 12 December 1968.

[16] Pages 62-64, t.s.n., hearing of 28 November 1968.

[17] Page 3, t.s.n., hearing of 19 November 1968.

[18] Pages 10-11, *idem*.

[19] Page 17, *idem*.

[20] Page 24, *idem*.

[21] Page 8, t.s.n., hearing of 20 November 1968.

[22] Page 85, t.s.n., Hearing of 10 December 1968.

[23] *People vs. Tapac*, L-26491, 20 May 1969, 28 SCRA 191; also *People vs. Pagaduan*, L-26948, 25 Aug. 1969, 29 SCRA 54; *People vs. Peralta*, C-19069, 29 Oct. 1968, 25 SCRA 759, and cases therein cited.

[24] "x x x Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. x x x."

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