

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PRUDENTE, ALIAS OTIC; RICARDO AMBID, ALIAS BOHOL, ALIAS CARDO; AND IRENEO PAMPLONA, ACCUSED-APPELLANTS.

G.R. No. L-45292. December 26, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

JOSE PRUDENTE, RICARDO AMBID and IRENEO PAMPLONA were accused of the crime of Robbery with Rape in Criminal Case No. 8496 of the then Court of First Instance of Davao Oriental. The information filed against them reads:

"That on or about February 10, 1964, in the Municipality of Malalag, Province of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with deadly weapons bore with an auger bit the kitchen door of the Malalag Commercial owned by Tan Se Poh and once inside, with intent of gain, with violence against and intimidation of persons, did then and there willfully, unlawfully and feloniously take, steal and carry away cash in the amount of P775.00 and several articles all valued at P1,249.80 belonging to the said Tan Se Poh, to his damage and prejudice in the total amount of P2,024.80; that on the occasion thereof, the above-mentioned accused, Jose Prudente alias Otic and Ricardo Ambig alias Bohol alias Cardo, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Teodorica Bejona, against her will, while accused Ireneo Pamplona, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of Albina Buhat, against her will.

"The commission of the foregoing offense was attended by the aggravating circumstances of (1) dwelling, and (2) nighttime, the accused having purposely sought it to facilitate the commission of the crime." (Expediente, pp. 57-58.)

After trial, the court rendered judgment on March 24, 1969, as follows:

"WHEREFORE, in resume, the Court feel morally certain after a painstaking consideration of the evidence that accused Jose Prudente, Ireneo Pamplona and Ricardo Ambid were the ones who committed the crime of Robbery with Rape attended by aggravating circumstances of nocturnity, dwelling, abuse of superior strength without any mitigating circumstance. In accordance with the provisions of our Revised Penal Code, the accused are hereby sentenced to MAXIMUM PENALTY OF DEATH and they are further sentenced to indemnify jointly and severally the offended party the sum of P2,024.80 and to pay proportionate part of the costs." (Id., p. 356.)

The case is before Us on automatic review because of the im-position of the death penalty. The People's version of the facts is as follows:

"It was past midnight or around 1:00 o'clock in the morning of February 10, 1964 (p. 25, tsn., June 23, 1965). Filomeno Elle who worked as bookkeeper of Malalag Commercial, a general merchandise store owned by Tan Se Poh and located at the poblacion, Malalag, Davao Oriental, was asleep inside his quarters above the office

of the establishment. He was suddenly awakened by three persons, whom he later identified as the three appellants. He was told to stand up, after which he was made to lie flat on the floor, face down. His hands were tied at his back. Resurrecion Panal, the driver of Tan Se Poh, who was sleeping in the same room, was also hogtied. Elle and Panal were brought downstairs. Elle was ordered to lie down on the cement floor. He was asked where the money was kept. He answered that it was in the safe. When asked for the key, he replied that it was with the owner. (pp. 6-15, tsn., Ibid.)

"Appellants thereafter hammered at the safe. Coins dropped therefrom. Other cabinets were also forced open. (pp. 15-16, tsn., Ibid).

"Elle was told to get up. He was led by the three appellants to the kitchen, and then up to the second floor above, where Corazon Baroan, Teodoro Bejano and Albina Buhat were sleeping. The first two were salesgirls in the store, while the third was a cook of Tan Se Poh, the proprietor. The girls were aroused from their sleep. Elle was told to lie down on the floor, and then was covered with a blanket. (pp. 16-18, tsn., Ibid).

"Albina Buhat shouted 'Please God help me'. Appellant Ireneo Pamplona slapped her with a pistol. She recognized the faces of the appellants as the room was brightly lighted with a fluorescent lamp. (pp. 181-183, tsn., Sept. 14, 1965).

"After their hands were tied by appellant Pamplona at their backs, the girls were made to sit down while their belongings were ransacked. (pp. 183-184, tsn., Ibid).

"The three girls were thereafter led to the ground floor. Appellant Pamplona, who was holding the hand of Albina Buhat, made the latter sit on the bench near the door of the kitchen. Pamplona inquired about her salary, to which she replied that she did not have money. Pamplona said, 'Now that you don't have money you have to submit to what I want to do to you'. She was forthwith led by Pamplona into the office. She asked what Pamplona wanted of her, to which the latter answered: 'Because you don't have money I have to ruin your honor'. Pamplona also asked where the money of her master was kept, and she pointed to the safe, which appeared to have already been opened. He persisted in his advances. The girl resisted. He was pointing a pistol at her. He grabbed her hair and pushed her head against the wall. She continued to resist. He pushed her down and raised her skirt. He removed his pants. All the while, he held her hands and pointed the pistol to her mouth. She kept resisting but she became tired finally. She implored, 'Mr. Elle, help me'. Pamplona succeeded in having carnal knowledge of her. She cried. (pp. 184-195, tsn., Sept. 14, 1965).

"Meanwhile, Corazon Baroan, upon reaching the store, was asked where the money was. She pointed to the safe which was already destroyed. She was brought back to their sleeping quarters above the kitchen by appellant Ricardo Ambid. The latter demanded for her money, and when she answered she had none, he said he will rape her. She pleaded 'Please do not abuse me just kill me'. He made her lie flat on her stomach on the floor. As a ploy, she told him to follow her downstairs where she kept her money. The two of them went down to the store. There, she saw Teodorica Bejona sitting by the scales. Appellant Jose Prudente was with the latter. When she asked Teodorica Bejona if anything was done to her, the latter answered in Visayan, 'Gikuan, gikuan'. The two girls were thereafter brought back to their sleeping quarters by appellants Prudente and Ambid. Once inside, Corazon Baroan was made to lie flat on the floor with her hands tied at her back. She was covered with a blanket. (pp. 10-15, tsn., Jan. 13, 1966).

"Teodorica Bejona, on the other hand, was brought by appellant Ricardo Ambid downstairs, and then to the sleeping quarters of Filomeno Elle above the office. Inside, after searching Elle's pants for money, and finding none, appellant Ambid ordered the girl to lie down on the bed. The girl refused. She sat down. Ambid ordered her to remove her panty. He forced her to lie down, and when she resisted, he pushed her down on the bed. He held her thigh, then removed her clothes. She shouted for help. Ambid pointed the pistol he was holding at her mouth, saying, 'Do not shout or else I will kill you now'. Thereupon, he placed himself on top of her. She kicked him. But he kept pressing her. Finally, he succeeded in having carnal knowledge of her. After he was through, Ambid brought her downstairs. (pp. 86-92, tsn., February 23, 1966). They met appellant Jose

Prudente. The latter led the girl to the office. There, he asked her to lie down. She refused. She instead sat down. Prudente threatened her with a hunting knife (Exh. "D") which he pointed at her breast saying, 'Do not move. If you will not give in, I will kill you'. Then he embraced her and pushed her down. He removed his clothes, after which he placed himself on top of her. She kicked him. She struggled to get free. He repeated, 'Do not shout because I will kill you'. When she was tired struggling, Prudente succeeded in forcibly having sexual intercourse with her. Afterwards, her mouth was tied with a piece of cloth and her legs with a rope. She was made to lie down and then covered with cloth. (pp. 93-98, tsn, Ibid).

"After the culprits were gone, Filomeno Elle and Resurrecion Panal helped untie each other. Elle ran directly to the PC headquarters where he reported the incident. (p. 21, tsn., June 23, 1965).

"When appellants Jose Prudente and Ricardo Ambid were brought face to face with offended parties later that same morning, at around 8:00 o'clock, the latter readily pointed to the two as the culprits. A similar identification was made by them of appellant Ireneo Pamplona subsequently. (pp. 207-208, tsn., September 14, 1965).

"The medical examination conducted on the persons of Albina Buhat and Teodorica Bejona that same morning of the incident, indicated that they were sexually attacked. A fresh laceration with slight bleeding, was found on the right medio-lateral portion of the hymen of Teodorica Bejona, while Albina Buhat had also a fresh laceration with slight bleeding on the left medio-lateral portion of her hymen. (Exh. "A", p. 62, 64-66, tsn., August 16, 1965).

"Investigation conducted by the police authorities at the premises disclosed that the barbed wire fence at the backyard of the store was cut. A hole was bored by an auger bit (barena) on both the outside door and inner door of the kitchen. The safe inside the office was forced open. The store was ransacked. (pp. 116-118, tsn., September 14, 1965; pp. 79-80, 90 tsn, August 16, 1965). Cash taken during the heist amounted to P775. 00 and the value of the articles and goods carted away totalled P1,498.00 (Exhibit "B")." (Brief, pp. 3-9.)

While the case was pending review in this Court, acting Director Pablo L. Rosales of the Bureau of Prisons informed that appellant Jose Prudente died of Pulmonary Tuberculosis Minimal at the New Bilibid Prison Hospital on September 19, 1980. On September 23, 1982, We resolved to dismiss the case against Jose Prudente. Hence this review is confined to Ambid and Pamplona only.

The appellants claim innocence of the crime charged by interposing the defense of alibi. They presented Jacinto Pendon, Sr. to the witness stand who testified that at about 1:00 A.M. of February 10, 1964, Ireneo Pamplona, Jose Prudente and Ricardo Ambid went to his house; that when they arrived, he was busy slicing meat in preparation for the fiesta of the barrio; that Pamplona, Prudente and Ambid requested that they be allowed to sleep in his house; that there-after, all the accused-appellants joined him in the slicing of the meat (TSN, p. 278); that all the accused stayed in his place until 5:30 o'clock in the morning when appellants asked permission to leave, and then left (Id., p. 280). To fortify their defense of alibi, the appellants assert that complainants failed to conclusively identify them during the trial, as the culprits of the crime.

We are not persuaded.

It is well established in this jurisdiction that alibi cannot prevail against the positive identification made by victims of robbery with rape.

The record reveals that the prosecution witnesses were able to recognize all of the accused during the commission of the crime and they properly identified them during the trial. We quote the pertinent testimony of prosecution witnesses, to wit:

FILOMENO ELLE, bookkeeper of Malalag Commercial, testified as follows:

"ATTY. MATAS [Private prosecutor]:

Q Did you see the faces of each one of these 3 persons when you saw them on the ground floor?

A Yes, sir. (TSN, p. 476.)

x x x x x x x x

ATTY. TA-ASAN [Counsel for Pamplona]:

Q How far were they from you?

A At least 3 feet.

Q And that was the time you recognized the accused?

A No, it was at the time . . . (interruption)

ATTY. TA-ASAN:

That is enough, it is already responsive.

ATTY. MATAS:

We request that the witness be allowed to finish his answer.

ATTY. TA-ASAN:

It is already answered.

COURT:

Let him continue his answer.

A At the time they pointed at me the dagger and the pistol and the flashlight dimmed at my eyes, I was not able to recognize them but when I was brought down that was the time I recognized (sic) them totally because the lights were on." (Id., p. 492.)

ALBINA BUHAT, one of the rape victims, testified as follows:

"ATTY. MATAS:

Q You said you saw three (3) persons, were you able to see the faces of these 3 persons?

A Yes, sir.

Q And this incident you related, the coming up of the 3 persons to your room happened after midnight of February 9, 1964?

ATTY. TA-ASAN:

We object, very leading.

COURT:

Sustained.

ATTY. MATAS:

Q Why were you able to recognize the faces of these 3 persons when you stated before that you were awakened after midnight of February 9?

A Because there was a bright light.

Q Do you mean to say your room was bright at that time?

ATTY. TA-ASAN:

Leading.

COURT:

Sustained.

ATTY. MATAS:

Q When you said that it was bright, what was bright?

A I am referring to our room.

Q What light was used that you said it was bright?

A Flourescent light. (TSN, pp. 645-646.)

x x x x x x x x

ATTY. ORELLAN [Counsel de oficio]:

Q The following morning which was February 10, the two accused, Prudente and Ambid were brought to you, is it not?

A Yes, at 8:00 o'clock they were brought to the store.

Q And you were requested to identify them as to whether or not they were the persons who perpetrated the crime, is it not?

A Yes, that is true.

Q And that at that time you hesitated to identify them, is it not?

A It is clear to me that they were the ones.

ATTY. ORELLAN:

That is all. (TSN, pp. 297-298.)

x x x x x x x x

ATTY. SENCIO: [Counsel for the accused]

Q The quarters was lighted with flourescent lamp at the time you were awakened?

A Yes, sir.

Q In fact it was lighted the whole night, is that correct?

A Yes, sir.

Q When the three persons came to the quarters you were immediately able to distinguish their identities, is that correct?

A Yes, it was very clear to me." (Id., pp. 671-672.)

TEODORICA BEJONA, another rape victim, testified as follows:

"[ATTY. SENCIO]:

Q You were able to observe the face of Ricardo Ambid at that time of the incident, is that correct?

A Yes, sir, he kissed me.

Q And because you were kissed by Ricardo Ambid you noticed the mole at the tip of his nose?

ATTY. MATAS:

We object to the question, no basis. It has not been established that Ricardo Ambid has a mole at the tip of his nose.

ATTY. SENCIO:

We reform the question.

Q Did you notice the mole of Ricardo Ambid at the tip of his nose since you were kissed by him?

A I saw the whole face.

Q Did you notice the mole at the tip of his nose? I want you to see Ricardo Ambid again. Did you notice the mole at the tip of his nose at the time of the incident?

A I did not look at his face very well.

Q For how long were you molested by Ricardo Ambid before he was able to achieve physical intercourse with you?

A More or less five minutes.

Q When you were brought back by Ricardo Ambid to the place where the scales were located, that particular place was of course lighted?

ATTY. MATAS:

We object, it is misleading, because this witness did not testify it was Ricardo Ambid who brought her where the scales was located, rather it was Jose Prudente.

ATTY. SENCIO:

We stand corrected.

Q You stated that you were brought by Ricardo Ambid and Prudente to the place where Filomeno Elle, Resurrecion Panal and Albina Buhat were placed, is that particular place lighted?

A Yes, sir.

Q What kind of light was it?

A Flourescent lamp.

Q Because the place was lighted, you were able to see these persons, to see their faces?

A Yes, sir.

Q What particular feature of the accused Ricardo Ambid made you identify him?

A The feature which leads me to remember him is his height and his being handsome. (TSN, pp. 144-146.)

x x x x x x x x

ATTY. SENCIO:

Q What made you remember that the accused was the same person who was present during the night?

A His small in size and his height, sir." (Id., pp. 147-148.)

The appellants executed extra-judicial confessions. The confession of Jose Prudente is embodied in Exhibit F; that of Ireneo Pamplona in Exhibit G; and that of Ricardo Ambid in Exhibit H.

During their trial and before this Court they claim that the confessions were not freely given, i.e. they were obtained by force, violence and intimidation. The trial court rejected the claim and rightly so.

The law presumes that a confession was voluntarily given so that that the burden is on the accused to destroy the presumption. In the case at bar the presumption of spontaneity has not been rebutted. We quote with approval a portion of the People's brief as follows:

"The picture of unmitigated torture and brutality which appellants claimed to have been subjected to in the hands of the police, is at once negated by the simple fact that appellants did not file any complaint, criminal, administrative, or otherwise, against their alleged tormentors. They had every opportunity to do so. They could have easily en-listed the assistance of their lawyer in this regard. They did not.

'(ATTY. SENCIO)

Q Did you seek the assistance of your present counsel regarding the possibility of filing corresponding criminal action against Lt. Sabio?

(JOSE PRUDENTE)

A No, sir. (p. 108, tsn, August 26, 1966)'

"On the contrary, they admitted having signed and acknowledged the truth of the contents of their confessions before Municipal Judge Vicente Cabalida (pp. 169-171, tsn., August 26, 1966; p. 42, tsn., October 27, 1966). To erase every scintilla of doubt, Judge Cabalida testified under oath on the voluntariness of their confessions. (pp. 3-17, tsn., April 26, 1966). Judge Cabalida, could not have been more assertive of the truth, for, as a member of the bench, he could not and would not have risked the dire consequences of perjured testimony or failure to accord what is due to one who repudiates a confession. Appellant Prudente, who was an acquaintance of Judge Cabalida, did not even disclose the alleged mauling to the latter when he appeared and signed his confession before him. (pp. 175-176, tsn., August 26, 1966). Also, during the preliminary investigation of the case conducted by the fiscal, no mention was made by any of the appellants on the alleged torture or brutality they underwent. And the impression they wanted to create was that, while they consistently and staunchly refused to sign their confessions while actually undergoing the alleged torture, when their lives were in immediate danger, they however voluntarily signed their confessions before Judge Cabalida because of a mere threat to their lives if they did not. Of course, the policemen adverted to vehemently denied the imputations against them.

"The fact alone that the extra-judicial confessions of appellants were taken by the PC at the 104th PC headquarters at Malalag, Davao Oriental, and not by the alleged offending municipal policemen except that of appellant Ireneo Pamplona, which was taken by the Chief of Police of Malalag, renders the pretense of duress and involuntariness the more incredible. The confessions themselves are replete with details and facts which only appellants were aware of and could have provided.

"It bears to state also that appellants, after the alleged torture and brutality, did not seek or submit to medical assistance." (Pp. 17-19.)

The robbery with rape was committed on February 10, 1964. At that time the penalty for the crime was reclusion temporal in its medium period to reclusion perpetua. Considering the presence of aggravating circumstances and absent any mitigating circumstance, the appropriate penalty is reclusion perpetua, not death.

WHEREFORE, the judgment under review is hereby modified; Ricardo Ambid and Ireneo Pamplona shall suffer the penalty of reclusion perpetua; Ireneo Pamplona shall indemnify Albina Buhat in the amount of P25,000.00 for the rape; Ricardo Ambid shall indemnify Teodorica Bejona a like amount for the rape; and the indemnity to be paid jointly and severally to Tan Se Poh shall be P2,273.00. Each of the appellants shall pay his proportionate share of the costs.

Ricardo Ambid and Ireneo Pamplona have been in detention since February 11, 1964, or for a period of over 20 calendar years. Let a copy of this decision be sent to the Board of Pardons and Parole, Ministry of Justice, which may wish to recommend them for executive clemency.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Fernando, C.J., in the result.

Teehankee, J., concurs in the judgment and penalty imposed.

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