

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARTURO CARANDANG, MARIO BUISER, MONTANO CARAAN AND
DIOMEDES ESTRELLA, DEFENDANTS-APPELLANTS.**

G.R. No. L-31012. August 15, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

The appeal in this case from a judgment of conviction by the four accused, Arturo Carandang and Diomedes Estrella for the crime of robbery with rape, with the other two defendants Montano Caraan and Mario Buiser being held liable only for robbery, raises no significant legal question. The reliance for the reversal sought is made to rest on the plea that the trial judge could have appreciated the evidence differently. It is therefore premised on the credibility accorded the witnesses for the prosecution, primarily the offended parties themselves. It becomes apparent then why the burden assumed by appellants is far from easy, considering furthermore that for exculpation, they would rely on the defense of alibi. We cannot reverse.

From the testimony of the prosecution witnesses, relied upon by the lower court, the offense in question occurred in the early evening of November 28, 1968, while the spouses Eugenio Gutierrez and Socorro Familiar and their children were taking their supper, their house being located at Barrio Sta. Veronica, San Pablo City.[1] At that time, there was the sudden appearance of a man, with his face partly covered with a handkerchief and armed with a gun.[2] He ordered the persons inside the house not to make any noise and to go to the sala; then he put out the light of the Coleman lamp inside the house. While the Gutierrezes were being taken to the sala, another person, with his face likewise partly covered with a piece of cloth from the nose down, arrived. The first thing he did was to ask Eugenio Gutierrez for his gun.[3] A negative response so enraged him that he kicked the latter on the face, asked him to kneel, and said "Your gun or your life." [4] The presence of a light in the room of the house caused one of them to blindfold the members of the household.[5] Then the house was ransacked and cash amounting to P130.00, a radio valued at P280.00, and a watch valued at P70.00 taken.[6] The two individuals thus perpetrating such acts were recognized by Gutierrez as the accused Arturo Carandang and Diomedes Estrella. Moreover, he heard talk coming from below the house, asking them to hurry up so they could leave.[7] He did identify the source as the other two accused Montano Caraan and Mario Buiser, both of whom were known to him for several years, as they were hired to pick coconuts in the plantation which he was supervising at the time.[8] Not satisfied with what they had done, one of the accused, Arturo Carandang, approached the wife of Gutierrez, Socorro Familiar, then praying, and pulled her to the kitchen.[9] It was there where her panties were immediately ripped off and she was asked, at the point of a gun, to lie down.[10] Socorro pleaded to Carandang to desist from what he intended to do as she had just given birth, all to no avail.[11] After he was through with the sexual act, the accused Diomedes Estrella approached her, and, at gun point, was also able to have carnal knowledge of her.[12] During such assault by Estrella, her blindfold did not conceal things as she kept moving her head; thus she saw the other accused, Montano Caraan, seated near the stairs.[13] He was also about to do the same thing as his companions, but Socorro asked him to have pity on her informing him as she did the other two that she had just

given birth, and Caraan voluntarily desisted.[14] Thereafter, the party left the house, before leaving, they threatened the occupants with death, should they report the incident to the authorities.[15] Gutierrez was able to follow them surreptitiously, and upon reaching the road, he saw that the four accused, the three aforementioned, and also Mario Buiser, going to the house of Otilio Diones. Then and there, he reported the happening to the barrio captain, Isabelo Guevarra. He made sure that the identities of the culprits were revealed.[16]

The version for the defense rejected by the lower court was set forth in the brief for appellant Carandang in these words: "That on November 28, 1968. and a year prior thereto, he has been living in the house of spouses Otilio Diones and Jacinta Saba in barrio Santa Veronica, San Pablo City; that on the morning of November 28, 1969, appellant Arturo Carandang went to the ricefield he was farming for spouses Otilio Diones and Jacinta Saba, and returned home for lunch at 11:00 A.M. In the afternoon, he also worked in the ricefield. On his way home he went to a [place] and gathered fodder for his carabao. returning home at about 4:30 P.M. After he had fed the carabao, he rested in a bamboo bed under the house until he was called by his Ate (Jacinta Saba) as supper then was ready. At about 6:00 P.M., his three co-accused Diomedes Estrella, Mario Buiser and Montano Caraan arrived. He accompanied Montano Caraan to the house of Miss Oliva Diones, whom Caraan was courting. They stayed in the house of Oliva Diones for about an hour and a half, after which, they returned to the house of spouses Otilio Diones and Jacinta Saba. The three co-accused of appellant Arturo Carandang left at about 10:30 P.M., and appellant retired to bed. Thereafter, policemen Nazario Perez arrived and inquired for appellant Arturo Carandang; that he was aroused from his sleep and told that they will bring him to barrio captain who wanted to talk to him; that after patrolman had a brief conversation with the barrio captain, he was told that he will be utilized as guide to locate his three co-accused. However, he was taken to the police headquarters of San Pablo City, and detained." [17] As noted, the judgment was one of conviction, the appealed decision being notable for the rather detailed analysis of the evidence. After a study of the transcript of testimony as well as the briefs for both the prosecution and the defense, the state being represented by the then Solicitor General, now Associate Justice Felix Antonio, aided by the then Assistant Solicitor General, now Judge Ricardo L. Pronove, Jr., who took pains to present quite a fair and objective account of this unfortunate occurrence, we have reached the conclusion, as noted at the outset, that a reversal is not warranted.

1. All four appellants, in the two briefs submitted, one for Carandang by Attorney Salvador B. Timog, and the other for Estrella, Caraan and Buiser by Attorney Magno T. Bueser, did direct their line of fire on what they considered to be a failure of the lower court to appreciate correctly what did really transpire. While the effort to discredit the testimony of the offended parties, the couple Eugenio Gutierrez and Socorro Familiar, evinced their concern to assure that the rights of their clients be fully protected, it cannot be said to possess a persuasive ring. It is not easy to raise doubt as to the guilt of the accused for the offenses for which they were indicted and found guilty. The lower court certainly has not laid itself open to any accusation of being remiss in analyzing the evidence on the part of both the state and the accused. Much less can it be alleged that there was lacking then that measure of impartiality required by law of occupants of the bench in their appraisal of testimony that could lead to the loss of liberty, and in the case of heinous offenses, even of the right of the prisoner at the dock to life itself.

Moreover, a recent decision would indicate the difficulty thus faced by appellants in seeking to overturn their conviction on this ground alone. Thus in *People vs. Angcap*, [18] it was said: "There is need to stress anew that this Court has long been committed to the principle that the determination by a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect, unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding. So it was announced by Justice Moreland in 1915 in the first case of consequence enunciating such a doctrine. As he pointed out, in the event of a conflict in the testimony of the witnesses, 'the peculiar province of the trial court is to resolve the question of credibility, and, unless there is something in the record impeaching by fair interpretation

the resolution of the trial court in relation to that question, this court will assume that he acted fairly, justly, and legally in the exercise of that function/ So it has been since then. In a case reported in the latest volume of the Philippine Reports, Justice Paredes, speaking for this Court succinctly stated 'that with respect to the credibility of witnesses, the trial court's findings and conclusions, command great respect and weight.' Its more usual formulation was also set forth by Justice Malcolm in these words: 'After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some circumstances of weight and influence, which has been overlooked or the significance of which has been misinterpreted.' "[19]

Nor is their case for a reversal bolstered by their plea of alibi. "This is not to lose sight of the fact that the presence elsewhere of the accused would preclude their participation in a crime. Such a fact, if there be such, has to be shown though by evidence that commands assent. Unfortunately for appellants in this case, they were unable to do so. The categorical nature of the identification made by the offended spouses placed a burden on them too difficult to overcome by the allegation that they could not have been the perpetrators of the foul deed. In this connection, an excerpt from *People vs. Tapitan*[20] is relevant. Thus: "In a 1908 opinion by Justice Torres, the first time the defense of alibi was paid considerable attention, this Court correctly ruled that such a plea could not prevail against the positive testimony of five witnesses to the effect that the accused far from being away from the place where the offense took place was indeed present. So it is in the case before us. Such a defense is futile and unavailing. To the same effect is the following: 'The appellants' weak defense of alibi is not sufficient to overcome the positive identification made of them as the perpetrators of the crime by the witnesses, against whom they could not impute sufficient reason for pointing to them.' As we had occasion to remark in one of our latest opinion, through Justice Capistrano: 'Alibi is one of the weakest defenses, and is easily fabricated. We have examined the testimonies in support of this defense of alibi, and have found the same unworthy of credence.' "[21]

2. The remaining error assigned in the brief for appellants Estrella, Caraan and Buiser would find fault with the finding of the lower court, allegedly disregarding the testimony of Dr. Anacleto Polillo who, on November 29, 1968 at 2:00 A.M., examined medically the offended party, Socorro Familiar.[22] Such an alleged error, on its face, is misleading because this doctor, in answer to a question by the court, readily admitted that before conducting such examination, the patient "complained that she feels something on her private part because she was raped by somebody." [23] When asked whether the findings in his medical certificate later issued were compatible with such complaint on the part of the patient, this is how he replied: "Well, Your Honor, the findings here, only one finding here may tally with her complaint." [24] To be more specific, he referred to the "erythematous, abrasion of the labia menora." [25] There was, though, his statement that "in a true case of rape, the presence of spermatozoa should be positive." [26] This rather categorical affirmation he qualified by speaking of their being found in the genital organ of the woman in question for at least twenty-four hours, unless the offended party would wash it. The brief for the three appellants would impress on this Court that doubt does exist as to rape actually having been committed. This is too flimsy an argument to be taken seriously. More than seven hours at least had elapsed by that time from the sexual assault suffered by the victim. There is nothing improbable then in her cleaning that part of her body. Moreover, from the legal standpoint, the authoritative pronouncement from *People vs. Selfaison*, [27] the opinion being rendered by Justice Gutierrez David, is to the effect that such a defense lacks merit Thus: "Citing Dr. Anzures' 'Lectures on Legal Medicine'1 which states that an examination within 3 days after intercourse would reveal the presence of spermatozoa, the appellants underscore the fact that the physical examinations to which the complainants were subjected to were negative as to the presence of spermatozoa. The absence of such spermatozoa, however, does not necessarily mean that the complainants had not in fact been raped. The very authority cited states that such absence does not necessarily mean that the girl

subject of the examination has not had any sexual intercourse. It need hardly be said here that in the crime of rape, the slightest penetration is enough. In the case of the complainants, we agree with the trial court that the recent laceration in the hymen and the contusions on the walls of the labia menora, of their genitals — together with the evidence adduced during the trial — sufficiently show that the copulative act had been performed by means of force and violence. * * * In fact, it is not even necessary that there be a medical examination of the victim in cases of rape. Whether or not the charge will prosper depends upon the evidence offered and so long as such evidence convinces the court, a conviction for rape is proper. At any rate, it is not improbable that the complainants washed or flushed themselves not only for the sake of cleanliness but more particularly in order to avoid possible conception. It is, indeed, difficult to believe that the complainants, who are very young and unmarried, would tell a story of defloration, allow the examination of their private parts, and thereafter permit themselves to be the subject of a public trial, if they were not motivated by an honest desire to have the culprits apprehended and punished." [28] The last portion of the above excerpt is merely a reiteration of what was set forth in *People vs. Canastre* [29] a 1948 decision, to the effect that this Court is committed to the principle in accord with the traditional psychology of our people inhibiting a woman from exposing herself to the obloquy that would follow an admission that she had been thus victimized if the truth were otherwise, unless there be proof of a motive weighty enough to make her bear with equanimity the pillory to which she would be thus subjected. What gives force to such an observation is that here, the husband, who himself must certainly bear the brunt of shame at this unfortunate incident, did likewise testify to the violation of his wife. [30]

WHEREFORE, the decision of the Circuit Criminal Court of the VIIIth Judicial District of August 26, 1969 finding the accused Arturo Lozada Carandang and Diomedes Estrella y Arcega "guilty beyond reasonable doubt as Principals in the crime of Robbery with Rape and considering the aggravating circumstances of nighttime, dwelling of the offended party, abuse of superior strength and ignominy, without any mitigating circumstance to consider, [sentencing] each of them to suffer the penalty of reclusion perpetua, to jointly and severally, with their other co-accused, indemnify the complaining spouses in the sum of [Four hundred eighty (P480.00) pesos], representing the value of the articles taken, to jointly and severally indemnify the complaining spouses in the sum of [Five thousand (P5,000.00) pesos] by way of damages * * *" and the accused Montano Caraan y Pampolina and Mario Buiser "guilty beyond reasonable doubt as principals in the crime of Robbery, defined and penalized under Article 294, paragraph 5, as amended by Section 6, Republic Act No. 18, and considering the aggravating circumstances of nighttime, dwelling of the offended party and abuse of superior strength, without any mitigating circumstance to be considered in their favor, [sentencing] them to suffer an indeterminate penalty ranging from [four (4) years, two (2) months and one (1) day] of prision correccional as minimum to [ten (10) years] of prision mayor as maximum, to jointly and severally indemnify the offended party in the sum of [Four hundred eighty (P480.00) pesos]" [31] is affirmed. Costs against appellants.

Makalintal Acting C.J., concurs in the separate opinion of Justice Ruiz Castro.

Ruiz Castro, J., files a separate opinion.

Teehankee, J., concurs and dissents in a separate opinion.

Makasias and Esguerra, JJ., concur in this and in the separate opinion of Justice Teehankee.

Barredo, J., concurs in the separate opinion of Justice Teehankee.

Zaldivar, J., is on leave.

Antonio, J., took no part.

[1] T.s.n., session of July 8, 1969, 4, 29; session of July 9, 1969, 3.

[2] Ibid.. 4, 33; 4.

[3] Ibid., 35; 6.

[4] Ibid., 5, 36; 5.

[5] Ibid., July 8, 1969, 43.

[6] Ibid., 27; 13.

[7] Ibid., July 9, 1969, 8.

[8] Ibid., 8, 9.

[9] Ibid., 6.

[10] Ibid., 7, 8, 18, 44.

[11] Ibid., 13.

[12] Ibid., 16.

[13] Ibid., 17, 18, 53.

[14] Ibid., 18, 20.

[15] Ibid., 84.

[16] Ibid., July 9, 1969, 15-16, 19-21.

[17] Brief for Appellant Arturo Carandang, 4-5. A rather voluminous brief filed on behalf of appellants Estrella, Caraan and Buiser surprisingly lack a straightforward and coherent account of the facts as testified to by their own witnesses, counsel satisfying himself with a vigorous and exhaustive attack on the version of the prosecution in the course of which reference was made to the evidence offered by them as to what transpired.

[18] L-28748, February 29, 1972, 43 SCRA 437.

[19] Ibid., 444-445. The opinion cited decisions starting from United Mates vs. Pico, 15 Phil. 549 (1910) to People vs. Dramayo, L-21325, Oct. 29, 1971, 42 SCRA 59. The Malcolm decision is People vs. De Otero, 51 Phil. 201 (1927). Thirty other cases were referred to.

[20] L-21492, April 25, 1969, 27 SCRA 959.

[21] Ibid., 964-965. U.S. vs. Roque, 11 Phil. 422, People vs. Caisip, 105 Phil. 1180 (1959) and People vs. Acabado, L-26104, Jan. 31, 1969, 26 SCRA 727. Cf. People vs. Venegas, 95 Phil. 209 (1954) and People vs. Samaniego, 95 Phil. 218 (1954).

[22] Brief for Appellants Diomedes Estrella, Montano Caraan and Mario Buiser, 32.

[23] Ibid., 35.

[24] Ibid., 36.

[25] Ibid.

[26] Ibid., 37.

[27] L-14732, January 28, 1961, 1 SCRA 235.

[28] Ibid., 242-243. Cf. People vs. Jose, L-28232, Feb. 6, 1971, 37 SCRA 450 and People vs. Pastores, L-29800,

Aug. 31, 1971, 40 SCRA 498.

[29] 82 Phil. 480.

[30] People vs. Gan, L-33446, August 18, 1972, 46 SCRA 667.

[31] Decision of the Circuit Criminal Court, Eighth Judicial District, San Pablo City, Appendix to Brief for Appellants Diomedes Estrella. Montano Caraan and Mario Buiser, 155-156.

CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

The Court's decision, per the main opinion of Mr. Justice Fernando, affirms the lower court's judgment of conviction of and sentence imposed upon, the four accused-appellants: — two of them, Arturo Carandang and Diomedes Estrella, for the crime of robbery with rape, of which they have been found "guilty beyond reasonable doubt as principals . . . and considering the aggravating circumstances of nighttime, dwelling of the offended party, abuse of superior strength and ignominy, without any mitigating circumstance⁷⁷ and meted therefor the penalty of reclusion perpetua, and the remaining two others, Montano Caraan and Mario Buiser for the crime of robbery, as defined under Article 294, paragraph 5 of the Revised Penal Code, of which they have likewise been found "guilty beyond reasonable doubt as principals" with the same aggravating circumstances and lack of any mitigating circumstance and meted therefor an indeterminate penalty of from four years, two months and one day of prision correccional as minimum to ten years of prision mayor as maximum.

I dissent from the imposition of the lighter penalty of reclusion perpetua as the maximum penalty for the crime of robbery with rape upon the two above first named accused-appellants, Carandang and Estrella, by the application of the penalty provided in Article 294, sub-paragraph 2 of the Revised Penal Code which imposes only the "penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape" rather than the graver penalty of death for the more serious crime of qualified rape as imposed by Article 335 of the penal code^[32] which provides that "(W)henever 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."

Here, it has been confirmed that the two first named accused-appellants, Carandang and Estrella, aside from robbing the victims, raped Socorro Familiar one after the other at gunpoint, in the very presence of her husband, and brazenly ignored her pleas for pity and to be spared the pain and ignominy as she had just given birth.^[33]

Under Article 335, paragraph 3, third sub-paragraph of the penal code above-quoted, the mandatory penalty for qualified rape thus committed with the use of a deadly weapon and by two persons and with the presence of the aggravating circumstances above-enumerated is death.

The present case is analogous to the situation in *Napolis vs. Court of Appeals*^[34] where the Court, in a unanimous decision penned by Chief Justice Roberto Concepcion, overturned previous jurisprudence that ignored the more severe penalty of reclusion temporal imposed on robbery in an inhabited building under Article 299 of the penal code and imposed the lighter penalty of prision correccional, maximum to prision mayor, medium, under Article 294, sub-paragraph 2 of the penal code when the robber committed not only the act of simple breaking-in (carrying the heavier penalty) but further and more serious acts of violence against or intimidation of persons (which peculiarly carried the lighter penalty). Chief Justice Concepcion, speaking for the Court, stated that "(T)o our mind, this result and the process of reasoning that has brought it about, defy logic and and reason."^[35]

This Court, then, in Napolis, abandoning the earlier precedents, held that "'(W)e deem it more logical and reasonable to hold, as We do, when the elements of both provisions are present, that the crime is a complex one, calling for the imposition — as provided in Art. 48 of said Code — of the penalty for the most serious offense, in its maximum period x x x," as follows:

"The fourth assignment of error refers to the characterization of the crime committed and the proper penalty therefor. It should be noted that the Court of Appeals affirmed the decision of the trial court convicting Napolis, Malana and Satimbre of the crime of robbery committed by armed persons, in an inhabited house, entry therein having been made by breaking a wall, as provided in Article 299 (a) of the Revised Penal Code, and, accordingly, sentencing Napolis and Satimbre to an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, which is in accordance with said legal provision.

"In addition, however, to performing said acts, the malefactors had, also, used violence against Ignacio Peñaflor, and intimidation against his wife, thereby infringing Article 294 of the same Code, under conditions falling under sub-paragraph (5) of said article, which prescribes the penalty of prision correccional in its maximum period to prision mayor in its medium period, which is lighter than that prescribed in said Article 299, although, factually, the crime committed is more serious than that covered by the latter provision. This Court had previously ruled -

'x x x that where robbery, though committed in an inhabited house, is characterized by intimidation, this factor 'supplies the controlling qualification,' so that the law to apply is Article 294 and not Article 299 of the Revised Penal Code. This is on the theory that 'robbery which is characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things, because where violence or intimidation against the person is present there is greater disturbance of the order of society and the security of the individual.' (U.S. vs. Turla, 38 Phil. 346; People vs. Baluyot, 40 Phil. 89) And this view is followed even where, as in the present case, the penalty to be applied under Article 294 is lighter than that which would result from the application of Article 299. x x x.'

"Upon mature deliberation, We find ourselves unable to share the foregoing view. Indeed, one who, by breaking a wall, enters, with a deadly weapon, an inhabited house and steals therefrom valuable effects, without violence against or intimidation upon persons, is punishable under Art. 299 of the Revised Penal Code with reclusion temporal. Pursuant to the above view, adhered to in previous decisions, if, aside from performing said acts, the thief lays hand upon any person, without committing any of the crimes or inflicting any of the injuries mentioned in subparagraphs (1) to (4) of Art. 294 of the same Code, the imposable penalty — under paragraph (5) thereof— shall be much lighter. To our mind, this result and the process of reasoning that has brought it about, defy logic and reason.

"The argument to the effect that the violence against or intimidation of a person supplies the 'controlling qualification,' is far from sufficient to justify said result. We agree with the proposition that robbery with 'violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things,' but,

precisely, for this reason, We cannot accept the conclusion deduced therefrom in the cases above cited — reduction of the penalty for the latter offense owing to the concurrence of violence or intimidation which made it a more serious one. It is, to our mind, more plausible to believe that Art. 294 applies only where robbery with violence against or intimidation of person takes place without entering an inhabited house, under the conditions set forth in Art. 299 of the Revised Penal Code.

"We deem it more logical and reasonable to hold, as We do, when the elements of both provisions are present, that the crime is a complex one, calling for the imposition - as provided in Art. 48 of said Code -of the penalty for the most serious offense, in its maximum period, which, in the case at bar, is reclusion temporal in its maximum period. This penalty should, in turn, be imposed in its maximum period - from nineteen (19) years, one (1) month and eleven (11) days to twenty (20) years of reclusion temporal - owing to the presence of the aggravating circumstances of nighttime. In short, the doctrine adopted in U.S vs. De los Santos and applied in U.S. vs. Manansala, U.S. vs. Turla, People vs. Baluyot, Manahan vs. People, and People vs. Sebastian, is hereby abandoned and appellant herein should be sentenced to an indeterminate penalty ranging from ten (10) years, and one (1) day of prision mayor to nineteen (19) years, one (1) month and eleven (11) days of reclusion temporal." [36]

By the same token and rationale, I hold that it would be more logical and reasonable to hold that since the elements of both penal provisions are present, i.e. robbery with rape under Article 294, sub-paragraph 2 and qualified rape committed with the use of a deadly weapon and by two of the accused under Article 335, that the crime committed is a complex one calling for the imposition, under Article 48 of the penal code,³⁷ of the penalty for the most serious offense, in its maximum degree, which in the case at bar, is death for qualified rape (under Article 335) rather than the lighter penalty for the lesser offense of robbery with rape (under Article 294, sub-par. 2).

It would defy reason and logic, in the language of Napolis, to hold that if aside from robbery, the robbers both commit rape with the use of a deadly weapon, the imposable penalty (under Article 294) shall be much lighter than that imposed for qualified rape (under Article 335). Since the elements of both penal provisions are present, Article 48 should be applied by analogy and the penalty for the most serious crime (of qualified rape rather than robbery with rape) shall be imposed in its maximum — which is death.

Since the facts recited in the information as borne out by the evidence show that the two robbers-rapists, Carandang and Estrella, committed acts that are punishable both by Article 335 (for qualified rape) and by Article 294, sub-paragraph 2 (for robbery with rape), the penalty for the most serious offense of qualified rape i.e. death should be imposed upon them (with the robbery as an aggravating circumstance, just as prior to the amendment on June 20, 1964 of Article 335 by Republic Act No. 4111 making rape the most serious offense and imposing the penalty of death for rape with homicide, rape was considered as a mere aggravating circumstance when committed on the occasion of robbery with homicide).

At any rate, even without applying Article 48 on complex crimes (a single act constituting two felonies of robbery with rape and qualified rape) the proven aggravating circumstances of nighttime, dwelling, and ignominy (abuse of superior strength is absorbed in the qualifying circumstance of rape committed by two or more persons) warrant per se and call for the imposition of the penalty for qualified rape (reclusion perpetua to death) in its maximum degree of death. (Parenthetically, it may be noted that robbery with rape like the other felonies of robbery with homicide and robbery with physical injuries defined and penalized in Article 294, sub-paragraphs 1 to 4, are special indivisible crimes and are not the complex crimes covered under Article 48 of the penal code.) [38]

Following the reasoning of Napolis, it is more plausible to hold that Article 294, sub-paragraph 2 (providing for the lesser penalty for robbery with rape) applies only where robbery with simple rape takes place without any of the qualifying circumstances calling for the heavier penalty imposed by Article 335 for qualified rape (e.g. reclusion perpetua to death when committed with use of deadly weapon or by two or more persons, and death when the victim has become insane or a homicide is committed on the occasion of the rape).

Viewed otherwise, where robbery with rape is committed, but the rape is qualified by the use of a deadly weapon and is committed by two persons, either of these factors (which the law considers abhorrent and has expressly singled out as warranting imposition of the capital penalty) supplies the controlling qualification, so that the law to apply is Article 335 and not Article 294 of the penal code.

The information duly charged the two accused Carandang and Estrella with having committed with deadly weapons on the occasion of the robbery against the spouses Eugenio Gutierrez and Socorro Familiar, the crime of rape against Socorro. Since it is established doctrine that the real nature of the crime charged is determined not by the title of the information (robbery with rape) nor by the specification of the provision of the law alleged to have been violated (none was specified in the information at bar) but by the facts recited in the information, the said two accused should be held guilty of the crime of qualified rape and be imposed the capital penalty therefor, under Article 335, paragraph 3, third sub-paragraph of the penal code.

Many are the cases in our jurisprudence where the accused has been convicted for the most serious offense charged and proved against him, rather than for the lesser offense erroneously designated in the information. The courts are the final authority to adjudge what crime has been committed, and the fiscal's-erroneous determination is of no binding effect. The late Chief Justice Moran aptly restated the governing principle, thus: "an erroneous classification of an act described in detail in the complaint does not prevent the accused from being declared guilty under a different classification from that made by the fiscal, nor can it affect the sentence that may be entered in the cases. For instance, where an offense is qualified as a lesiones menos graves, but the facts recited in the information and proved at the trial show that the real offense committed is lesiones graves, the accused may be convicted for the latter offense. Likewise, where the prosecuting officer erroneously qualifies an offense as attempted murder, when by the recitals of the information, the real offense committed is frustrated murder, a judgment of conviction may be rendered upon the latter offense. Again, where the information recites that the defendant slapped the face of the municipal president (an act which constitutes the offense of assault upon a person in authority), but the fiscal wrongfully designates the crime as assault upon a mere agent of authority, the error does not prevent conviction under the true offense." [39]

Since the Court is however unable to muster the qualified majority required for the imposition of the death penalty upon the two said accused Carandang and Estrella, the lesser and next lower penalty of reclusion perpetua imposed by the lower court upon the said accused and affirmed in the main opinion must stand pro hac vice. [40]

I concur unqualifiedly with the other portion of the main opinion finding the remaining two accused, Caraan and Buiser, guilty only of simple robbery as found by the lower court and affirming the penalty imposed upon them.

[32] As amended by Rep. Act No. 4111, approved June 20, 1964.

[33] In contrast to accused, Montano Caraan, who as stated in the main opinion, took compassion and heeded her plea for pity and "voluntary desisted" from violating her.

[34] 43 SCRA 301 (Feb. 28, 1972).

[35] *Idem.*, at p. 312.

[36] *Idem.*, at pp. 310-312; italics supplied.

[37] "ART. 48. Penalty for complex crimes. -When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)" (Revised Penal Code).

[38] Cf. Padilla's Revised Penal Code Anno. 10th Ed. (1972), p. 104.

[39] 4 Moran's Rules of Court, 1970 Ed., pp. 23-24, and cases cited.

[40] Cf. Sec. 9, Rep. Act 296, as amended.

DISSENTING OPINION

RUIZ CASTRO, J.:

The information indicting the appellants Arturo Carandang and Diomedes Estrella, together with two others, recites as follows:

"The undersigned City Fiscal accuses Arturo Carandang, Montano Caraan, Diomedes Estrella and Mario Buiser, of the crime of robbery with rape, committed as follows:

"That on or about November 28, 1969, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of the Honorable Court, the accused above-named conspiring, confederating and mutually helping one another, armed with deadly weapons, to wit: firearms, with intent of gain and against the consent of the owners by means of violence and intimidation against persons, did then and there willfully, unlawfully and feloniously take from Eugenio Gutierrez and Socorro Familiar, the following articles with their corresponding value, to wit:

Cash

.....

P130.00

Radio

.....

280.00

Watch

.....

70.00

Ring

.....

200.00

P680.00

to the damage and prejudice of the said spouses in the total sum of P680.00; that on the occasion of the said robbery and in pursuance of their conspiracy, the accused Arturo Carandang and Diomedes Estrella, willfully and unlawfully and feloniously, by means of force and intimidation, did then and there have carnal knowledge of Socorro Familiar against her will and in her house."

It is needless to restate in full the findings of fact arrived at by the Court. In sum, the two appellants Carandang and Estrella, shortly after robbing the house of the complainant spouses Eugenio Gutierrez and Socorro Familiar, committed, at gunpoint, the crime of rape upon the person of Socorro.

At the threshold, I deem it essential, for the purposes of this separate opinion, that the pertinent provisions of the Revised Penal Code are restated in their exact phraseology.

Article 48 gives two - and only two - conceptual meanings of what is known in our penal law as a "complex crime," each of which calls for the imposition of the penalty for the more or most serious crime in its maximum period. The said article reads as follows:

ART. 48. Penalty of complex crimes.— When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Article 294, par. 2 (under Title Ten, entitled "Crimes Against Property") provides as follows:

"ART. 294. Robbery with violence against, or intimidation of persons.— Penalties. — Any person guilty of robbery with the use of violence against, or intimidation of any person shall suffer:

XXX XXX XXX

"2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted."

Article 335 (under Title Eleven, entitled "Crimes Against Chastity") defines and punishes the offense of rape, as follows:

"ART. 335. When and how rape committed.— Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by reclusion perpetua.

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

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death." (as amended by Rep. Act 4111).

Construing Articles 48, 294 (par. 2) and 335 in application to the undisputed facts obtaining in the case at bar, some members[41] of the Court seek to introduce into the corpus of our jurisprudence two conflicting and also completely strange (albeit tantalizing) doctrines, namely; first, the offense of robbery accompanied by rape (penalized by par. 2 of Article 294) and the crime of rape (penalized by Article 335) are a "complex crime" within the meaning and intendment of Article 48; and/or, second, the offense of robbery accompanied by rape ceases as such to be a punishable offense if the rape is one of the categories described and punished by the last four paragraphs of Article 335 (which crime of rape, for the purposes of this opinion, I will term "qualified rape.")

I wish I could say that I find it difficult to agree. The fact is that I regard these two suggested doctrines as heresy and therefore abhorrent. The temptation to resort to short-cuts always looms large when one confronts a perplexing, if not bewildering, problem of statutory construction. But it is precisely in the area of legal hermeneutics, more than in any other area of legal learning, that one must observe utmost care to avoid the pitfalls of hasty rationalization.

What some members of the Court have thus achieved is not mere legislation in the interstices; they have in point of fact exercised legislative power (with all its panoply) — something that by no conceivable manner can be justified as falling within the periphery of the constitutional warrant vouchsafed to the Court.

1. Article 48 unambiguously states that a "complex crime" results (I) "when a single act constitutes two or more grave or less grave felonies," or (2) "when an offense is a necessary means for committing the other." Conceptually, the acts committed by each of the two appellants constitute the offense of robbery accompanied by rape, as this is defined and punished by par. 2 of Article 294. It does not require mastery of logic to realize that the crime of robbery accompanied by rape cannot fall within any of the two conceptual meanings stated in Article 48. Robbery (a crime against property) and rape (a crime against chastity) are two distinct and separate acts, and are not and — by their very intrinsic natures — can never be the product of one single act. And, obviously, robbery cannot be considered a necessary means of committing rape, nor vice versa.

The most serious flaw that plagues the dissenting opinion is that the act of rape in the crime of robbery

accompanied by rape which is the self-same act of rape sought to be punished under Article 335 is made to complex itself— and this is resorted to, quite clearly, in order to bring forcibly (although erroneously) into application the last clause of Article 48 which reads, "the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." Worse yet, the conclusion conveyed is that the offense of robbery accompanied by rape (Article 294, par. 2) and the offense of rape (Article 335) resulted from the same act, or that one was a necessary means of committing the other. The fallacies are too glaring to require elaboration.

In my nearly seventeen years of judicial experience and legal reading, I have not come across, nor has my attention been called to, any instance in the jurisprudence of Spain and of the Philippines (or of any other country, for that matter), where the crime of robbery accompanied by rape and the separate, distinct offense of rape were held to be a "complex crime" within the meaning and intendment of Article 48 or some such similar provision of law.

Napolis vs. Court of Appeals (43 SCRA 301), invoked by analogy in the dissenting opinion, is inapropos and inapposite, because of the wide disparity between the facts in that case and the facts obtaining in the case at bar. The decision in Napolis can be sustained as correct within the context of that case; but to apply Napolis to the case at bar is unwarranted. Napolis involved the crime of robbery committed by a band in an inhabited house with the use of violence against and intimidation upon persons; it had absolutely nothing to do with the crime of rape.

Conventional wisdom teaches me that the process of reasoning by analogy, unless explicitly authorized by the language of the particular penal statute under consideration,[42] is anathema because antithetical to the general philosophy underlying the correct and proper interpretation and enforcement of penal laws.

2. I fail to understand the reason for the statement in the dissenting opinion that the two accused should be held guilty only of the crime of qualified rape, without any mention of the robbery committed by them, since it is indubitable from the information by virtue of which they were tried that the crime imputed to them — and the findings of fact conclusively demonstrate that the offense committed by them — is robbery accompanied by qualified rape.

The information in the case at bar clearly and in no uncertain terms indicts Carandang and Estrella of the crime of robbery accompanied by rape. To say that the two are guilty only of the crime of qualified rape is in effect to hold that the crime of qualified rape was not committed on the occasion of the robbery, or that the crime of robbery disappeared in both the legal and physical sense because of the supervening commission of the qualified rape, or that the information does not mean what it says. The rationalization in the dissenting opinion — which impresses me as too facile, too expedient, and devoid of reasonable legal or philosophical basis — I reject.

3. Where robbery accompanied by qualified rape is committed, the primordial question that inescapably presents itself for resolution is: What is the imposable penalty?

It is a cardinal mandate of legal exegesis that a court should endeavor to reconcile two apparently conflicting provisions of the same statute, and that only when the two are indubitably and absolutely repugnant to each other may a court, in the absence of an express repeal, be justified in ruling that one of the two provisions must yield to the other.

In the case at bar, this function weighs heavily, in view of the omission by Congress (due to negligence, or the utter absence of conscientious legislative study and deliberation, or some other cause) of not amending par. 2 of Article 294 in order to raise the penalty provided therein for the offense of robbery accompanied by rape to harmonize with the corresponding increase in penalties for rape provided by the amendatory Republic Act 4111.

I agree that when the robbery is accompanied by rape, it is irrational, in view of the increase in the penalties for

the different categories of rape, to insist that the penalty prescribed by par. 2 of Article 294 for the crime of robbery with rape, which is only reclusion temporal in its medium period to reclusion perpetua, must be imposed, for the simple reason that the crime of rape has become, by a twist of legislative policy declaration, a graver offense than the crime of robbery accompanied by rape as punished by par. 2 of Article 294.

It is my view that when robbery is accompanied by rape, the more logical and acceptable legal interpretative result is that the offense committed is still denominated robbery accompanied by rape (the term "rape" as used in par. 2 of Article 294 is generic and includes simple rape and qualified rape), but the imposable penalty should be that provided in the proper applicable paragraph of Article 335.

In other words, the penalty of reclusion temporal in its medium period to reclusion perpetua prescribed by par. 2 of Article 294 for the crime of robbery accompanied by rape must be deemed to have been supplanted by the respective penalties provided in Article 335, but the self-same penalty is preserved for the crime of robbery accompanied by intentional mutilation, as well as for the crime of robbery when by reason or on the occasion thereof any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted.

Only thus, and in no other way, can these two provisions of law be harmonized.[43] Article 48 has no bearing or pertinence, nor can it be brought into play by the process of analogy — which process is, in the case at bar, erroneous methodology.

4. Upon the foregoing disquisition, the following conclusions are ineluctable:

(1) The concept of the offense of robbery accompanied by rape is preserved in par. 2 of Article 294 of the Revised Penal Code,

(2) Within the meaning and intendment of Article 48, the crime of robbery accompanied by rape (par. 2 of Article 294) can never be complexed with the offense of rape (Article 335) for any purpose whatsoever or in whatever situation;

(3) The penalty provided by par. 2 of Article 294 for the offense of robbery accompanied by rape, which is reclusion temporal in its medium period to reclusion perpetua, has been supplanted by necessary and unavoidable implication by the applicable penalties prescribed in Article 335, as amended by Republic Act 4111;

(4) Where the robbery is accompanied by simple rape, the penalty shall be reclusion perpetua; and

(5) Where the robbery is accompanied by qualified rape of any of the categories described in the last four paragraphs of Article 335, the imposable penalty shall be that prescribed by the applicable paragraph of the said article.

[41] Justice Claudio Teehankee's concurring and dissenting opinion is concurred in by Justices Antonio P. Barredo, Felix V. Makasiar and Salvador v. Esguerra.

[42] E.g.: par. 10 of Article 13 of the Revised Penal Code which provides as follows: "Mitigating circumstances.— The following are mitigating circumstances: x x x 10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned."

[43] C.f. Article 297 of the Revised Penal Code which specifically provides that "When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua. unless the homicide committed shall deserve a higher penalty under the provisions of this Code." This Article, to my mind, perfectly demonstrates that

in a case of legislative awareness that an undue discrepancy in penal sanctions might arise as a result of the concurrence of two otherwise separately punishable felonies, the option is for the imposition of whichever penalty prescribed for any of the concurring crimes is higher.

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