

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GUILLERMO PORCARE ALIAS "GUILING"; AND DANILO
CUGAL, DEFENDANTS-APPELLANTS.**

G.R. No. L-37235. February 05, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by Guillermo Porcare, alias "Guiling", and Danilo Cugal from the decision of the Court of First Instance of Davao which found them "guilty beyond reasonable doubt of the crime of robbery with rape as defined and penalized under Article 294 of the Revised Penal Code, for which the former - Guillermo Porcare - is hereby sentenced to two (2) life imprisonments (reclusion perpetua) for the two separate rapes he committed and the latter - Danilo Cugal - to life imprisonments (reclusion perpetua), each of them to pay their victim Ederlina Nistal in the amount of P10,000.00 in the concept of moral and exemplary damages, to indemnify jointly and severally Bernardo Nistal the value of the stolen goods in the amount of P564.00, to suffer all the accessory penalties of the laws, and to pay the costs."

Prosecution evidence shows that about ten o'clock in the evening of May 31, 1970, Guillermo Porcare, alias "Gulling", Danilo Cugal and one unidentified person, broke into the house of spouses Bernardo and Fernanda Nistal, in barrio Libertad, Tagum, Davao. Guillermo Porcare and another described as a bearded fat man, about 5'5" tall, both armed with pistols went up the house and upon entering the room of the Nistals, Porcare ordered Bernardo and Fernanda to lie flat on the floor and to keep quiet, as he hogtied them. Porcare then covered each of them with blanket obviously to prevent them from seeing what would happen. Porcare demanded money of the spouses but the latter had nothing to give. Dissatisfied, Porcare warned the spouses: "If there is no money, it will be changed with lives." Porcare then ordered Ederlina, a young unmarried mother, 19 years old and daughter of the Nistals, to look for some money which might have been hidden somewhere in the house. Frightened, Ederlina searched all over the aparador, the drawers and the pockets of the clothes of his father but did not find any. In one of the rooms of the house where Ederlina was searching for money, Porcare entered and ordered her to undress at the same time pointing the muzzle of his gun at her. She refused the order. Whereupon, Porcare whistled to his companions to come and upon arrival, Porcare held Ederlina by the hands while his bearded companion pulled down her panty. By force and over the stubborn resistance of Ederlina, Porcare succeeded in raping her while his bearded companion stood guard.

After Porcare had satisfied his lustful desire, the bearded man took his turn in raping Ederlina at the point of a knife. He was followed by Danilo Cugal, who also succeeded in satisfying his beastly instinct on the defenseless woman.

After Cugal, Porcare raped Ederlina once more.

Throughout the time that Ederlina was being raped alternately by the three accused, one of them was taking whatever he could gather from the house of the Nistals. All in all, they were able to take the following:

- "1) one guitar worth P42.00
- "2) cash money worth P134.00
- "3) wrist watch worth P50.00 owned by Sebastian Paquiros
- "4) lady's wrist watch worth P30.00 owned by Ederlina Nistal
- "5) 3 pcs. pants worth P52.00 owned by Sebastian Paquiros
- "6) 2 pcs. pants worth P40.00 owned by alias 'ENAR'
- "7) 1 pc. pants worth P20.00 owned by alias 'RUFO'
- "8) 1 pc. pants worth P12.00 owned by alias 'AMPARO'
- "9) 3 pcs. polo worth P52.00 owned by Sebastian Paquiros
- "10) 1 pair rubber shoes worth P12.00 owned by alias 'ENAR'
- "11) 1 pc. polo worth P15.00 owned by alias 'RUFO'
- "12) half dozen panties worth P9.60 owned by Ederlina Nistal
- "13) half slip worth P4.50 owned by Ederlina Nistal
- "14) 2 fighting cocks worth P30.00 owned by Bernardo Nistal
- "15) 1 pc. mosquito net worth P12.00
- "16) 1 pair of leather shoes worth P22.00 owned by Bernardo Nistal
- "17) 1 pc. polo worth P15.00 owned by Sebastian Paquiros
- "18) 1 pc. polo worth P15.00 owned by Bernardo Nistal."

None of the articles stolen were recovered by the police.

After the three robbers-rapists had left, Ederlina still weak and trembling, staggered to untie her mother, her father and a companion in the house named Sebastian Paquiros.

The following morning, June 1, 1970, Bernardo Nistal reported the matter to the barangay captain and later to the police of Tagum, Davao. The police after questioning the victims, picked up Guillermo Porcare and Danilo Cugal. They were immediately identified and pinpointed by Bernardo Nistal and her daughter Ederlina as two of the persons who robbed their house and raped Ederlina the night before.

The following day, June 2, 1970, Police Sgt. Regalado Joseph questioned Danilo Cugal who admitted his participation in the crime, naming his companions during the incident. (Exhibits E, E-1 and E-2).

Ederlina was examined by Dr. Jose Lopez, Municipal Health Officer of Tagum, Davao, at about nine o'clock in the morning of June 2, 1970. There were lacerations in the hymen and presence of spermatozoa in the vaginal canal, indicating that the victim had sexual intercourse within 72 hours before the examination.

Appellants Guillermo Porcare and Danilo Cugal at the time were both residents in the same barrio of the Nistals, that is Libertad, Tagum, Davao. Porcare claimed that he courted Ederlina Nistal, representing himself as a widower, and Ederlina responded. However, when his wife arrived from Cotabato in April 1970, Ederlina and her father became mad at him. He testified during the trial that when the police brought him to the headquarters at 11:00 in the morning of June 1, 1970, the police asked the Nistals if they knew him and Ederlina answered, "He

has the same height." This angered her father and the police brought the Nistals inside the room. Upon their return, the Nistals "pinpointed" him. Further, he testified that at the time of the incident, he was at the residence of one Leopoldo Valdueza in barrio Canocotan which, however, is also within the municipality of Tagum; that he knew the Nistals since 1951 because they were neighbors; and that in 1957 he left for Cotabato and returned to Tagum in 1970 only.

Likewise, Danilo Cugal claimed that at the time of the incident he was at the house of one Alejandro Edig which is along the national highway in barrio Libertad. He disowned the signed statement (Exhibit E) which he gave during the investigation alleging that he was maltreated by the police.

The trial court rejected the defense' evidence which is really that of alibi. It is unavailing against the positive identification of the accused by the People's witnesses who have no motive to testify falsely against them. Ederlina, a barrio girl, would not tell a story of sexual violation, allow the examination of her private parts and, thereafter, subject herself to a public trial if she was not motivated by a desire to have the offender apprehended and punished. Hereunder is the testimony of Ederlina with respect to what appellants did to her.

"DIRECT EXAMINATION BY THE FISCAL:

.....

"Q Was your pants removed by that companion of Porcare?

A Yes, sir.

Q Did you have a panty at that time?

A No more, sir, because it went out with the pants.

Q

Now, when at that time that you did not have panty and pants anymore, what did these two do to you?

A

The other one pointed a gun at me and said, 'Do not move', and Porcare removed his pants and placed himself on top of me and he had sexual intercourse with me.

Q

What was your position when he was lying on top of you, were you lying down or what?

A I was lying down.

Q Where were you lying down?

A On the bed because they pushed me on the bed.

Q

While Porcare was on top of you having sexual intercourse with you, what was the other companion doing?

A The companion of Porcare was going back and forth.

Q

Did you not struggle to free yourself so that Porcare would not be able to have sexual intercourse with you?

ATTY. EDIG:

Objection, Your Honor, leading.

COURT:

Reform

FISCAL:

Q While he was on top of you, what did you do?

A

I tried my best to struggle but he was always pointing the gun at me. He was pointing the gun at my right temple. (Witness indicating his right temple).

Q Did the penis of Porcare enter your vagina?

A Yes, sir. (tsn. pp. 18-19, Feb. 2, 1971 hearing)

.....

A

And there I met Danilo Cugal and he held my hand and dragged me to the other room.

Q

Now, what did Cugal do to you at that time while you were in that other room?

A

He pushed me, and because I was tired I lose my strength and there I was made to lie down.

Q

By the way, at that time that Danilo Cugal dragged you to the other room, were you wearing your panty?

A I have no more panty and pants.

Q When you were lying down, what did Danilo Cugal do to you?

A He also removed his pants and had sexual intercourse with me.

Q Did you not do anything to free yourself while he was on top of you?

A No more, sir, because he was carrying with him a knife, a hunting knife.

Q What was he doing with the hunting knife?

A He was holding that knife.

Q And he had also his companions near you?

A Yes, sir.

ATTY. EDIG:

Leading, Your Honor.

FISCAL:

Already answered.

Q

After that, after Danilo Cugal had sexual intercourse with you, what happened?

A He dragged me again up to my bed.

Q

By the way, if this Danilo Cugal is in court now, will you look around and tell us if you can identify him?

A Yes, sir.

Q Please point to him.

A

(Witness pointing to a person inside the courtroom who when asked gave his name as Danilo Cugal).

Q How did you recognize Danilo Cugal?

A

I recognized him because when we met outside the room that moment, he was lighted by the flashlight of his companion.

Q Was that the first time that you have seen or known Danilo Cugal?

A I knew him for a long time because we were classmates in Grade II.

.....

Q And then what did Guillermo Porcare do to you?

A He held me up and brought me again to the other room.

Q What did Porcare do to you in the room again?

A

He pushed me again and then he had another sexual intercourse with me." (tsn, pp. 22, 23, 24 & 25, Feb. 2, 1971 hearing)

The defense of alibi is one of the weakest of the defenses and easy to concoct. It may be credited only if established by convincing and satisfactory proof and it must be also clearly shown that it was physically impossible for the accused to be at the scene of the crime at the time of its commission. In the case at bar, both accused were in places which are not far from the residence of the victims so that, as the trial court had found, it was physically possible for them to be there.

With respect to the confession, Exhibits E, E-1 to E-2, which Cugal wishes to recant, suffice it to say that considering the details appearing therein which he alone could supply immediately after his apprehension on June 2, 1970, it is hard to believe that the same was extracted by force or by third degree methods by the police officers. But then, even assuming that said statements (Exhibits E, E-1 and E-2) were to be discarded, the testimonies of the People's witnesses, particularly Ederlina Nistal, her mother Fernanda Nistal and Dr. Jose Lopez, are sufficient to substantiate the allegations of the information.

The crime committed by herein appellants on May 31, 1970 was robbery with rape, aggravated by dwelling and nighttime, a crime against property, the penalty of which is reclusion temporal medium to reclusion perpetua as provided for in Article 294(2) of the Revised Penal Code before it was amended by Presidential Decree No. 767 which took effect on August 15, 1975 and which increased the penalty for robbery with rape from reclusion perpetua to death if the rape is committed with the use of a deadly weapon or by two or more persons.

In *People vs. Perello, Jr.*, 111 SCRA 147, Chief Justice Enrique M. Fernando and Justices Aquino, Fernandez, Guerrero, De Castro and Escolin are of the opinion that Article 335 of the Revised Penal Code cannot be applied to robbery with rape and that that offense should be penalized under Article 294(2) in which case reclusion perpetua should be imposed. However, Justices Teehankee, Barredo, Makasiar, Melencio-Herrera, Plana and Erica voted for the application of Article 335 of the Revised Penal Code and for the imposition of death penalty.

The writer of this decision opines that the penalty should be under Article 294(2) of the Revised Penal Code because it is a crime against property and not a crime against chastity, a private offense.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in toto, with costs against the appellants.

SO ORDERED.

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

Fernando, C.J., concurs in accordance with his separate opinion in L-34105, *People v. Cabural*.

Teehankee, J., files a separate opinion.

Makasiar, J., death penalty should be imposed under Art. 335 R.P.C.

Abad Santos, J., three rapes was committed in which case the penalty on both appellants should be three reclusion perpetua.

Melencio-Herrera, J., I vote for the application of Art. 335 of the Revised Penal Code and for the imposition of the death penalty.

Plana, J., on official leave.

DISSENTING OPINION

TEEHANKEE, J.:

In consonance with my separate opinion in *People vs. Carandang* (52 SCRA 259, 277 [1973]), as well as in *People vs. Mabag* (98 SCRA 730, 750 [1980]) and a number of other cases, that 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 two factors (which the law [R.A. 4111] considers abhorrent and has expressly singled out as warranting imposition of the death penalty) supplies the controlling qualification, the proper penalty is death under Art. 335 and not under Art. 294 of the Penal Code.[*]

This but follows the Court's ruling in *People vs. Obtinalia* (38 SCRA 651 [1971]) that "in those cases where the rape on occasion of the robbery is committed by two or more persons, the death penalty provided by Republic Act No. 4111 [amending Article 355 of the Revised Penal Code] must apply" and not the lesser penalty of reclusion temporal in its medium period to reclusion perpetua provided under Article 294(2) of the Revised Penal Code for the crime of robbery with rape, since "it would be highly illogical and irrational to hold that when such rape is committed with the addition of a robbery, the offense should only be punishable with life imprisonment."

It is sheer technicality to contend that since the accused-appellants were charged in the information with robbery with rape under Art. 294(2), they should be convicted only under said Article with the lesser penalty of reclusion perpetua and could not be meted the capital penalty provided for the duly charged and proven crime of qualified rape under Art. 335, as amended by R.A. 4111, notwithstanding that the victim of the multiple rapes testified in open court as to the outrages committed against her chastity, and thereby substantially complied with the requirement that the rape be prosecuted upon the victim's complaint.

[*] The discrepancy and illogic between the two cited articles of the penal code have now been removed since August 15, 1975 through Presidential Decree No. 767 which amended Article 294(2) of the Revised Penal Code by providing the same increased penalty of reclusion perpetua to death "when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons."

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