

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO CAÑIZARES, FERMIN CAÑIZARES, AND ANTONIO
CAÑIZARES, DEFENDANTS, FERMIN CAÑIZARES,
DEFENDANT-APPELLANT.**

G.R. No. L-32515. September 10, 1981

Ponente: CONCEPCION, JR. J.

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CONCEPCION, JR. J.:

Appeal from the decision of the Court of First Instance of Davao in Criminal Case No. 9930, the dispositive portion of which reads, as follows:

"IN VIEW WHEREOF, the Court finds all the defendants guilty beyond reasonable doubt of having committed the crime of Robbery in Band with Rape, in the manner alleged in the information and considering the aggravating circumstance of night time purposely sought to facilitate the commission of the crime charged and by a band, without any mitigating circumstance to offset the same, the Court hereby sentences all and each one of the accused, Fermin Cañizares, Mariano Cañizares and Antonio Cañizares to suffer LIFE IMPRISONMENT according to Article 294, Paragraph 2 of the Revised Penal Code, and to pay unto the offended parties, the heirs of Patricio Delima the sum of P10,854.00 the value of the cash and articles stolen which are not recovered, without subsidiary imprisonment in case of insolvency due to the nature of the penalty imposed, and to pay the costs."

It is not disputed that in the early morning of May 24, 1966, the house of Patricio Delima, situated in sitio Paligue, barrio Bulacan, Padada, Davao del Sur, was broken into and robbed by several armed men of cash and other articles of value amounting to P10,854.00, on the occasion of which his daughter Primitiva Delima, was raped and violated by one of the malefactors.

Eufrosina Delima, a granddaughter of Patricio Delima, who slept in the house of her grandparents at the invitation of the latter,[1] in view of her forthcoming marriage,[2] testified that at about 2:00 o'clock in the morning of May 24, 1966,[3] while she was sleeping in a room in the upper floor of her grandparent's house, together with her grandmother Dionisia Diez, her aunt Primitiva Delima, and her cousin Luzminda Ofamin,[4] she was suddenly awakened by an armed man, dressed in fatigues, whom she later identified as the herein defendant-appellant Fermin Cañizares (Cañasares),[5] who pointed a gun at her,[6] saying: "If you don't want to die don't make any noise,"[7] and "Day, Day, wake up, we are agents of the law," forcing her to stand up.[8] She was frightened.[9] Looking around her, she saw two other men, whom she later identified as Mariano and Antonio Cañizares (Caña-sares), inside the room, similarly dressed in fatigues, and pointing their guns at her companions.[10] Afterwards, they were brought to the sala where their hands were tied behind their backs. Eufrosina's feet were also bound together at the ankles by strips of cloth.[11] In the sala, she saw her grandfather Patricio Delima, her uncle Guillermo Delima, and her cousin Eduardo Delima, son of Guillermo Delima, guarded by another armed man dressed in fatigues. Their hands were also tied behind their back.[12] She was asked where their money was kept but she told them that she was not from the house. So, the armed men asked the others. When no one

answered, the intruders threatened to kill them. Consequently, her grandfather, Patricio Delima, said: "You get everything, just ransack our trunk and you can get anything you want there." The armed men opened the trunk and took therefrom money, contained in two "alcancias" amounting to P10,000.00, which Patricio Delima had been saving in order to buy a jeep; one lady's watch worth P90.00; two necklaces valued at P46.00; and two rings, diamante negra, valued at P58.00. The armed intruders also got the .22 cal. rifle of Patricio Delima valued at P440.00; and a transistor radio worth P220.00.[13] Fermin Cañizares also dragged Primitiva Delima inside the room and forcibly had sexual intercourse with her.[14] About an hour later, the intruders covered them with mats and then left, after putting out the lights in the house. At the balcony of the house, Eufrosina heard one of the armed men say: "Where shall we go? To Davao City or to Malita." And they agreed to go to Malita. After a time, she was able to free herself from her bonds and went home, about 40 meters away,[15] and reported the incident to her father, Benigno Delima, who, in turn, informed the police authorities.[16] Some policemen came and conducted an investigation.[17] The following day, she went to the municipal building of Padada to identify a suspect and she pointed to Mariano Cañizares as one of the malefactors.[18]

Her testimony is corroborated by Primitiva Delima who further declared that after Fermin Cañizares had abused her, Fermin "told me, 'Do not report this to the agents of the law, if you will report we will have to kill you.' "[19] Asked how she was abused, Primitiva Delima declared as follows:

"Q You said that you were raped or one of these robbers had sexual intercourse with you inside the room, and that your hands were tied at the back, you said that did you not?

A Yes, sir.

Q How were you made to lie down?

A I lied face up because I was pushed to the floor.

Court:

Q Who pushed you?

A Fermin.

Q He was alone?

A Yes, Your Honor.

ATTY. OCAMPO:

Q And all the time your hands were tied at your back like this (counsel demonstrating with hands crossed) and you are tied this way?

A Yes, sir.

Q Was your pantie taken when you were already down?

A Yes, when I was already lying down.

COURT:

Q When you were lying your face was up or down?

A Face upwards.

Q Your body up or downwards?

A Up.

Q So that you must be lying on your hands because as you said your hands were tied at your back and you were facing upwards?

A Yes, your Honor.

Q When did he remove your panties when you were lying face up?

A When I was already lying down with my hands at my back.

ATTY. OCAMPO:

Q Which of these two panties you identified in court was the one taken from you on that assault upon you?

A The two of them because I was using double panties.

Q And at that time you said you had your menstrual period?

A Yes, sir.

Q You were bleeding profusely?

A Yes, sir.

Q What did Fermin Cañizares do after he pushed you to the floor?

A He abused me.

Q The assaulting he did was to have sexual intercourse with you?

A Yes, sir.

Q He did not do anything else?

A No more, they said: 'Do not make noise.'

Q Did you not tell him, please, do not touch me because I have my menstrual period?

A I told him - do not touch me because I have my menstrual period, but he did not believe me.

COURT:

Q Did he go over you?

A Yes, your Honor.

Q Did he put his penis in your vagina?

A Yes, sir.

Q Penetrated?

A Yes, sir.

Q Whole?

A Yes, your Honor.

Q Did you consent or like it?

A No, sir.

Q What did you do in order to show that you did not like the act?

A I was trying to struggling in order that the act would not be consummated but I was overpowered.

Q Did you kick him?

A I was not able to kick him.

Q Why?

A Because I was afraid.

Q Did you shout for help?

A I shouted once.

Q What did you say in your shout?

A I shouted, please help me. I was addressing this to my brother but they were not able to help because they were many outside, they were tied.

Q Was the intercourse for a long time or short time?

A Quite long.

Q Was he using force while he was lying with you like pressing your breast or holding your hands or covering your mouth?

A They have not used force because I had no more strength, I was already tired."[20]

Primitiva Delima was examined by the Municipal Health Officer of Hagonoy, Davao and found to have suffered the following lesions:

"EXTERNAL FINDINGS

"1. Linear, superficial abrasion, 1-1/2 inches long over the middle part of the back of the neck.

2. Linear, superficial abrasion, 1/2 inch long over the middle part of the back of the neck, 1 cm. to the left of No. 1.

"INTERNAL FINDINGS

"1. Introitus admits 2 fingers.

2. Lacerations of the hymen was found at 5:00 o'clock and 7:00 o'clock."[21]

In view thereof, a criminal complaint was filed with the Municipal Court of Padada, Davao, charging Mariano Cañizares (Cañasares) and his four (4) unidentified companions with the crime of Robbery in Band with Rape.[22] On June 30, the complaint was amended, naming as defendants, Fermin and Antonio Cañizares (Cañasares).[23]

Thereafter, trial was conducted and on July 29, 1970, the trial court rendered the herein appealed decision.[24] Prior to the promulgation of the decision, however, or on July 6, 1970, the accused Antonio Cañizares died,[25] so that only Mariano and Fermin Cañizares appealed.[26] Then, on July 13, 1975, Mariano Cañizares also died, and the case was dismissed insofar as he is concerned,[27] leaving the appeal of the defendant Fermin Cañizares.

The appellant assails the decision claiming that the trial court erred:

1. In considering, and in not discrediting the testimonies of Primitiva Delima and Eufrosina Delima, the only alleged eye-witnesses despite the substantial inconsistencies and improbabilities in their testimonies, all of which made them and their testimonies not credible;
2. In making findings of fact not supported by the records and in considering the testimony of an alleged witness by the name of Gabino Oyanguren who was not presented as witness either by the pro-secution or the defense;
3. In not giving credit to the testimonies of the defense witnesses; and
4. In convicting the accused despite the fact that the evidence failed to establish their guilt beyond reasonable doubt.

1. On the first assignment of error, the appellant maintains that it was error for the trial court to have relied upon the testimony of Primitiva Delima and Eufrosina Delima in deciding the case against him. To bolster his claim, the appellant points to inconsistencies and improbabilities in the declaration of said witnesses which render their testimony unworthy of belief. The appellant cites the statement of Primitiva Delima contained in her affidavit executed on May 25, 1966,[28] wherein she stated that she could easily identify the male-factors since their house was well-lighted when the crime was committed and pointed to Mariano Cañizares as one of the robbers, and yet, when asked during the trial of the case to identify Mariano Cañizares, she pointed at Fermin Cañizares, and when asked to identify Antonio Cañizares, she pointed at Mariano Cañizares. The appellant stresses that omission or failure at identification renders her testimony doubtful.

The appellant's assertion clearly lacks merit. As pointed out by the Solicitor General, the fact that Primitiva Delima was confused or mixed-up as to names of the accused does not detract from her positive identification of the malefactors. The explanation of the Solicitor General is impressed with merit and We quote:

"Primitiva Delima first came to know the names of the three appellants when her affidavit (Exh. 2) was taken by policeman Abner Granado, which she signed at the municipal building; it was policeman Camarino who told her their names, but she was made to confront them when she was already in the municipal building (pp. 144, 149, tsn, Adao). However during the confrontation Primitiva Delima merely pointed to them as the male-factors, without identifying each one of them by name. She could not have known of their respective names in advance of the confrontation. Even if she were told their names, it was not possible that this victim could have remembered which appellant was Fermin, Mariano, Antonio. Indeed, there was no other opportunity for Primitiva to have enabled her to know the respective names of appellants." [29]

The appellant also points at conflicting testimony of Primitiva Delima and Eufrosina Delima to the effect that Eufrosina declared that her hands and feet were tied in the sala, while Primitiva Delima stated that they were tied inside the room where they slept; and that Eufrosina testified that she saw four armed men, while Primitiva said that there were seven persons.

The alleged contradictions in the testimony of Primitiva and Eufrosina Delima, pointed out by the appellant, however, refer to minor details which do not impair the intrinsic credibility of the witnesses. On the other hand, it strengthens their credibility and show that the witnesses were not coached or rehearsed.[30]

2. On the second assignment of error, the appellant cites the following statements of the trial court as not supported by evidence:

- a) "x x x but Fermin transferred his residence at Cabacungan, Padada, and lived there with his wife until he was arrested by the police on May 25, 1966;"
- b) "x x x Besides the supposed owner of the coprax, Gabino Oyanguren did not come out in the open to assert

his ownership over the disputed property altho he testified their alibi, but remained silent as to his alleged connection or involvement in the conflict of claims over the coprax processed by the defendants;" and

c) "x x x With better reasons it could be stated herein that the accused Fermin Caizares who was allegedly with his wife in the house of his father-in-law at Cabacungan, Padada during the occurrence of the incident in question could have also probably and possibly gone to the scene of the crime by riding on a motor vehicle since the distance between these places is 30 kilometers and passable to jeeps and trucks."

The appellant argues that Cabacungan is not in Padada, but is situated in Barrio Bulacan, Malalag, Davao; that it is not true that Fermin Cañizares was arrested on May 25, 1966, but was detained after he voluntarily went to the municipal building of Padada, together with Vice-Mayor Santos Matubang of Malalag and then Councilor Saturnino Rosario to intercede in behalf of his brother Mariano who had been arrested and detained in connection with the present case; that no witness by the name of Gabino Oyanguren had been presented by the prosecution or the defense; and that the accused Fermin Cañizares and his wife, although living at Cabacungan, did not stay in the house of his father-in-law, but lived in the house of his land-lord Saturnino Rosario.

Admittedly, the trial court had made inaccurate statements in its decision, as pointed out by counsel for the appellant. But, such inaccuracies refer to trivial matters and appears to be misapprehensions of the trial court which do not detract from the established fact that the appellant and his companions robbed the house of Patricio Delima and that the appellant raped Primitiva Delima on the occasion thereof.

3. On the third assignment of error, the appellant argues that their version is amply supported by evidence and is more credible and reliable. The appellant and his co-accused denied participation in the commission of the crime for which they were charged and interposed the defense that they were somewhere else when the crime was committed and that it was physically impossible for them to be at the scene of the crime at the time it was committed. The defendants claim that the Municipal Mayor of Padada, Davao who harbors a grudge and against them, instigated their prosecution notwithstanding their innocence.

The appellant testified that from 1963 to 1966, he was administering a parcel of coconut land belonging to his father-in-law, Gabino Oyanguren, situated in Paligue, Bulacan, Padada, Davao. In March, 1966, he invited his brothers Antonio and Mariano, (also defendants in this case) to help him in making coprax from the coconuts planted on the land. The coprax they have made, however, were confiscated by policemen of Padada, Davao, and brought to the municipal building. So, he appealed to Governor Bangoy of Davao and the latter sent a letter to Mayor Ordaneza of Padada, Davao directing the mayor to have the coprax weighed. The mayor resented this and upon receipt of the letter, the mayor got mad and vowed that: "not long from now I will send you to jail." [31] In view of the threats, his brothers Antonio and Mariano returned to their house at Tibulog, Malita, Davao, while he transferred his residence to Cabacungan, Malalag, Davao, about 30 kilometers from the poblacion of Malalag, [32] and stayed in the house of Saturnino Rosario. [33]

The appellant further stated that he was sleeping with his wife in the house of Saturnino Rosario in Cabacungan in the evening of May 23, 1966 and awoke at about 7:00 o'clock in the morning of May 24, 1966. [34] Then, on May 25, 1966, the wife of his brother Mariano came to him and informed him that Mariano was in jail. So, he asked the help of his landlord, ex-Councilor Saturnino Rosario who, in turn, asked Vice-Mayor Santos Matubang of Malalag, Davao to intercede in behalf of Mariano. When they arrived at the office of the Chief of Police of Padada, he saw acting chief of police Brigido Caminero interrogating a woman, whom he later identified as Primitiva Delima. Caminero asked Primitiva if he (Fermin) was one of the robbers, and Primitiva answered that he was not because the robber was already old and had a beard. Later, the vice-mayor wanted to take him home, but Caminero refused saying that there was still an investigation to be conducted by the mayor. [35]

In support of his claim, the appellant cites the testimony of Santos Matubang and Saturnino Rosario who both declared that they were present when the chief of police of Padada asked Primitiva Delima whether or not Fermin Cañizares was one of the robbers and Primitiva Delima answered that Fermin was not the robber because the robber had a beard and is old.

The testimony of Matubang and Rosario are, however, belied by acting chief of police Caminero who testified in court that in the afternoon of May 25, 1966, Fermin Cañizares, Antonio Cañizares and Mariano Cañizares were pin-pointed in the office of the chief of police as the perpetrators of the crime.[36] Between the biased testimony of defense witnesses Matubang and Rosario and the unprejudiced testimony of the public officer, the latter should prevail.

The appellant's claim that Mayor Ordaneza of Padada, Davao instigated the filing of this case against him and his brothers Antonio and Mariano appears to be an after-thought. None of the accused complained of such threats by the Mayor before and it was only during the trial of the case that Fermin Cañizares made mention of such threats.[37]

Besides, the claim of the appellant is not corroborated, and Acting Chief of Police Caminero, who was present in that incident, denied that the Mayor had threatened to send the accused to jail. His testimony reads, as follows:

"Q It has been testified by the three accused, Mariano, Fermin and Antonio Cañizares that this case was filed because of the personal differences between the accused and the Mayor, is that true? Mayor of Padada.

A No, sir.

Q They said here that the Mayor of Padada threatened to send the accused to jail, is that true?

A No, sir.

Q Is there any incident wherein the accused were called by the Mayor?

A Yes, sir.

Q Why do you know that incident or case?

A Because I was the one who investigated that case.

Q Is there any personal difference between the accused and the Mayor?

A None, sir."[38]

There is also nothing in the record to show that Mayor Ordaneza had influenced the family of Patricio Delima into implicating the appellant, or that Primitiva Delima and Eufrosina Delima had any motive to testify falsely against him.

The claim of the appellant, which is affirmed by Saturnino Rosario and Andres Tapic, that he was sleeping with his wife in the house of Saturnino Rosario on the night in question is belied by the positive identification of the appellant by Primitiva Delima and Eufrosina Delima that he was one of the robbers and the person who raped Primitiva Delima.

Besides, Andres Tapic merely testified that he saw the appellant in the house of Saturnino Rosario at 9:00 o'clock in the evening of May 23, 1966, where he stayed for about two hours, and again at 5:30 o'clock in the morning of May 24, 1966,[39] although the appellant declared that he woke up at about 7:00 o'clock in the morning of May 24, 1966, so that he could not have known what the appellant did between those hours. Since the crime was committed at about 2:00 o'clock in the morning of May 24, 1966, his testimony is of little importance. There

being no positive showing that Cabacungan, Malalag, Davao, where the house of Saturnino Rosario is situated, is very distant and inaccessible from Paligue, Bulacan, Padada, Davao, where the crime was committed, it was not physically impossible for the appellant to be at the scene of the crime at the time of its commission.

The testimony of Saturnino Rosario, upon the other hand, is exaggerated and improbable, and cannot be relied upon. He testified that he was awake that night in question and saw Fermin Cañizares in the house the whole time. His testimony reads, as follows:

"COURT:

Q Did you see Fermin Cañizares at P2:00 o'clock at night?

A Yes, he was there in the house.

Q What was he doing at 12:00 o'clock?

A He happen to converse with each other in our house.

Q On May 24, at 1:00 o'clock in the evening did you see Fermin Cañizares?

A Yes, he was in the house.

Q What was he doing?

A He was working.

Q Inside the house?

A Yes, inside the house.

Q What work?

A He was doing?

A He was preparing some food and fetching water.

Q Did you talk to him?

A Yes, your Honor.

Q What about at 2:00 o'clock of May 24, 1966, early morning, did you see him in your house?

A I saw him.

Q Did you talk to him?

A I only saw him.

Q Did you not talk to each other?

A No, sir.

Q What was he doing?

A I don't know what he was doing at that time downstairs.

Q How about you what were you doing at that time?

A I was lying down as I felt tired.

Q At three o'clock of May 24, 1966, did you see him in your house, early morning?

A Yes, your Honor.

Q What was he doing?

A I don't know, what he was doing but I saw him.

Q Was he eating or smoking, walking or sitting down?

A He was downstairs working.

Q At four o'clock in the morning of May 24, 1966 did you see him?

A Still I saw him.

Q What was he doing if any?

A He was downstairs splitting firewood, fetching water.

Q What about you did you do or what were you doing?

A Lying down.

Q You have talked with him?

A No."^[40]

On the whole, the issues raised by the appellant in his appeal involves the credibility of witnesses, and the settled, long-standing rule, where the issues raised hinge on credibility of witnesses, is for the appellate tribunal to give due respect to the assessment of the facts made by the lower court, said court having had the opportunity, not only of receiving the evidence, but also of observing the witnesses while testifying. This rule should not be overturned unless there is showing that in making the disputed factual findings, the trial court had overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in the case.^[41] In the instant case, there is no positive reason that would justify a reversal of the judgment appealed from.

WHEREFORE, the judgment of conviction should be, as it is hereby AFFIRMED. But, the penalty imposed upon the appellant should be MODIFIED. The appellant is hereby sentenced to suffer the penalty of reclusion perpetua and to pay unto the heirs of Patricio Delima the amount of P10,854.00 for the value of the cash and articles stolen and not recovered, without subsidiary imprisonment in case of insolvency. The appellant is further sentenced to indemnify Primitiva Delima, the rape victim, the amount of P12,000.00. With costs against the appellant.

SO ORDERED.

Barredo, (Chairman), Aquino, Abad Santos, and De Castro, JJ., concur.

[1] t.s.n., Adao, Vol. I, p. 28.

[2] Id., p. 68.

[3] Id., p. 34.

[4] Id., p. 32.

- [5] Id., p. 38.
- [6] Id., p. 36.
- [7] Id., p. 35.
- [8] Id., pp. 73-74.
- [9] Id., p. 54.
- [10] Id., pp. 46, 74-75.
- [11] Id., p. 38.
- [12] Id., p. 40.
- [13] Id., pp. 55-58.
- [14] Id., pp. 60-62.
- [15] Id., pp. 27, 68.
- [16] Id., pp. 63-66; 80.
- [17] Id., p. 81.
- [18] Id., p. 97.
- [19] Id., p. 136.
- [20] Id., pp. 155-159.
- [21] Exhibit "A".
- [22] Exhibit 3.
- [23] Exhibit 4.
- [24] Original Record, pp. 182-192.
- [25] Id., p. 179.
- [26] Id., p. 198.
- [27] Rollo, pp. 225-226.
- [28] Exhibit 2.
- [29] Appellee/s Brief, p. 4.
- [30] People vs. Selfaison, 110 Phil. 839; People vs. Sangalang, L-32914, Aug. 30, 1974, 58 SCRA 737.
- [31] t.s.n., Adao, Vol. II, p. 101.
- [32] Id., p. 105.
- [33] Id., pp. 74-81.
- [34] Id., p. 83.
- [35] Id., pp. 86-89.

[36] *Id.*, p. 175.

[37] *Id.*, p. 104.

[38] *Id.*, p. 177.

[39] *Id.*, pp. 161, 165.

[40] *Id.*, pp. 111-114.

[41] *People vs. Sales*, L-29340, April 27, 1972, and cases cited.

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