

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EWALDO CABATLAO, DEFENDANT-APPELLANT.

G.R. No. L-42149. October 23, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review of the decision in Criminal Case No. 138-006 for Robbery with Rape of the Court of First Instance of Davao Oriental, Branch XII convicting the accused and imposing upon him the penalty of death.

The information filed with the court a quo charging the accused Ewaldo Cabatlao together with John Doe with the crime of Robbery with Rape reads:

"The undersigned accuses EWALDO CABATLAO of the crime of ROBBERY WITH RAPE, under Art. 294 of the Revised Penal Code, committed as follows:

"That on or about September 20, 1970, in the Municipality of Baganga, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John Doe, who is still at large, and helping one another, with the use of violence against and intimidation of persons, armed with deadly weapons, and with intent of gain, did then and there wilfully and feloniously enter the house inhabited by the spouses Quirino Pandan and Lolita Peligreno Pandan and their children, and once inside take, steal and carry away cash in the sum of TWO HUNDRED (P200.00) PESOS belonging to the spouses Quirico and Lolita Pandan, to their damage and prejudice in the aforesaid sum of P200.00; that on the occasion and/or by reason of the aforesaid robbery, the above-named accused, Ewaldo Cabatlao, acting in conspiracy with his co-accused, by use of force and intimidation, being armed with deadly weapons, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Lolita Peligreno against her will and consent.

"Contrary to law.

"Mati, Davao Oriental, May 10, 1971.

FOR THE PROVINCIAL FISCAL:

S/T RICARDO M. BERBA

2nd Asst. Prov. Fiscal"[1]

The trial proceeded as against accused Ewaldo Cabatlao alone for his co-accused, John Doe, remained at large and his identity was not determined.

The trial court found that the crime was committed at midnight on September 20, 1970, in sitio Dalican, barrio Bobonao, Baganga, Davao Oriental at the house of the spouses Quirico Pandan and Lolita Pandan; that while the spouses together with their two (2) young children were soundly asleep, they were awakened by the noise of their chickens under their house; that Lolita Pandan had barely lighted a wick lamp when the improvised door shutter

of their main door was forcibly opened and fell down; that two (2) armed men barged into their house, one armed with a dagger who identified as the accused Cabatlao and the other armed with a haras or bolo who was not known to the victims; that Quirico Pandan was immediately hogtied with both hands behind his back and made to lie down face downward; that the hogtied Quirico Pandan was then guarded by the other robber while accused Cabatlao hogtied like-wise Lolita Pandan after thrusting his dagger at her body but only hitting her hand; that Cabatlao forced open a wooden trunk with his dagger and extracted therefrom the savings of the spouses in the amount of P200.00; that the accused Cabatlao, with his dagger, threatened Lolita Pandan with death and forced her to lie down and had sexual intercourse with said Lolita Pandan, which the lower court characterized as "on three inconceivable positions upon imposition of the accused"; that after the accused Cabatlao had satisfied his lust, his companion, the unidentified John Doe, also had sexual intercourse with Lolita Pandan; that on the following morning the spouses reported the incident to their landlord, Arnulfo Balbuena, who accompanied them to the Municipal Police Department to formally lodged their complaint; and that Lolita Pandan was examined by the Rural Health Physician who issued a medical certificate (Exh. D).[2]

The accused, Ewaldo Cabatlao, interposed as his defense alibi corroborated by the testimonies of four (4) witnesses.

The defense witnesses testified that on the night of September 20, 1970, the accused Cabatlao was in his house at Dalican, Bobonao, Baganga, Davao Oriental; that the accused did not leave the house the whole day and night of said date because he had severe headache, tooth ache and stomach ache; that the defense witnesses were in the house of Ewaldo Cabatlao engaged in a drinking spree but Ewaldo Cabatlao was not able to participate because he was just lying down in pain.[3]

The lower court's findings and conclusions are:

"The offended spouses, Lolita Pandan and her husband, positively and steadfastly pointed to the accused Ewaldo Cabatlao as one of the principal perpetrators of the crime. In the affidavits taken by the police investigators of the offended spouses on September 22, 1970, only two days from the date of the incident, it appears that the accused Ewaldo Cabatlao has been definitely and positively identified by the complainants.

"In the light of the facts established by the evidence, the court is of the opinion that the acts complained of have been committed by the accused Ewaldo Cabatlao and that he is guilty of the crime of which he is charged. The court found the defense of alibi put up by the accused not impressive. The alibi, as herein devised by the accused, is unworthy of belief. Witnesses Gregorio Estrada and Lucindo Katipunan whose testimony were presented to constitute the alibi, were conflicting in their testimony. For instance, Gregorio Estrada testified that there was no partition or separate room in the house of Epifanio Cabatlao; but Lucindo Katipunan testified that there was a separate room or bed-room. Gregorio Estrada testified that his daughter Luz Estrada has been living with the Cabatlaos in Bobonao since her marriage some-time long before September 20, 1970; but Lucindo Katipunan testified that he arrived in the house of the Cabatlaos' in Bobonao to look for work only on September 20, 1970. Gregorio Estrada testified that they drunk that evening of September 20, 1970 Siu Hoc Tong, but Lucindo Katipunan testified that they drank tuba. Gregorio Estrada testified that he arrived in Bobonao at 11:00 o'clock morning of September 20, 1970, but Lucindo Katipunan testified that Gregorio Estrada arrived at 9:00 o'clock in the morning. Gregorio Estrada testified that Lucindo Katipunan is a resident of barrio Baculin, Baganga, Davao Oriental, but Lucindo Katipunan declared that he is a resident of barrio Banao, Baganga, Davao Oriental.

"These various conflicts in their testimony, in the mind of the court, betray the untruthfulness of their version. The only portion of their testimony which appears dove-tailed is that portion declaring that there was a drinking spree the whole evening of September 20, 1970 in the house of the accused, and that the accused never went out of the house because he was ill. But even in this regard, their credibility has been impaired in

view of the admission of Lucindo Katipunan upon cross-examination by the fiscal that he was told by Gregorio Estrada what the latter testified in court. Thus the probability is that they concocted their testimony beforehand.

"Alibi is a very weak defense because it is easily manufactured. The Supreme Court has invariably held that the defense of alibi cannot overcome the weight of positive testimony which is natural, clear and convincing. This is more so where no motive has been shown on the part of the prosecution witnesses that would have prompted them to testify falsely, and where the accused has been positively identified. Tested by these guidelines, the court believes that the version of the prosecution is entitled to more weight.

"The commission of the crime was attended by the aggravating circumstances of (1) night-time and, (2) that the offense was committed in the dwelling of the offended party. No mitigating circumstance was present.

"Bearing in mind the provisions of Republic Act No. 4111 amending the provisions of Article 335 of the Revised Penal Code, which raised the penalty to be imposed with the range from reclusion perpetua to death, when rape is committed with the use of deadly weapons or when the crime is committed by two or more persons, the court, in the light of the facts and circumstances of the case is left without alternative but to impose the extreme penalty of death upon the accused not only because it is the mandate of the law but also as a measure of relief to an outraged society and to provide a deterrent to the future commission of similar offense."[4]

Atty. Marcial Balgos was appointed by the Court as counsel de officio of the accused.[5]

The counsel de officio assigned the following errors:

"First Assignment of Error

"THE TRIAL COURT ERRED WHEN IT FOUND THE EVIDENCE OF THE APPELLEE SUFFICIENT TO JUSTIFY A FINDING OF CONVICTION.

"Second Assignment of Error

"THE TRIAL COURT ERRED WHEN IT FOUND APPELLANT'S SILENCE IN VIEW OF THE EVIDENCE PRESENTED AGAINST HIM AS INDICATIVE OF HIS GUILT.

"Third Assignment of Error

"THE TRIAL COURT ERRED WHEN IT FOUND APPELLANT POSITIVELY IDENTIFIED, HENCE, HIS ALIBI UNTRUE AND, THEREFORE, LIABLE UNDER THE CIRCUMSTANCE TO BE METED THE EXTREME PENALTY."[6]

Anent the alleged rape committed by the accused upon the victim, Lolita Pandan, the evidence needs a thorough scrutiny and appraisal to determine its veracity in the light of human nature and experience.

The testimonies of Lolita Pandan and her spouse, Quirico Pandan, are not only erratic but also conflicting in their material points. Both spouses made exaggerated allegations on how the rape was committed. Lolita Pandan testified that she was abused three times in different inconceivable positions. The first sexual intercourse was performed upon her lying down. The second intercourse was executed by placing both her legs on the shoulder of the accused and the third sexual act was executed by making the victim stand and bending downward with her buttocks in front of the accused.

The carnal acts, as depicted by the victim, while not impossible of being performed can only be achieved by complete submission of the woman and cooperation of both the man and the woman in the process. The portrayal is not only incredible under the circumstances but also bizarre.

The alleged rape of Lolita Pandan is not borne out by the medical evidence consisting of the medical certificate

and the testimony of the physician who examined the victim. Dr. Teopisto M. Morales, Rural Health Physician, testified that the victim's body from the abdomen down showed no traumatic injury. The doctor also categorically stated that the private parts of the victim were thoroughly examined for injury and semen deposits in the "cervix" and "curvacious region portion" but he "was not able to realize some remains of possible semen" or "traumatic injury" (t.s.n., pp. 232-4 to 232- 5, April 25, 1973).

The alleged rape becomes more improbable in the light of the following testimony of Quirico Pandan:

"Q After you were tied, you said Cabatlao went to your wife. What was your precise position at this particular instance?

A I was lying down face downward.

Q In other words, you have no means of seeing anything because your face was down?

A I did not look anymore because I pity my wife, sir.

Q In other words, you did not notice what transpired after you lied down face downward?

A No, sir.

Q Specifically so because you said that before Cabatlao went to your wife, he first put out the light of the belon?

A Yes, sir.

Q And, there was already darkness after?

A Yes, sir.

Q In other words, what you said in the direct examination you saw your wife abused was a figment of your fertile imagination?

A Yes, sir, that was my calculation.

(t.s.n., pp. 322-323, April 25, 1973)

The victim's assertion of injuries she allegedly sustained while being sexually abused (Exhibits "5" and "D") is not credible. Lolita Pandan admitted that the dagger thrusts were only attempts to intimidate her. She was superficially wounded only once by the first thrust which she tried to parry (t.s.n., pp. 64-65, p. 143, February 22, 1973). Dr. Morales declared that the four (4) superficial wounds of the victim had dried up (t.s.n., pp. 256, 258, 259, April 25, 1973). It is inconceivable that the said wounds could have been inflicted during the commission of the crime barely sixteen (16) hours before the examination by Dr. Morales. A wound though slight, will not dry up in sixteen hours. The wounds found by Dr. Morales may have been sustained by the victim somewhere else and not the result of the commission of the alleged rape.

The following rulings of the Supreme Court are applicable to this case:

"If there was any resistance, it was al-legged in general terms which likewise cannot suffice to sustain a conviction. Where the offense charged is rape through force, the element of voluntariness must be lacking. If there is an indication of willingness, even if half-hearted, the complaint must be dismissed. Even the documentary evidence of the prosecution does not prove beyond reasonable doubt that the crime charged was committed. Living Case Report No. MI-70-179 (Exhibit "A") states that 'no extra genital physical injury is noted on the body of the subject at the time of examination'. Dr. Ernesto G. Brion affirmed in his testimony that the absence of bruises or scratches on any part of the body of the subject is an indication that physical

violence was not used on her." (People vs. Ching Suy Siong, L-6174, February 28, 1955; People vs. Joven, L-36022, May 22, 1975, 64 SCRA 126; People vs. Lacuna, 87 SCRA 364, 374-375).

"The medical certificate shows that Yolanda sustained only hematoma or contusion on the left leg. Said injury could have been caused by the leg bumping against a hard ob-ject. No other injury on the body of Yolanda Perez was noted in the medical certificate issued by Dr. Leonardo P. Tobias, Municipal Health Officer of Paombong Bulacan, and Dr. Bienvenido O. Muñoz, Medico-Legal Officer of the NBI. If the accused were really intent on having sexual intercourse with Yolanda by force, he could have easily succeeded in doing so. A man who is bent on raping a woman will not just hurt her thighs. He will most likely hold her private parts and breasts, leaving physical injuries in the process. In the instant case, the medical certificates reveal that the hymen of Yolanda is intact and no laceration or injury on the private parts were noticed." Lopez vs. People, G.R. No. L-47469, December 29, 1978, 87 SCRA 462, 471.

The alleged rape has not been sufficiently established.

The next issue to be resolved is what crime was really committed by the accused Ewaldo Cabatlao.

The finding of the trial court that robbery with violence against or intimidation of persons as provided for in Article 294 paragraph 5 of the Revised Penal Code was committed is supported by the evidence.

The counsel de oficio assailed the finding of the court a quo that robbery was committed on the ground that neither the trunk nor the padlock that was allegedly destroyed was exhibited in court; that the alleged robbery was not clearly established by the evidence for the reason that Barrio Captain Sayman testified that neither of the spouses mentioned such fact of robbery when he and Patrolman Paquidongan investigated the said incident in their house; that said robbery of P200.00 was merely a suggestion of said Patrolman Paquidongan; that the failure of the accused to testify should not be taken against the accused as inference of his guilt; and that the said accused was not positively identified as one of the perpetrators of the crime so that his defense of alibi should have been given credence.

The defense of alibi was correctly not sustained considering the positive identification of the accused. There is no showing of any motive of the prosecution witnesses to testify falsely against said accused.

The material contradictions in the testimonies of the defense witnesses on the alibi of the accused Ewaldo Cabatlao noted by the trial court may not be ignored. There is no reason to disturb such findings. It does not appear that the trial court overlooked facts of substance and value that if considered, might affect the result of the case.[7]

The trial court appreciated two aggravating circumstances of nighttime and dwelling. The said aggravating circumstances cannot be considered. Nocturnity was not alleged in the information. Moreover, there is no evidence adduced that nighttime was specially sought by the offenders, or taken advantage of by them to facilitate the commission of the crime or to insure its consummation with a minimum of resistance from the inmates of the house. (People vs. Galapia, 84 SCRA 526, 531-532) Likewise the finding of dwelling as aggravating circumstance in the crime of robbery committed in the house of the Pandans is untenable. It is an inherent element of robbery with force upon things committed inside the dwelling of the victim. Entrance to said house is inevitable; without such entrance there could be no robbery. (People vs. Jaramilla, 55 SCRA 563, 572)

The accused Ewaldo Cabatlao is hereby found guilty of the crime of Robbery With Violence against or Intimidation of Persons as provided for in Article 294, paragraph 5, of the Revised Penal Code.

The penalty imposable upon the accused is what this Court imposed in the case of People vs. Liera[8], as follows:

"The penalty for robbery under Article 294, paragraph No. 5, is prision correccional in its maximum period to

prision mayor in its medium period. The penalty lower by one degree is arresto mayor in its maximum period to prision correccional in its medium period. The indeterminate penalty imposed on the accused should therefore be a minimum of FOUR (4) YEARS and TWO (2) MONTHS only."

WHEREFORE, the decision under review is hereby modified in that the accused Ewaldo Cabatlao is found guilty beyond reasonable doubt of the crime of Robbery with Violence against or Intimidation of Persons as provided for in Article 294 par. 5 of the Revised Penal Code, and is hereby sentenced to an indeterminate penalty ranging from Four (4) years, and Two (2) months of prision correccional, to Ten (10) Years of prision mayor, to indemnify the offended parties in the sum of Two Hundred Pesos (P200.00) without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur. Teehankee, J., votes for the affirmance of death penalty in a separate opinion.

Makasiar, J., concurs in the statement of facts in the dissent of Justice Aquino and votes for the imposition of the death penalty.

Aquino, J., see attached dissent.

[1] Rollo, pp. 7-8.

[2] Rollo, pp. 10-15

[3] Rollo, pp. 15-18.

[4] Rollo, pp. 19-20.

[5] Rollo, pp. 46-52.

[6] Rollo, p. 53, Appellant's brief, p. 1.

[7] People vs. Garcia, 89 SCRA 440, 450-451, citing numerous cases.

[8] 82 SCRA 163, 171-172.

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DISSENTING OPINION

AQUINO, J.:

I dissent. The rape was proven beyond reasonable doubt. After the accused, Ewaldo Cabatlao, had hogtied the spouses Quirico Pandan and Lolita Pandan and taken two hundred pesos from their trunk, Cabatlao put out the light, removed his clothes and with his dagger in hand approached Lolita.

He pushed her backward. She fell prostrate on the floor with her hand still tied behind her back. While she was in that position, Cabatlao placed himself on top of her. He tore her dress and panty with his dagger. She cried and

shouted for help, saying: "Tabang kamon".

Cabatlao poked his dagger at Lolita's body and held her neck with his other hand. He was able to insert his penis into her vagina and consummate the sexual intercourse. Lolita was three months pregnant.

After Cabatlao had sexual congress with Lolita, his companion in turn raped her. The next day she was examined by a doctor who certified that she had incised wounds on her right palm, left forearm and the left side of her neck and abrasion and hematoma on her forearm (Exh. D).

The doctor opined that the wounds were caused by a dagger. He revealed that the labia majora, labia minora and uterus had no injuries, that she was pregnant and her vagina was "roomy and wide". He testified that the absence of injuries in her genital organ did not preclude the possibility of sexual injury.

The trial judge observed that Lolita, who looked humble and frail, testified in a spontaneous, natural and sincere manner and that she swallowed her pride and endured a humiliating cross-examination in order to seek redress for the grievous wrong committed by Cabatlao.

Cabatlao did not testify in his defense. He did not contradict the testimony of the Pandan spouses against him. As noted by the trial court, "he chose to remain silent in spite of the blistering denunciation against him".

The trial court convicted Cabatlao of rape under article 335 of the Revised Penal Code and not of robbery with rape under article 294(2). Hence, it imposed the death penalty.

I am of the opinion that Cabatlao should be convicted of robbery with rape, the crime against property imputed to him. Hence, he should be sentenced to reclusion perpetua. He was not charged with a crime of chastity; so, he cannot be convicted under article 335.

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SEPARATE OPINION

TEEHANKEE, J.:

The record shows beyond doubt that on the occasion of the robbery, qualified rape was committed by the accused Cabatlao and his companion who has remained at large. The victim's testimony stands uncontradicted. Since the crime was committed with the two aggravating circumstances of dwelling and ignominy, I vote for affirmance of the death penalty imposed by the trial court on Cabatlao, pursuant to the Court's ruling in *People vs. Obtinalia*, 38 SCRA 651 (1971), and my separate opinion in *People vs. Boado*, G.R. No. L-44725, March 31, 1981 (which is hereby reproduced by reference), that the proper penalty in such cases is the more severe provided for qualified rape by Article 335 of the Revised Penal Code as amended by Republic Act No. 4111 and not the lesser penalty provided for robbery with rape in Article 294 (2) of the Revised Penal Code (which lesser penalty has subsequently been eliminated since August 15, 1975 through P. D. 767 which now provides 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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