

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OPINIADO DOLAR Y EVALLA AND REYNALDO MONTALBO Y GUTIERREZ, ACCUSED-APPELLANTS.

G.R. No. 100805. March 24, 1994

Ponente: PUNO, J.

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PUNO, J.:

In an Information,[1] dated October 27, 1987, accused REYNALDO MONTALBO and OPINIADO DOLAR were charged with ROBBERY WITH RAPE, allegedly committed as follows:

"That on or about October 24 1987, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent of (sic) gain and by means of force, violence and intimidation, to wit: by then and there poking a knife at Danilo Permison y Rosalin and Leny Reli y Santualia, threatening them with death should they make an outcry and thereafter striking the former with the knife, hitting him on the left hand, take steal and carry away one wallet containing cash money of P270.00 and one Citizen wristwatch worth P880.00, belonging to said Danilo Permison y Rosalin and cash money of P20.00, belonging to Leny Reli y Santualia, all in the total amount of P1,170.00, against their will, to the damage and prejudice of said owners in the said sum of P1,170.00 Philippine Currency; that on said occasion, the said robbery was accompanied by rape in that said Opiniado Dolar y Evalla in pursuance of their conspiracy with each other, did then and there wilfully, unlawfully and feloniously, by means of force, violence and intimidation, to wit: by then and there poking the knife at the neck of said Leny Reli y Santualia, succeed(ed) in having carnal knowledge of her, against her will and consent. (emphasis ours)

"Contrary to law."

Upon their arraignment on December 11, 1987, the accused pleaded not guilty[2] and underwent trial.

The prosecution's evidence show that at around eight thirty in the evening of October 24, 1987, Danilo Permison and his nineteen year-old girlfriend, Leny Reli, were walking along Bonifacio Drive, Port Area, Manila. From Anda Circle, they headed towards the Philippine Coast Guard headquarters. Across the Bonifacio Drive was the lighted NAPOCOR building. Suddenly, Reynaldo Montalbo and Opiniado Dolar darted from a dark portion of the area. Sensing danger, Danilo and Leny evaded the two. However, it was too late. Dolar collared and poked a fan knife (balisong) on Danilo. Montalbo, on the other hand, poked a fan knife on Leny. Both accused warned them: "Huwag (kayong) sisigaw at baka papatayin namin kayo." (Don't shout or we will kill you).[3]

Danilo and Leny were dragged to the darker portion of the area. The hold-uppers, again, threatened to kill them should they refuse to give their money and jewelry. They obeyed. As Danilo was getting the wallet from his pocket, accused Dolar lunged at him saying: "Ang bagal mo," injuring the left thumb of Danilo in the process. Irritated, Dolar pinned down Danilo on the ground with his face down. He took Danilo's wallet, containing cash in the sum of P270.00, and his Citizen watch worth P880.00. Leny was also made to lie on the ground. A twenty peso bill was taken from her by Montalbo. Thereafter, Danilo and Leny were ordered to lie on the ground with

their face up.[4]

After Danilo and Leny were divested of their money and jewelry, accused Montalbo fled towards the squatters' area nearby, leaving behind Dolar. Apparently, Dolar had other sinister intent in mind. He sat on Danilo's belly and, with the fan knife poked on Danilo's chest, warned: "Huwag kang kikilos, ibabaon ko ito." [5]

Dolar ordered Leny to come nearer. She obliged. He asked her to kiss him and threatened to kill Danilo if she refuse to do so. Fearful for the life of her boyfriend, she closed her eyes and allowed accused Dolar to kiss her on the lips. Dolar pressed her down on the ground beside Danilo. With his left hand, he unbuttoned, unzipped and pulled down Leny's maong pants. Thereafter, he removed her panty. He did all these while the knife, which he held with his right hand, was poked on Danilo's chest. Danilo helplessly watched as Dolar was touching and biting Leny's private part. His lust still unsatisfied, Dolar lowered his pants and brief to his knees, pointed the knife at Leny's throat and then went on top of her. Dolar cautioned Danilo not to move, otherwise, he would kill Leny. Danilo waited for his chance to escape. Finally, when accused kneeled to satisfy his lust, Danilo immediately stood up and ran towards the NAPOCOR building for help.[6] While Danilo was gone, Dolar continued ravishing Leny. Soon after, he fled towards the squatters' area.

After her rapist had left, Leny stood up and put on her panty and pants. She was crying as she proceeded towards the NAPOCOR building. With the help of the security guards on duty, the policemen were informed of the incident.

That same evening, policemen from the Western Police District conducted a saturation drive in the squatters' area. More or less, fifteen (15) men, including accused Opiniado Dolar and Reynaldo Montalbo, were gathered by the policemen and brought to Precint No. 5 of the Western Police District in Manila. A police line-up was formed. Without hesitation, Danilo and Leny identified accused Reynaldo Montalbo and Opiniado Dolar as the culprits. Thereafter, the sworn statements of Danilo Permison, Leny Reli and one Miriam Castro, alleged owner of the house where accused were found hiding, were taken. It was then twelve thirty in the morning of October 25, 1987.

The defense was anchored on alibi. Reynaldo Montalbo, a truck helper and resident of 20th Street, Bonifacio Drive, Port Area, Manila, averred that on October 24, 1987, he reported for work from one o'clock until five o'clock in the afternoon. At around six o'clock in the evening, he went home. He was resting on his rented room, owned by the father of Miriam Castro, when the policemen arrived at eight thirty in the evening that same day. The policemen gathered fifteen (15) men from the 20th Street. Subsequently, he and several other men were taken to Precint No. 5. At the station, a police line-up, consisting of fifteen (15) men, including himself and Dolar whom he saw for the first time, was formed. Danilo and Leny identified him and Dolar from the line-up. He alleged that Leny was merely coached by Danilo to get even.

For his part, Opiniado Dolar asserted that at around five o'clock in the afternoon of October 24, 1987, he paid a visit to his friend, Reynaldo Improgo Dumarao, at the latter's residence at 20th Street, Port Area, Manila. They talked until nine o'clock in the evening. The policemen then arrived and ordered them to step out of the house. Fifteen (15) men, including himself and Dumarao, were brought to the police station. He denied knowing Reynaldo Montalbo. He and Montalbo were, thereafter, identified from the police line-up by Danilo Permison.

Defense witness Reynaldo Improgo Dumarao corroborated the testimony of his friend, Opiniado Dolar, that the latter visited him between four thirty and five o'clock in the afternoon of October 24, 1987. It was alleged that on October 24, 1987, Dolar had just arrived in Manila, from their hometown Bacolod. They engaged in conversation. At around nine o'clock in the evening, the policemen came. The policemen brought fifteen (15) men to the precinct. After Dolar and Montalbo were identified from the police line-up, they (accused Dolar and Montalbo) were jailed.

In its Decision, dated August 15, 1989, the trial court found accused Dolar and Montalbo guilty as charged of robbery. The trial court, however, ruled that there was no conspiracy to commit the crime of rape. The dispositive portion of trial court's decision, reads:

"WHEREFORE, the Prosecution having proven beyond reasonable doubt the guilt of the accused Opiniado Dolar y Evalla of the crime of robbery with rape, sentences him to suffer the penalty of Life Imprisonment; to pay Danilo Permison the sum of One Thousand one Hundred Fifty (P1,150.00) as damages, and to pay Leny Reli the sum of Ten Thousand (P10,000.00) Pesos as damages.

"Accused Reynaldo Montalbo y Gutierrez is likewise found guilty beyond reasonable doubt not of the crime of robbery with rape, but only a simple robbery, and sentences him to suffer the penalty of FOUR (4) YEARS, TWO (2) MONTHS, and ONE (1) DAY to SIX (6) YEARS IMPRISONMENT; to pay Leny the sum of One Thousand (P1,000.00) Pesos as damages, he is entitled to the full term he was under detention.

"SO ORDERED."

Accused Reynaldo Montalbo did not appeal from the foregoing judgment. On February 1, 1990, he was granted a six-year probation by the trial court.

For his part, Opiniado Dolar appealed, raising this error:

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT OPINIADO DOLAR GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH RAPE."

We affirm the judgment of conviction.

We are aware of the trial court's difficult task of weighing the testimony of the prosecution witnesses vis-a-vis the testimony of defense witnesses, particularly in rape cases. The issue, thus, boils down to the credibility of witnesses.

In the case at bench, two (2) prosecution witnesses, Danilo Permison and Leny Rely, positively identified accused-appellant Dolar as the hold-upper and the rapist. Danilo Permison testified as follows:

"FISCAL DELOS REYES;

"Q: Mr. Danilo Permison, on October 24, 1987, on or about 8:80 in the evening, will you tell us where you were then?

"DANILO PERMISON:

"A: I was walking towards the headquarters of the Philippine Coast Guard together with Leny Reli.

"x x x x x x x x

"Q: While you were walking with Leny, your girlfriend xxx, was there any unusual incident that happened?

"A: While (we were) walking, we met two (2) men.

"Q: What happened after meeting these two men?

"x x x x x x x x

"A: We evaded them, because I noticed that they had bad intention.

"Q: What else happened after you are trying to evade them?

"A: After we evade (sic) them, I was collared and a bladed weapon was poked on my waist.

"x x x x x x x x

"Q: These two men that you met that evening, will you be able to recognize them if you see them again?

"A: Yes, sir.

"Q: If they are in this court room right now, will you kindly point them out?

"INTERPRETER:

Witness pointing to xxx Opiniado Dolar and Reynaldo Montalbo.

"Q: Which of these two men that you pointed before this Court collared you?

"INTERPRETER:

Witness pointing to a person who answers in the name of Opiniado Dolar.

"Q: Which of these two persons pointed out poked a Batangas Knife at your breast?

"A: That same person Opiniado Dolar.

"x x x x x x x x

"Q: What else happened if any after you and your companion were poked with a knife with these two people?

"A: I was told not to shout.

"x x x x x x x x

"Q: What else happened after they told you not to shout.

"A: They told us to produce our money and jewelries (sic), otherwise they will kill us.

"Q: What did you do then after you were told to bring out your money and jewelries, otherwise they will kill you?

"A: Having dragged on me, I cannot do anything and we are (sic) made to lie down face down and took our money.

"Q: How much money was taken from you?

"A: P270.00.

"Q: How about jewelries (sic), were there any jewelries taken from you?

"A: One Citizen wristwatch.

"x x x x x x x x

"Q: How much is the value of your wristwatch?

"A: P880.00.

"Q: Who among these two accused took your wallet?

"A: Opiniado Dolar was the one who took my wallet and then turned it over to Montalbo.

"Q: How about your wristwatch, who took it from you?

"A: He was the one also.

"x x x x x x x x.

(TSN, April 21, 1988, pp. 3-5).

Leny Reli corroborated the testimony of her boyfriend. She further testified that accused Reynaldo Montalbo, took her money in the amount of twenty pesos (P20.00). Thereafter, accused Montalbo fled to the squatters' area.

Leny vividly recalled how she was violated by accused-appellant in the presence of her boyfriend. She testified:

"FISCAL:

"Q: Miss Reli, this morning, you testified that after one of the accused (took) your money he scampered away and thereafter, the other accused who was seated on top of the belly of Danilo Permison ordered you to come closer to him, did you follow the order of the accused?

"COURT:

He already said that.

"Q: When you come close to that accused seated on top of the belly of your boyfriend about you, what happened when you came close to him?

"A: He ordered me to kiss him.

"Q: Did you follow his order to kiss him?

"A: Yes, sir.

"x x x x x x x x

"Q: How many times did you kiss him?

"A: He was the one who kissed me, I just closed my eyes.

"Q: After the accused kissed you, what happened next?

"A: He removed my pants, sir.

"x x x x x x x x

"Q: When the zipper of your pants was pulled down, what happened?

"A: He also removed the panty, sir.

"Q: What was your position when the button, when your pants was unbuttoned and the zipper was pulled down?

"A: I was lying, sir.

"Q: How come you were lying on the ground when your pants and panty was (sic) removed?

"A: I was made to lie down, sir.

"Q: How?

"A: I was pressed to lie down, sir.

"Q: What was the position of the accused when you were pressed and ordered to lie down?

"A: He was still on top of my boyfriend Danilo Permison and his knife was still poked at him.

"x x x x x x x x

"Q: After you were ordered to come nearer to the accused, what happened next?

"A: He begun kissing my private parts, sir, and he inserted his finger in my private parts.

"x x x x x x x x

"Q: After the accused Dolar did this, xxx, what else happened?

"A: He removed his pants and then rode on top of me.

"x x x x x x x x

"Q: Where was your boyfriend Danilo Permison while accused Dolar inserted his private parts into yours xxx?

"A: He ran towards Napocor building to ask (for) help.

"Q: You mean, you were left behind?

"A: Yes, sir,

"Q: When your companion Danilo left and went to Napocor building, was it after accused had already inserted his private parts into yours or was it before?

"x x x x x x x x

"A: He was in the process of entering his private parts into mine when my boyfriend Danilo Permison ran towards Napocor."

(TSN, July 28, 1988, pp. 10-14)

We agree with the trial court's finding that Danilo and Leny told the truth when they testified in open court. Their testimonies are not only consistent in all material aspects, they are also replete with minutiae of the incident.

There is no cogent reason for us to depart from the established doctrine that the findings of the trial court pertaining to the credibility of witnesses deserve great respect since it had the opportunity to observe the demeanor of the witnesses as they testified on the witness stand and, therefore, it could discern if the witnesses had told the truth or not.[7]

Accused-appellant contends that it was not possible for Danilo and Leny to recognize the culprits since the place of incident was dark. He further alleges that Bonifacio Drive is not a busy street, particularly at night, and very few cars pass by to illuminate the area. This argument is untenable.

We note that the Napocor building, some thirty meters from the place of incident, was lighted at the time Danilo and Leny were held up. Accused-appellant was seen at close range by Danilo and Leny before they were dragged. Further, Danilo and Leny testified that the light from the passing vehicles illuminated the area, thus, they managed to recognize the culprits. The identification of accused-appellant, a few hours after the incident, bolstered the allegations of Danilo and Leny on Dolar's participation in the crime. Judging from their testimonies in open court, Danilo and Leny had retained their senses despite the horrible experience they had gone through. Thus, we held: "It is the most natural reaction for victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from their memory." [8]

We examined the evidence for accused-appellant which consist of his testimony and that of his childhood friend, Reynaldo Dumarao.

Reynaldo Dumarao claimed that he was with accused-appellant on the date and time of commission of the offense. He testified:

"ATTY. CAWED:

"Q: Now, where is Opiniado Dolar staying on October 24, 1987, if you know?

"A: I do not know where he lives, but he came from Bacolod on October 24, 1987.

"Q: You said that the accused Opiniado Dolar arrived from Bacolod on October 24, 1987, what time did he arrive then?

"A: About 4:30 to 5:30 in the afternoon.

"Q: Would you know where the accused was between 8:00 and 9:00 o'clock in the evening of October 24, 1987, the whereabouts of Opiniado Dolar?

"A: He is in my house, he just came from the province and we were conversing.

"Q: Now, when Opiniado Dolar arrived on October 14, 1987, at about 4:30 in the afternoon, would you remember if he went out of your house on that particular date?

"A: No, sir."

(TSN, May 11, 1989, pp. 4-5).

The defense would like to impress the court that accused-appellant did not commit the offense charged since he had just arrived from Bacolod on the date and time in question. We are not persuaded.

The testimony of defense witness Reynaldo Dumarao was contradicted by accused-appellant on cross-examination. Accused-appellant testified:

"FISCAL:

"Q: Now, xxx you mentioned a certain address as 4044-A Asteroid, Sun Valley, Paranaque, what is that address that you gave?

"A: That is the house of my wife.

"Q: Are you telling the Court that before the resident (sic) took place on October 24, 1987, you were living with your family in Sun Valley?

"A: Yes, sir.

"x x x x x x x x

"Q: Are you telling the Court that you have been living in that place for about a year before October 24, 1987.

"A: I go there.

"Q: When (sic) you mean to say that you have been living there less than a year?

"A: Yes, sir.

"Q: Would you say that you have been living there for about six (6) months?

"A: More than a month.

"Q: And therefore, you (sic) on the night of October 24, 1987, you are just paying a visit to your friend?

"A: Yes, sir.

"Q: And that was the exact time when you were apprehended by the police?

"A: Yes, sir."

(TSN, May 11, 1989, pp. 20-21).

Alibi is a weak defense, particularly, when it is not physically impossible for accused to be at the scene of the crime at the time of its commission.[9] In the case at bench, accused-appellant was at his friend's house, some eight meters away from the place of the incident. He was arrested at nine o'clock, or thirty minutes after the robbery and rape had been committed. It was, thus, not impossible for him to be at the scene of the crime.

All things considered, we hold that Opiniado Dolar is guilty beyond reasonable doubt of the crime of robbery with rape. We note, however, that the trial court erred in sentencing him to life imprisonment. The penalty for Robbery with Rape, pursuant to Article 294 (2) of the Revised Penal Code, is reclusion perpetua to death. The penalty of reclusion perpetua is not synonymous with life imprisonment as the former entails imprisonment for at least thirty (30) years and carries with it accessory penalties, whereas, the latter has no definite duration and does not carry any accessory penalty.[10]

WHEREFORE, premises considered, the appealed decision is AFFIRMED WITH MODIFICATION that accused-appellant Opiniado Dolar is meted the penalty of reclusion perpetua. Considering the perversity of the accused-appellant, the civil indemnity in favor of Leny Reli is increased to forty thousand pesos (P40,000.00).[11] Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Original Records, p. 1

[2] Original Records, pp. 7-8.

[3] Exhibits "A" and "B".

[4] Exhibits "A" and "B".

[5] Ibid.

[6] TSN, April 21, 1988, pp. 6-9; July 28, 1988, pp. 10--14.

[7] People vs. De Guzman, G.R. No. 102409-10, December 21, 1992, 216 SCRA 754, 759-770.

[8] People vs. Sartagoda, G.R. No. 97525, April 7, 1993, 221 SCRA 251, 257.

[9] People vs. Villagrancia, G.R. No. 94471, March 1, 1993, 219 SCRA 212.

[10] People vs. Estrella, 92506-07, April 28, 1993, 221 SCRA 543, 548.

[11] People vs. Cruz, G.R. No. 101844, November 18, 1991, 203 SCRA 682.

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