

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAT. DAVID MANZANO Y HERILLA, ROMULO ORDONEZ Y NABOR, JAIME BALCORTA Y MANZANO, JULITO BARRACAS Y BALCORTA, RICHARD DOE, JOHN ...

G.R. No. 108293. September 15, 1995

Ponente: MELO, J.

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MELO, J.:

Accused were charged with robbery with rape in an Amended Information, thusly:

That on or about the 11th day of July, 1991, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, all armed with hand guns, conspiring together, confederating with and mutually helping one another, with intent to gain and by means of violence and intimidation against persons, did, then and there, wilfully, unlawfully and feloniously rob the residence of FELICIDAD BAIRAN Y MARASIGAN located at No. 63 Doña Carmen St., Don Jose Subdivision, Fairview, this City in the following manner, to wit: on the date and place aforementioned, accused pursuant to their conspiracy, barged into the residence of said FELICIDAD BAIRAN Y MARASIGAN and at gun point, hogtied the occupants thereof and thereafter robbed, took and carried away the following:

FROM FELICIDAD BAIRAN Y MARASIGAN

1. Cash Money -----P 50,000.00
2. One (1) pc. of earring ----- 100,000.00
3. One (1) pc. of necklace ----- 300,000.00
4. One (10) pc. of ring ----- 300,000.00
5. One (1) Seiko watch ----- 1,000.00
6. One (1) pc. of Gold Necklace ----- 80,000.00
7. One (1) pc. of bracelet ----- 50,000.00

FROM SUSAN BAIRAN Y MAGSALIN

1. Cash Money ----- P 50,000.00
2. Assorted jewelries and
assorted lotion and perfumes ----- 500,000.00

all in the total amount of P1,431,000.00, Philippine Currency, and on the occasion of the aforementioned offense, accused DAVID MANZANO Y HERILLA, by means of violence, intimidation of person, did, then and there, with lewd designs, wilfully, unlawfully and feloniously have carnal knowledge of Susan Bairan y Magsalin, against the latter's will and consent, to the damage and prejudice of the said offended parties in the aforementioned amount and in such other amount as may be awarded to them under the provisions of the New Civil Code of the Philippines, contrary to Article 294, par. 2, in relation to Art. 335 of the Revised Penal code.

(p. 9, Rollo.)

Of those charged, only Pat. David Manzano, Romulo Ordoñez, Jaime Balcorta, and Julito Barracas were arrested. The others, unidentified as they have remained, were never arrested.

Upon arraignment, all the accused entered pleas of not guilty, and following trial, the trial court found all of them guilty beyond reasonable doubt of the crime charged in a decision dated December 17, 1992, the dispositive portion of which reads:

Samakatwid, nang dahil sa pagkakasa-alang-alang sa mga nabanggit sa dakong itaas at mga katibayang iniharap laban sa mga nasasakdal, walang makatwirang alinlangan na sina Pat. DAVID MANZANO y HERILLA, ROMULO ORDONEZ y NABOR, JAIME BALCORTA y MANZANO at JULITO BARRACAS y BALCORTA ay pawang nagkasala ng Pagnanakaw na kalakip ang Panggagahasa at nilabag nila ang Artikulo 294, Talata Bilang 2 ng Binagong Kodigo Penal at iginagawad sa kanila ng hukumang ito ang parusang reklusyon perpetua o habang-buhay na pagkabilanggo

Inuutusan ng hukumang ito na bayaran nina Pat. David Manzano y Herilla, Romulo Ordonez y Nabor, Jaime Balcorta y Manzano at Julito Barracas y Balcorta sina Gng. Felicidad Bairan at Gng. Susan Bairan ang halagang P1,431,000.00, salapi ng Pilipinas, ang katumbas na halaga ng ari-ariang ninakaw at tinangay ng mga nasasakdal at ang pananagutan ng bawat isa hinggil sa pagbabayad ng halagang ito ay buo at solidaryo (in solidum). Inuutusan din ng hukumang ito si Pat. David Manzano y Herilla na bayaran si Susan Bairan ng halagang P50,000.00, salapi ng Pilipinas, bilang bayad-pinsala sa nasirang puri at karangalan ng huli.

Ang pansamantalang pagkakakulong ng mga nasasakdal na sina Pat. David Manzano y Herilla, Romulo Ordonez y Nabor, Jaime Balcorta y Manzano at Julito Barracas y Balcorta, sa panahon ng paglilitis ay bibilangin kasama sa pagtutuos ng parusang iginawad sa kanila.

Ang ginugol sa pag-uusig (kostas) ay babayaran ng mga ipinagsakdal.

(pp. 42-43, Rollo.)

From said decision, the instant appeal has been interposed, with reversal anchored upon the following assignments of error:

I

The trial court erred in believing the prosecution witnesses, and disbelieving the defense of alibi of the accused-appellants.

II

The trial court erred in declaring that the prosecution witnesses had positively identified the accused-appellants despite the fact that they were identified only after they were illegally arrested by the CIS.

III

The trial court erred in declaring that just because three of the accused-appellants are relatives, and the four of them live in but one residence shows that they conspired to commit the crime of robbery with rape.

IV

The trial court erred in finding the accused-appellants guilty beyond reasonable doubt of the crime of robbery with rape.

(pp. 1-2, Appellants' Brief; p. 266, Rollo.)

The facts of the case, as borne out by the record, were correctly summarized by the Office of the Solicitor General as follows:

On July 11, 1991, at about 10:30 o'clock in the evening, Jovencio Nemis, driver in Mrs. Felicidad Bairan's house at 63 Doña Carmen St., Don Jose Subdivision, Fairview, Quezon City, drove home the spouses Ongbuco who were visitors of Susan Bairan, daughter-in-law of Mrs. Bairan. Upon returning to the Bairan house, but before he could get inside the gate, a group of armed men poked their guns at him. Jose Raquedan, one of the students being supported by Mrs. Bairan, saw the incident. He immediately ran to the basement of the house and told his companions to close the door and windows. Homer Gana, another of Mrs. Bairan's supported students, forthwith went upstairs, put out the lights, and closed the door and windows. He, however, heard someone knocking at the door, and when he opened it he saw Jovencio Nemis and a group of armed men with their guns poked at the latter. Instinctively he tried to close the door, but it was pushed open by the armed men who then got inside the house (pp. 4-10, tsn., October 10, 1991).

Inside the house, the armed men gathered all the occupants in the sala and tied their arms and feet with torn clothes, except Mrs. Bairan (pp. 9-10, tsn., supra .) In order to gain entrance into the bedroom of Mrs. Bairan — inside which were Mrs. Bairan, her daughter-in-law Susan Bairan, and the latter's three children - the armed men used Jovencio Nemis to call and knock at the bedroom's door. Once inside, the armed men ransacked the room, opened the drawers, aparador and other places where money, jewelries and other valuables were kept. They scattered things all around and the room was in disarray.

While the room was being ransacked, accused Pat. David Manzano dragged Susan Bairan inside the adjoining bedroom. With his gun pointed at Susan's head, Pat. Manzano told the latter, thus: "Putang ina mo, huwag kang maingay, papatayin kita" (pp. 14-15, tsn., November 27, 1991). Manzano warned Susan that if she will resist and fight back, he will kill her. He then held the arms of Susan and forcibly made her lie down on the carpet. He removed his pants and briefs, then raised Susan's duster or "malong" and removed her panty. While Susan was on a lying position and resisting with her two arms being held by Manzano, the latter tried to insert his penis inside Susan's. By sheer force Manzano was ultimately able to accomplish his evil desire, after which he warned Susan that should the latter report what happened, he will kill her. While Susan was being raped by Manzano, somebody knocked at the door and shouted: "Ilabas mo ang babae" (p. 21, tsn., supra.).

Dr. Annabelle Soliman, NBI Medico Legal Officer, identified and submitted Living Case Report No. MG-91-760 (Exh. "F") on rape subject Susan Bairan (pp. 5-9, tsn., March 19, 1992).

The valuables taken by the armed robbers from the house of Mrs. Felicidad Bairan are the following;

FROM FELICIDAD BAIRAN y MARASIGAN

1. Cash money P 50,000.00
2. One (1) pc. of earring 100,000.00
3. One (1) pc. of necklace 300,000.00
4. One (1) pc. of ring 300,000.00
5. One (1) Seiko watch 1,000.00
6. One (1) pc. of gold necklace 80,000.00

7. One (1) pc. of bracelet 50,000.00

FROM SUSAN BAIRAN y MAGSALIN

1. Cash money P50,000.00
2. Assorted jewelries and assorted
and perfumes 500,000.00

Aside from ransacking the house, taking valuables and raping Susan Bairan, the armed men cooked food, ate and slept, leaving Mrs. Bairan's residence only at about 5 o'clock in the morning of the following day, July 12, 1991 (pp. 9-11, tsn., September 12, 1991).

Mrs. Felicidad Bairan immediately reported the crime to the Quezon City Police Station and to the Criminal Investigation Service at Camp Crame (pp. 22-23, tsn., November 27, 1991).

In the early morning of July 21, 1991, while Herminia Pascual, Mrs. Bairan's househelp, was on her way to visit her cousin at Litex, she saw accused Julito Barracas, David Manzano and Jaime Balcorta inside their compound at 39 Pres. Quezon, Unit II, Brgy. Commonwealth, Quezon City. She also saw accused Romulo Ordonez near the gate. Forthwith she called by phone Jerry Pablo of the CIS. At around 7 a.m. that same day she accompanied Larry in arresting the suspects (pp. 24-30, tsn., September 12, 1991).

At the CIS Office in Camp Crame, Pat. David Manzano, Romulo Ordonez, Jaime Balcorta and Julito Barracas were pointed to and identified by the victims as among the armed men who robbed the house of Mrs. Felicidad Bairan. In court, during the trial, these accused were also positively identified by the prosecution witnesses (p. 4, Decision).

(pp. 6-10, Appellee's Brief ff. p. 272, Rollo.)

Accused-appellants' contention that they were illegally arrested by the CIS without any warrant of arrest is well-taken.

It is to be noted that accused-appellants were arrested on July 21, 1991, or 10 days after the commission of the robbery with rape which was perpetrated on July 11, 1991.

The warrantless arrest does not fall under any of the situations provided for by Section 5, Rule 113 of the 1985 Rules on Criminal Procedure which provides:

SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7.

None of the circumstances mentioned in said Rule obtains in this case. Unquestionably, accused-appellants were not arrested while they were actually committing or attempting to commit a crime in the presence of the arresting officers, as contemplated under paragraph (a) of Section 5. Neither is paragraph (b) applicable, for the arresting officers had no personal knowledge indicating that accused-appellants had just committed an offense. Obviously, paragraph (c) is not pertinent for the persons arrested had not escaped from a penal establishment or had escaped while being transferred from one confinement to another.

However, the illegal arrest of accused-appellants does not negate the validity of their conviction. For the evidence against them is not derived or drawn from their illegal arrest or as a consequence thereof. Their conviction is based on their positive identification by the victims as the authors of the crime. Such positive identification was totally independent of their unlawful arrest. In fact, it was the recognition and identification by witness Herminia Pascual, Mrs. Bairan's househelp, of accused-appellants which led to their arrest. On the early morning of July 21, 1991, while Herminia was on her way to visit her cousin at Litex, she saw accused-appellants Julito Barracas, David Manzano, and Jaime Balcorta inside their compound at 39 Pres. Quezon, Unit II, Brgy. Commonwealth, Quezon City, and she also spotted accused-appellant Romulo Ordonez near the gate. She immediately called up by phone Jerry Pablo of the CIS, and at around 7 a.m., that day she accompanied Jerry in arresting accused-appellants. It is indubitable, therefore, that their identification as the perpetrators of the crime by at least one witness occurred prior to their arrest. Their contention that they were identified by the witnesses only because they were arrested and only after such arrest is thus without any factual basis. The testimony of the other prosecution witnesses that accused-appellants committed the crime charged may be considered as, at least, corroborative of the testimony of Herminia. However, the testimony of Susan Bairan is not merely corroborative but is a main and principal testimony establishing the fact she was raped by Manzano. Again, her testimony is not dependent on the arrest of Manzano for her identification of Manzano as her rapist is unquestionable, indisputable, unequivocal, and categorical. During the rape, she was as close to him as is physically possible, for a man and a woman cannot be physically closer to each other than during the sexual act. She testified that she could not forget his face as the room where she was forcibly dragged to and raped was illuminated through the window by a nearby mercury streetlight which passed through the thin curtain.

The insistence that the prosecution witnesses could not have identified the culprits because the latter wore masks during the commission of the crime is devoid of evidentiary support. The armed robbers, some with masks, stayed for 6 to 7 hours at the house of Felicidad Bairan where they even "cooked food, ate and slept" (p. 11, tsn., September 12, 1991). During that long period of time those who were masked removed their masks, from time to time, while the robbery was taking place (p. 10, tsn., November 27, 1991). Thus, their faces were exposed and seen by the witnesses to the commission of the crime, resulting in accused-appellants' subsequent identification. Prosecution witness Jose Raquedan saw the culprits before they entered the house. He declared that there were more or less 10 persons who took part in the robbery and he was able to positively identify one of them, Pat. David Manzano. He recognized Manzano because before the witness could close the door of the house, Manzano called him and said, "Brod sandali lang" and told him not to run. Likewise, Dennis Gana, a student and resident of the Bairan house, testified that when the robbers entered the house, they were told to lie face down in the sala and they were tied; he was able to see the faces of the armed men when he occasionally peeped at them and when he was allowed to go to the comfort room; in court, he positively identified accused-appellants Manzano, Barracas and Balcorta as among the robbers.

It is to be stressed that there is a total lack of ill-motive on the part of the victims and the prosecution witnesses to testify falsely against accused-appellants. When there is no showing that the witnesses for the prosecution were actuated by any improper motive, their testimony is entitled to full faith and credit (*People vs. Fuertes*, 229 SCRA 289 [1994]; *People vs. de la Cruz*, 229 SCRA 754 [1994]).

Further, accused-appellants contend that the fact that three of them are relatives and that all four of them lived in the same place does not show that they conspired to commit the crime of robbery with rape. Conspiracy need not be proved by direct evidence of prior agreement to commit the crime as it could be inferred from the conduct of the accused before, during, and after the commission of the crime, showing that they acted in unison with each other evincing a common purpose or design (*People vs. Dalanon*, 237 SCRA 607 [1993]). The concerted acts of the accused to obtain a common criminal objective signify conspiracy (*People vs. Silong* (232 SCRA 487 [1993])). The acts of accused-appellants clearly show conspiracy among them. They entered the Bairan residence together. They tied up the occupants of the house and divested them of money and valuables, and ransacked the house looking for valuables. While one of them ravished Susan, the others, aware of what was taking place, did nothing, thereby giving their implicit assent to such beastly act. The facts of the case plainly manifest the existence of conspiracy among accused-appellants.

Finally, accused-appellants interpose the defense of alibi. Manzano claims that he was at Police Station 5 on the night of the incident, July 11, 1991; and that at 3 o'clock the following morning he joined an operation to apprehend murder suspects in Lupang Pangako. Jaime Balcorta and Julito Barracas profess that they were in Villacorta, Mabini, Pangasinan on the date of the incident attending the wake of a nephew. Romulo Ordonez, for his part, avers that on July 11, 1991 he was in his house at San Simon, Bani, Pangasinan, tending to their store; that on the evening of said date he went to the house of a neighbor to attend the wake of one deceased Anacieto Bahad and left at 3 o'clock the following morning. The alibis of accused-appellants Balcorta, Barracas and Ordoñez are bare self-serving assertions, uncorroborated by disinterested witnesses.

Alibi, we have repeatedly held, is the weakest defense and cannot prevail over the positive identification of the accused by prosecution witnesses (*People vs. Lag-aw*, 229 SCRA 308 [1994]; *People vs. Calope*, 229 SCRA 413 [1994]). In the face of the positive identification of accused-appellants by their very victims as the perpetrators of the crime charged, the defense of alibi must fall. Although the alibi of Manzano appears to have been corroborated by his fellow police officers in the precinct where he was stationed, said defense is unworthy of belief not only because he was positively identified by the victims of the robbery and the rape but also because it has been held that alibi becomes more unworthy of merit where it is established mainly by the accused himself and his relatives (*People vs. Gundran*, 228 SCRA 583) and by the same token if it is established by the accused or his friends and comrades-in-arms.

WHEREFORE, the appealed decision is hereby **AFFIRMED**, with costs against accused-appellants.

SO ORDERED.

Romero and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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