

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO CANTURIA, ORLANDO DIIN, CARLOS BARON, NORBERTO GABITO, ANTONIO SAN JORGE, EDISON DIIN, EDISON SANCHEZ AND GLORIOSO LERI...

G.R. No. 108490. June 22, 1995

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

At just about midnight on September 10, 1985, the spouses Romeo and Leonor Mendenes and their three children were in deep slumber in their modest home in the municipality of Irosin, Sorsogon. They were quite oblivious of the fact that one of eight men, armed with bolos, had succeeded in boring a hole through the lawanit window of their bedroom making it possible for him to unlock the same, and for him and his companions to make a surreptitious entry into the house.

The first of the intruders to come into the house roused the spouses from sleep and brandishing his weapon, ordered the startled pair to lie face down on the floor. This man, later identified as Carlos Baron, bound Romeo Mendenes hand and foot. Another bolo-wielding man also entered the house through the same window, opened the main door, and let his companions in.

Thereupon the bandits, for that they were, ransacked the Mendenes house and went through the family's personal belongings. Baron remained beside Romeo whom, he kicked whenever the latter tried to lift his head to see what the armed trespassers were doing.

After a while, Renato Canturia, one of the robbers, moved to the side of Mrs. Leonor Mendenes and began touching intimate parts of the hapless woman's body. Evidently, this disgusting activity soon led to full arousal of Canturia's animal passion. He dragged Leonor out of the house to a place some thirty meters away. There, by threat of his jungle knife, two and a half (2 1/2) meters long, he forced Leonor to take off her clothes. Ignoring her tearful pleas, Canturia pawed her body and mashed her private parts after which he had sexual intercourse with her, twice. All throughout the unfortunate woman's ordeal, Canturia's knife remained pointed at her throat. A third attempt to rape Mrs. Mendenes was aborted when Canturia heard his companions whistling for him. He ordered Leonor to put her dress back on, pulled her back inside the house, and tied her hands.

Before leaving the house, the armed men warned husband and wife not to tell anyone what had happened lest the worse fate of death befall them all. The Mendenes children mercifully slept undisturbed all throughout their parents' harrowing experience.[1]

After the malefactors' departure, Leonor, whose feet had not been fettered, went to where her husband still lay on the floor. They struggled to free each from their bonds and after a time were able to do so. Still filled with fear of the robbers, they then fled with their children to the house of Romeo's father. When daylight came, Romeo reported the incident to the Irosin Police Station, and Leonor underwent a physical examination in the Irosin

District Hospital. She was found positive for spermatozoa.[2]

The information received from the Mendenes spouses convinced the Irosin police officers that it was a group of persons known as "Dose Pares" which was responsible for the crime. In fact, they had already received reports of several robberies allegedly perpetrated by this group in the area. Accordingly, on September 19, 1985, police officers proceeded to the houses of the suspects, namely: Carlos Baron, Orlando Diin, Renato Canturia, Glorioso Lerit, Antonio San Jorge, Norberto Gabito, Edison Diin, and Edison Sanchez. In the course of their investigation, they found some of the items stolen from the Mendeneses in the house of Antonio San Jorge. The police then brought the eight men to their headquarters. There they were pointed to by Romeo and Leonor as the persons who had robbed them. Leonor particularly identified Canturia as the person who had raped her.

Following this, the eight suspects were charged with robbery with rape under an information reading as follows :

"That on or about the 10th day of September 1985, in the Municipality of Irosin, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to gain, by using force and intimidation, conspiring, confederating and helping one another, did then and there, wilfully, unlawfully and feloniously entered (sic) the house of Mr. and Mrs. Romeo Mendenes by unlevering (sic) and unlocking the back of the window and once opened went inside the house by passing thru the window an opening not intended for entrance or egress, and poked at the occupants with a bolo and tied their hands and feet and on the occasion thereof one of the conspirators Renato Canturia focibly take (sic) Leonor (wife of Romeo Mendenes) out of their home for almost 30 meters away and forcibly had sexual intercourse against the will and consent of said Leonor and at the same time the co-conspirators of Renato Canturia ransacked the personal belongings of Mr. and Mrs. Mendenes and take, rob, steal and carry (sic) away the following articles, to wit:

- three (30 dozen of plates;
- One (1) clock citizen;
- One (1) necklace;
- Three (3) fighting cocks;
- Thirteen pieces of 25 c/coins;
- Two (2) pants
- One (1) dozen bowl;
- One (1) dozen fork;
- Two (20 casseroles;
- Two (2) cauldrons;
- Two (2) wedding rings;
- Two (2) blankets;
- One (1) flashlight plus several underwear and T-shirts and articles

with a total value of TEN THOUSAND (P10,000.00) PESOS, Philippine Currency, to the damage and prejudice of the aforesaid amount and to the personal damage of Leonor Mendenes.

With the aggravating circumstances of night time, superior strength and use of deadly weapon."

The case was docketed as Criminal Case No. 280 and, upon the defendants' plea of not guilty, was tried in the Regional Trial Court of Irosin, Sorsogon, Branch 55, Judge Senecio Ortile presiding.

The evidence of the prosecution tended to prove the facts narrated in the opening paragraphs of this opinion. As might be expected, the People's case was anchored mainly on the testimony of Leonor Mendenes who unequivocally pointed to all eight accused as the persons who had offended against her family. She described to the Court the specific participation of each of the accused in the crime; she pointed to Baron as the one who had roused them from sleep and hogtied her husband, Romeo; she identified Glorioso Lerit and Edison Diin as the look-outs; and she related how the robbers had methodically divested her family of its possessions. She singled out Canturia as the person who had brutally defiled her.

Six of the accused opted to testify for the defense: Edison Diin and his father Orlando Diin, Glorioso Lerit, Antonio San Jorge, Renato Canturia and Edison Sanchez. All put up the defense of alibi; all claimed that at the time of the commission of the offense, they were at places other than the Mendeneses' house. San Jorge claimed he was in the mountains of Tabon-Tabon stripping abaca. The other five testified that they were either in their respective houses, sleeping, or drinking with friends.

After giving evidence in their defense, Sanchez and Lerit escaped from the Sorsogon Provincial Prison and have since remained at large.

The Regional Trial Court found all the accused guilty beyond reasonable doubt of the crime charged, adjudging the proofs of the prosecution to be entitled to full credit, and rejecting the defense of alibi set up by the accused. In its decision dated 27 June 1991, the Trial Court sentenced each of the defendants to suffer the penalty of reclusion perpetua, and to pay jointly and severally the amount of P50,000.00 as civil indemnity to Leonor Mendenes and the amount of P10,000.00 corresponding to the value of the stolen goods without subsidiary imprisonment in case of insolvency. It also directed that the accused be credited with the full benefit of their preventive imprisonment if they should agree in writing to abide by the disciplinary rules imposed on convicted prisoners, failing in which they would be credited only with four fifths (4/5) of the time of their preventive confinement.[3]

An appeal was taken in behalf of all the accused to this Court. The Court's attention was soon called, however, to the escape of Lerit and Sanchez from the Sorsogon Provincial Prison. For this reason the Court dismissed their appeal in a Resolution dated November 3, 1993, pursuant to Section 8, Rule 124 of the rules of Court.[4] The Public Attorney's Office, counsel for the fugitives, Lerit and Sanchez, offered no objection to the dismissal of the latter's appeal and promptly withdrew its appearance for them.[5] The Trial Court's judgment as regards Lerit and Sanchez thus became final and executory.[6]

Hence, it is only with the appeal of the six remaining accused that the Court will have to deal. These six appellants fault the Trial Court for failing to give due weight to the defense of alibi considering the "untenable identification by private complainant," Leonor Mendenes. Appellants contend that Leonor could not have sufficient time and opportunity to see and subsequently remember the faces of the robbers. They argue that by Leonor's own admission, the crime took place in the middle of the night, in a room where the lone source of illumination, a 25 watt bulb, was immediately turned off by the first robber to enter the house; that after this bulb was thus turned off, the only source of illumination that remained was the flashlight held by one of the robbers. They thus conclude that in such a dark environment, Leonor's identification of the accused as the robbers is incredible and erroneous. The appellants also contend that neither could Leonor have seen the face of the person who raped her because it was pitch black in the place where the sexual violation took place. According to them, this erosion or degradation of the proof of identity should have given corresponding enhancement and acceptability to the defense of alibi.

The arguments are untenable and cannot be accepted.

There is no question but that a robbery was perpetrated by a band against the Mendenes spouses at their home, and that in the course thereof, Leonor Mendenes was raped. There is no serious dispute either (no rebuttal having been essayed) about the fact that the police team that went to investigate the suspects in their houses, found some of the stolen items in the house of accused San Jorge.[7] The explanation proffered by San Jorge for his possession of the stolen items — that they were peddled to his wife by co-accused Orlando Diin[8] — strengthens rather than weakens the case against him and his co-accused. When a person has in his possession part of recently stolen property, he is presumed to be the taker of all, in the absence of satisfactory explanation of his possession.[9]

The matter of the accuracy of the identification by Leonor Mendenes of the offenders is a factual issue resolved by the Trial Court which pursuant to established doctrine, should be given weight on appeal unless there are convincing indications that certain facts or circumstances of weight and significance have been overlooked which, if considered, would alter the result of the case. The Court discerns no such convincing indications in the case at bar and thus perceives no reason to overturn the trial court's conclusion of the correctness of Leonor Mendenes's positive identification of the appellants as the persons who had robbed her family of their hard-earned property, and of Canturia as the person who had ravished her during the robbery. The records reveal that Leonor Mendenes categorically pointed to the appellants as the persons who broke into her house and carried away her family's belongings, mostly, kitchen utensils. There was no hesitation, equivocation or vacillation on her part when she identified the accused as the people responsible for the robbery. She repeated the identification in open court, while understandably under deep emotion, crying very hard, attempting to control the detestation she must have felt for those who had so grievously wronged her and her loved ones. She detailed with clarity the specific participation of each of the accused in the robbery. And when she came to Canturia, and identified him before the Court as her rapist, she broke down and sought to hit him.[10] There was, to repeat, no tinge of doubt, hesitation, or artificiality in her testimony. She acted as naturally and normally as might be expected from a grievously wronged woman recounting her plight.

When asked how she came to see the faces of the accused in the dark confines of their bedroom, Leonor positively declared that one of the robbers held a flashlight while light reflected on their faces. At the time the robbers entered the room, Leonor and her husband were told to lie down. Romeo's hands were tied and every time he tried to glance at the robbers, he was kicked by Baron. Leonor was not similarly restricted in her movements. She was not tied. She was also on the floor but she was able to lift her face. She was thus able to see and recognize the faces of the culprits. True, after a while she was sexually harassed by Canturia but fending off lascivious actuations did not deter or prevent her from recognizing the faces of the other robbers and observe how her family's belongings were being carted away by heartless men. There is no cause to doubt the sincerity and the certitude of her evidence.

Quite recently, this Court ruled that the light coming from a flashlight is sufficient illumination by which to make a reliable identification.[11] In this case, the illumination coming from the flashlight of one of the robbers made it possible for Leonor to see the bandits' faces. Moreover, as this Court has previously observed, it is a most natural reaction for victims of criminal violence to strive to observe the appearance of their assailants and the manner in which the crime was committed. Leonor must also have striven to engrave the faces and physical features of the robbers in her memory, the better to help in later bringing them to justice. It should moreover be recalled that Canturia was already sexually molesting her even at the onset of the robbery. He stayed physically close to her inside the house. And they could not have been closer, physically, than during the rapes. The Court is satisfied that Leonor had the opportunity to make an accurate identification of her rapist and of his companions, and that

there was no mistake in her subsequent identification of them.

The Court cannot, however, see its way to upholding the conviction of all the accused for robbery with rape. Of seeming relevance, to be sure, are two (2) familiar principles, i.e. (a) that in a conspiracy the act of one is the act of all — a conspiracy being amply demonstrated by the proofs among the eight (8) accused in this case — and (b) that when "more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band," in which case, any member of the band "who is present at the commission of a robbery by *** (said) band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same."^[12] This notwithstanding, it is the Court's view that only Canturia should be held responsible for the crime because he alone perpetrated the detestable crime of rape. The others could not be held liable therefor. For while the evidence does convincingly show a conspiracy among the accused, it also as convincingly suggests that the agreement was to commit robbery only; and there is no evidence that the other members of the band of robbers were aware of Canturia's lustful intent and his consummation thereof so that they could have attempted to prevent the same. In an early case, where on the occasion of a robbery in band, one of the members of the band caught a woman while trying to get away, and raped her in a place away from her house in which the robbery was being committed, this Court declined to hold the other members of the band responsible for the rape, in the absence of positive proof that they "were aware of, much less *** (abetted)" said rape.^[13] Said other members of Canturia's band may and should be held guilty of the crime of robbery by a band under Article 294, No. 5, in relation to Article 296, of the Revised Penal Code.

The aggravating circumstances of dwelling and nocturnity shall be appreciated against the appellants. The crime was committed in the place of abode of the victims; and the accused used the cover of the night to facilitate the commission of the crime. Abuse of superior strength is absorbed by commission in band. The robbery having been committed by a band with the attendance of these aggravating circumstances, there being no countervailing mitigating circumstances, the penalty provided by law for the offense shall be imposed in its maximum period.

In view of all the foregoing, the judgment of the trial court finding accused appellant Renato Canturia guilty of the crime of robbery with rape, and sentencing him to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties of the law, is hereby AFFIRMED. Appellants Carlos Baron, Orlando Diin, Edison Diin, Norberto Gabito and Antonio San Jorge are sentenced to an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as minimum, to TEN (10) YEARS of prision mayor as maximum for the crime of robbery. The award of damages by the lower court is also hereby affirmed.

SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.

[1] Rollo, pp. 18-19; TSN, 18 June 1987, pp. 6-13

[2] Exh. "A"

[3] Rollo, pp. 23-24

[4] Rule 124; "Sec. 8. Dismissal of appeal for abandonment or failure to prosecute. ** The Court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal."

[5] Rollo, p. 59

[6] The act of escaping from prison by a prisoner while his case is on appeal implies the withdrawal of said appeal. The judgment of the court below becomes final. (See *US v. Ravides*, 4 Phil. 271; "The principle upon which this rule rests is that a party appealing who flees the jurisdiction pending appeal, is in contempt of the authority of the court and of the law, and places himself in position to speculate on the chances for a reversal meanwhile keeping out of the reach of justice and preparing to render the judgment nugatory or not, at his option. Such conduct is intolerable and does not invite leniency on the part of the appellate court. (*Francisco*, Criminal Procedure, 1993 ed., p. 520, citing *US v. Wilson*, 82 Phil. 567 and *Langao v. Fakat*, 30 SCRA 866)

[7] TSN, 12 Sept. 1988, pp. 3-4

[8] TSN, 11 May 1989, p. 12

[9] SEE SEC. 3, (j), Rule 131, Rules of Court; *US v. Ungal*. 37 Phil. 835; *Peo. vs. Maclid*, 212 SCRA 758; *Peo. vs. Javier*, 112 SCRA 186

[10] TSN, 18 June 1987, p. 6

[11] In *People v. Apawan and Sause*, G.R. No. 85329 promulgated on 16 August 1994, it was held that the light coming from the flashlight of accused Sause was sufficient to allow the prosecution witnesses to see the faces of accused. SEE also *Peo. v. Nopia*, 113 SCRA 599

[12] ART. 296, Revised Penal Code.

[13] *Peo. v. Hamiana*, 89 Phil. 225, 232 (1951); see also, *Peo. v. Pascual, et al.*, (unrep.) 93 Phil. 1114, cited in *Aquino*, *The Revised Penal Code*, 1977 ed., Vol. III, p. 1468

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