

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH BARRIENTOS, ACCUSED-APPELLANT.

G.R. No. 119835. January 28, 1998

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellant Joseph Barrientos was indicted in an Information that read:

"I N F O R M A T I O N

"The undersigned Prosecutor II of Zamboanga del Sur, accuses JOSEPH BARRIENTOS, of the crime of DOUBLE ROBBERY WITH RAPE, committed as follows:

"That on February 11, 1992, at 5:30 o'clock in the afternoon at the compound of the Molave Regional Pilot School, Poblacion, Municipality of Molave, Province of Zamboanga del Sur, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent of gain and with intent to lie while armed with a batangas knife, threaten and by means of force and intimidation did then and there, willfully unlawfully and feloniously have a sexual intercourse with one Exaltacion Lopez for two (2) times and thereafter by means of force and intimidation did then and there wilfully, unlawfully and feloniously took from Exaltacion Lopez, the amount of One Hundred (P100.00) Pesos Philippine Currency, to her great damage and prejudice in the afore-stated amount.

"CONTRARY to Article 294, paragraph 2, of the Revised Penal Code.

"Molave, Zamboanga del Sur, May 26, 1992.

(SGD.) FERNANDO G. CAGOCO

2nd Asst. Prov'l. Prosecutor"[1]

Priorly filed by the Molave Chief of Police, Inspector Motalib Banding, before the Municipal Trial Court ("MTC") of Molave, Zamboanga del Sur, which conducted the preliminary investigation, was the complaint; viz:

"C O M P L A I N T

"The undersigned Chief of Police Molave Police Station, Molave, Zamboanga del Sur, under oath accuses JOSEPH BARRIENTOS, of the crime of 'ROBBERY WITH RAPE', committed as follows:

"That on the 11th day of February 1992, at 5:30 P.M. more or less, at the compound of the Molave Regional Pilot School, Molave, Zamboanga del Sur, Philippines, and within the preliminary jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation armed with a Batangas knife, did, then and there willfully, unlawfully and feloniously, raped and robbed the said complainant, Mrs. EXALTACION LOPEZ right in her classroom.

"CONTRARY TO LAW.

Molave, Zambo. del Sur, February 24, 1992.

(SGD.) MOTALIB T. BANDING

Inspector, PNP
Chief of Police

"SUBSCRIBED AND SWORN to before me this 24th day of February 1992, at Molave, Zamboanga del Sur, Philippines.

(SGD.) DIOSDADO C. ARRIESGADO

Municipal Trial Judge"[2]

Substantiating the complaint was the sworn statement of the complainant, Exaltacion Lopez, which, in part, stated:

"02

Q-What prompted you to appear (at) the Office of the Chief of Police Molave Police Station?

A-I am here to file complaint against Joseph Barrientos.

"03.

Q-What crime did he [commit] against you?

A-

Because he raped me and then robbed.

"04.

Q-When was that, and to wherein particular place did it [happen]?

A-Last February 11, 1992, at about 5:30 p.m., more or less, right in my classroom situated at the Molave Regional Pilot School Campus."[3]

The defense, contending that the prosecution did not have a strong case against the accused, applied for bail. After conducting a hearing thereon, during which Exaltacion Lopez, Inspector Motalib Banding, and Cleofas Mendoza (a fellow teacher of the complainant) were presented by the prosecution, the court, in an order, dated 22 July 1992,[4] denied the petition for bail. A motion for its reconsideration, as well as for the quashal of the warrant of arrest,[5] was likewise denied by the trial court in its order of 25 August 1992.[6]

In the arraignment that followed, the accused pleaded "not guilty" to the charge.

The evidence for the prosecution, incorporating the evidence presented during the hearing on the petition for bail (deemed reproduced during the trial), in most part consisted of the statements at the witness stand of Exaltacion Lopez, Inspector Motalib Banding, Cleofas Mendoza and Dr. Vladimir Villaseñor (the examining physician).

The complainant, Exaltacion Lopez, a 50-year old teacher, testified that she was, at past 5:00 in the afternoon of

11 February 1992, in her classroom at the Molave Regional Pilot School in Molave, Zamboanga del Sur, preparing to call it a day. While shutting down the wooden jalousie windows of the classroom, she was suddenly held from behind by a man in pink jogging pants. The man was naked from waist up except for his face which was wrapped in "ninja" fashion. The intruder grabbed Exaltacion by her right hand, and pointed a batangas knife at her neck. She attempted to snatch the knife away but that did not work. He led her to the corner of the room with the knife still being poked on her. By the time she turned her head to squarely face him, the man was already completely naked except for the "ninja style" shirt that still partly covered his face. She pleaded to be spared but he paid no heed. He ordered her to lie down on the cemented floor. Showing his impatience, by her refusal, the man grabbed her by the blouse causing her to fall on the floor. He rode on top of her, throwing her two hands above her head. Then, holding the batangas knife with one hand, he used the other in removing her panty. Ultimately, he succeeded in having her. When he had finished, he demanded P100.00 from her which she hastily gave. He would not, however, let her go just yet. After a while, he again forcibly took her. His lust now fully satisfied, he wiped himself dry using the table cloth hanging at the magazine rack. Shortly thereafter, he departed. After recovering from the ordeal, she closed the room and hurriedly repaired home. She informed her husband of the incident that evening.[7] The following morning, her fellow teachers, to whom she likewise narrated the incident, assisted in bringing the matter up to the police authorities.[8]

Cleofas Mendoza, a fellow teacher of Exaltacion Lopez, stated that she went to the Molave Police Station on 12 February 1992 to report the rape.[9] Inspector Motalib Banding, after receiving the report, promptly conducted an investigation. He went to the crime scene and interviewed Exaltacion who described the rapist to be a man of medium built and with a fair complexion, protruding eyes (botlogon ng mata) and a scar at the right arm.[10] Banding took the table cloth used by the rapist and sent it for laboratory examination to the PC Crime Laboratory in Manila. He dispatched his police officers to round up possible suspects on the basis of the description given by the complainant. A week later, or on 21 February 1992, he and policeman Cortez invited accused Joseph Barrientos for questioning.[11] When Barrientos was presented to Exaltacion at the police station, the latter immediately recognized him to be the person who molested her. Barrientos asked Exaltacion for her forgiveness; his words: "Ma'm, pasaylo-a ko sa akong nahimo nimo, dili nato ni kasohan, tabangan ta lagi ka Ma'm nga mawala ang estorya nimo" (Ma'm, forgive me for what I have done against you, we will not bring this to court, I will help you Ma'm to eradicate the story against you). She refused to forgive him.[12]

The table cloth sent for examination was analyzed by Dr. Vladimir Villaseñor. It was found positive for the presence of seminal fluid stains.

The defense denied the accusation. Aside from the accused, six other witnesses were presented to corroborate appellant's alibi and claim of maltreatment by the police.

Appellant stated that in the morning of 11 February 1992, he had left Molave for Dumingag, Zamboanga del Sur, where he stayed at the house of his brother until the morning of 13 February 1992. He went to Dumingag in order to borrow a fatigue uniform which he would use for the ROTC summer camp training in Sinacaban. The next day, 12 February 1992, he attended the death anniversary of his brother's father-in-law.[13] He was able to return home to Molave only in the afternoon of 13 February 1992. That same afternoon, while watching a basketball game at the Public Plaza of Molave, police officer Robert Cortez invited him to the Police Station for questioning. After a brief investigation, he was allowed to go home.[14] On 17 February 1992, he and a certain Dante Baguio, a person of his size and built but with darker complexion, were fetched by a police vehicle and presented to two children at the Police Station. The children, when asked if they could recognize appellant, responded in the negative. Thereupon, he was allowed to leave the station.[15] On 20 February 1992, while he was on his way home, he was directed by Inspector Banding, then driving a police service vehicle, to proceed to the Molave

Police Station. At the station, he was asked to wait for Inspector Banding at the latter's office. After a little while, Inspector Banding arrived with Lopez who pointed at him (the accused) as being the man who had raped her. He vehemently denied the accusation.[16] He was locked up in jail anyway. The next day, he was mauled, blindfolded and maltreated by Inspector Banding and his men for not agreeing to confess to the crime.[17]

After the presentation of evidence had closed, the court, presided over by Hon. Camilo E. Tamin of the Regional Trial Court ("RTC") of Molave, Zamboanga del Sur, Branch 23, promulgated its decision, dated 20 February 1995, which held accused Barrientos guilty of the crime charged. The court concluded:

"WHEREFORE, this court finds the accused guilty beyond reasonable doubt of the complex crime of rape with robbery and hereby sentences him to the penalty of reclusion perpetua and to pay the offended party Exaltacion Lopez moral damage in the sum of P300,000.00, and the cost of the proceedings.

"SO ORDERED." [18]

Interposing an appeal to this Court, the accused asseverates that the trial court has erred -

"I. IN HOLDING THAT THERE IS A VALID COMPLAINT SIGNED BY THE PRIVATE OFFENDED PARTY SUFFICIENT IN LAW TO CONFER JURISDICTION TO THE TRIAL COURT;

"II. IN ADMITTING THE TESTIMONY OF THE PRIVATE OFFENDED PARTY AND CHIEF OF POLICE, MOTALIB BANDING THE ACCUSED ASKED FORGIVENESS FROM THE PRIVATE OFFENDED PARTY THEREBY ADMITTING HIS GUILT;

"III. ON RELYING ON THE SOLE TESTIMONY OF THE PRIVATE OFFENDED PARTY THAT SHE COULD IDENTIFY THE ACCUSED AS THE VERY PERSON WHO RAPED AND ROBBED HER; and

"IV. IN NOT BELIEVING THE TESTIMONY OF THE ACCUSED-APPELLANT AS CORROBORATED BY HIS WITNESSES." [19]

Appellant assails both the complaint signed by the Chief of Police and the Information filed by the Assistant Provincial Prosecutor as being insufficient to confer jurisdiction on the court, arguing that the prosecution for rape can only be done by means of a valid complaint made by the offended party herself.

The contention lacks merit.

The term "complaint filed by the offended party" found in Rule 110, Section 5, of the Rules of Court, said the Court in *People vs. Sangil*, [20] should be -

"x x x given a liberal or loose interpretation meaning a 'charge, allegation, grievance, accusation or denunciation' (p. 158, West's Legal Thesaurus Dictionary) – rather than a strict legal construction, for more often than not the offended party who files it is unschooled in the law. The purpose of the complaint in Section 5, Rule 110, is merely to initiate or commence the prosecution of the accused. The victim's 'sinumpaang salaysay' which was prepared in the vernacular, and the 'complaint' in English, which must have been prepared for her by someone else, complement each other, when read together, and satisfy the legal definition of a 'complaint' as 'a sworn statement charging a person with an offense, subscribed by the offended party x x x' (Sec. 3, Rule 110, 1985 Rules on Criminal Procedure). The Court is not inclined to disregard her salaysay (complaint) for mere lack of an oath for that would amount to suppressing her anguished cry for redress." [21]

The sworn statement of Exaltacion Lopez, the offended party in the case at bar, was signed by Lopez herself in the office of the Chief of Police (Motalib Banding). That statement, in "question and answer" form and filed with the Molave MTC to support the complaint signed by the Chief of Police, was to this effect:

"PRELIMINARY: Mrs. Exaltacion Lopez Y Fernandez, you are being informed that under Article 183 of the

Revised Penal Code, any person who knowingly making any untruthful statement shall testify under oath before any competent person duly authorized by law to administer oath shall commit the crime of Perjury. Is this clearly understood by you?

“PRELIMINARY:

Mrs. Exaltacion Lopez Y Fernandez, you are being informed that under Article 183 of the Revised Penal Code, any person who knowingly making any untruthful statement shall testify under oath before any competent person duly authorized by law to administer oath shall commit the crime of Perjury. Is this clearly understood by you?

“ANSWER-

Yes Sir.

“Q.

Please state your name age and other personal circumstances?

“A.

Exaltacion Lopez Y Fernandez, 50 years old, married, Public School Teacher and resident of Quezon St, Molave, Zamboanga del Sur.

“Q.

What prompted you to appear before the Office of the Chief of Police Molave Police Station?

“A.

I am here to file complaint against Joseph Barrientos.

“Q.

What crimes did he [commit] against you?

“A.

Because he raped me and then robbed.

“Q.

When was that, and to wherein particular place did it [happen]?

“A.

Last February 11, 1992, at about 5:30 P.M. more or less, right in my classroom situated at the Molave Regional Pilot School Campus.

“Q.

Why did it [happen]?

“A.

During that time, I was in my classroom working my lesson plan, whom I noticed two female children entered roaming inside of which I cautioned them and they went out without any response.

“Q.

What transpired after the two children left the classroom?

“A.

I closed the window purposely to go home, suddenly somebody held my right arm tightly, at this moment, I turned my head to clarify and I saw a certain person whose head wrapped with a shirt (gibolokotan) and only his eyes were visible, as if Ninja style, aiming the Batangas knife closely to my neck, at this juncture, I attempt to grab the said Batangas knife but all in vain since he aimed it closely to my neck, I asked him of what was his purpose, despite he quoted words ‘HUBO’, at this critical situation, I plan to escape walking towards the health corner waiting an opportunity but subject person walked on behind me closely still the Batangas knife positioning closely to my neck, until we reached the health corner, sensing have no chance to escape, I faced him and I was frightened when I saw the said person already [nude], at this juncture, I appeal to him saying words to quote ‘AYAW KO INTAWON PAGHIBABTI DONG KAY TIGULANG NA KO’ Meaning, ‘Please [don’t] touch me I’m already old’, despite he ordered me to lie down in the cemented flooring, sensing my life will be on danger, and I observed his both eyes [were red], as if he acted as drug craze person, I obey his order of which accomplished him of his amorous desire to have sexually [intercourse] with me since I feel the discharged of his semen into my womb, after his first sexual intercourse, by forced and intimidation he demanded money of which I gave him the cash of P100.00 peso bill which the only money I have, therein expecting that he will be freed and or released me but still I observed him playing the said Batangas knife on and off then he told me to have another sexual [intercourse] of which still he freed to accomplish same of what he did for the first time.

“x x x x x x x x

“Q.

How come that you were able to identify Joseph Barrientos to be the very suspect who raped and robbed you, in fact according to you his head wrapped with a shirt and only his eyes were visible?

“A.

Because of the scar at his right arm of which I saw when I glanced to the Batangas knife he was holding, and I noticed that his eyes is just protruding (Botlogon ug Mata).

“Q.

What else can you say with regards of his identity?

“A.

His [voice] and the body posture.

“x x x x x x x x

“Q.

How were you able to be sure enough that he is the identical person?

“A.

Because he personally beg pardon and apology from me in the presence of INSPECTOR MOTALIB T BANDING PNP, Chief of Police of Molave Police Station after he confessed of his wrong doings.”[22]

Verily, the situation is not beyond the context and the ambit of the ruling in *People vs. Sangil*.^[23] The legal requirement imposed in Article 344 of the Revised Penal Code, as has been so aptly observed in *People vs. Ilarde*,^[24] is “out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial.”^[25] The overriding consideration in determining compliance with the requirement is the intent and determination of the aggrieved party to seek judicial redress. Here, the sworn statement of the victim hardly can cast doubt on her evident resolve to bring the accused to justice.

In any event, the issue on the validity and sufficiency of the complaint has been belatedly put up by appellant. The matter could have been raised in a motion to quash the information pursuant to Section 3,^[26] Rule 117, of the Rules of Court which step he has failed to do. The rule, according to the Court’s holding in *People vs. Garcia*,^[27] is that -

“x x x at any time before entering his plea, the accused may move to quash the information on the ground that it does not conform substantially to the prescribed form. The failure of the accused to assert any ground for a motion to quash before he pleads to the information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and jeopardy.”

Appellant next faults the trial court for not rejecting the testimony to the effect that the accused has sought forgiveness from the complainant when made to confront him, on 21 February 1992, at the office of the Chief of Police. He claims that the confrontation between him and the complainant is violative of his right to counsel, he having been neither assisted, nor advised of his right to be represented, by counsel at the time.

The argument is misdirected.

There was no written confession or sworn statement of the accused taken during any custodial investigation[28] that had been presented, nor even attempted to be presented, in evidence. The matter testified to was appellant's spontaneous statement of having asked for the forgiveness of the offended party. It was a statement uttered by appellant, overheard by the Chief of Police Motalib Banding, that had not been elicited from him through any questioning. Incidentally, in appellant's own testimony in court, he disclaimed having sought forgiveness from Exaltacion Lopez[29] but conceded that, in his counter-affidavit of 10 March 1992, he admitted having apologized to the complainant, although, he added, it was only because of the alleged mauling and torture he had received from Inspector Banding and his men.

Appellant questions his so-called warrantless arrest. There is paucity of facts on record to substantiate this claim but if, indeed, there has been an irregularity attendant to his arrest, it should, not having been raised at the opportune time, be deemed cured by his having voluntarily submitted himself to the jurisdiction of the trial court. Not only did appellant enter his plea during arraignment and actively participated at the trial,[30] but he likewise has filed, even priorly, a petition for bail which, itself, would have just the same constituted a waiver of any supposed irregularity in his arrest.[31]

Neither is the Court convinced by the contention that appellant has not been sufficiently identified to be the culprit by the complainant. Familiarity with the physical features of a person is an acceptable way for proper identification.[32] As has so keenly been observed by the trial court:

“At the investigation by the police in the afternoon of February 12, 1992, the complainant described the person who ravished her as one of bulging eyes, of fair complexion, sturdily built in body, and with a scar at the right arm at the elbow joint. The accused fits the description given by the offended party. At the confrontation between the accused and the offended party in the Office of the Chief of Police, the offended party was able to positively identify the accused as the person who ravished her twice in the afternoon of February 11, 1992. She found the identifying scar in the part of the body of the accused where she said the same can be located. She was able to recognize the voice, the fair complexion of the accused, his bulging eyes and his body built.”[33]

The positive identification made by the complainant of the person who took away her honor has placed the defense of alibi unacceptable. Alibi cannot prevail over positive identification.[34] Most importantly, alibi, to be convincing and effective, requires proof not only of the accused being at some other place at the time of commission of the crime but also of being physically impossible for him to be at the locus criminis[35] or within its immediate vicinity.[36] These requirements are not at all here extant.

The Court has gone over the records of the case, examined the evidence on record and assessed anew the testimony of witnesses. In its review, the Court has not overlooked the now settled guidelines in evaluating rape cases, to wit: (a) That an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, although innocent, to disprove; (b) that, in view of the intrinsic nature of the crime of rape where generally only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) that, like in any other ordinary criminal case, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the defense.[37] Accordingly guided, the Court is more than convinced that the trial court did not err in its findings and conclusions.

The testimony of the complainant suffers little, if any really, from serious flaws. The Court quotes presently the pertinent portions of her testimony:

“Q:

How many windows of the room were you able to close when a man entered your room?

“A:

I was about to close the last window.

“Q:

Were you able to close the last window when a man entered your room, is that correct?

“A:

I was closing the last window when I noticed there was a man at my back and who grabbed my hand and when I looked at him to verify as to the person who grabbed my hand, I saw the head wrapped with a cloth and pointed his batangas knife right at my neck.

“Q: At the time you first noticed the man, he was not yet naked?

“A: He was half naked and he was wearing a pink jogging pants.

Q: “Was there an electric light at the room at the time when you first noticed a man in your room?

“A: There was a fluorescent lamp but I did not put the light on because it was not yet dark.

“Q: Will you describe to the court, the nature of your window of your room?

“A: It is wooden jalousie window.

“Q: In other words, when you closed the windows the room would be dark?

“A: Not totally dark. How could it be dark when the door was still [open].

“Q: You mean to say the door was not closed when you were molested?

“A: Yes sir.

“Q: It was all the time [open]?

“A: Yes, it was [open] because I was about to go home. I usually don't close the door when I am about to go home.

“Q: The man who entered the room did not close the door?

“A: I do not know whether he closed the door. At that time I was closing the window. My back was facing him when I noticed somebody held my hand closely.

“x x x x x x x x

“Q: Was this man who entered the room wearing any shoes?

“A: No sir.

“Q: You said in your direct testimony that you were brought to the health corner after closing the last window. Then, you noticed a man who was already naked?

“A: Yes sir. He was already naked.

“Q: Was he completely naked at that time?

“A: Yes, he was totally naked.

“Q: At that time, was he at your back or in front of you?

“A: He was at my back.

“Q: You said the pants he was wearing was pink in color?

“A: Yes sir.

“Q: What was the color of the shirt?

“A: I do not know what color was that but I know it is technicolor that was used in wrapping his head.

“Q: Will you tell the court, how long after he first penetrated you. Did he finish the sexual act with you?

“A: I cannot tell how long but he really succeeded in molesting me because I felt his semen entered my vagina.

“Q: Was the first sexual intercourse lasted for about five minutes?

“A: I do not know how many minutes.

“Q: After the first sexual intercourse with you, how long did he do the second intercourse with you?

“A: I do not know how long he molested me.

“Q: Would the interval of the first intercourse to the second intercourse was one hour?

“A: I cannot tell how many minutes or hour was the interval. What I know he molested me again.

“Q: During the time he molested you in that room, did you notice any person outside the room?

“A: I did not see any person outside. If there are persons outside, I could have been saved.

“Q: When you went home, was it still light or already dark?

“A: It was still light.

“Q: You were then wearing watch what you are wearing now?

“A: Yes sir.

“Q: What time was it when you left that building?

“A: I did not look at my watch. I do not know what was the time when I left because I was not in my right mind and I did not notice the time anymore.”[38]

In affirming the conviction appealed from, the Court has, too, adhered to the long established rule that an appellate court does not just casually modify, let alone discard, the factual findings of the trial court without cogent reasons. It obviously should be, for a trial court is in a preferred position in coming up with an accurate impression of the testimony given by witnesses; clearly, trial courts enjoy the advantage over appellate courts of directly and at first hand observing and assessing testimonial evidence.[39] The exception from the rule, i.e., that there are facts of substance and value evidently missed in the process of evaluation that might affect the result of the case, are not here shown.

Finally, certain inaccuracies in the disposition by the trial court of the case require to be addressed. After all, an appeal by an accused in a criminal case opens the whole case for review on any question of fact or law, including those not raised by the parties,[40] as well as of the penalty and indemnity decreed by the trial court.[41]

The court a quo imposed reclusion perpetua on appellant for what it had described to be the complex crime of rape with robbery, holding that -

“On the basis of the evidences submitted, [the] court is morally convinced that the accused committed the two acts of rape against, and the robbery of P100.00 from, the complaining witness Exaltacion Lopez. However, since the said acts were committed on the same occasion, [the] court believes that there is only one criminal intent and that, therefore, only one complex crime of rape with robbery was committed by the accused.”[42]

The trial court might have had in mind, instead, the special complex crime of robbery with rape penalized under

Article 294(2)[43] of the Revised Penal Code. This special complex crime contemplates a situation where the culprit or culprits have an original design to take personal property belonging to another with intent to gain and rape is committed merely as an “accompanying” crime; the principal offense is robbery (a crime against property) and rape is perpetrated incidental to the robbery. It is a public crime which can be prosecuted de oficio and where a separate complaint of the victim would not be indispensable.[44]

Looking closely at the records of the instant case, it would be quite difficult to conclude that the original intention of appellant was to rob the victim (for the crime to fall under Article 294, paragraph 2, of the Revised Penal Code). On the contrary, it would appear that the primary and real intent of appellant was to commit rape and that his demand for cash from his victim was just an afterthought when the opportunity presented itself[45] specifically during a respite between the first and the second sexual intercourse.

Appellant’s original lustful design is manifest from appellant’s actions as so explicitly detailed by the victim, thus:

“Pros. Magangcong:

“Q:

On that particular date, did you remember if there was an unusual incident that took place?

“A:

Yes sir.

“Q:

Will you please inform this court what is that incident?

“A:

That time, I was preparing my lesson plan when there was a person entered my room.

“COURT:

“Q:

Who was with you that time when the person entered your room?

“A:

I was alone.

“Pros. Magangcong:

“Q:

Now, after the person entered your room, what did he do to you?

“A:

While I was closing the windows my back was facing him, the person grab my right hand.

“Q:

What happened next when that person grabbed your right hand?

“A:

I looked back at him to verify as to who the person who grabbed my right hand. And what I saw is a person whose head is wrapped with shirt.

“Q:

After looking at him, did you attempt to run?

“A:

When I turned my back to verify as to who was the person holding my hand, I could not think what to do because that person pointed his batangas at my right neck.

“Q:

Because you did not run, what happened next?

“A:

I tried to grab his batangas but I did not succeed in getting it from him because he was stronger than me.

“Q:

Because he was stronger, what did he do to you?

“A:

He pointed his batangas on my neck.

“Q:

After pointing his batangas, what happened next?

“A:

I walked towards the health corner.

“Q:

Did he also walk with you towards the health corner?

“Atty. Acain:

Objection, Your Honor, leading.

“Pros. Magangcong:

“Q:

How did you happen to go to the health corner when the knife was pointed to your neck?

“A:

He followed me towards the health corner while he was holding the knife pointed at my neck.

“COURT:

“Q:

By the way, was there other classroom near your classroom?

“A:

Yes sir.

“Q:

How many classroom adjacent to your classroom?

“A:

Two adjacent classrooms and another, my room. Three in all.

“Q:

At that time, the two classrooms adjacent to your room have anybody inside?

“A:

Nobody.

“COURT:

Proceed.

“Pros. Magangcong:

“Q:

Because he followed you in the health corner, what happened there in the health corner?

“A:

While he was following me, I faced him. When I faced him, he was already naked.

“Q:

Because he was already naked, did he say anything?

“Atty. Acain:

Objection, Your Honor, leading.

“COURT:

Ask what happened next.

“Pros. Magangcong:

Q:

What happened why he was naked?

“A:

I pleaded to him not to molest me because I am already old but he ordered me to lie down on the cemented floor.

“Q:

What happened next after he ordered you to lie down on the cemented floor?

“A:

I did not lie down immediately on the cemented floor. Instead, I looked at him trying to gaze what was his intention towards me. And I saw my life is endangered because his eyes are very red.

“COURT:

“Q:

Despite the fact that he was already naked, you did not know his intention?

“A:

I know his intention that is why I pleaded to him not to molest me because I am already old.”[46]

The question arises as to whether or not appellant may be convicted of the separate offenses of two counts of rape and one robbery notwithstanding the fact that the offense charged in the Information is one of “Double Robbery with Rape under Article 294, paragraph 2, of the Revised Penal Code.”

The Court rules in the affirmative. Controlling in an Information should not be the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.[47] Neither is it the technical name given to the offense by the prosecutor, more than the allegations made by him, that should predominate in determining the true character of the crime. There should also be no problem in convicting an accused of two or more crimes erroneously charged in one information or complaint, but later proven to be independent crimes, as if they were made the subject of separate complaints or informations.[48]

Parenthetically, in a number of cases decided by the Court at the time when Article 294(2) and Article 335 of the Revised Penal Code imposed different sets of penalties, the Court was divided on the question of which provision should be applied in crimes of robbery with rape when committed with the use of deadly weapon or by two or more persons. The disagreement focused on the applicable penalty considering that Article 335 punished qualified rape with reclusion perpetua to death against the penalty of reclusion temporal maximum to reclusion perpetua for

robbery with rape under Article 294(2). There were more times^[49] when the Court held Article 294(2) to be applicable than when it ruled otherwise.^[50] In *People vs. Mabag*,^[51] the votes of the Justices were stated by the ponente, Mr. Justice Vicente Abad Santos, thus -

“The writer of this opinion together with Justices Hermogenes Concepcion, Jr., Ramon C. Fernandez, Juvenal K. Guerrero and Pacifico P. de Castro are for the affirmance in toto of the lower court’s decision. Justice Ameurfin A. Melencio-Herrera concurs with the aforementioned members of the Court and adds the observation ‘that even in a prosecution for Robbery with Rape, which can be prosecuted de officio, the offended woman should still file a complaint for Rape as a jurisdictional requirement (sec. 4, Rule 110; Art. 344, Revised Penal Code), and out of consideration for her. But if the rape victim herself testifies in open Court, as in this case, the purpose behind the requirement should be deemed as having been met, it being apparent that the victim, as in a complaint filed by her, has decided to expose in a public trial the outrage on her person.’ Justice Claudio Teehankee concurs in the imposition of the death penalty but believes that not one but three death penalties should be meted to the accused. He has filed a separate opinion to this effect. Justice Antonio P. Barredo’s vote is ‘that appellant Paulino Mabag should be sentenced to three death penalties because as I have already explained in previous opinions, it is absurd to read Article 294 (2) of the Revised Penal Code without taking into account the latest amendment of Article 335. The construction of laws must never result in absurdity.’ Justice Felix V. Makasiar has filed a dissenting opinion to the effect that the accused should be convicted and sentenced to death for three separate crimes of robbery with rape. However, Chief Justice Enrique M. Fernando following his opinion in *People vs. Carandang*, L-31012, August 15, 1973, 52 SCRA 259, believes that the appropriate penalty is reclusion perpetua and so does Justice Ramon C. Aquino who has filed a dissenting opinion.

“It thus appears that nine members of the Court are for the imposition of the death penalty in varying numbers, while two members are for reclusion perpetua only.

“WHEREFORE, for lack of the necessary votes the decision appealed from is hereby modified in that the accused shall suffer the penalty of reclusion perpetua but is affirmed in all other respects. Costs de officio.”^[52]

It was during this period of diversity of opinion within the Court that, relevant to the instant case, *People vs. Mabag*,^[53] was decided where, for lack of the required ten votes, the death sentence imposed on the accused was modified to reclusion perpetua, and where, among other things, it said:

“As to the second assignment of error, the appellant claims that even assuming, without admitting, that he is guilty of the offense charged, he cannot be meted the death penalty because Arts. 293, 294, par. 2 and 296 of the Revised Penal Code which are mentioned in the information prescribe only the penalty of reclusion temporal in its medium period to reclusion perpetua when the robbery shall have been accompanied by rape, among other crimes. [Presidential Decree No. 767 which took effect on August 15, 1975 has amended Art. 294, par. 2 of the Revised Penal Code by adding the following: ‘PROVIDED, HOWEVER, THAT WHEN THE ROBBERY ACCOMPANIED WITH RAPE IS COMMITTED WITH THE USE OF A DEADLY WEAPON OR BY TWO OR MORE PERSONS THE PENALTY SHALL BE RECLUSION PERPETUA TO DEATH.’ This amendment cannot of course be given retroactive effect.]

“But the applicable provision is Art. 335 of the Revised Penal Code the relevant portion of which reads: ‘Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty is reclusion perpetua to death.’ And this is the provision mentioned in the dispositive portion of the lower court’s decision quoted above. The fact that Art. 335 of the Revised Penal Code is not mentioned in the information is unimportant and did not deprive the appellant of his constitutional right to be informed of the accusation against him. As former Chief Justice Moran said:

“‘It has been held, however, that if the above requirement [Rule 110, Sec. 7, Rules of Court] is not complied with and no name has been given to the offense alleged to have been committed, the defect is merely of form which does not prejudice the substantial rights of the defendant. This is especially so where the facts pleaded

are clearly constitutive of a specific offense. In such cases, the real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but by the facts recited in the complaint or information. This is so because 'from a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in his defense on the merits x x x. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute x x x. In the designation of the crime, the accused never has a real interest until the trial has ended. For his full and complete defense, he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights x x x. It is the province of the court alone to say what the crime is and what it is named.' Accordingly, the accused will not be permitted 'to stand by and watch the fiscal while he guesses as to the name which ought to be applied to the crime with which he charges the accused, and then take advantage of the guess if it happens to be wrong, while the acts and omissions upon which that guess was made and which are the only real foundation of the charges against him are clearly and fully stated in the information.' Otherwise, it would 'change the battleground in criminal cases from issues to guesses and from facts to fancy.'" (IV Moran, Rules of Court, pp. 22-23, 1970 ed.)

"That the lower court did not err in applying Art. 355 of the Revised Penal Code is shown by the decision of this Court in *People vs. Obtinolia*, G.R. No. L-30190, April 30, 1971, 38 SCRA 651." [54]

All taken, herein appellant must be convicted of two counts of rape under Article 335, qualified by with the use of deadly weapon (a batangas knife), and the crime of robbery under Article 294, paragraph 5, of the Revised Penal Code.

Article 335 of the Code, before the more onerous amendatory provisions of Republic Act No. 7659 (1994) and Republic Act No. 8353 (1997), read:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (As amended by Rep. Act No. 2632, approved June 18, 1960, and Rep. Act No. 4111, approved June 20, 1964.)"

When, such as in the case at bar, the crime of rape was committed with the use of a deadly weapon, the penalty prescribed would be reclusion perpetua to death; there being neither mitigating nor aggravating circumstance shown, the minimum thereof, or reclusion perpetua, should be the appropriate penalty. The penalty of death, in

any event, could not be imposed because of the then constitutional proscription.

In turn, Article 294, paragraph 5, of the Revised Penal Code provides:

“ART. 294. Robbery with violence against or intimidation of persons-Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

“x x x x x x x x

“5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases. (As amended by Rep. Act No. 18.)”

Applying the Indeterminate Sentence Law, and absent any mitigating or aggravating circumstance, the full range of the penalty that may be imposed is anywhere from arresto mayor in its maximum period to prision correccional in its medium period, as the minimum penalty, to prision mayor in its minimum period, as the maximum penalty.

The trial court missed to order appellant to pay the victim actual damages of P100.00 cash taken from her. Conformably with recent court rulings, indemnity for damages must likewise be awarded to the rape victim. The purpose of this award is essentially one of reparation, not punishment or correction, that accounts for its being appropriately termed “indemnity.” Consistent with the prevailing rule, and considering the circumstances of the case, the civil indemnity is here fixed at P100,000.00 for the two counts of rape committed.

WHEREFORE, the judgment of the RTC of Molave, Zamboanga del Sur in Criminal Case No. 92-10267 is MODIFIED by finding accused-appellant Joseph Barrientos guilty beyond reasonable doubt of two counts of rape and the separate crime of robbery. He is accordingly sentenced to suffer the penalty of two (2) reclusion perpetua for the crimes of rape^[55] and the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to seven (7) years of prision mayor, as maximum for the robbery committed. Accused-appellant is ordered to indemnify the offended party the sum of P100,000.00 and to restore the amount of P100.00 taken from her.

Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Panganiban, and Martinez, concur.

[1] Records, Vol. I, p. 1.

[2] Ibid., p. 4

[3] Ibid., p. 5.

[4] Ibid., pp. 48-49.

[5] Ibid., pp. 51-52.

[6] Ibid., p. 55.

[7] TSN, Volume 3, 20 July 1992, pp. 4-13.

[8] Ibid., p. 14.

[9] TSN, Volume 3, 22 July 1992, p. 33.

[10] TSN, Volume 3, 20 July 1992, pp. 33-34.

[11] Ibid., pp. 34-35.

[12] Ibid., pp. 38-39.

[13] TSN, Volume 3, 14 July 1993, pp. 12-19.

[14] Ibid., pp. 25-30.

[15] TSN, Volume 3, 20 July 1993, pp. 10-15.

[16] Ibid., pp. 16-19.

[17] Ibid., pp. 21-24.

[18] Rollo, pp. 37-38.

[19] Rollo, pp. 54-55.

[20] 208 SCRA 696.

[21] At page 707.

[22] Records, Volume 1, pp. 5-6.

[23] Supra.

[24] 125 SCRA 11.

[25] At p. 18.

[26] SEC. 3. Grounds. – The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged or the person of the accused;
- (c) That the officer who filed the information had no authority to do so;
- (d) That it does not conform substantially to the prescribed form;
- (e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;
- (f) That the criminal action or liability has been extinguished;
- (g) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

[27] G.R. No. 120093, 06 November 1997.

[28] See *People vs. Taylaran*, 108 SCRA 373, cited in *People vs. Dy*, 158 SCRA 111.

[29] TSN, Volume 3, 20 July 1993, p. 20.

[30] People vs. Macam, 238 SCRA 306; People vs. Codilla, 224 SCRA 104.

[31] People vs. Abapo, 239 SCRA 373.

[32] People vs. Reception, 198 SCRA 670.

[33] Rollo, p. 35.

[34] People vs. Malagar, 238 SCRA 512; People vs. Escoto, 229 SCRA 430.

[35] People vs. Umali, 242 SCRA 17; People vs. Rivera, 242 SCRA 26.

[36] See People vs. De Roxas, 241 SCRA 369.

[37] People vs. Tacipit, 242 SCRA 241; People vs. Sanchez, 250 SCRA 14.

[38] TSN, 20 July 1992, pp. 25-29.

[39] People vs. Gornes, 230 SCRA 270.

[40] People vs. Rodrigo Villaruel, 261 SCRA 386.

[41] People vs. Villagrancia, 226 SCRA 374 citing People vs. Godines, 196 SCRA 765.

[42] Rollo, p. 37.

[43] ART. 294. Robbery with violence against or intimidation of persons-Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

X X X X X X X X

2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of article 263 shall have been inflicted; Provided, however, That when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons the penalty shall be reclusion perpetua to death. (As amended by Pres. Decree No. 767, Aug. 15, 1975.)

[44] People vs. Ramos, 92 SCRA 165; People vs. Yu, 110 Phil. 793.

[45] See People vs. Dinola, 183 SCRA 493.

[46] TSN, Volume 3, 20 July 1992, pp. 4-7.

[47] See People vs. Aspili, 191 SCRA 530.

[48] People vs. Maribung, 149 SCRA 292, Pecho vs. People, 262 SCRA 518.

[49] People vs. Caisip, 105 Phil. 1180; People vs. Feliciano, 77 Phil. 526; People vs. Olden, 47 SCRA 45; People vs. Otto, 49 SCRA 306; People vs. Carandang, 52 SCRA 259; People vs. Mabag y Labado, 98 SCRA 730; People vs. Perello, Jr., 111 SCRA 147; People vs. Porcare, 120 SCRA 546; People vs. Cabural, 120 SCRA 528; People vs. Mendez, 122 SCRA 415.

[50] People vs. Corpin, 31 SCRA 354; People vs. Obtinalia, 38 SCRA 651; Napolis vs. Court of Appeals, 43 SCRA 301; People vs. Arias, 102 SCRA 303.

[51] 98 SCRA 730.

[52] At pp. 748-749

[53] 98 SCRA 730.

[54] At pp. 746-747.

[55] Article 335, Revised Penal Code in relation to Article VIII, Section 5(2-d), 1987 Constitution.

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