PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.FERNANDO ARELLANO Y ROBLES, ACCUSED-APPELLANT.

G.R. No. 125442. September 28, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Makati City, Branch 138, convicting accused Fernando Arellano y Robles of robbery with rape, and sentencing him to reclusion perpetua and to return to complainant Francisca Magdangal the amount of P1,100.00 representing the money stolen from Francisca Magdangal and Julius Magdangal, and the jewelry stolen from her or its value, and to indemnify complainants Francisca Magdangal and Avelina Andrade in the amount of P50,000.00 each.

On September 17, 1992, assistant prosecutor Albert V. Alcala of Makati filed with the Regional Trial Court, Makati an information charging Fernando Arellano y Robles with robbery with rape, committed as follows:

> "That on or about the 9[th] day of September 1992, in the municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon, conspiring and confederating together with another personage, whose true name and identity are unknown, with intent of gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal and rob one FRANCISCA A. MAGDANGAL of cash money placed inside her wallet worth P400.00, cash money placed inside her cabinet worth P1,000.00 and assorted jewelry worth P100,000.00; and also her husband JULIUS G. MAGDANGAL of cash money placed inside his wallet worth P600.00, to the damage and prejudice of the said Francisca A. Magdangal and Julius G. Magdangal; that by reason of or on the occasion of said robbery, the said accused, by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the aforesaid FRANCISCA A. MAGDANGAL and AVELINA ANDRADE, one after the other, against their will and without their consent.
>
> "CONTRARY TO LAW."[2]

On October 18, 1993, the trial court arraigned accused Fernando Arellano. He pleaded not guilty.[3] Trial ensued.

On September 8, 1992, Francisca Alzate Magdangal, 48 years old and a teacher at Assumption College, was sleeping in the master's bedroom of her residence at 218 Doña Soledad Extension, Better Living, Parañaque. Her four-year-old daughter, Maggie, slept with her in the same room. Her husband, Julius Magdangal, slept in their son's room down the hallway and opposite the master's bedroom.

At around 2:30 in the early morning of September 9, 1992, Francisca Magdangal was awakened by a noise from her window. She went back to sleep but suddenly she was jolted awake when she heard an object thrown inside her room. She looked in the direction of the window and heard two men talking outside. Suddenly, a flashlight beamed directly into her eyes. She heard a man's voice telling her to open the door or he would kill her and her daughter. Still blinded by the flashlight on her face, she failed to notice if the man speaking carried any weapon.

She unlocked the master's bedroom door then slipped back to her bed. She lay on the bed, embraced her daughter and then covered herself with a comforter blanket. A man gained access to the house through a sliding door in the living room and entered the master's bedroom. He asked Francisca where her money was. From beneath the cover of the blanket, she replied, "An dyan." The man searched the room and found money inside a bag on top of her dresser. The money amounted to P500.00, more or less. When the man asked her where her husband's money was kept, she pointed to the top of the television set. The man also found the money, approximately in the amount of P600.00. He asked her where she kept her jewelry, and she pointed to the cabinet. He could not find anything valuable inside the cabinet, so he ordered Francisca to point the place where she kept her jewelry. Francisca removed the blanket from her face and gave instructions to the man where to find the jewelry. In the process, she studied his features closely. She could see his face because the light on her dresser table was switched on. He found her jewelry and then left the room for about a minute. When the man returned, he told her not to resist and began undressing her. She started to pray. He removed his shorts and inserted his penis into her vagina. Simultaneously, her daughter, Maggie, asked what was happening. Francisca told her daughter to keep quiet and to go back to sleep. The girl obeyed. In five minutes, the man satisfied his lust. Thereafter, he left the room again. She stayed in her bed, too scared to move.[4] She could not find the courage or strength to scream.[5]

Avelina Andrade, househelper of the Magdangal spouses, was sleeping in her room beside the kitchen. At around 2:30 in the morning, she woke up and noticed a man in her room. The fluorescent light in the laundry area beside her bedroom window was left open, allowing her to see the features of the intruder's face.[6] When Avelina tried to get up from her bed, the man poked a small knife at her neck. He told her not to utter any noise or he would kill her. The man pushed her to go upstairs to her mistress' room. While climbing the staircase, the man stood behind Avelina, poking a knife at her back. They reached the master's bedroom. Avelina noticed that the room was in disarray and that her mistress Francisca Magdangal was on the bed covered with blanket.[7] Then, the man ordered Avelina to lie beside Francisca. Avelina saw the man's face through the light of the dresser.[8] Then, the man covered her head with a thick cloth. He continued to ransack the room. Thereafter, he lay beside Avelina and ordered her to remove her shorts. When she refused, he poked his knife against her and he removed her shorts. He also took off her panties. He then inserted his penis into her vagina. She felt pain and started crying. She kept removing the thick cloth from her head but the man kept putting it back.

During the ordeal, Francisca was beside her, still covered with a blanket.[9] Moments later, Francisca slowly grabbed a golf club lying beside the bed. In a swift motion, she swung the golf club towards the man and tried to hit him. At the same time, she shouted at the top of her voice. The man, still naked, grabbed his shorts and ran outside, clutching the money and jewelry. Francisca chased him to the gate. The man jumped over the fence and escaped.

Meanwhile, Julius Magdangal woke up and saw his wife screaming hysterically. Francisca told him about the robbery and rape. Julius began yelling for help from the neighbors. Elmer Macquian, a barangay tanod, responded and came to their house. Upon being apprised of the situation, Elmer called the police. Policemen arrived and asked questions regarding the incident. After a few minutes, the policemen left.

At around 9:00 in the morning of September 9, 1992, policemen returned to the house of the Magdangal spouses and conducted an investigation. They recovered a pair of slippers, a pocket knife, and a flashlight from the master's bedroom. They were unable to take any fingerprints. Francisca Magdangal and Avelina Andrade narrated the robbery and rape to the policemen. Thereafter, Francisca Magdangal and Avelina Andrade went to the NBI to undergo medical examination.

At around 10:30 in the morning of September 9, 1992, Dr. Louella Nario of the National Bureau of Investigation conducted a medical examination of both complainants. She failed to find any external physical injury on both

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complainants.[10] When Dr. Nario examined Francisca Magdangal, she found the patient's hymen reduced to carrunculae myrtiformis, or remnants, and positive for spermatozoa.[11] She concluded that Francisca had sexual intercourse with a man within the last twelve hours before examination. Dr. Nario also examined Avelina Andrade and found fresh lacerations in her hymen. Her vestibular mucose, or the tissue surrounding the hymen, was very red or congested with superficial abrasion at the base.[12] Dr. Nario likewise concluded that Avelina Andrade had sexual contact with a man not more than twelve hours prior to examination.

On September 14, 1992, agents of the National Bureau of Investigation (NBI) accosted accused Fernando Arellano while he was on the way home and invited him to the NBI office.[13] The next day, complainants Francisca Magdangal and Avelina Andrade went to the NBI office and identified accused Fernando Arellano as the person who robbed and raped them.

Accused Fernando Arellano interposed the defense of denial and alibi.[14] He alleged that on September 8, 1992, at around 7:00 in the evening, he rode a tricycle from his place of work at H. V. Lutillan Construction, Ford Estate, Paranaque, to his house at F. C. Balarao, Airport Village, Barangay Moonwalk, Parañaque. He cooked rice and then waited for his wife. He ate dinner at around 9:00 in the evening together with his wife and the spouses Clemente and Nilda Soccorro who were staying in his house. After supper, he watched a television show and went to bed at 10:00 in the evening. He slept in his bedroom with his wife, while the Socorro spouses slept on a sofa in the living room, about one-meter away from the main entrance of the house.

On September 9, 1992, accused Fernando Arellano woke up at around 5 in the morning. He fed his turkey, drank coffee and left his house at 6:00 in the morning. He rode a tricycle to work and arrived there at 6:30 in the morning. Normally, he would walk to work but his right foot still hurt from an injury a week before when he accidentally stepped on a two-inch nail.

On September 14, 1992, while he was on his way home, four persons grabbed him and dragged him to a nearby store. A woman standing at the store pointed to him. Thereafter, the four persons brought accused Fernando Arellano to the National Bureau of Investigation. There, accused alleged that he was boxed and forced to admit the charges against him. After being detained at the NBI overnight, he was presented to complainants Francisca Magdangal and Avelina Andrade. Meanwhile, his wife transferred residence.

Elmer Macquian, a barangay tanod, testified that on September 9, 1992, he was sitting at a barangay outpost in Doña Soledad Extension, around eight (8) to ten (10) meters from the house of Francisca Magdangal. Between 4:30 and 4:45 in the morning, he saw a man jump over the fence of the Magdangal residence.[15] He described the man as tall, with white complexion, wearing black short pants, medium built, curly hair in front, and "nakahubad."[16] He could see the man because an electric lamppost stood about seven (7) to ten (10) meters from the house of Magdangal. The man saw him and turned to run away. Elmer gave chase, but the man disappeared behind the house of the Magdangal spouses. Moments later, Elmer heard Julius Magdangal calling for help. Elmer went to the Magdangal residence and asked what happened to them. Seeing his wife crying hysterically, Julius Magdangal told Elmer to return to the house the next day. The following morning, Elmer came back to the house of the Magdangal spouses and saw policemen conducting an investigation. Elmer informed them that he saw a man jump over the fence of complainant's house. He alleged that the fence of the Magdangal residence was only 3 ½ feet, thus, he was able to see the man coming from the house of the Magdangal spouses and leaping over the fence.

Renato Lumapat, a police officer, testified that he went to the house of the Magdangal spouses to investigate the robbery and rape. There, he saw Elmer Macquian and took the barangay tanod's sworn statement. He also wrote a spot report on the incident but was unable to obtain sworn statements from complainants Francisca Magdangal

and Avelina Andrade. He failed to lift fingerprints, but he found a flashlight, a pocketknife and a pair of slippers at the scene of the crime.[17]

Nilda Socorro, a cousin of the accused, testified that at the time of the commission of the crime, accused Fernando Arellano was sleeping at his house at F. C. Balarao Street, Airport Village, Barangay Moonwalk, Parañaque, with his wife.[18]

On March 25, 1996, the trial court rendered a decision convicting accused Fernando Arellano y Robles of the crime charged.[19] The dispositive portion of the decision reads:

> "IN VIEW OF ALL THE FOREGOING, the Court finds accused Fernando Arellano y Robles guilty beyond reasonable doubt of the crime of robbery accompanied with rape, defined and penalized under Articles 293 and 294 paragraph 2 of the Revised Penal Code and he is hereby sentenced to suffer the penalty of reclusion perpetua. Accused is further ordered to return to the complainant Francisca Magdangal the amount of P500.00 and the jewelries listed in Exhibit H, failing in which, accused shall pay to the said complainant the value thereof. He is further ordered to return to Julius Magdangal the amount of P600.00. Accused is to indemnify complainants Magdangal and Andrade the amount of P50,000.00 each.
>
> "SO ORDERED.
>
> "Makati City, March 25, 1996.
>
> "(sgd.) SIXTO MARELLA, JR.
>
> "Judge"[20]

Hence, this appeal.[21]

Accused-appellant denied the charge and contended that the prosecution failed to prove the identity of the perpetrator beyond reasonable doubt. Further, the trial court failed to appreciate his alibi.

The appeal lacks merit.

On the issue of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, unless there appears some fact or circumstance of weight and influence which has been overlooked or the significance of which was misinterpreted. None of the exceptions exists in this case.[22]

In her testimony, Francisca Magdangal said that she saw the face of accused-appellant when she instructed him where to find her jewelry in the cabinet. Avelina Andrade also saw accused-appellant's face because of the light in the laundry area near her room and the light from the dresser of her mistress, Francisca. Thus, the two witnesses were able to see the facial features of accused-appellant enabling them to identify him later on. Indeed, the natural reaction of victims of a crime is to try to look at the features of their assailants. "Victims of criminal violence naturally strive to know the identity of their assailants and observe the manner the crime was perpetrated, creating a lasting impression which may not be erased easily in their memory."[23] Moreover, there was no showing that the prosecution witnesses were actuated by improper motive to impute a false charge against accused-appellant. Therefore, we believe that the victims' identification of the accused-appellant as their assailant deserves full faith and credit.

Medical evidence also corroborated the testimonies of the victims and was consistent with the theory that Francisca Magdangal and Avelina Andrade had been victims of rape.

On the other hand, we find accused-appellant's alibi as unavailing and futile. For the defense of alibi to prosper, the accused must prove that he was elsewhere when the crime was committed and that it was physically

impossible for him to be at the scene of the crime at the time of its commission.[24] In this case, accused-appellant sought to prove that he was eating dinner at his residence at the time of the commission of the crime. However, he failed to show that it was not physically impossible for him to be at the house of complainants on the night in question. More importantly, the defense of alibi cannot prevail over the positive identification of the accused by prosecution witnesses who had no motive to testify falsely against him.[25]

Accused-appellant pointed out that Elmer Macquian, barangay tanod, testified that the accused-appellant was not the same person he saw jump out of the house of the Magdangal spouses on the night in question. However, the victims themselves were at a closer range to the accused-appellant than Elmer and could better identify him. Elmer also admitted that he saw the man leap over the fence in a split second. Thus, the testimony of the victims must be given greater weight.

To secure a conviction for robbery with rape, the prosecution must prove the following elements: "(1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with animo lucrandi; and (4) the robbery is accompanied by rape."[26]

In this case, the prosecution established that accused-appellant took the jewelry and money of the Magdangal spouses through intimidation. Francisca was constantly threatened that accused-appellant would kill her and her daughter if they would not cooperate. Francisca narrated how accused-appellant took money in the master's bedroom and ransacked the room for valuables. Her husband, who knew the amount of money in his wallet, reported that he lost more than P500 after accused-appellant fled the scene. Although there may be inconsistencies in the testimony of prosecution witness Francisca Magdangal as to the amount of cash taken, there was no dispute that the accused-appellant asported cash and jewelry. There is no need to prove the exact amount taken, as long as there is proof of the unlawful taking.[27]

After gathering various sums of money, accused-appellant then raped the two women in the house. Testimonial evidence and medical findings support the claim of the prosecution witnesses Francisca Magdangal and Avelina Andrade that they had been raped.

Thus, the trial court correctly convicted accused-appellant of robbery with rape.

The Court agrees with the finding of the trial court as to the items to be returned or the value thereof to be reimbursed to the victims of robbery with rape, as enumerated in the inventory submitted by the Magdangal spouses.[28]

We note, however, that the trial court ordered the accused to indemnify the victims in the amount of P50,000.00 each, without specifying the kind of damages it represented. This amount must be designated as civil indemnity awarded to the victim upon finding of the commission of the offense and that the accused-appellant committed it.[29]

In addition, moral damages, distinct from civil indemnity, may be granted as well, considering the traumatic experience that the victims endured right in their own home. Thus, the amount of P50,000.00 as moral damages is awarded to each of the victims, in line with current jurisprudence.[30]

Under Article 294 (1) of the Revised Penal Code, the special complex crime of robbery with rape has a corresponding penalty of reclusion perpetua to death.[31] In this case, the crime was committed with the aggravating circumstance of the use of a deadly weapon, a knife. However, since the crime was committed in 1992, prior to the enactment of Republic Act No. 7659,[32] and during the effectivity of the constitutional proscription on the imposition of the death penalty,[33] the trial court correctly imposed the penalty of reclusion perpetua.[34]

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WHEREFORE, the Court AFFIRMS with MODIFICATION the decision of the Regional Trial Court, Makati, finding accused-appellant Fernando Arellano y Robles guilty beyond reasonable doubt of robbery with rape, and sentencing him to reclusion perpetua, with all the accessory penalties provided by law. The Court sentences accused-appellant to reimburse to complainant Magdangal spouses the amount of P1,100.00 and return the jewelry taken, or its value amounting to P302,000.00. In addition, accused-appellant must pay to each of the victims, Francisca Magdangal and Avelina Andrade, the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages. With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.
Puno, J., no part.

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[1] In Criminal Case No. 92-6189, Judge Sixto Marella, Jr., presiding.

[2] Information, Regional Trial Court Record, p. 1.

[3] Order, Regional Trial Court Record, p. 46.

[4] TSN, January 9, 1995, pp. 6-22.

[5] TSN, January 23, 1995, p. 41.

[6] TSN, January 10, 1993, p. 43.

[7] Ibid., p. 15.

[8] Ibid., p. 49.

[9] Ibid., pp. 5-21.

[10] TSN, February 13, 1995, p. 15.

[11] Ibid., pp. 15-17; Medico-Legal Certificate, Regional Trial Court Record, p. 163.

[12] Ibid., pp. 23-24; Medico-Legal Certificate, Regional Trial Court Record, p. 154.

[13] The NBI has been conducting surveillance operations due to the increasing incidents of rape reported in the area.

[14] Testimony of Fernando Arellano, TSN, August 15, 1995, pp. 4-38.

[15] TSN, July 4, 1995, pp. 16-17.

[16] Ibid., p. 19.

[17] TSN, July 25, 1995, pp. 4-30.

[18] TSN, September 26, 1995, pp. 5-17.

[19] Decision, Regional Trial Court Record, pp. 490-498.

[20] Decision, Regional Trial Court Record, p. 498.

[21] Notice of Appeal, filed on April 1, 1996, Regional Trial Court Record, p. 502. On July 07, 1997, we accepted the appeal (Rollo, p. 47).

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[22] People v. Limon, 366 Phil. 29, 34 [1999]; People v. Sultan, 331 SCRA 216 [2000]; People v. San Juan, 336 SCRA 588 [2000].

[23] People v. Diopita, G. R. No. 130601, December 4, 2000.

[24] People v. Sequis, G. R. No. 135034, January 18, 2001; People v. Lacatan, 356 Phil. 510, 521 [1998].

[25] People v. Mamalayan, 345 Phil. 998, 1015 [1997]; People v. Montealto, 336 Phil. 725, 734 [1997].

[26] People v. Seguis, G. R. No. 135034, January 18, 2001.

[27] People v. Aquino, 329 SCRA 247, 268 [2000].

[28] Exhibit "H", Regional Trial Court Record, p. 162.

[29] People v. Quilatan, G. R. No. 132725, September 28, 2000; People v. Watimar, G. R. No. 121651-52, August 16, 2000; People v. Guiwan, 331 SCRA 70 [2000].

[30] People v. Pulusan, 352 Phil. 953, 978 [1998].

[31] People v. Candelario, 311 SCRA 475, 495 [1999].

[32] Entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes."

[33] Section 19 (1), Article III, 1987 Constitution.

[34] People v. Belo, 360 Phil. 36, 50 [1998]; People v. Cristobal, 366 Phil. 19, 28 [1999].

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