

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO TEJERO Y CARANZO, ANTONIO MARCOS Y OBO, EDGAR DEL MONTE Y ALEYA, SONNY CARANZO, JOHN DOE AND PETER DOE, ACCUSED, ANTONI...

G.R. No. 128892. June 21, 1999

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PER CURIAM:

For automatic review is the Decision[1] dated March 13, 1997 of the Regional Trial Court of San Pedro, Laguna, Branch 31 in Criminal Case No. 0320-SPL finding the accused-appellant Antonio Marcos Y Obo guilty beyond reasonable doubt of the crime of Robbery with Rape and sentencing him to suffer the penalty of death and to indemnify the victims in the sum of P50,000 as civil indemnity; P100,000 as moral damages; the sums of P205,000, P17,000 and P85,000 representing the cash, jewelry and other valuables taken from the victims; and to pay the costs of the suit.

On March 12, 1996, at about 11:00 o'clock in the Municipality of San Pedro, Province of Laguna, Antonio Marcos (MARCOS), Sonny Caranzo (CARANZO), Pepito Tejero (TEJERO) and Edgar del Monte (DEL MONTE) armed with handguns entered the residence of Arnold and Aileen Orodio through the back door which was left open by Anthony Abino after answering a call of nature. The four men ransacked the house taking with them cash and jewelry. Thereafter, MARCOS and CARANZO proceeded to the residence of Magdalena Ventura located within the same compound as the house of the Orodios and robbed Magdalena and Arnold taking cash and jewelry belonging to Arnold, Magdalena and the Orodio Junk Shop. On occasion of the robbery, CARANZO and MARCOS raped Magdalena. Aileen, Arnold and Magdalena were then brought to the other house, tied and herded into the master's bedroom where TEJERO and DEL MONTE were guarding Anthony Abino, Salvador Castillo, Celia Villanueva, Joselito Ibana and May An Sevilla. All the accused then left using the Elf van of the victims as a getaway vehicle.

The accused-appellant was charged with the crime of Robbery with Rape in an information[2] that reads:

"That on or about 11:00 o'clock in the evening of March 12, 1996, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with handguns, with intent to gain, conspiring, collaborating, confederating and mutually helping one another with the use of violence and intimidation or against persons did then and there willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

- 1.) Jewelries and Cash belonging to Magdalena Ventura in the aggregate amount of TWO HUNDRED FIVE THOUSAND (P205,000.00) PESOS;
- 2.) Jewelries and Cash belonging to Arnold Orodio in the aggregate amount of SEVENTEEN THOUSAND (P17,000.00) PESOS;
- 3.) Cash belonging to Orodio Junk Shop owned by Vicente Orodio in the amount of EIGHTY FIVE THOUSAND (P85,000.00) PESOS

and on occasion of the said robbery, the accused Antonio Marcos and Sonny Carranzo, by use of force, violence and intimidation and while conveniently armed with handguns did then and there, one after another, willfully, unlawfully and feloniously had carnal knowledge of Magdalena Ventura against the latter's will, to the damage and prejudice of the offended party.

CONTRARY TO LAW."

The accused, with the exception of CARANZO who is still at large, pleaded not guilty to the crime charged upon arraignment.

The prosecution presented four witnesses: Aileen Orodio, Arnold Orodio, Magdalena Ventura, and Dr. Maximo Reyes.

Aileen Orodio testified that on March 12, 1996, she arrived at her house located at Adelina II-A, San Pedro, Laguna at around 11:00 p.m. from Makati together with her husband, Arnold, Salvador Castillo, and Anthony (Jun-jun) Abino. As the house was locked, Anthony and Arnold went to the office of the junk shop located within the same compound to get the keys of the house. While waiting for the keys, Celia Villanueva, Arnold's cousin, woke up and opened the door to let them inside. Arnold, however, was still in the office of the junk shop. Jun-jun then went out of the house to urinate leaving the back door of the house open. After Jun-jun returned, four (4) armed men, including accused MARCOS whom she identified in court, followed him and entered the house. She was eating on the dining table when one of the armed men pointed a gun at her while the other three stood beside her and told her not to make any noise. Salvador Castillo ran to the other room to try and get help but two of the men were able to run after him; mauled him and hit him with a gun on the head. After mauling him, Anthony Abino, Salvador Castillo, Celia Villanueva and the son of their driver were tied and herded into the master's bedroom. The four men then ransacked the house taking a total of P45,000.00 including her and Celia's jewelry valued at P7,000.00 and Celia's cash amounting to P5,000.00 as well as her own money amounting to P500.00. She was then brought to the office by MARCOS and another man whom she named as CARANZO; she informed them that there was money there after being asked for more money. The office is located in a one-story building with two rooms; one room serves as the office while the other serves as the residence of Magdalena, the aunt of her husband. When they were outside the office, MARCOS poked his gun at Arnold and ordered him and Aileen to enter the office where CARANZO had entered and was pointing his gun at Magdalena. Inside, MARCOS and CARANZO ransacked the office and took money in an undetermined amount. CARANZO then took Magdalena inside the adjacent room while MARCOS remained with her and Arnold after cutting the telephone wire. Although the door to the room was closed, she heard Magdalena say "wag po, wag po". After twenty minutes, CARANZO stepped out of the room and MARCOS entered. She asked CARANZO what he did but he did not respond. After twenty minutes, MARCOS stepped out of the room; Magdalena was still inside in a reclined position with her nightgown folded up to her upper thigh. When Magdalena joined them, she appeared to be in a state of shock; her nightgown was crumpled. She asked Magdalena what they did to her but she did not answer. They were then brought to the house where Magdalena and Arnold were tied by MARCOS and CARANZO and placed in the master's bedroom while the two other men disassembled their stereo. Thereafter, the men asked for the key of their vehicle. As the key was in the office, she was again brought there to locate it. They then loaded the "Elf" van with the things they took from the house and left. After reporting the incident to the police, an investigation of the incident was conducted at the San Pedro, Laguna, Police Station where she executed an affidavit which she identified in court.[3]

Arnold Orodio testified that on March 12, 1996 at around 11:00 p.m., he and his aunt, Magdalena, were in the office located beside the junk shop inside their compound at Adelina II-A, San Pedro, Laguna, talking about the schedule of the trips of their trucks for the following day. Aileen, who was nine (9) months pregnant at that time,

arrived with two men armed with short firearms. When inside, one of the armed men poked a gun at him while the other poked a gun at Magdalena. In court, he identified MARCOS as one of the two armed men. They then took money from the steel cabinet; Magdalena gave them the key after they asked where the money was. One of the men then took Magdalena into one of the rooms while the other man remained in the living room guarding him and Aileen after cutting the telephone wire. He did not hear anything coming from the room where Magdalena was. The man guarding them then took his wristwatch, ring and some cash. After about twenty minutes, the man with Magdalena stepped out of the room; he showed them the jewelry he took from Magdalena and asked them if the jewelry was genuine. During this time, the other man entered the room where Magdalena was and came out twenty minutes later. He, Aileen and Magdalena were then brought to the master's bedroom which was being guarded by two other armed men, TEJERO and DEL MONTE, whom he identified in court. He and Magdalena were tied and left in the master's bedroom with Celia Villanueva, Jun-jun Abino, Salvador Castillo and Lito Ibana who were also tied. Aileen then accompanied the men to the office of the junk shop to get the key of the "Elf" van which was used as their getaway vehicle.

On cross-examination, Arnold testified that he was able to identify MARCOS and CARANZO because they removed the cloth covering their faces when they entered the office and that DEL MONTE's and TEJERO's faces were not covered when he saw them in the master's bedroom. He also stated that his necklace was worth P2,000.00, his ring, P3,500.00 and his wristwatch, P1,500.00.[4]

Magdalena Ventura testified that on March 12, 1996 at around 11:00 p.m., she was in her office/residence discussing business matters with Arnold. Aileen arrived with two men wearing black jackets. Thinking that Aileen was picking up Arnold, she opened the door to let them in. CARANZO entered and pointed a gun at her and asked her where the money was. She opened her drawer to let him get what he wanted but pleaded to him not to harm them. After he took P5,000.00 from her drawer, CARANZO asked for more money, and so she gave him the key to the filing cabinet; he opened it and took the money of the junk shop amounting to P80,000.00, her cash of P5,000.00, and her jewelry amounting to P200,000.00. Afterwards, CARANZO dragged her inside the room despite her telling him that she was recovering from a spinal operation. CARANZO ordered her to enter so that she would not get hurt, ransacked the room, took her watch and then told her to lie down and remove her nightgown and underwear while pointing his gun at her. Thereafter, he told her not to move so that she would not have a hard time. Then, he placed himself on top of her, bent her knees, pulled her from her shoulder and removed the buttons and zipper of his pants; he brought out his penis and after several attempts, was able to insert it into her vagina causing her pain not only in her vagina but also at her back. He was on top of her for about ten to fifteen minutes, moving his body upward while pulling hers down. When he was through, he gave her another panty; told her to button her gown and not to tell anyone what happened. He left the room when MARCOS, whom she identified in court, knocked at the door shouting "alis na tayo dalian mo diyan". MARCOS came in and asked if CARANZO did anything to her. Since she was in a state of shock, she just nodded. As MARCOS was ready to remove his pants, she again pleaded "huwag po"; he replied "madali lang ito, huwag ka nang maingay para hindi ka masaktan". While pointing his gun at her, he ordered her to remove her panty and unbutton her nightgown but she hesitated so he removed her panty himself; he bent her knees and inserted his penis into her vagina doing up and down movements. All this time, she protested and cried; she was exhausted because of the pain on her back and private part. MARCOS and CARANZO then brought her, Aileen and Arnold to the big house that she noticed was in disarray. Inside, she saw two other armed men, DEL MONTE and TEJERO whom she identified in court. MARCOS and CARANZO dragged the three of them into the master's bedroom where she saw Celia Villanueva, Joselito Ibana, Salvador Castillo, Jun-jun Abino and May An Sevilla tied up. She and Arnold were then tied and left inside the master's bedroom. CARANZO asked for the key of the Isuzu Elf van and when he was informed that the key was in the office, he brought Aileen there to get it. After taking the VHS and cassette tapes of Arnold,

the men boarded the van and left. Afterwards, Aileen helped in untying them. Magdalena also testified that the robbers took cash and personal belongings amounting to P272,307.00 from her, Aileen, Arnold, Joselito and Celia and P80,000.00 from the junk shop. At around 1:00 a.m., she reported what happened to CJ Llamas, a friend of hers, hoping that he would help locate the van which was later recovered at Holiday Hills. Arnold also reported the incident to the police who later invited them to the police station to identify the men who robbed and raped Magdalena. At the police station, she identified MARCOS, TEJERO and DEL MONTE, who were detained, as three of the four malefactors while she identified CARANZO through a picture that was shown to her.[5] As a consequence of this incident, she was traumatized and had to undergo a psychological examination for two months, psychiatric therapy for two months, physical therapy for two and a half months, regular check-ups with her cardiologist, and underwent a genital examination given by the NBI.[6] She also executed a sworn statement,[7] which she identified in court. She added that seven months prior to the robbery and rape, she underwent an operation at the Makati Medical Center for a slipped disc which left part of her body paralyzed.

Dr. Maximo Reyes, a medico-legal officer of the NBI, testified that on March 13, 1996, he conducted a medico-genital and physical examination on Magdalena. Although he did not find any external signs of violence on her body, he noted that the vestibule or outside lining of her hymen had a congestion or inflammation/reddening as a result of a long, superficial and fresh abrasion that was not more than twenty-four hours old. Under the normal course of events, only a fully erect penis is capable of producing such a laceration or trauma to the genitalia. He also found that her hymen remained intact and that there was no sperm found in her private organ nor in her cervix.[8]

For their part, the defense presented three witnesses: Antonio Marcos, Pepito Tejero and Edgar del Monte.

All three denied their participation in the robbery.

MARCOS, a resident of Block 4, Lot 3, Barangay Riverside, San Pedro, Laguna, denied that he robbed Magdalena, Arnold and the Orodio Junk Shop on March 12, 1996. He alleged that at around 11:00 p.m. of said date, he was asleep in his house together with his wife and three children. He also denied raping Magdalena. He further stated that he only met TEJERO inside the jail of the San Pedro Police station while he had previously seen CARANZO inside the cockpit but was only introduced to him when CARANZO transferred to Barangay Riverside.[9]

TEJERO, a resident of Barangay Nueva, San Pedro, Laguna, also denied that he robbed the complainants. He claims that he was sleeping at around 11:00 p.m. of March 12, 1996 and woke up at 7:00 a.m. the next day. He sold abaca for a living and received P1,000.00 a month with free board and lodging from his employer and his highest educational attainment was Grade VI. It was only in court that he discovered that he was charged with robbery and rape and avers that he does not know why he is implicated in this case.[10]

DEL MONTE, a resident of 808 Barangay Estrella, San Pedro, Laguna, worked as a houseboy for Gingging Caviltes two weeks prior to his arrest. He does not know his age; has never attended school; and does not know how to read nor write. He is unaware of any reason why Police Officer Panganiban arrested and detained him at the municipal jail of San Pedro, Laguna. He denies robbing the complainants in this case and claims that up until the time he testified, he had no knowledge of the charge against him. He further denies knowing any of his co-accused and that he only met MARCOS and TEJERO inside the jail.[11]

The Regional Trial Court rendered its decision on March 13, 1997, the dispositive portion of which reads:

"IN VIEW THEREOF, the Court finds that the prosecution represented by Assistant Provincial Prosecutor Melchorito Lomarda has duly established beyond reasonable doubt the guilt of accused Antonio Marcos y Obo for the crime of robbery with rape and accused Pepito Tejero y Caranzo and Edgar del Monte y Alea for the

crime of simple robbery with both crimes defined and penalized in Article 294, Revised Penal Code, as amended by Sec. 9, RA 7659. Their commission of the crime was attended by the aggravating circumstances of dwelling and band without any mitigating circumstance.

WHEREFORE, the Court hereby sentences:

Accused Antonio Marcos

- to suffer the death penalty;
- to pay Magdalena Ventura the sum of P50,000.00 as civil indemnity and another P100,000.00 as moral damages;

Accused Pepito Tejero and Edgar del Monte

- to suffer an indeterminate penalty of from imprisonment of four (4) years and two (2) months of prison correccional as minimum to ten (10) years of prison mayor maximum;

Accused Antonio Marcos, Pepito Tejero and Edgar del Monte

- jointly and severally to pay Magdalena Ventura, Arnold Orodio and the Orodio Junk Shop represented by Vicente Orodio the sums of P205,000.00, P17,000.00 and P85,000.00, respectively, representing the cash, jewelry and other valuables taken from them;
- to pay the costs of the suit.

SO ORDERED.

San Pedro, Laguna, March 13, 1997."[12]

The case is now before this court on automatic review insofar as it concerns the imposition of the death penalty on Antonio Marcos.

Accused-appellant assails the decision of the trial court and claims that the prosecution has failed to prove his guilt beyond reasonable doubt. He admits that his defense of alibi is weak but that the evidence of the prosecution must be able to stand by itself in order to convict him. He posits his acquittal on four arguments to wit:

- Magdalena averred in her sworn statement that a certain DAZZLE, a child of one of their workers, was in the room with her when she was raped. The non-production of this corroborative witness without any explanation weakens the testimony of Magdalena; it would be unnatural that the two men raped her in the presence of Dazzle; and
- The failure of Magdalena to shout for help negates the fact of rape. Many persons resided within the compound and if she had shouted, they would have heard her. No evidence was presented showing that she was prevented from doing so; and
- The identification made by Magdalena at the police station was induced by the police as the accused were not caught in the act of committing the crime for which they were charged. He cites the "Karagdagang Salaysay" of Magdalena dated May 15, 1996 where she phrased her answers with the uniform phrase "napag-alaman ko na ang pangalan ay si" before mentioning the names of all the accused; and
- Finally, that there was a defect in the information since it charged six persons with the commission of the offense when the witnesses only declared that there were four malefactors.[13]

We resolve to affirm the judgment of conviction.

The evidence of the prosecution consisting primarily of the testimonies of the three eyewitnesses convinces us

that the guilt of the accused-appellant has been proven beyond reasonable doubt.

Accused-appellant's defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[14] A positive identification of the accused made by an eyewitness prevails over such a defense.[15] In the present case, not one, but three eyewitnesses identified him as one of the robbers.

Moreover, for alibi to prosper as a defense, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[16] We are not convinced that the accused-appellant proved this with his assertion that he was asleep in his house when the crime occurred. It would not have been physically impossible for him to be at the crime scene since the crime was committed in San Pedro, Laguna which is the same municipality where his house is located.

Neither can his denial prevail over the categorical testimony of MAGDALENA that accused-appellant raped her after CARANZO ransacked her room and raped her. It was not alleged or proven that she was motivated to falsely implicate the accused in the commission of such a heinous crime. The absence of evidence showing any improper motive on the part of the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive exists, and that their testimonies are worthy of full faith and credit.[17] Accused-appellant himself testified that he cannot ascribe any motive to the complainants for filing the case against him:

"ATTY. LIBROJO TO APPELLANT MARCOS

Q: Would you know of any reason why Magdalena Ventura would file a case against you for robbery with rape?

A: I do not know, sir."[18]

Moreover, it is highly improbable that a woman would subject herself to the humiliation of a rape trial unless the imputation of rape be true.[19]

We cannot sustain accused-appellant's argument that the prosecution suppressed vital and material evidence when it failed to present DAZZLE during the trial. The prosecution has discretion to decide on who to call as witness during trial and its failure to do so did not give rise to the presumption that "evidence willfully suppressed would be adverse if produced"[20] since the evidence was merely corroborative or cumulative and was not proven to be willfully suppressed.[21]

Likewise, accused-appellant's claim that Magdalena was not prevented from shouting when she was allegedly raped deserves scant consideration. The failure of a victim to physically resist does not negate rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's assault because of fear for life and personal safety.[22] In the instant case, the complainant clearly established how the accused-appellant employed force and intimidation during the sexual assault as follows:

"PROSECUTOR LOMARDA TO MAGDALENA VENTURA

Q. When he ordered you to pull out your nightgown and removed your panty, was the second man already without his pants?

A. Not yet, sir.

Q. Did you obey his command?

A. Yes, sir because he was pointing a gun to me like the other one, sir.

Q. What happened next, if any?

A. He was the one who pulled my panty because I was hesitant and again he bend my knees and did the same thing, sir.

Q. When you said the same thing, what do you mean?

A. He also inserted his penis to my vagina, sir.

Q. And when he inserted his penis to your vagina, where was his pants?

A. Pulled down to his knees, sir.

Q. Was he able to put his penis inside your vagina?

A. Yes, sir.

Q. And where was his gun?

A. The same as the first one, he was pointing the gun on my left temple, sir.

Q. Did you plead to him?

A.

I did, sir I was pleading to him from the very start when he entered the room and then he said `madali lang ito, huwag ka nang maingay para hindi ka masaktan', sir." [23]

In her cross-examination, she further explains why she did not shout, to wit:

"ATTY. LIBROJO TO MAGDALENA VENTURA:

Q. You were free then to shout?

A. Yes, sir.

Q. You did not shout?

A. He was pointing the gun to me telling me to keep quiet.

Q. You were not able to say anything?

A. I just kept praying and I was pleading that he should not hurt me.

Q. As you said that you have just undergone a back operation, that was what you are telling him?

A.

Yes, sir.

Q. So it took you some time to tell him those things. How much time did you spend to explain to him that you should not be harmed?

A. Actually even from the time that he dragged me from the office, I was already telling him.

Q. To spare you from harm that he intends to do you?

A. Yes, sir.

Q. It did not occur to you to take the gamble of shouting so that help will forthwith come to you?

A.

With the distance of my house to the place of the other occupants, it would be very impossible because there were parked vehicles in the garage covering my residence from the other house.

Q. No amount of shouting would reach the big building even if you shout on top of your voice?

A. Yes, sir."^[24]

We are convinced that Magdalena could not have shouted for help even if she wanted to since the accused-appellant was pointing a gun at her temple while he raped her. We also note that she was recovering from a spinal operation that limited her movement and that during the time she was raped, she was aware that Aileen and Arnold were in the adjacent room being guarded at gunpoint by CARANZO. It is therefore, understandable that she felt that no amount of shouting could save her at that point.

We find that the testimony of prosecution witness Magdalena established beyond a reasonable doubt that the accused-appellant committed the crime of robbery with rape. Her testimony is corroborated by the testimony of Dr. Maximo Reyes who testified on the findings^[25] of the medico-genital and physical examination he conducted on Magdalena. He stated in court that the subject had a trauma or "gasgas", not more than twenty four hours old, on the vestibule or outside lining of her hymen which, under the normal course of events, only a fully erect penis could cause.

In addition, Aileen's testimony corroborates not only the charge of robbery but strengthens Magdalena's accusation of rape:

"ATTY. AGOSILA TO AILEEN ORODIO

Q. After Sonny Carranzo sent out of that room, what else happened?

A. Antonio Marcos entered that same room where my auntie was, sir.

Q. Where was Sonny Carranzo at that time when Antonio Marcos went inside that room when Maven Ventura was?

A. He was with us outside that room, sir.

Q. What was he doing with you?

A. He was looking for something in the office, sir.

Q. And for how long did Antonio Marcos stay in that room?

A. Also for about twenty (20) minutes, sir.

Q. After 20 minutes what happened?

A. Antonio Marcos and Auntie Maven stepped out of the room, sir.

COURT:

Q. Will you describe to us the appearance of Magdalena Ventura?

A She appeared to be shocked, maam.

Q. What else?

A. Her clothes are crumpled, maam.

Q. How was she dressed that time?

A. In nightgown, maam.

Q. Before she went out of that room, were you able to see her outside?

A. Yes, maam.

Q. What was her appearance?

A.

Her dress was fold up to her upper thigh, maam.

Q. On what position?

A. She was reclining on the bed, maam."[26]

There is no merit in accused-appellant's claim that the identification made by Magdalena of the accused was

induced by the police. He premises his argument on a play of words in the phrase "napag-alaman ko na ang pangalan ay si" (I learned that the name is) which she used in her sworn statement when she identified the accused. The fact that she learned the names of the accused after the incident will not detract from the fact that she identified MARCOS as the assailant since one need not identify the accused by name; what is important is that she is positive as to the physical identification of the accused from her own personal knowledge. At any rate, during her direct examination, she explained how she identified the accused in the police station as follows:

"PROSECUTOR LOMBARDA TO MAGDALENA VENTURA:

Q.

You also testified earlier that you were shown some pictures at the police station in fact you were able to identify Sonny Carranzo, who is still at large, thru his picture, when was that?

A. In May, 1996, maam.

Q. How did it happen that you saw Sonny Carranzo at the picture at the police station?

A.

The police station of San Pedro, Laguna called us and asking us if we could come to identify of those that were arrested and put to jail so we could at least file our case and identify if ever they are the one who were involve, maam.

Q. So, in short, the police invited you to go to the police station as they were able to arrest some suspects?

A. Yes, maam.

Q. And you also said that you were asked to identify some person and tell them if they are the same person who entered the compound, is that what you mean?

A. Yes, maam.

Q. Did you go to the police station?

A. Yes, maam.

Q.

What happened there?

A. They showed us the people inside the jail and asked if there are anyone who was the member of the group who robbed us, maam.

Q. You mean you were outside the jail but from your place you could see the inmates?

A. Yes, maam.

Q. More or less how many were there?

A. They were many, maam.

Q. Were you able to point the person who robbed your house?

A. Yes, maam.

Q. How many persons?

A.

Three, maam

Q. Were you able to get their names?

A. Yes, maam.

Q. If they or the three were inside the courtroom, will you please point to them?

A. The other one on the left and the two other on the right, maam.

(Witness again pointing to Antonio Marcos, Pepito Tejero and Edgar Del Monte).

Q. Did you inquire from the police why these three persons whom you identified as robbers and who robbed you were inside the jail?

A. They told us that they were arrested in one of their operations maam.

Q. When you said their operation, you are referring to whom?

A. Police operation, maam.

Q. You mean aside from your case, these group were arrested in connection with another case, is that what you mean?

A. Yes, maam that is what they told us.

Q. Did you come to know what particular case where they involved?

A. No, maam.

Q. Did you not ask the police why they were arrested?

A. They just gave us the copy of the testimony given by the arresting officer, maam.

Q. You said that you were informed that accused were involved with another case, did you come to know what case is that?

A. Robbery, maam."^[27]

There is nothing in her narration that would support a finding that the identification of the accused was suggested in any manner to her. On the contrary, her identification was positive, certain and unequivocal. Besides, two other witnesses, Aileen and Arnold, also positively identified all the accused at the police station.

Finally, the fact that the fiscal charged six persons in the information when the witnesses only mentioned four is a defect in the information which could have been cured by an amendment thereto^[28] if brought to the attention of the lower court, and cannot now be raised for the first time on appeal. Assuming for the sake of argument that said issue was properly raised, we see no reason to fault the prosecutor for charging six persons in the information. His decision to charge six persons was based on the sworn statement^[29] of Arnold where he stated that they were

robbed by six men.

We now come to the imposition of the proper penalty. The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. 7659[30] which reads, insofar as pertinent, as follows:

"Art. 294 - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; xxx"

In the present case, the aggravating circumstance of band[31] attended the commission of the crime. All three witnesses testified that the four accused were carrying guns when they committed the crime. In the crime of robbery with rape, band is an aggravating circumstance.[32]

Moreover, the aggravating circumstance of dwelling was also attendant in the present case since the robbery was committed in the houses of the victims Aileen, Arnold and Magdalena without provocation on their part.[33] In robbery with violence and intimidation against persons, dwelling is aggravating since in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house.[34]

Article 63 of the Revised Penal Code states the rule for the application of indivisible penalties. It provides:

"In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation."

The penalty of reclusion perpetua to death is composed of two indivisible penalties.[35] Applying article 63 of the Revised Penal Code, the penalty that should be imposed is death which is the maximum provided for by law in the absence of any mitigating circumstance to offset the aggravating circumstances of dwelling and band. These aggravating circumstances need not be alleged in the information since they are mere generic aggravating circumstances which have the effect of increasing the penalty to the maximum period which is death.[36]

We however reduce the award of moral damages to Magdalena Ventura from P100,000.00 to P50,000.00 to conform with current jurisprudence[37]; a conviction for rape carries with it the award of moral damages to the victim since it is recognized that the victim's injury is concomitant with and necessarily results from the odious crime of rape to warrant per se an award of moral damages.[38]

In addition, the presence of one or more aggravating circumstances justifies the award of exemplary damages pursuant to Article 2230 of the Civil Code[39] after proof that the offended party is entitled to moral, temperate and compensatory damages.[40] The amount of P20,000.00 as exemplary damages is reasonable[41] in view of the presence of the aggravating circumstances of dwelling[42] and band[43].

Lastly, we modify the order for the reparation of the stolen cash and jewelry. An ordinary witness cannot establish the value of jewelry[44] and the trial court can only take judicial notice of the value of goods which are matters of public knowledge or are capable of unquestionable demonstration[45]. The value of jewelry is not a matter of public knowledge nor is it capable of unquestionable demonstration and in the absence of receipts or any other competent evidence besides the self-serving valuation made by the prosecution witnesses, we cannot award the reparation for the stolen jewelry. The accused-appellant is however ordered to pay Aileen Orodio the amount of P500.00, Arnold Orodio the amount of P12,000.00, Magdalena Ventura the amount of P5,000.00 and the Orodio Junk Shop the amount of P80,000.00 representing the amounts of cash stolen from said complainants respectively. These amounts were established by the prosecution witnesses and were not rebutted by the defense. Finally, there is no evidence to establish the value of the VHS and the stolen cassette tapes since no description as to its kind/model was given by the prosecution witnesses.

Four justices of the Court have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the conviction of the accused-appellant is hereby **AFFIRMED** with the modification that the award for moral damages is reduced to P50,000.00 and an award of exemplary damages in the amount of P20,000.00 is granted. The accused-appellant is further ordered to pay the amounts of P500.00 to Aileen Orodio, P12,000.00 to Arnold Orodio, P5,000.00 to Magdalena Ventura and P80,000.00 to the Orodio Junk Shop as reparation for the stolen cash.

Upon finality of this decision, let certified true copies thereof, as well as the records of this case, be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Romero Bellosillo, Melo, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Puno, J., abroad on official business.

Panganiban, J., on leave.

[1] Penned by Judge Stella Cabuco Andres, Rollo, pp. 18-29.

[2] Rollo, pp. 7-8.

[3] T.S.N., January 16, 1997, pp. 4-37.

[4] TSN, February 7, 1997, pp. 10-24.

[5] TSN, February 14, 1997, pp. 3-34.

[6] Living Case No. NG-96-405, Exhibit B.

[7] Exhibit C.

- [8] T.S.N., February 17, 1997, pp. 4-17.
- [9] T.S.N., February 18, 1997, pp. 3- 9.
- [10] Ibid., pp. 11-13.
- [11] Ibid., at pp. 15-21.
- [12] Decision, p. 12; Rollo, p. 29.
- [13] Appellant's Brief, pp. 2-6.
- [14] People vs. Realin, G.R. No. 126051, January 21, 1999 at p. 13.
- [15] People vs. Nialda, G.R. No. 115946, April 24, 1998 at p. 11; People vs. Realin, Supra.
- [16] People vs. Villanueva, G.R. No. 122746, January 29, 1999 at p. 11; People vs. Realin, Supra.
- [17] People vs. Lapinoso, G.R. No. 122507, February 25, 1999 at p. 14.
- [18] T.S.N. February 18, 1997 at p. 5.
- [19] Ibid.
- [20] Rule 131, Rules of Evidence, § 3(e).
- [21] People vs. Andal, 279 SCRA 474 at pp. 495-496 [1997].
- [22] People vs. Sagucio, 277 SCRA 183 at p. 191 [1997]; People vs. Rabosa, 273 SCRA 142 at p. 150 [1997].
- [23] T.S.N., February 14, 1997, p. 19.
- [24] T.S.N., February 17, 1997, pp. 25-26.

[25] "GENERAL PHYSICAL EXAMINATION:

xxx Marginally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, fully developed. Hemispherical, doughy. Areolas, dark brown, 3.0 cms. In diameter. Nipples, dark brown, protruding, 1.0 cm. In diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

xxx fully grown, abundant. Labia Majora, slightly gaping. Labia Minora, coaptated. Fourchette, moderately lax. Vestibule, congested with a fresh superficial abrasion on the fossa manicularis. Hymen, annular, thin, moderately tall, and intact.

Hymenal orifice admits a tube 1.8 cms. In diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
2. Recent genital trauma present."

[26] T.S.N., January 16, 1997, pp. 30-31.

[27] T.S.N., February 14, 1997, pp. 31-34.

[28] § 14, Rule 110, Rules of Court; § 4, Rule 117, Rules of Court.

[29] Record, p. 36.

[30] Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was not yet in effect.

[31] Article 296 of the Revised Penal Code defines a band in this wise:

"Whenever more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band xxx.

Any member of a band who is present at the commission of a robbery by the 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."

[32] People vs. Lutao, 250 SCRA 45 at p. 57 [1995].

[33] People vs. Belo, G.R. No. 109148, December 4, 1998 at pp. 12-13.

[34] People vs. Cabato, 160 SCRA 98 at p. 110 [1988].

[35] Luis B. Reyes. The Revised Penal Code, Book I, 14th ed., 1988, at p. 716; Ramon C. Aquino. The Revised Penal Code. Book I, 1997 ed., at p. 728.

[36] Reyes, Supra, at p. 313.

[37] People vs. Belo, G.R. No. 109148, December 4, 1998 at p. 13.

[38] People vs. Mahinay, Supra at p. 18.

[39] People vs. Bahenting, G.R. No. 127659, February 24, 1999 at p. 12; People vs. Gutierrez, Jr., G.R. No. 116281, February 8, 1999 at p. 26.

[40] People vs. Mahinay, supra at p. 18.

[41] People vs. Bahenting, Supra, People vs. Gutierrez, Supra.

[42] Article 14 (3), Revised Penal Code.

[43] Article 14 (6), in relation to Article 296, Revised Penal Code.

[44] Galian vs. State Assurance Co., 29 PHIL 413 at p. 418 [1915].

[45] People vs. Martinez, 274 SCRA 259 at pp. 272-273 [1997].

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