

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO REGALA Y ABRIOL, ACCUSED-APPELLANT.

G.R. No. 130508. April 05, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Armando Regala appeals from the judgment in Criminal Case No. 7929 rendered by the Regional Trial Court of Masbate, Masbate, Branch 46, 5th Judicial Region, convicting him of the crime of Robbery with Rape.

The information against accused-appellant on November 27, 1995, filed by 2nd Assistant Provincial Prosecutor Jesus C. Castillo, reads as follows:

"That on or about September 11, 1995, in the evening thereof, at Barangay Bangon, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together and helping one another, with intent to gain, violence and intimidation upon persons, did then and there wilfully, unlawfully and feloniously enter the kitchen of the house of Consuelo Arevalo and when inside, hogtied said Consuelo Arevalo and granddaughter Nerissa Regala (sic), take, steal, rob and carry away cash amount of P3,000.00 and two (2) gold rings worth P6,000.00, to the damage and prejudice of owner Consuelo Arevalo in the total amount of P9,000.00, Philippine Currency; and in pursuance of the commission of the crime of robbery against the will and consent of the granddaughter Nerissa Regala (sic) wilfully, unlawfully and feloniously accused Armando Regala y Abriol has for two times sexually abused and/or intercoursed with her, while hogtied on the bed and in the kitchen.

CONTRARY TO LAW.[1]

Accused-appellant was apprehended by the police four days after the incident. He was identified at a police line-up by Nerissa and her grandmother.

The prosecution presented three witnesses: Dra. Conchita Ulanday, Municipal Health Officer of Aroroy, Masbate, who personally examined the rape victim; Nerissa Tagala, the rape victim, 17 years old, a third year high school student; and her grandmother, Consuelo Arevalo, who was her companion when the robbery with rape transpired at Consuelo's house.

The prosecution's version is stated in Appellee's Brief as follows:

"On September 11, 1995, at about 9:00 o'clock in the evening at Barangay Bangon, Aroroy, Masbate, then 16-year old victim Nerissa Tagala and her grandmother (Consuelo Arevalo) were sleeping, when appellant Armando Regala and his two other companions entered the former's house. (pp. 6-7, TSN, August 26, 1996).

Appellant and his companions entered the house through the kitchen by removing the pieces of wood under the stove. Appellant went to the room of Nerissa and her grandmother and poked an 8-inch gun on them, one after the other. (p. 8, TSN, August 26, 1996)

Nerissa and her grandmother were hogtied by appellant and his companions. Thereafter, Nerissa was raped by

appellant Armando Regala in bed while her grandmother was on the floor. After the rape, appellant and his two companions counted the money which they took from the "aparador." (pp. 9-10, TSN, August 26, 1996)

Appellant and his companions then ran away with P3,000 in cash, 2 pieces of ring valued at P6,000 and two wrist watches worth P5,000. (pp. 11-13, TSN, August 26, 1996)

The following day, September 12, 1995, Nerissa went to the Rural Health Clinic of Aroroy, Masbate for medical examination. In the Medical Report presented by Municipal Health Officer Dr. Conchita S. Ulanday, it was shown that Nerissa sustained laceration of the hymen at 4:00 o'clock and 7:00 o'clock positions (fresh wounds), indicating a possible sexual assault upon the victim. (p. 16, TSN, August 26, 1996)[2]

The defense presented accused-appellant who testified that on September 11, 1995, he was staying in the house of Antonio Ramilo at barangay Syndicate, Aroroy, Masbate. Ramilo was the manager in the gold panning business where accused-appellant was employed. Antonio Ramilo testified and corroborated his defense and stated that accused-appellant was in his house, which is about 5 kilometers away from Barangay Bangon.

The trial court held that the defense of alibi cannot overcome the positive identification of the accused. The dispositive portion of the judgment reads:

"WHEREFORE, in view of all the foregoing, the Court finds accused Armando Regala y Abriol guilty beyond reasonable doubt of the crime of Robbery with Rape, as penalized under Par. 2 of Art. 294 of the Revised Penal Code and hereby sentences him to suffer imprisonment of reclusion perpetua; to indemnify the victim Consuelo Arevalo the sum of P9,000.00, the cash and value of the looted articles; to indemnify the victim Nerissa Tagala the sum of P50,000.00 as moral damages, and the further sum of P25,000.00 as exemplary damages. No subsidiary imprisonment in case of insolvency, and to pay the costs."[3]

Armando has appealed to this Court pleading that:

(1)

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT SUFFICIENT EVIDENCE EXIST TO ESTABLISH CLEARLY THE IDENTITY OF THE ACCUSED-APPELLANT AS PERPETRATOR OF THE CRIME CHARGED.

(2)

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[4]

which alleged errors were discussed jointly.

In essence, accused-appellant questions the sufficiency of the prosecution's evidence in identifying him as one of the perpetrators of the crime charged. He claims that the complaining witness could not have positively identified him as there was no electricity nor any light in the place of the incident which took place at 9:00 o'clock in the evening. Consuelo Arevalo was able to identify accused-appellant only after he was pinpointed by Nerissa, and made contradictory statements in court when she stated that accused-appellant removed his mask after she was hogtied, and later stated that accused-appellant removed his mask before she was hogtied. The medico-legal officer, Dr. Ulanday, herself testified that the complaining witness either voluntarily submitted to a sexual act or was forced into one.

The appellee insists that appellant's lame defense of alibi cannot stand against the positive identification made by the victim, and avers that the victim, a 16 year old barrio lass at the time the rape was committed, was motivated

by a sincere desire to seek and obtain justice. The Solicitor General also recommends an additional award of compensatory damages of P50,000.00 in favor of Nerissa Tagala.

We affirm the judgment of conviction.

There was sufficient evidence to establish the identity of accused-appellant as the perpetrator of the crime.

Nerissa positively recounted the incident on the witness stand. She was sleeping with her grandmother in the latter's house when the accused-appellant Regala, together with the unidentified companions entered the house. Regala pointed a gun, about 8 inches long, at her grandmother, and then at her, and hogtied both of them. Regala took off her panty and her shorts, and removed his own "porontong" pants, and made sexual intercourse ("itot") with her while she was hogtied in bed. Her grandmother was at the floor. She saw the aparador of her grandmother being opened. She could not shout because the gun was pointed at her, and she was afraid. Two companions of the accused-appellant entered the room as she was being raped. Two rings valued at about P6,000.00 and 2 wrist watches (one "Seiko" and the other "Citizen") and money was taken by the accused-appellant and his companions. After raping her in bed, Nerissa saw accused-appellant counting the money taken from the aparador. Thereafter, she was brought to the kitchen, still hogtied, and raped again.[5] On cross-examination, Nerissa stated that although there was no electricity, and the light in the house was already off, she was able to see the face of Regala because at the time Regala was counting the money, one of his companions was holding the flashlight "beamed to the money" and there was "some reflection" on the face of Regala[6] She remembered the face of Regala because of an earring on his left ear[7] which he was wearing when presented at the police line-up.[8]

Consuelo Arevalo testified and corroborated the testimony of her granddaughter. Armando Regala entered the house with two companions, hogtied her and Nerissa, and were asking for money. After having sexual intercourse with Nerissa, Regala took P3,000.00 in paper bills and coins from her aparador, and got a stainless Seiko wristwatch and two gold rings valued at P6,000.00. She was able to recognize Regala because of his earring on his left ear, and because he was pinpointed by Nerissa at the police station. She was not able to shout at the time because her mouth was gagged with a piece of cloth by Regala.[9] On cross-examination, Consuelo Arevalo declared that she was able to see Regala because he used her flashlight, and he took off the mask he was wearing; she recognized Regala because of his earring and his flat top hair cut.[10]

The Court gives its approbation to the finding of the trial court that the evidence was sufficient to clearly establish the identity of Armando Regala as the person who, with two companions, committed the crime of robbery accompanied by rape on the night of September 11, 1995. Nerissa Tagala positively identified Armando Regala because at the time he was counting the money on her bed, the other companion of the accused beamed the flashlight towards the money and there was a reflection on the face of Regala. Although the three intruders were wearing masks when they entered the house, they removed their masks later.[11]

Our cases have held that wicklamps, flashlights, even moonlight and starlight may, in proper situations, be sufficient illumination, making the attack on the credibility of witnesses solely on this ground unmeritorious.[12]

We are not persuaded by the contention of accused-appellant that the contradictory replies of Consuelo Arevalo when asked whether Regala removed his mask "before"[13] or "after"[14] she and Nerissa were hogtied exposed the fact that she was not able to identify the accused-appellant. The contradiction referred to a minor detail and cannot detract from the fact that both Nerissa and Consuelo positively identified Regala as there was a flashlight used to focus at the money while it was being counted and there was a reflection on the face of Regala. Both Nerissa and Consuelo remembered the earring on his left ear, which he was still wearing at the time of the police line-up inside the police station.

Dr. Conchita Ulanday's testimony does not support the contention of accused-appellant that Nerissa voluntarily submitted to the sexual advances of Regala. The admission of Dr. Ulanday that her findings point to the fact that Nerissa "either voluntarily or was forced into sexual act" does not prove that Nerissa voluntarily submitted to the sexual act. Dr. Ulanday testified that there was suggested evidence of penetration as shown by the two lacerations at 4 o'clock and at 7 o'clock which were fresh wounds. That the act was involuntary was clearly established by the fact that Nerissa was hogtied when she was sexually attacked. As correctly pointed out by appellee, Nerissa was a 16-year old barrio lass, not exposed to the ways of the world and was not shown to have any ill-motive to falsely implicate accused-appellant, who was a stranger. And as repeatedly pronounced by this Court, it simply would be unnatural for a young and innocent girl to concoct a story of defloration, allow an examination of her private parts and thereafter subject herself to a public trial or ridicule if she was not, in fact, a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished.[15]

The crime of robbery with rape was committed in 1995 when RA 7659 was already in force. Article 294 of the Revised Penal Code as amended now provides, under paragraph 1 thereof:

"1. The penalty of reclusion perpetua to death, when for any reason of 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."

The victim in the case at bar was raped twice on the occasion of the robbery. There are cases[16] holding that the additional rapes committed on the same occasion of robbery will not increase the penalty. In *People vs. Martinez*, [17] accused Martinez and two (2) other unidentified persons, who remained at large, were charged with the special complex crime of robbery with rape where all three raped the victim. The Court imposed the penalty of death after considering two (2) aggravating circumstances, namely, nocturnidad and use of a deadly weapon. However, the Court did not consider the two (2) other rapes as aggravating holding that "(T)he special complex crime of robbery with rape has, therefore, been committed by the felonious acts of appellant and his cohorts, with all acts or rape on that occasion being integrated in one composite crime." J

There are likewise cases[18] which held that the multiplicity of rapes committed could be appreciated as an aggravating circumstance. In *People vs. Candelario* [19] where three (3) of the four (4) armed men who robbed the victim "alternately raped her twice for each of them", this Court, citing *People vs. Obtinolia*, [20] ruled that "(T)he characterization of the offense as robbery with rape, however, is not changed simply because there were several rapes committed. The multiplicity of rapes should instead be taken into account in raising the penalty to death."

It should be noted that there is no law providing that the additional rape/s or homicide/s should be considered as aggravating circumstance. The enumeration of aggravating circumstances under Article 14 of the Revised Penal Code is exclusive as opposed to the enumeration in Article 13 of the same code regarding mitigating circumstances where there is a specific paragraph (paragraph 10) providing for analogous circumstances.

It is true that the additional rapes (or killings in the case of multiple homicide on the occasion of the robbery) would result in an "anomalous situation" where from the standpoint of the gravity of the offense, robbery with one rape would be on the same level as robbery with multiple rapes.[21] However, the remedy lies with the legislature. A penal law is liberally construed in favor of the offender[22] and no person should be brought within its terms if he is not clearly made so by the statute.[23]

In view of the foregoing, the additional rape committed by herein accused-appellant should not be considered as aggravating. The penalty of reclusion perpetua imposed by the trial court is proper.

As regards the civil indemnity, we find well-taken the recommendation of the Solicitor General that compensatory damages should be awarded in the amount of P50,000.00. Nerissa Tagala is entitled to an award of civil

indemnity ex delicto of P50,000.00, which is given in favor of the offended party in rape.[24] Also 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 ordinary crime of rape to warrant per se an award of P50,000.00 as moral damages.[25]

WHEREFORE, the judgment convicting Armando Regala y Abriol guilty beyond reasonable doubt of the crime of Robbery with Rape, is hereby **AFFIRMED** with the **MODIFICATION** that Nerissa Tagala is entitled to an additional award of P50,000.00 as civil indemnity.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Crim. Case No. 7929, p. 1 Records.

[2] Rollo, pp. 73-74.

[3] Decision, p. 16, Rollo.

[4] Appellant's Brief; p. 36, Rollo.

[5] Tsn., August 26, 1996, pp. 6-13.

[6] At pp. 13; 18.

[7] At p. 13.

[8] At p. 18.

[9] Tsn., January 10, 1997, pp. 2-6.

[10] At pp. 9-13.

[11] Tsn., January 10, 1997, p. 9.

[12] *People vs. Villaruel*, 261 SCRA 386.

[13] Tsn., January 10, 1997 p. 10.

[14] At p. 9.

[15] *People vs. Dado*, 244 SCRA 655.

[16] *People vs. Cristobal*, G.R. No. 119218, April 29, 1999; *People vs. Martinez*, 274 SCRA 259; *People vs. Lutao*, 250 SCRA 47; *People vs. Precioso*, 221 SCRA 748.

[17] 274 SCRA 259.

[18] *People vs. Candelario & Legarda*, G. R. No. 125550, July 28, 1999; *People vs. Pulusan*, 290 SCRA 353; *People vs. Salvatierra*, 257 SCRA 489.

[19] G. R. No. 125550, July 28, 1999.

[20] 38 SCRA 651.

[21] People vs. Pedroso, 115 SCRA 599; People vs. Mabilangan, et al., 111 SCRA 398.

[22] People vs. Terrado, 125 SCRA 648.

[23] U.S. vs. Abad Santos, 36 Phil. 243.

[24] People vs. Victor, G. R. No. 127903, prom. July 9, 1998; People vs. Napiot, G. R. No. 119956, prom. August 5, 1999.

[25] People vs. Prades, 293 SCRA 411; People vs. Alba, G. R. Nos. 131858-89, prom. April 14, 1999.

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