

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO VERCELES, FELIX CORPUZ, MAMERTO SORIANO (AT LARGE), PABLO RAMOS (AT LARGE), AND JERRY SORIANO (STATE WITNESS), ACCUSED, ...

G.R. No. 130650. September 10, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused Mario Verceles alias “Baldog”, Felix Corpuz, Mamerto Soriano alias “Merto”, Pablo Ramos and Jerry Soriano were charged with the crime of Robbery with Rape committed as follows:

That on or about the 19th day of October, 1996, in the morning, in barangay Malibong, municipality of Urbiztondo, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent of gain and by means of force upon things, entered the house of one Mrs. Rosita Quilates by forcibly destroying the grills of the window which they used as an ingress and once inside, did, then and there, willfully, unlawfully and feloniously take and cart away the following personal properties: one (1) colored T.V., one (1) VHS, assorted jewelries, one (1) alarm clock and one (1) radio cassette, all valued at SIXTY THOUSAND PESOS (P60,000.00) owned by the said Rosita Quilates, and that on the same occasion, the said accused, conspiring, confederating and helping one another, did then and there, willfully, unlawfully and feloniously have sexual intercourse with Maribeth Bolito against her will to the damage and prejudice of the aforementioned victims.

CONTRARY to Art. 299, par. A(2) in relation to Art. 335 of the Revised Penal Code.[1]

Of the five accused, Mamerto Soriano and Pablo Ramos remain at large. Only Mario Verceles, Felix Corpuz and Jerry Soriano were brought to the jurisdiction of the court. During arraignment, the three accused, duly assisted by counsel, pleaded not guilty to the crime charged. Thereafter, the prosecution filed a motion to discharge accused Jerry Soriano as a State Witness. The court proceeded with the trial of the case pending the resolution of the said motion to discharge.

The trial court subsequently discharged accused Jerry Soriano and received his testimony as state witness. According to Soriano, on October 18, 1996, the five accused boarded a tricycle owned by Mario Verceles to visit his cousin in barangay Goliso, located at the boundary of Urbiztondo. At 8:00 in the evening, they proceeded to barangay Malibong to visit Pepe, a compadre of Mamerto Soriano. Before reaching Pepe’s place, they stopped at the house of Jerry’s grandmother, Rosita Quilates. Jerry sensed that his companions had an evil plan, so he and Pablo Ramos tried to leave. However, Mamerto Soriano poked a gun at Jerry and told them not to leave. Then, they tied Jerry and Pablo under a mango tree. The three proceeded to the house of Rosita Quilates. While waiting for the three, Jerry and Pablo fell asleep. When they woke up at 2:00 a.m., they saw the three accused carrying a TV set, VHS and other things. They helped the three load the items in the tricycle. Then they went home to San Jacinto, Pangasinan. Several days later, they sold the items and Jerry was given three hundred pesos.[2]

The prosecution witness Maribeth Bolito testified that on October 19, 1996 at around 2:00 in the morning, she was awakened by a man fondling her breast and other private parts. She tried to resist and fight back but her strength proved too weak against her aggressor. Furthermore, the man had a gun pointed at her head. She later identified her aggressor as Mamerto Soriano. While she was being ravished, she saw two men standing at the door, whom she identified as accused Mario Verceles and Felix Corpuz. Soriano undressed her then kissed her on the body and fondled her breasts for five minutes. She pretended to be thirsty, so Soriano, holding her tightly, brought her to the kitchen. There he removed his pants and laid her on the floor and tried to insert his penis inside her vagina. Maribeth lost consciousness and when she came to, her private part was very painful and the three accused were gone.[3]

Dra. Revelina Millan, who examined Maribeth on October 20, 1996, made the following findings:[4]

- GO IMP : September 2nd week/96
- 3 days
- SKIN : No hematoma
- No Abrasion
- IE : with healed laceration at 9 o'clock position
- For vaginal smear for presence of spermatozoa
- Result : Negative for spermatozoa

SPO2 Eduardo Fernandez, who investigated the robbery, testified that the malefactors entered through the window of one of the bedrooms of the house; that they took personal properties valued at P60,000.00; that Maribeth Bolito was sexually abused; and that a necklace was recovered from Felix Corpuz.[5]

Mrs. Rosita Quilates testified that she learned from her granddaughter, Maribeth Bolito, that her house was robbed and her personal belongings were missing; and that she was able to recover the properties from a certain Andres Tirano, who bought them from accused Mamerto Soriano.

In their defense, Felix Corpuz testified that on October 19, 1996, he was in Manila working as a carpenter in a construction firm. He stayed in Manila from October 5, 1996, and did not visit his hometown until the completion of the job contract on October 27, 1996. He first learned that he was a suspect in a crime on November 3, 1996.[6]

Ernesto Lambino, Jr. corroborated the testimony of Felix Corpuz. He testified that he was the one who recruited Felix to work in Tambo, Rizal, Parañaque as a mason carpenter. They arrived in Manila on October 5, 1996 and Felix started his work on October 6, 1996 until October 26, 1996.[7]

Accused Mario Verceles, for his part, testified that in the evening of October 18, 1996, he attended the wake of Crispulo de Guzman at Barangay San Vicente, San Jacinto, Pangasinan. There he played cards up to 4:00 a.m. of October 19, 1996. He left the place at 5:00 a.m. He only learned that the police were looking for him when his wife fetched him in Mapandan, Pangasinan. He went to the barangay captain of his place and arranged for his surrender to the authorities. Police Inspector Rodolfo Tadeo corroborated his testimony that he voluntarily surrendered to the police on November 5, 1996.[8]

After trial, the lower court rendered a decision, the dispositive portion of which reads:[9]

WHEREFORE, in view of the foregoing, the Court hereby finds accused Felix Corpuz and Mario Verceles guilty beyond reasonable doubt of the crime of Robbery with Rape defined and penalized under Article 294, 1,

as amended, of the Revised Penal Code, and there being neither mitigating nor aggravating circumstance, the Court hereby sentences each to suffer the penalty of Reclusion Perpetua. Both Felix Corpuz and Mario Verceles are likewise ordered to pay jointly and solidarily the victim Maribeth Bolito the sum of Two Hundred Thousand Pesos (P200,000.00) for moral damages, One Hundred Thousand Pesos (P100,000.00) for exemplary damages and to pay Rosita Quilates the sum of Twenty One Thousand Pesos (P21,000.00) on the value of the properties which were not recovered and further orders that the recovered TV, VHS appliances and necklace be returned to its lawful owner.

SO ORDERED.

Accused Felix Corpuz and Mario Verceles interposed the instant appeal. They alleged that the trial court erred in discharging Jerry Soriano as a state witness, in appreciating conspiracy among the accused, in not considering as mitigating circumstance the voluntary surrender of Mario Verceles, and in awarding damages to the private complainants.

The appeal lacks merit.

Accused-appellants contend that the discharge of Jerry Soriano did not comply with the requirements of the Rules of Court. They contend that Soriano's testimony does not constitute direct evidence; at most, it was circumstantial in nature and of minuscule importance.[10] Moreover, Jerry Soriano was the most guilty for he admitted his guilt with regard to the commission of the crime together with Mamerto Soriano.[11]

The requirements for the discharge and utilization of an accused as a state witness are enumerated in Rule 119, Section 17[12] of the Revised Rules of Criminal Procedure, viz:

- a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of the accused;
- c) The testimony of said accused can be substantially corroborated in its material points;
- d) Said accused does not appear to be the most guilty; and
- e) Said accused has not at any time been convicted of any offense involving moral turpitude.

The trial court did not err in discharging Jerry Soriano to be utilized as a state witness. First, the testimony of Jerry Soriano was absolutely necessary as the prosecution has no direct evidence to prove the identity of the malefactors Mamerto Soriano, Felix Corpuz, Mario Verceles and Pablo Ramos. The record reveals that the five accused were together on the night the robbery and rape took place. He may not have witnessed the actual robbery and rape, but he has personal knowledge of the robbery when he saw the three accused return to the place where he and Pablo Ramos were allegedly tied, carrying with them the properties said to have been stolen. Second, Jerry Soriano's testimony was corroborated in its material points by other prosecution witnesses and physical evidence. These are: (a) the testimony of Maribeth Bolito that there were three malefactors, one of whom sexually abused her and two of whom just stood at the door; (b) the testimony of Rosita Quilates that her properties were stolen; and (c) the testimony of SPO2 Renato Solomon that they were able to recover the stolen properties from a certain Andres Tirano who bought them from accused Mamerto Soriano. Lastly, Jerry Soriano does not appear to be the most guilty for he was not a co-conspirator in the robbery with rape. He merely accompanied the accused and received three hundred pesos as his share in the proceeds of the sale of the stolen properties. Besides, the question of whether Jerry Soriano appears to be the most guilty is a factual issue. The discretionary judgment of the trial court on this matter is seldom interfered with by appellate court except in case of grave abuse of discretion.[13] We find no good reason to disturb the trial court's findings of facts.

Granting *ex gratia argumenti* that not all the requisites of a valid discharge are present, the improper discharge of an accused will not render inadmissible his testimony nor detract from his competency as a witness. Any witting or unwitting error of the prosecution in asking for the discharge, and of the court in granting the petition, no question of jurisdiction being involved, cannot deprive the discharged accused of the acquittal provided by the Rules, and of the constitutional guarantee against double jeopardy.[14]

On the matter of whether rape was committed, we agree with the trial court's ruling that neither the healed lacerations on the vagina of the victim nor the absence of spermatozoa negates rape. When an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape had been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[15]

In the case at bar, the victim's declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by accused-appellant Mamerto Soriano against her. The Court finds no reason to depart from the rule that the trial court's evaluation of the credibility of the testimonies of the witnesses is accorded great weight because it has the unique opportunity of hearing the witnesses testify and observing their deportment and manner of testifying.[16]

We agree with the trial court that conspiracy has been sufficiently proved by the prosecution. Accused-appellants were one in design with accused Mamerto Soriano in taking personal properties belonging to others without the latter's consent by breaking one of the windows to be used as their ingress. In the course of the robbery, one of them, particularly Mamerto Soriano, succumbed to lustful desires and raped Maribeth Bolito while accused-appellants just stood outside the door and did nothing to prevent Mamerto Soriano. We have previously ruled that once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing the rape.[17] The rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape.[18]

In trying to mitigate his criminal liability, accused-appellant Mario Verceles argued that the trial court erred in not considering the circumstance of voluntary surrender in his favor. Upon learning that police authorities were searching for him in connection with the alleged crime, he immediately proceeded to the barangay captain of his place and voluntarily surrendered himself. However, the Solicitor General argues that the surrender of accused-appellant Mario Verceles was not voluntary and spontaneous for it took him 16 days to show up from the commission of the crime on October 19, 1996 to November 4, 1996.[19]

For the mitigating circumstance of voluntary surrender to be appreciated, the accused must satisfactorily comply with three requisites: (1) he has not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture.[20] Voluntary surrender is not a mitigating circumstance where it appears that the purpose of the accused in going to the authorities is for an entirely different matter as to inquire merely about a warrant of arrest in connection with a pending case against the accused for rape. [21]

Evidence shows that Mario Verceles' surrender to the authorities was not spontaneous and unconditional. He submitted himself to the police only to clear the matter and to know the reason why the police were looking for him[22] and when asked what his involvement was to the alleged robbery and rape, he answered that he does not

know anything about the crime.[23] In *People v. Abella*,^[24] we held that when the accused goes to a police station merely to clear his name and not to give himself up, voluntary surrender may not be appreciated. On the basis of the foregoing, accused-appellant Mario Verceles is not entitled to the benefit of the mitigating circumstance of voluntary surrender.

We thus hold that accused-appellant's defense of alibi and denial cannot overcome Maribeth Bolito's positive testimony that she was raped and that her grandmother's house was robbed, especially since this was substantially corroborated by the other prosecution witnesses. Time-honored is the rule that the positive and categorical assertions of witnesses generally prevail over bare denials.^[25]

In line with established jurisprudence,^[26] we are constrained to modify the award of moral damages from P200,000.00 to P50,000.00, as this award is not intended to enrich the victim but to compensate for her suffering. Moreover, the trial court committed a reversible error when it awarded exemplary damages in the amount of P100,000.00 despite the absence of one or more aggravating circumstances.^[27] As regards the value of the properties belonging to Rosita Quilates that were not recovered, the records are bereft of any evidence to support such claim. Lastly, Maribeth Bolito should have been awarded the sum of P50,000.00 for civil indemnity, as it is mandatory upon a conviction of rape. Such indemnity is distinct from moral damages and based on different jural foundations.^[28]

WHEREFORE, the assailed decision finding accused-appellants Mario Verceles and Felix Corpuz guilty beyond reasonable doubt of the crime of Robbery with Rape punished under Article 294 (1) of the Revised Penal Code and sentencing them to suffer the penalty of Reclusion Perpetua, is **AFFIRMED** with the **MODIFICATION** that the award of moral damages is reduced from P200,000.00 to P50,000.00; the award of exemplary damages is **DELETED** for lack of basis and the sum of P50,000.00 is awarded for civil indemnity.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Record, p. 1.

[2] TSN, February 20, 1997, pp. 40-49.

[3] Rollo, Decision, pp. 74-75.

[4] *Ibid.*, p. 75.

[5] *Id.*, pp. 72-73.

[6] *Id.*, p. 76.

[7] *Id.*

[8] *Id.*, p. 77.

[9] *Id.*, p. 81.

[10] Rollo, Brief for Accused-Appellants, pp. 114-116.

[11] *Ibid.*, Brief for Appellant (Felix Corpuz), pp. 62-63.

[12] Previously under Rule 119, Section 9 of the Rules of Court.

- [13] *People v. Sison*, 312 SCRA 792, 801 [1999] .
- [14] *People v. Bariquit*, 341 SCRA 600, 616-617 [2000] .
- [15] *People v. Callos*, G.R. No. 133478, January 16, 2002.
- [16] *People v. Canon*, G.R. No. 141125, July 28, 2002.
- [17] *People v. Mendoza*, 292 SCRA 168, 183 [1998] .
- [18] *Ibid.*, citing *People v. Lascuna*, 225 SCRA 386, 400-401 [1993] .
- [19] *Rollo*, Consolidated Brief for the Appellee, p. 154.
- [20] *Roca v. Court of Appeals*, 350 SCRA 414, 425 [2001] .
- [21] See *People v. De Vera*, 308 SCRA 75, 97 [1999] .
- [22] See, *TSN*, April 30, 1997, p. 19.
- [23] *TSN*, May 2, 1997, p. 8.

[24] 318 SCRA 270, 297 [1999] .

- [25] *People v. Patanayan*, G.R. Nos. 141189-202, July 23, 2002.
- [26] *People v. Mamalayan*, G.R. No. 137255, November 15, 2001.
- [27] Article 2230, New Civil Code.
- [28] *People v. Diopita*, 346 SCRA 794, 806 [2000] .

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