

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN ALEMAN AND AQUILINO VIÑA,
DEFENDANTS-APPELLANTS.**

G.R. No. 39776. February 20, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the late afternoon of August 31, 1972, the house of the spouses Mariano Cagas and Emeteria Tan Cagas in Tinacla-an, Clarin, Misamis Occidental, was robbed by three armed men. Two of the culprits took fancy of the 18-year old niece of Mrs. Cagas, Julieta Tan, and forced their lust on her. One after another, the two raped Julieta in a room adjoining another where the spouses were held at bay by the third man. After about one and a half hours, the three men left, carrying with them money and personal items worth P1,698.00. They explicitly warned the Cagas spouses to be silent, or they would return to kill them.

On November 29, 1972, Benjamin Aleman, Aquilino Viña, Rodrigo Espinas and Antero Fernandez were charged with robbery with rape in the Municipal Court of Clarin, in connection with the incident. After preliminary investigation, Aleman, Viña and Espinas were absolved but the case with respect to Antero Fernandez was elevated to the Court of First Instance of Misamis Occidental. Thereafter at the request of the PC Provincial Commander and the private prosecutor, a reinvestigation was conducted which resulted in the filling of an information dated May 3, 1973, which was later amended on August 30, 1973. The amended information reads:

"The undersigned 2nd Assistant Provincial Fiscal accuses Benjamin Aleman, Aquilino Viña, Rodenio Espinas and Antero Fernandez of the crime of Robbery with Double Rape, committed as follows:

That on or about the 31st day of August, 1972, at about 6:30 in the evening, in barrio Tinacla-an, municipality of Clarin, province of Misamis Occidental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another and with common intent of gain, did then and there willfully, unlawfully and feloniously enter the house of Mariano Cagas and once inside, they intimidated the spouses Mariano Cagas and Emeteria Tan de Cagas, and then hogtied them, demanded money from them and right then and there took, stole and carried away the following personal properties, to wit:

One (1) Transistor radio valued at.

P 200.00

One (1) Seiko ladies watch valued at

300.00

One (1) Physician's flashlight valued at. . . .

150.00

Jewelries valued at

600.00

One (1) jacket

28.00

Class ring

150.00

Cash money

__270.00

Total - - - - -

P1,698.00

to the damage and prejudice of the said spouses in the total sum of P1,698.00, Philippine currency.

That during the occasion of such robbery, by means of force and intimidation, the two robbers namely, Benjamin Aleman and Aquilino Viña took turn in having sexual intercourse with one Julieta Tan against her will.

And that in the commission of the above crime there was one aggravating circumstance present as the accused perpetrated the offense in the dwelling of the offended party.

Contrary to Article 294, paragraph 2, in relation to Article 14, paragraph 3, of the Revised Penal Code."

After trial, the court rendered a decision on June 19, 1974, with the following dispositive portion:

"WHEREFORE, the accused, Benjamin Aleman and Aquilino Viña are hereby found guilty beyond reasonable doubt of the crime of robbery with double rape. They are hereby sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties of the law; to jointly and severally indemnify Mr. and Mrs. Mariano Cagas the sum of P1,698.00 and Julieta Tan the sum of P10,000.00, with subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

The accused, Rodenio Espinas is hereby found guilty beyond reasonable doubt of the crime of robbery in an inhabited house. He is hereby sentenced to suffer an indeterminate penalty of from four (4) years and two (2) months of prision correctional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, also with the accessory penalties of the law; to indemnify Mr. and Mrs. Mariano Cagas the sum of P1,698.00, without subsidiary imprisonment in case of insolvency and to pay the proportionate costs.

The accused Antero Fernandez is hereby acquitted of the crime charged in the amended information, with costs de oficio. He is hereby released from custody."

A motion for new trial on grounds of alleged irregularities during the trial and newly discovered evidence, was filed on behalf of those convicted. The motion was denied.

Those convicted interposed this appeal. Rodenio Espinas however, withdrew his appeal. Hence, this review is

limited to Benjamin Aleman and Aquilino Viña.

This appeal revolves on the sole issue of credibility of the contending witnesses. The appellants deny the prosecution's evidence that they were two of the persons who robbed the Cagas household and raped Julieta Tan. They base their denial on the following grounds: First, the delay of the Cagas spouses in reporting the incident to the authorities (for while the robbery took place on August 31, 1972, the Cagases went to the Philippine Constabulary headquarters in Cota, Ozamis City, on September 30, 1972) - casts doubt on their claim that they recognized the culprits; second, they were individually singled out by each of the prosecution witnesses, in a manner which reveals a pattern to frame them up - in that, Emeteria Cagas testified that she recognized Benjamin Aleman, alone, Mariano Cagas identified Rodenio Espinas only, and Julieta Tan named Benjamin Aleman and Aquilino Viña alone; and, third, the rape of Julieta Tan is not worthy of belief, because Rosita Cagas who physically examined her, did not make a medical certificate of the findings, nor report the alleged rape as a medico-legal case.

The appellants insist that their alibis deserve more credence than the prosecution's evidence. Aquilino Viña contends that he was on guard duty as a municipal policeman at the municipio in Clarin when the robbery occurred. Benjamin Aleman, also a municipal policeman in Clarin, contends that, at that time, he was playing billiard in Mialen, Clarin, after having finished his guard duty in the municipio ahead of Viña.

The evidence for the prosecution consist mainly of the testimony of Emeteria Cagas, Mariano Cagas, Julieta Tan and Dr. Rosita Cagas, the physician who examined Julieta Tan after the alleged rape.

Emeteria Cagas testified that a man approached her, when she was attending to her goats, very near their house, at around 6:00 o'clock in the afternoon of August 31, 1972. After greeting her with a - "good afternoon," the man suddenly grabbed her hands, telling her that he had business with her husband. The man then pointed a handgun at Emeteria and dragged her to the house.

Upon Emeteria's call, Julieta Tan, her niece, opened the door. Julieta came from the kitchen where she was preparing supper. Just then, two other men rushed inside. Alarmed, Julieta ran back to the kitchen followed by one of the intruders.

Emeteria was brought to the kitchen, and was told to call her husband. When Mariano Cagas responded to his wife's trembling voice, he was met with flashlight beams from one of the intruders. Mariano testified that he had a glimpse of a man pointing a handgun on his wife's side. He said that he told the intruders to get what they wanted but not to harm them.

Mariano proceeded to the unlighted sala, followed by one of the men. At first, Mariano thought that there were only two but it turned out there were actually three. He was told to lie on the floor, flat on his stomach whereupon his hands and feet were bound.

Emeteria was told to join her husband in the living room. But not for long, because the intruders demanded money from her. She was brought to their bedroom, dimly lighted by a small kerosene lamp on an altar. She gave the culprits some money, but she was choked by one of them, as she was asked for more. She gave them P270.00, all in all. Then she was told to lie flat on the floor.

A little later, Emeteria saw Julieta enter the room with one of the robbers. Then she heard a man say, "Day, you look vividly on my face. You remember my face, so that you can remember my face tomorrow." ("Day" or Inday referred to Julieta). Then the man proceeded to ransack the room's built-in cabinets. He then left the room taking Julieta with him.

Upon order of the culprits, Mariano joined his wife. He said that it was difficult for him to reach their room from the sala, because his feet were tied. He was told to lie beside his wife. One of the culprits stood guard at the door of the room.

Emeteria Cagas testified that she recognized the man who surprised her when she was attending to her goats, as he resembled her customer who used to buy her livestocks. She identified this man in court, as the accused-appellant Benjamin Aleman.

Mariano Cagas identified the man who stood guard at the door of their bedroom as Rodenio Espinas. [He was the one who was convicted of robbery only and then withdrew his appeal.]

Further corroborating each other, the spouses testified that they heard their niece shout and cry: "Da, please, help me . . . Noy, please, don't do something to me." These came from the next room, separated from where the spouses were, by a thin room-divider, which did not even reach the ceiling. They also heard creaking sounds of the bed.

The culprits left after about one and half hours, bringing with them the items enumerated in the information. Before leaving, one of them tied the hands of Emeteria. They warned the spouses to be silent, or else they would return to kill them.

Having been tied loosely, Emeteria untied herself; and then her husband. Mariano went to the adjoining room, where he found Julieta wrapped in a mosquito net and a blanket. Julieta told her uncle that she was raped by two of the robbers.

Julieta was then a third-year high school student at the Holy Child High School, Clarin, Misamis Occidental. She testified that when she was in the kitchen, she was asked by the malefactors where the spouses kept their money. Unable to tell the place, one of them thrust the barrel of his gun in her mouth and as a result she cried in pain. The man then kissed her. And reacting, Julieta pinched his face.

When she was brought to her aunt's bedroom, she saw Emeteria lying, face downward, on the floor. One of the robbers lighted a gas lamp found on the altar, and gave it to her saying, "Day, you look vividly on my face. You remember my face so that you can remember my face tomorrow." Thereafter, she was brought to the adjoining room. Feeling the lecherous intention of the robbers, she refused to enter. But one pulled her, and another pushed her. Inside, she was thrown on the bed. The robber holding the lighted kerosene lamp, placed it on the headboard. Then, one held her hands, and pointed a hunting knife on her neck. The other held her legs, and forcibly removed her underwear. She struggled, shouted, and pleaded for mercy but to no avail.

She was first raped by the robber whom she described as the bigger one. The other followed. According to Julieta, she felt extreme pain in her private parts, each time she was abused by the two.

The two wanted to bring her with them. But she begged them to leave her there. The two tied her with a mosquito net and a blanket and left her. She was in this situation when she was found by her uncle.

Julieta identified the man who told her to look at his face as Aquilino Viña. She said that Viña was her first rapist, and Benjamin Aleman was the second rapist.

After the robbers had left, the Cagas spouses brought their niece to the Ozamis City Community Hospital. They went directly to Rosita Cagas, their daughter, a medical graduate who was waiting for the results of her medical board examinations and was working in the hospital. Rosita Cagas was informed of the robbery and the sexual assault perpetrated on Julieta's person.

Rosita Cagas submitted Julieta to a physical examination. During the trial, Rosita, then, a full-pledged doctor,

testified on her findings as follows:

- Contusion on the left breast;
- Scratches on the medial site of the left thigh;
- Vulva smeared with blood;
- Hymen lacerated at 3:00 o'clock and 6:00 o'clock positions.

Dr. Rosita Cagas further testified that she gave Julieta a tranquilizer and gave her a vaginal douche as a precaution against unwanted pregnancy. Dr. Cagas, however, said that she did not issue any medical certificate nor report the matter as a medico-legal case because she was not yet a doctor at that time and had no authority to issue a certificate. She did not report the rape as a medico-legal case because her parents said they were not filing a case.

The aunt and niece spent the night of August 31, 1972, in the hospital, from where they were fetched by Mariano, the following morning.

Before fetching his wife and niece, Mariano passed by the headquarters of the Municipal Police Force of Clarin, and reported the robbery. He informed Police Chief Luisito Villa about the robbery but told him that they had no intention of filing a case. Mariano said that he only wanted the robbery entered in the police blotter. He did not inform the police chief about the rape of his niece because they did not want to be "exposed to the public."

Sometime after the incident, Julieta Tan went to the municipal building of Clarin, to get a letter at the post office. But Julieta was unable to get any letter because the sight of two men in police uniforms, standing near the post office, frightened her away. Recognition dawned on her - the two were her rapists.

Julieta hurriedly reported her discovery to her uncle and aunt. At that time, she did not know yet their names. She came to know them as Benjamin Aleman and Aquilino Viña, when together with her uncle she confronted the two at the Philippine Constabulary Headquarters in Cota, Ozamis City on October 3, 1972.

It appears that with the imposition of martial law in September, 1972, Mariano went to the Philippine Constabulary Headquarters on September 30, 1972, to secure a permit for a farmers' cooperative meeting. He met a certain Captain Kitane who apparently knew about the robbery and rape of his niece. When asked why he did not complain to the Constabulary authorities, Mariano replied that he was afraid because the culprits were armed and that his family lived in a place far from neighbors. He was assured by Captain Kitane that the culprits would be brought to justice.

And so on October 3, 1972, the Cagas spouses and Julieta were summoned by some PC soldiers to the headquarters, because earlier that day three suspects had been apprehended. Mariano, Emeteria and Julieta identified those apprehended because they recognized them individually during the robbery. They were told that the suspects were Benjamin Aleman, Aquilino Viña and Rodenio Espinas.

That confrontation led to the filing of the robbery with rape charge against Aleman, Viña and Espinas in the Municipal Court of Clarin. The complaint was amended to include one Antero Fernandez, who was arrested by the municipal police of Clarin on April 25, 1973. Fernandez allegedly executed a sworn statement admitting participation in the robbery, and exculpating Aleman, Viña and Espinas. Because of the confession, the charge against the three was dropped, and the case against Fernandez alone, was elevated to the Court of First Instance of Misamis Occidental. However upon reinvestigation as aforesaid, an amended information, supra, was filed against the four.

The conviction of Benjamin Aleman and Aquilino Viña must be affirmed.

The delay of the complaining witnesses in reporting the incident to the Constabulary authorities was satisfactorily explained. It was the, culprits' threat that they would return to kill the Cagases if the latter should report to the authorities. To Mariano Cagas, the threat sounded real, not only because it came from armed men, but also because his daily work in a cooperative in Ozamis City required him to commute thereto and leave his wife and niece in their house located in an isolated place in Tinacla-an. Moreover, Mariano and Emeteria so associated the rape of their niece with shame that they originally preferred to bear their misfortune in silence, rather than expose Julieta and the family to the indignity of a public trial.

Oftentimes, there are those who, out of sheer helplessness and a sense of insecurity, find themselves in the midst of uncertainty. And so it was with Mariano Cagas. On September 1, 1972, he reported the robbery (evening of August 31, 1972) to the police of Clarin, but told the chief of police that they had no intention of filing a case. He did not even mention the rape of Julieta Tan. When he went to the Philippine Constabulary Headquarters on September 30, 1972, and was asked why he did not complain to the Constabulary, he replied that he was afraid for his family.

Mariano's fear and uncertainty continued until October 3, 1972, when the suspects Aleman, Viña and Espinas were arrested by the Constabulary. Thereafter Mariano seemed to have regained his composure. He, Emeteria and Julieta executed various affidavits, (which were not however presented by the prosecution), narrating the incident of August 31, 1972. And, Mariano had Julieta examined by Dr. M. Remulla, apparently to make up for the lack of medical certificate when Julieta was examined by Rosita Cagas in the evening of August 31, 1972. Dr. M. Remulla issued a medical certificate dated October 3, 1972 (Exh. "B"), showing among other things, healed vaginal lacerations.

It is claimed by the appellants that they were not recognized by the Cagas spouses and Julieta. However, that they pointed at the malefactors singly did not diminish the evidentiary value of their testimony. The manner and the circumstances in which the victims were individually accosted by the culprits show that the former had the opportunity to recognize their tormentors.

Emeteria was able to recognize Benjamin Aleman because it was Aleman who approached her outside the house. Aleman talked to her, grabbed her hand and dragged her to the door. There was still sufficient light when Emeteria attended to her goats, enabling her to take a good look at Aleman.

Why did not Emeteria point at Aleman's companions? Because she was not able to see their faces as the other two rushed inside the house when Julieta opened the door. It was dark inside, such that, when Mariano responded to his wife's calls, he was met with a flashlight beam from one of the intruders.

It was also dark in the sala where Mariano was told to lie on the floor. And so Mariano was unable to see the faces of the culprits. In fact, Mariano said that he thought at first there were only two robbers whereas actually there were three. But Mariano was able to recognize Rodenio Espinas, because the latter stood guard at the door of their bedroom, as he and his wife were flat on the floor. According to Mariano, the light from the altar further enabled him to have a good view of Espinas.

If there should be doubt, (and there is none), as to whether Mariano and Emeteria recognized the culprits, such doubt is indeed erased by the recognition made by Julieta of Aleman and Viña.

Julieta was brought to the bedroom of the spouses. She recognized Aquilino Viña who had the temerity and arrogance to give her a lighted gas lamp and to tell her to look at his face so that she could remember him. Moreover, Julieta could not have been mistaken, considering the manner in which she was tormented by Aquilino Viña and Benjamin Aleman. Consummating sexual intercourse with an unwilling and struggling woman takes

time, affording the victim opportunity to look at her rapist. It will be recalled that one of the two placed a gas lamp on the headboard before throwing Julieta on the bed.

It does not appear that Julieta had met Viña and Aleman elsewhere before the fateful evening of August 31, 1972. And yet, when she went to the post office, many days after the incident, she readily recognized the two men in police uniforms as her rapist.

The records do not disclose any improper or evil motive which could have prompted these witnesses to make malicious imputations against the appellants. The testimony of these witnesses, in the absence of ulterior motives are therefore worthy of full faith and credit.

At this point, it is easy to see that the respective alibis of the appellants cannot stand vis-a-vis the positive identification made by the victims. Added to this is the fact, that the appellants had not shown that it was physically impossible for them to have been at the place of the crime during its commission. It should be considered that Tinacla-an is only a few minutes ride by tricycle from Clarin municipal building where Viña was allegedly on guard duty and also from Mialen where Aleman allegedly played billiard.

Was Julieta Tan raped? In view of the foregoing discussions, further elaboration seems unnecessary. But, to dispel any doubt, the point of dispute raised by the appellants is hereby dealt with briefly.

A medical certificate or a medico-legal report is not essential to prove that rape was committed where the testimony of the rape victim is by itself credible. As said in *People v. Royeras*, (No. L-31886, April 29, 1974, 56 SCRA 666, 672), "when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed."

The testimony of Julieta Tan appears conclusive, logical and probable. Her testimony withstood the test of cross-examination. Her demeanor on the witness stand convinced the trial court of her sincerity. And there are no cogent reasons why she should not be believed as the defense had not even shown any reason why an 18-year old high school student would fabricate a story of rape upon herself and impute it to persons who were strangers to her.

Finally, the appellants fault the trial court for having denied the motion for new trial.

The motion was based on alleged irregularities committed in the trial in that one of the private prosecutors, Atty. Galileo Trocio was a godson of the presiding judge, the Honorable Geronimo Morabe, and the latter should have thus inhibited himself from this case; and that the Prosecuting Fiscal Miguel Olivar did not seriously and earnestly prosecute the case against Antero Fernandez, the accused who was acquitted.

Through the same motion, the appellants proposed to present alleged newly discovered evidence in the form of testimony of one Rogelio Tejero, houseboy of the Cagases, who would have testified that he saw the malefactors leave the premises after the robbery and that none of them were the appellants.

No error was committed in denying the motion for new trial.

There is no just or valid reason why the trial judge should inhibit or disqualify himself from this case. It had not been shown that Atty. Trocio was his godson. What the trial judge said in his order denying the motion to disqualify him, is that he was a sponsor in the wedding of Atty. Trocio. But this fact alone does not constitute sufficient cause for inhibition.

Not even a strong sense of "delicadeza" or propriety can justify voluntary inhibition by a trial judge from hearing a case. (*Joaquin v. Barreto*, 25 Phil. 381 [1913]).

It will be noted that Atty. Trocio was not the only private prosecutor. There was also Atty. Valeriano Kaamino who like Atty. Trocio actively intervened in the case, under the direct control and supervision of the prosecuting fiscal. There is nothing in the records to show that Atty. Trocio exerted personal influence on the trial judge. Neither is there any indication of bias or prejudice on the part of the trial judge.

The appellants' accusation against Fiscal Miguel Olivar is not substantiated by anything, other than the fact that the accused Antero Fernandez was acquitted. Though nothing need be said about Fernandez' acquittal, the arguments in the People's Brief on this point, is hereby quoted with approval:

"As to Fiscal Olivar's alleged tepidity in prosecuting the case against Antero Fernandez, it is clear from the records that it was not the conduct of Fiscal Olivar that was responsible for the acquittal of Antero Fernandez, but the strength of his (Fernandez') testimony that he was coerced by the Clarin police into signing a confession where he admitted complicity in the robbery and rapes committed on August 31, 1972, and that his coerced confession was designed to exculpate appellants, who were policemen in the Clarin police force."

As to the alleged newly discovered evidence, in order that it can justify a new trial, the following must be shown: (a) that the evidence is new and was discovered after the trial; (b) that such evidence could not been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) that it must be of such probative weight that it would probably alter the judgment. (Rule 121, Sec. 2(b), Rules of Court.)

The appellants did not show that the proposed evidence in the form of Rogelio Tejero's testimony was new and was discovered after the trial. What appears is that the appellants' counsels knew during the trial that Tejero was a houseboy of the Cagases, and they also knew what he could have testified had he been presented. And yet, it does not appear that reasonably diligent efforts were exerted to produce Tejero during the trial. Moreover, it had not been shown that Tejero's testimony would carry such weight as to change the verdict in this case. It had not been disputed that the appellants left the Cagas dwelling after about one and a half hours, so that they left at around 7:30 o'clock that evening, when it was dark outside. How could Tejero then recognize the faces of the malefactors?

The appellants were found guilty of the crime of robbery with double rape. Since the crime was committed in the house of the victims, dwelling should be considered as an aggravating circumstance.

WHEREFORE, the judgment appealed from is hereby modified in that the appellants shall each suffer the penalty of two reclusion perpetua considering that both of them cooperated in committing the two rapes but affirmed in all other respects. Costs de officio.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr. and De Castro, JJ., concur.

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