

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNABE CIRILO, JR., DEFENDANT-APPELLANT.***G.R. No. 53542. December 14, 1987*

Ponente: CRUZ, J.

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The accused-appellant asks us to reverse his conviction because his co-accused were acquitted. He claims the same evidence was submitted against all of them and urges in effect that what is sauce for the goose is sauce for the gander. It is not that simple, of course. Adages may embellish language but they do not decide cases.

The original charge was for robbery with rape, against Bernabe Cirilo, Pedro Mendoza and Manuel Sosota. According to the prosecution, the three men, at about eleven thirty o'clock in the evening of September 26, 1971, entered the house of Asuncion Segovia where she was sleeping in one bed with her daughter Maria and the latter's classmate, Lourdes Fernandez, both 14 years old. The men warned them against making an outcry, hogtied them at gunpoint, then started ransacking the place. Afterwards, Mendoza and Sosota took turns in raping Maria while Cirilo abused Lourdes. Cirilo then asked for some food from Maria, whom he also raped later. The men then left, taking a number of valuable articles with them.[1] The matter was reported to the authorities the following morning and the rape victims were medically examined two days later.[2]

The accused-appellant was the first to be charged in the information filed on December 28, 1981.[3] His co-accused were formally impleaded about ten months later, after they had been identified by the victims.[4] On motion of the fiscal, all three accused were tried together, with the prosecution presenting common evidence against them consisting mostly of the testimony of the two girls and Asuncion Segovia. Each of the accused claimed separate alibis. After trial, the accused-appellant was convicted of double rape and sentenced to reclusion perpetua for each rape. The other two accused were exonerated for insufficient evidence. The charge of robbery was dismissed and the allegation of conspiracy discounted.[5]

Right or wrong, the acquittal of Mendoza and Sosota cannot be reviewed by the Court because of the bar of double jeopardy. The Solicitor General is of the opinion that they should also have been convicted as there was sufficient evidence against them but agrees that the issue has become academic.[6] However, the accused-appellant invokes their acquittal as a ground for his own exoneration. His claim is that he should not have been found guilty while his co-accused were exonerated because they were all tried together and the same evidence was adduced against all three of them.

In suggesting what might be called a "package deal" in common parlance, the accused-appellant is espousing a rather dubious legal proposition. His postulate is that where a common trial is held, all the accused must be similarly dealt with and be either all acquitted or all convicted on the basis of the evidence submitted against them at the trial. It is not correct to treat one differently from the others, he argues, because the evidence against all of them is identical.

The flaw in this argument is immediately apparent. The supposition is that since the evidence against the

defendants was presented at their common trial, such evidence was applicable to all of them and operated with equal weight or effect against each of them. This will not necessarily follow. And more so in this case since the claimed conspiracy among the accused was not deemed established. The evidence of the prosecution operated against each one of them separately although some of the evidence was presented against all of them, like the testimony that they all entered the house through a window. Some of the witnesses' declarations affected one or the other and not always all of the accused. Moreover, the accused-appellant does not take into account the separate defenses made by each of the accused and simply assumes that the defense of one was the defense of all and would determine in its totality their innocence or guilt without distinction.

In truth, the evidence for the prosecution was not identical for all three accused, and neither were their respective defenses. Maria testified that she was raped by Mendoza and Sosota in succession and later by Cirilo after he had eaten.[7] Lourdes testified she had been raped only by Cirilo.[8] The two girls also differed in their separate identification of each of the three intruders, particularly of the accused-appellant. As for the defendants, while each of them pleaded alibi, they did not claim to be in the same place together, Mendoza claiming he was drinking with friends at the time of the rapes[9] and Sosota that he was then in Manila.[10] The accused-appellant testified he was in the house of a neighbor and assisting with his wife in the delivery of a child.[11]

The medical evidence is not disputed.[12] We shall dismiss as inconsequential, if not ridiculous, the argument that the girls did not resist (and so accepted?) the outrage inflicted upon them. Given the actual threat of weapons and the general menace of the rude intrusion in their sleep by masked and armed men, the two 14-year old girls could not have been expected to make any physical or vocal protest when they were violated. Moreover, their hands were tied.

This would leave now only the question of the sufficiency of the defendant-appellant's identification, which he disputes on the ground that the testimony of Maria and Luz are unreliable. His position is that if their identification of Mendoza and Sosota was rejected by the trial court, there is no reason why their testimony identifying him was found acceptable.

There is. The fact is that there were different circumstances in which the three co-accused were identified, and the identification of the accused-appellant was more convincing to the trial court than that of the other two. Perhaps the judge did err in disbelieving the identification of the other two, as the Solicitor General suggests, but that is beside the point now. The only issue we have to consider at this time is whether or not the identification of the accused-appellant was sufficient to sustain his conviction as against the constitutional presumption of innocence.

We hold that the identification was sufficient. To begin with, it came from witnesses who had no ax to grind, so to speak, and had no reason to fabricate testimony against the accused-appellant, who was practically unknown to them. They had no grudge against him. He was a stranger until he forced his intimacy upon them. The only time they had talked to him earlier was when they and the accused-appellant happened to ride together in the same passenger jeep, which incident, providentially, enabled them to recollect his face later.[13] Secondly, their means of identification was quite positive. Lourdes says she identified him by the light of the refrigerator when he opened it in search for food.[14] Maria saw his face three times, to wit, when his mask fell off while he was raping her,[15] when he lit a cigarette,[16] and when he turned on the oil lamp.[17] Asuncion Segovia, for her part, testified that she recognized him while she was being hogtied and when his handkerchief slipped from his face.[18]

Significantly, the witnesses pointed to him only four days after the incident, on September 30, 1971, when he was picked up by the police for questioning.[19] By contrast, for whatever it may be worth, the other accused were identified several months later[20] and were merely John Does in the information already filed against the

accused-appellant until they too were separately charged later.

In the light of the positive identification made by the prosecution witnesses, the alibi offered by the accused-appellant was properly rejected. Alibi is an inherently weak defense and will be accepted only upon the clearest proof that the defendant was not or could not have been at the scene of the crime when it was committed. It is especially feeble when he is positively identified, particularly by the victims themselves, as in the instant case.

The trial court convicted the accused-appellant of two simple rapes and sentenced him to two penalties of reclusion perpetua without taking into account his use of a deadly weapon and the commission of the offense in the house of one of the victims. The crimes committed are double qualified rapes, each punishable under Article 355 of the Revised Penal Code with reclusion perpetua to death. The appropriate penalty is death for each of the rapes, in view of the aggravating circumstance of dwelling and there being no mitigating circumstances, but this can no longer be applied because of the prohibition in Article III, Section 19(1) of the Constitution. The sentence is therefore reduced to reclusion perpetua for each of the two rapes, the same penalty imposed by the trial court but not quite for the right reason.

Considering the age and innocence of his victims, whose future has been forever blighted by his outrage to their chastity, the Court also sentences the accused-appellant to pay a civil indemnity of P30,000.00 to each of them.

WHEREFORE, the judgment of the trial court as above rectified is AFFIRMED, with costs against the accused-appellant. It is so ordered.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Rollo, pp. 8-11.

[2] Ibid., pp. 17-18.

[3] Id., p. 5.

[4] Id., p. 30.

[5] Id., p. 22. The decision was penned by Judge Jose F. Madara, Court of First Instance of Albay.

[6] Appellee's Brief, pp. 12-13.

[7] TSN, pp. 49 & 55.

[8] Ibid., p. 204.

[9] Id., p. 273.

[10] Id., p. 299.

[11] Id., pp. 352-353.

[12] Record on Appeal, pp. 2-4, Exhs. "A" & "B".

[13] TSN, p. 42.

[14] Ibid., p. 170.

[15] Id., p. 23.

[16] Id., p. 21.

[17] Id., p. 22.

[18] Id., pp. 100-101; 125.

[19] Rollo, p. 25.

[20] Ibid., p. 18.

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