

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUSTAQUIO LORENO Y MALAGA AND JIMMY MARANTAL Y
LONDETE, ACCUSED-APPELLANTS.**

G.R. No. 54414. July 09, 1984

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In an information filed before the Court of First Instance of Camarines Sur, accused Eustaquio Loreno y Malaga and Jimmy Marantal y Londete were charged with the crime of Robbery with Double Rape, committed as follows:

"That on or about the 7th of January, 1978, in the Barangay of Magsaysay, Municipality of Libmanan, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with John Doe, Jose Doe, Richard Doe, Peter Doe, Charlie Doe, and Ricky Doe, who are still at large, armed with firearms, conspiring and con-federating together and mutually helping one another, with intent to gain and rob, taking advantage of nighttime to better accomplish their purpose, did then and there wilfully, unlawfully and feloniously assault, attack and use violence and intimidation upon the person of Elias Monge by tying his two hands and the hands of the members of his family and on the occasion hereof, while they were made lying flat on the floor, the herein accused take, rob and carry away, without the consent of said Elias Monge, owner thereof, of the following properties, to wit:

One camera with trademark Olympus worth P 400.00

Two birthstones rings worth 700.00

One wedding ring with name 'MONDING 100.00

One pair of earrings heart-shape 100.00

Two pieces of necklace gold worth 400.00

Two pieces of mosquito net 70.00

Three pieces of blankets color orange and spotted 200.00

Three men pants and also one cut of cloth 235.50

One beach towel, with decoration 35.00

One aluminum Reynold kettle 30.00

One caserole 15.00

Two pieces of pillow case 12.00

Two cans of rice 70.00

One flashlight Eveready two batteries 30.00
Two bottles of Johnny Walker Wine 450.00
Two T-shirts one mark Marlboro and plain white 20.00
Five bags of assorted sizes 200.00
One lady wrist watch Bulova 50.00
One men's wrist watch En clock 17 jewels 150.00
One eagle pin US gold 200.00
One baby wallet containing cash 57.00
Three live chickens 30.00
One waterproof jacket reversible 40.00
Cash money it assorted denominations all paper bills 7,000.00

TOTAL P10,619.50

all in the total amount of TEN THOUSAND SIX HUNDRED NINETEEN PESOS and FIFTY CENTAVOS (P10,619.50), Philippine Currency, to the damage and prejudice of the owner thereof in the aforementioned amount. That on the occasion thereof, the above-named accused, with lewd design, and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit sexual intercourse with Monica-Monge, a virgin of 16 years old, and with Cristina Monge, all against their will."[1]

Upon arraignment, both accused Eustaquio Loreno y Malaga and Jimmy Marantal y Londete entered a plea of not guilty to the crime charged.

After trial, the lower court rendered judgment adverse to the accused, the dispositive portion of which read:

"ACCORDINGLY, we find the guilt of the accused Eustaquio Loreno has been established by proof beyond reasonable doubt and hereby find him GUILTY of Robbery with Double Rape, penalized by Par. 5 of Article 294 of the Revised Penal Code. There being present aggravating circumstances in the commission of the offense, Eustaquio Loreno is hereby sentenced to LIFE IMPRISONMENT, the maximum penalty provided by law.

Likewise, the Court finds that the guilt of the accused Jimmy Marantal has been established beyond reasonable doubt and hereby finds him GUILTY of the crime of ROBBERY penalized under Par. 5 of Article 294 of the Revised Penal Code. Jimmy Marantal is sentenced to indeterminate penalty ranging from TWO (2) YEARS and ELEVEN (11) DAYS of prison correctional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prison mayor, in view of the aggravating circumstances present.

Said accused Eustaquio Loreno and Jimmy Marantal shall indemnify jointly and severally Elias Monge in the sum of P10,619.50 without subsidiary imprisonment. In addition, Eustaquio Loreno shall indemnify Monica Monge and Cristina Monge in the sum of P10,000.00 each or a total of P20,000.00 as damages, without subsidiary imprisonment.

The accused herein shall pay one-half of the costs each."[2]

The facts of the case as stated by the Solicitor General in his Brief, are as follows:

"In the evening of January 7, 1978, Barangay Captain Elias Monge was at his house located at barrio Magsaysay, Libnanan, Camarines Sur. He and his two young daughters, namely: Monica Monge, single, then 14 years old, and Cristina Monge, married, then 22 years old, were preparing to attend the dance to be held in the barrio proper that evening. But they had to wait for a while because his wife, Beata Monge, was still changing the diaper of baby Rachel Baybayon, four-month old daughter of Cristina Monge. The other occupants present in the house that evening were his sons, Mario, then 11 years old, and Nilo, then 13 years old, and their farm helper, also staying with them, by the name of Francisco Fabie. Cristina was then vacationing at her parents' house. Her husband, Raymundo Baybayon, was in Manila (pp. 2-5, tsn, Oct. 18, 1979 AM; pp. 2-3, tsn, Oct. 22, 1979 AM; pp. 2-4, tsn, Oct. 19, 1979 AM; pp. 2-3, tsn, Oct. 29, 1979 AM; pp. 2-3, tsn, Oct. 29, 1979 AM).

At about 7:40 o'clock that same evening, while he was at the balcony of said house, Francisco Fabie saw at first four men with flashlights approaching. When they came near, he heard one of them call Elias Monge saying that there was a letter from the chief (hepe). Fabie called Elias Monge who was in the sala, informing him that there was a letter from the chief. Two of the visitors, one wearing red clothes and the other in dark sweater, came up the house. When Elias Monge went out to the balcony the man in dark sweater handed to him the letter. Because it was dark to read it, Elias Monge invited the man in dark sweater to come inside the sala. The other man in red clothes posted himself near the post of the balcony (pp. 4-5, tsn, Oct. 19, 1979 AM; pp. 6-7, tsn, Oct. 18, 1979 AM; pp. 4-9, tsn, Oct. 22, 1979 AM; pp. 4-7, tsn, Oct. 29, 1979 AM; pp. 4, 12-13, tsn, Oct. 29, 1979 PM).

When he and the man in dark sweater were inside the sala Elias Monge asked his daughter, Monica to fetch his reading glasses. On reading the letter, Elias Monge and Monica read the following: "Kami mga NPA", which caused Monica to run to her mother, seized with fear, informing her just what she came to know about their visitors. Cristina Monge attempted to run to the kitchen to get a bolo but she was held back by the man in dark sweater who then announced to all those inside not to make any scandal. When Elias Monge turned to look at him, the man in dark sweater poked his gun at him, and ordered all those inside to lie on the floor (pp. 13-14, tsn, Oct. 18, 1979 PM; p. 7, tsn, Oct. 18, 1979 AM; pp. 4, 1-13, tsn, Oct. 29, 1979 AM; pp. 4, 13, 16, tsn, Oct. 29, 1979 PM).

In the meantime, outside at the balcony the man in red clothes asked Fabie for a glass of water, and the latter asked Mario Monge to get the glass of water, but Mario did not obey and instead went to the sala. Hence, Fabie himself went inside the house to fetch the glass of water. But, as he went inside the sala, he noticed the man in red clothes following him. As Fabie reached the door to the sala, the man in red clothes poked his gun on Fabie's back and pointed a sharp instrument on his neck and then he was pushed to go inside the sala. Once inside the sala, which was lighted, Fabie saw and recognized the man in red clothes to be Eustaquio Loreno. Also, Elias Monge and his two daughters, Monica and Cristina, saw and recognized Eustaquio Loreno as he entered the sala as one of the companions of the man in dark sweater. All the occupants of the house were ordered by the man in dark sweater and Loreno to remain lying flat on their stomachs on the floor (pp. 5-6, tsn, Oct. 19, 1979 AM; pp. 10-12, tsn, Oct. 22, 1979 AM; pp. 7-8, tsn, Oct. 18, 1979 AM; pp. 21-22, tsn, Oct. 18, 1979 PM; pp. 5, 17-18, tsn, Oct. 29, 1979 PM; p. 5, tsn, Oct. 29, 1979 AM).

Thereafter, the man in dark sweater instructed Loreno to tie all their victims on the floor. Loreno tied them with rattan. The man in dark sweater cut the baby's hammock (duyan) and got the ropes with which he and Loreno used to reinforce in tying the victim's hands together behind their backs. Thereafter, the man in dark sweater instructed Loreno to go downstairs and drive the barking dog away. Loreno held Fabie and brought him downstairs to drive the barking dog away (pp. 8-9, tsn, Oct. 18, 1979 AM; p. 6, tsn, Oct. 19, 1979 AM).

On reaching the corner of the house below the flashlight used by Loreno happened to focus on the person of Jimmy Marantal. Fabie immediately recognized Jimmy Marantal as one of the visitors who remained on the ground as lookouts. Jimmy Marantal beamed his flashlight on the face of Fabie, and seeing the latter, he kicked him (Fabie) on the right side of his rib which caused him to fall on the ground. Marantal kicked Fabie who

managed to roll on his side and was hit on his left thigh. After a while, Loreno lifted Fabie bodily from the ground, and brought him back upstairs (pp. 6-7, tsn, Oct. 19, 1979 AM; pp. 13-14, tsn, Oct. 22, 1979 AM).

After Loreno and Fabie returned to the sala, the man in dark sweater got hold of Monica Monge and dragged her up to a room located above the balcony. She tried to resist but she was then still tied. Inside the room, Monica was asked to reveal the whereabouts of her piggy bank savings. She said there was none. He ransacked the room but found none. The man in dark sweater then seized Monica and forcibly removed her pants. Monica resisted and shouted at her parents for help. He boxed and slapped her. Despite her struggle, he was able to remove her panty and then made her lie on the floor near the bed. After undressing himself, he forcibly went on top of her. She kept on struggling and shouting for help, but he succeeded in inserting his organ into her vagina. She felt pain. He proceeded to have sexual intercourse with her. She could not do anything to stop him from consummating his lust as she was still tied. When he was through with her, she noticed blood in her private part (p. 9, tsn, Oct. 18, 1979 AM; p. 7, tsn, Oct. 19, 1979 AM; pp. 5, 14, tsn, Oct. 29, 1979 PM; pp. 5-6, tsn, Oct. 29, 1979 AM).

Below in the sala, Monica Monge's parents and others heard her shouts for help and the struggle she put up inside the room. Hearing her shouts for help, Loreno menacingly pointed his gun at them, telling them not to rise if they wanted to live. Then Loreno brought Beata Monge first to the masters room and then to the teacher's room. During these two occasions, he forced Beata Monge to open the aparador and the trunk respectively, with her keys, and he got their contents, which he brought to the sala, holding on to Beata Monge who remained tied. All the things he got from the two rooms were poured on the floor of the sala (pp. 6, 17-19, tsn, Oct. 29, 1979 AM; pp. 7-8, tsn, Oct. 19, 1979 AM; pp. 11-12, tsn, Oct. 18, 1979 AM; pp. 6, 14-15, 18, tsn, Oct. 29, 1979 PM).

Thereafter, the man in dark sweater returned to the sala, dragging along Monica Monge whose hair was dishevelled and was crying, and he made her joined the others on the floor of the sala. He reached for a can of pineapple juice from the aparador in the sala and drank its contents. Not long thereafter, he turned his attention to Cristina Monge, and he dragged her to the room which was then rented by school teacher Miss Olitoquit (who was then in Naga City). Inside the room, the man in dark sweater forced his lewd designs on her but she resisted and struggled although her hands were still tied behind her back. He boxed her, hitting her on her right eye which caused her to lose consciousness. He then proceeded to satisfy his lust on her. When she regained consciousness, the man in dark sweater returned her shorts. She then realized that he had succeeded in having sexual intercourse with her (pp. 6, 17-19, tsn, Oct. 29, 1979 AM; pp. 7-8, tsn, Oct. 19, 1979 AM; pp. 11-12, tsn, Oct. 18, 1979 AM; pp. 6, 14-15, 18, tsn, Oct. 29, 1979 PM).

While the man in dark sweater and Cristina Monge were still inside the teacher's room, a third man entered the sala, and he told Loreno to cover their victims on the floor with a mat. Loreno found instead a piece of lawanit with which they covered their victims. The third man proceeded to the kitchen, and when he returned to the sala, he was bringing along some rice. Then, a fourth man entered the sala and he asked from Elias Monge for a cigarette. Elias Monge stood up and told him to get it from his pocket as he was still tied. Reacting to Monge's reply, the fourth man boxed him, hitting him on his breast and solar plexus which caused him to fall on the floor. Then Loreno asked Elias Monge to accompany him to the house of a nearby neighbor. On reaching the balcony, Elias Monge protest ed and refused to accompany Loreno who then held Elias Monge by the neck, pointing his gun at him. Beata Monge protested, telling her husband not to go along. Loreno desisted from his plan to go to the nearby neighbor's house. Elias Monge did not recognize the identities of both the third and fourth men (pp. 12-15, tsn, Oct. 18, 1979 AM; pp. 16-17, 25-26, tsn, Oct. 18, 1979 PM; pp. 12-13, tsn, Oct. 22, 1979 AM; pp. 7, 14-15, tsn, Oct. 29, 1979 AM).

Thereafter Loreno entered the room where Cristina Monge was earlier brought by the man in dark sweater, and he found her still lying on the floor. Loreno embraced her trying to kiss her and touch her private parts. One of the malefactors on the ground called those upstairs to hurry because a man was approaching. Loreno then released Cristina Monge and told her to return to the sala to breast-feed her daughter who was continuously

crying. Thereafter, the malefactors went down from the house one by one, bringing along all the things they robbed from their victims. The man in dark sweater returned to the sala and touched the thighs of Cristina Monge, who was already wearing her shorts, and he told them not to tell anybody what happened to them, otherwise he will kill them. And then all the malefactors left the place (pp. 15-16, tsn, Oct. 18, 1979 AM; pp. 16, 18, 19-20, tsn, Oct. 29, 1979 PM).

Soon thereafter, Elias Monge heard Sixto Agapito who was on the ground near the fence of the house calling him, asking if he was going to the dancehall. Elias Monge replied from upstairs that he was not feeling well, and Agapito left. Elias Monge was able to untie himself, and then he also untied the others. Fabie then revealed to him that earlier when he had gone down with Loreno, he (Fa-bie) saw and recognized Jimmy Marantal as among those left on the ground as lookout for the group that had just robbed them. Cristina and Monica Monge also told their father that they were abused by the man in dark sweater when they were brought inside the rooms. For the rest of the night, they remained on guard and could hardly sleep (pp. 15-17, tsn, Oct. 18, 1979 AM; pp. 10-11, tsn, Oct. 19, 1979 AM; P. 7, tsn, Oct. 29, 1979 PM).

Elias Monge and his family later discovered that they were robbed of their following personal properties: jewelry valued at P1,000.00; two mosquito nets, P70.00; three blankets, P200.00; one caldero of rice, P30.00; one reversible jacket, P40.00; three chick-ens, P30.00; one camera, P400.00; one beach towel, P35.00; cash in the amount of P6,500.00; and several others, all in the total of P10,305.00, more or less (pp. 4-6, 8, 14-17, tsn, Oct. 22, 1979; pp. 16-17, tsn, Oct. 18, 1979 AM).

Fabie had often seen and had known Loreno because the latter's daughter married a member of the youth organization in the barrio when he (Fabie) was its president. Elias Monge had already known Loreno whose occupation was catching wild pigs, and the latter used to place bobby traps in his (Monge's) place to catch pigs, during which occasions Loreno usually slept in his house. Monica Monge and Cristina Monge also had already known Loreno because his daughter married a neighbor near their house. Monica often saw Loreno traverse the playground of the Magsaysay Elementary School where he was studying. Fabie had also known Jimmy Marantal because the latter often attended dances held by the barrio youth organization, and he (Marantal) even married one of its members. He had engaged Marantal in conversations many times (p. 3, tsn, Oct. 19, 1979 AM; pp. 2-3, tsn, Oct. 22, 1979 AM; pp. 2-3, 8-9, tsn, Oct. 29, 1979 AM; pp. 2-3, 7-8, tsn, Oct. 18, 1979 AM; pp. 2-3, 21-22, tsn, Oct. 18, 1979 PM; pp. 2, 8-10, 17-18, tsn, Oct. 29, 1979 PM).

Despite the revelation of her daughters to him that they were sexually abused that fateful evening, Elias Monge forced himself to report the following day, Sunday the robbery-rape incident at the PC detachment in Sipocot, but there was no one to talk there. So he proceeded to the PC headquarters at Camp Tara, bringing along the ropes and rattan which were used by the malefactors in tying him and his family during the robbery-rape incident. He was given a written recommendation from the PC to the hospital with instructions to have himself and his daughter Monica be physically examined. Cristina Monge was informed that there was no need for her to submit for physical examination because she was already married. (pp. 18-19, tsn, Oct. 18, 1979 AM; p. 18, tsn, Oct. 18, 1979 PM; p. 8, tsn., Oct. 29, 1979 PM).

Sgt. Victorino del Socorro, the chief of the investigation section of the 243rd PC Company, stationed at Tara, Camarines Sur, investigated on January 10, 1978 the robbery-rape incident. He was informed by Barangay Captain Elias Monge that his house was robbed and his two daughters were raped by the robbers in the evening of January 7, 1978 in their house and that he (Monge) was able to identify two of the robbers, mentioning their names as Eustaquio Loreno and Jimmy Marantal of Barrio Calabnigan, Libmanan, Camarines Sur. After Sgt. del Socorro and his team made an ocular inspection of the place on that same day, they proceeded to barrio Calabnigan where they picked up Eustaquio Loreno and Jimmy Marantal and brought them to the PC camp. At the PC camp on January 17, 1978, the two suspects were duly identified upon confrontation as two of the robbers by the above-mentioned barrio captain, his daughters Monica and Cristina Monge, and their helper Fabie. During the investigation, the two suspects refused to give their written statements. Thus, Sgt. del Socorro was able to secure the written statements of Elias Monge, Francisco Fabie, Monica Monge, and

Cristina Monge about the robbery-rape incident. Upon being identified both said suspects told their victims if they could just talk and settle the matter, but Elias Monge replied that what they did that evening was an oppression (ka-apihan) against him and his family. The two suspects retorted that it was up to him (pp. 19-21, tsn, Oct. 18, 1979 AM; pp. 18-20, tsn, Oct. 18, 1979 PM; pp. 1-5, 6, 8-12, tsn, Oct. 30, 1979 AM).

Dr. Jesus H. Miraflores, resident physician of the Camarines Sur Provincial Hospital at Naga City, examined Elias Monge on January 10, 1978. The X-Ray examination's result was negative. But the doctor found him to have sustained an external injury which he classified as "resolving hematoma, right costal region", a close wound, already spread out but in the process of healing, located on the right side of the middle portion of the thorax. He gave Elias Monge a prescription for anti-infection to stop the bleeding as there was still slight bleeding and to subside the swelling. Afterwards he gave the corresponding medical certificate to Elias Monge (Exhibit "A"; pp. 22-26, tsn, Oct. 29, 1979 AM; p. 19, tsn, Oct. 18, 1979 AM).

Dr. Erlie S. Cabral, another resident physician of the same provincial hospital, examined Monica Monge on January 10, 1978. The doctor did not find any fresh wound on her body, but examining her hymen, she found fresh and incomplete lacerations of said hymen at 3:00 and 9:00 o'clock locations and, inserting her index finger inside her patient's sex orifice, it easily admitted her forefinger. She had the patient's vagina smeared for spermatozoa but none was found after laboratory examination. The doctor observed that the lacerations did not reach the base of the hymen but the edges of the lacerated portions were still reddish and slightly swollen. The doctor opined that the lacerations could have been caused by the forcible penetration of a male's penis into the patient's vagina. The doctor further explained that the laceration of the hymen heals after five days. She also explained that male spermatozoa stays inside the female vagina at the most for 72 hours. She stated that, admitting there was orgasm during the forcible sexual intercourse, any sperm must have already disappeared when she examined Monica Monge on January 10, 1978 which was already beyond 72 hours since she was raped in the evening of January 7, 1978 (pp. 26-28, 31, 33-34, tsn, Oct. 29, 1979 AM; Exhibit "B").[3]

Appellants Eustaquio Loreno and Jimmy Marantal claimed that they acted under the compulsion of an irresistible force and/or under the impulse of uncontrollable fear of equal or greater injury. They admitted that they were in the house of Elias Monge on the night of January 7, 1978,[4] but they were only forced by a man wearing black sweater and his five companions who claimed to be members of the New People's Army (NPA), operating in the locality, with the threat that if they did not obey, appellants and their families would be killed. We, however, find the contention untenable.

A person who acts under the compulsion of an irresistible force, like one who acts under the impulse of uncontrollable fear of equal or greater injury is exempt from criminal liability because he does not act with freedom. The force must be irresistible to reduce him to a mere instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity to the accused for escape or self-defense in equal combat.[5]

A perusal of the appellants' statement of the robbery-rape incident as summarized in their joint brief (pp. 3-10), showed that they admitted their participation in the commission of the crimes of robbery and rape against Elias Monge and his family on January 7, 1978. Further established were facts inconsistent with appellant's claim of having acted under the compulsion of an irresistible force and/or under the impulse of an uncontrollable fear of equal or greater injury, to wit:

1. Appellant Eustaquio Loreno was armed with a short firearm when he and the man in dark sweater went up the house of Elias Monge. While inside the house, Loreno pointed the gun to the victims which enabled the malefactors to ransack the house (p. 38, tsn, Oct. 30, 1979 PM).

2. When Eustaquio Loreno and the man in dark sweater reached the balcony, Loreno positioned himself next to the post in the balcony, while the man in dark sweater delivered the letter to Elias Monge. Loreno admitted that, without prior instructions, he immediately positioned himself near the post of the balcony (p. 10, tsn, Id.), an act which showed his voluntary participation in the criminal acts.

3. Eustaquio Loreno himself tied the victim with rattan and thereafter, with ropes of the hammock. Loreno in fact admitted that he was the one who furnished the rattan which he got from inside the house (pp. 14-15, tsn, Id.).

4. When Monica Monge was struggling and shouting for help from inside the room where she was earlier dragged by the man in dark sweater, Loreno's immediate reaction was to point his gun to the victims who were then lying on the floor, telling them not to rise if they wanted to live (p. 38, tsn., Id.).

The records likewise revealed that on the two occasions Eustaquio Loreno brought Beata Monge to the master's room and the teacher's room where he made her open the trunk and the "aparador" with her keys and got the contents which he brought and poured on the floor of the sala, appellant Loreno acted alone, without the threat and assistance of the man in dark sweater. And after the man in dark sweater consummated his lust on Cristina Monge in the teacher's room and seeing Cristina Monge still lying on the floor, Loreno embraced her and tried to kiss and touch her private parts.

When Eustaquio Loreno and Francisco Fabie went downstairs to drive the barking dog away, the flashlight of Loreno happened to be focused on the face of Jimmy Marantal who in turn beamed his flashlight on the approaching Fabie. Upon seeing Fabie, Jimmy Marantal kicked the former twice causing him (Fabie) to fall to the ground. Marantal's reaction towards Fabie was due to the fact that Fabie had recognized him and the blows which he gave to Fabie who was still tied at the moment was to serve as a warning to Fabie not to report his presence and participation in the rob-bery-rape incident to the authorities.

Jimmy Marantal, who was standing at the gate of the house below, must have heard the shouts of Monica Monge for help and must have known by then that Monica Monge was being abused by his two companions who earlier went up the house. As a "lookout" or guard, Jimmy Marantal gave his companions effective means and encouragement to commit the crimes of robbery and rape. There was no showing that Jimmy Marantal raised a voice of protest or did an act to prevent the commission of the crimes.

All these demonstrated the voluntary participation and the conspiracy of the appellants. The foregoing acts, though separately performed from those of their unidentified companions, clearly showed their community of interest and concert of criminal design with their unidentified companions which constituted conspiracy without the need of direct proof of the conspiracy itself.[6] Conspiracy may be inferred and proven by the acts of the accused themselves and when said acts point to joint purpose and concert of action and community of interest, which unity of purpose and concert of action serve to establish the existence of conspiracy,[7] and the degree of actual participation by each of the conspirators is immaterial.[8] Conspiracy having been established, all the conspirators are liable as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one is the act of all.[9]

The foregoing crime of robbery with double rape was committed on January 7, 1978 by more than three persons, all armed,[10] in conspiracy with each other, attended by the aggravating circumstances of band, nighttime and dwelling and is, under P.D. 767, promulgated on August 15, 1975, punishable by death. But, for lack of the required number of votes, the accused should suffer the penalty of reclusion perpetua.

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**, with the modification that the accused **JIMMY MARANTAL** is hereby sentenced to suffer the penalty of reclusion perpetua. With costs

against appellants.

SO ORDERED.

Aquino, Guerrero, Abad Santos, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Makasiar, J., partial dissent. Appellant Jimmy Marantal is guilty of robbery only, no clear proof that he knew Monica Monge was being raped. And even if he did, he could not participate as he was in the ground outside the house as look out.

Fernando, C.J., and Teehankee, J., no part.

Melencio-Herrera, J., on official leave.

[1] Rollo, pp. 8-9.

[2] Decision, pp. 4-5.

[3] pp. 6-18, Appellee's Brief.

[4] p. 2, Appellants' Brief.

[5] People vs. Villanueva, 104 Phil. 450.

[6] People vs. Carbonel, 48 Phil. 868.

[7] People vs. Verzo, 65 SCRA 324.

[8] People vs. Reyes, 17 SCRA 309; People vs. Akiram, 18 SCRA 239.

[9] People vs. Chan Lit Wat, 50 Phil. 182; People vs. Pareja, 28 SCRA 764.

[10] p. 15, Brief of the Defendants-Appellants.

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