

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NENITO C. FERRER ALIAS CHITO, RODOLFO ZULUETA ALIAS BOY
NEGRO AND NELSON MAICO Y HIDALGO ALIAS DENNIS,
DEFENDANTS-APPELLANTS.**

G.R. No. 60073. September 23, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Before this Court on automatic review is the judgment of the defunct Court of First Instance of Bulacan, Branch VI, in Criminal Case No. 3381-M, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered, finding all the accused, Nenito C. Ferrer alias Chito, Rodolfo Zulueta alias Boy Negro and Nelson Maico y Hidalgo alias Dennis, guilty beyond reasonable doubt of the complex crime of robbery with rape (multiple rape), with the use of deadly weapons or by two or more persons, and without any mitigating circumstance but with the aggravating circumstances of night time, band, superior strength to ensure impunity, unlawful entry and use of vehicle, and hereby sentences said accused to the maximum penalty of DEATH.

"On the civil aspect of the case, all the accused are ordered to restitute the properties stolen as enumerated in the first amended information, and in default thereof, to indemnify jointly and severally the offended party Teresa Estrella y Santos the sum of P176,250.00, the value of the jewelries, money and other items stolen, less the amount of P7,000.00 representing the value of a GP wrist watch which was recovered and returned to the said offended party; to jointly and severally indemnify the offended party Lena Estrella the sum of P50,000.00 as moral damages by reason of the sexual assault on her person by the three accused, and the costs of this suit.

"For their services as counsel de oficio for the herein accused, Attys. Isabelo V. L. Santos, Rodolfo S. Pasamba, Herminia V. Pasamba, Pablo C. Cruz are hereby awarded P200.00 each; Atty. Cesar M. Solis, a former Fiscal, and Atty. Lucenito N. Tagle, who had shown extraordinary concern for the protection of the rights of the herein accused, the sum of P1,500.00 each, subject however to the availability of funds.

"Let the entire records of this case be transmitted to the Honorable Supreme Court of the Philippines for automatic review, in accordance with law.

"SO ORDERED." (pp. 28-29, Rollo)

About twelve o'clock midnight, August 15, 1979, appellants Nenito C. Ferrer, Rodolfo Zulueta and Nelson Maico and one Agapito Maico entered the house of complainant Teresa Estrella in Guiguinto, Bulacan, by forcibly bending one of the iron grills in the front jalousie windows, and with faces covered with handkerchiefs and armed with a .38 revolver and a long knife, forced Narciso, one of the children of Mrs. Estrella to knock at the master's bedroom where Mrs. Estrella and her second husband Bernardo Alejo were sleeping. Lena Estrella was sleeping in her own room and was awakened by a heavy knock at the door. She stood up and saw her mother, Mrs. Estrella, accompanied by two armed men and they, together with the other members of the household, were

brought to the master's bedroom where Bernardo Alejo was. They were gagged with pieces of cloth and hogtied with electric cords. Thereafter, appellant Rodolfo Zulueta demanded money and jewelry from Mrs. Estrella, with threat that one of her sons or members of the family would be taken as hostage if she would not comply. Frightened, Mrs. Estrella yielded to appellants jewelry worth more than P100,000.00 and cash money amounting to P17,000.00. Rodolfo Zulueta then brought Lena Estrella, aged 14, to her room and armed with a Caliber .38 gun, removed one of the straps of the duster Lena was wearing. Lena pushed him off but Zulueta poked the gun at her and told her to do what she was told, otherwise, he would harm every member of the household. He removed her other strap and touched her breast. Lena pushed Zulueta away from her again but he removed her underpants and his own clothes, then placed himself on top of her and succeeded in sexually abusing her. Appellants Maico and Ferrer also had carnal knowledge with Lena following which they brought her to the master's bedroom and like the rest, her hands were tied at the back and she was made to lie down with her face towards the floor.

About four o'clock in the morning, appellants boarded the car of Mrs. Teresa Estrella who was ordered to drive them to Manila. Two of the appellants alighted at the corner of Mayon Street and España Extension, while the other two got-off at Roxas Boulevard.

The matter was reported at once to the police authorities of Guiguinto and Pat. Tomas de Armas conducted the investigation. Lena was physically examined by Dr. Ruperta Caluag who found the victim in shock and slightly apathetic, with a swelling in her vagina. Dr. Caluag's report, in part, reads:

"x x x last mens, June 2, 1979, irregular; Internal Exam: Hymen lacerated at 7-9 o'clock position, no bleeding but edges with lacera-tion, fresh." (Exhibit "W-1")

The information filed by the Provincial Fiscal of Bulacan against appellants for the crime of robbery with multiple rape in the then Court of First Instance of Bulacan, docketed as Criminal Case No. 3381-M, reads:

"x x x x x x x x x x

"That on or about the 15th day of August 1979, in the municipality of Guiguinto, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Nenito C. Ferrer alias Chito, Rodolfo Zulueta alias Boy Negro and Nelson Maico y Hidalgo alias Dennis, together with Agapito Maico y Hidalgo alias Jon-Jon and alias Oreng Manguerra who are still at large, armed with a gun and bladed weapon, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of violence, threats and intimidation enter the house of one Teresa Estrella y Santos, and once inside, take, rob and carry away with them the following properties, to wit:

Cash money amounting to

-

P17,000.00

Pendant with chain

-

10,000.00

Men's ring

-

15,000.00

I.D. bracelet

-

9,000.00

Unisex ring

-

5,000.00

Lady's ring

-

13,000.00

Lady's ring

-

3,000.00

Lady's ring

-

2,500.00

Men's ring

-

1,500.00

Men's ring

-

6,000.00

Lady's ring 3K

-

45,000.00

Lady's ring emerald

-

15,000.00

Pendant w/ chain Chinese gold

-

1,300.00

Pendant w/ chain white gold

-

700.00

Four (4) pairs of earring

-

15,000.00

Lady's ID bracelet

-

2,500.00

Pendant w/ chain

-

1,000.00

Pendant

-

1,500.00

Lady's ring

-

500.00

GP wrist watch

-

7,000.00

Seiko wrist watch

-

1,200.00

Seiko lady's wrist watch

-

400.00

Lady's Watch

-

500.00

Jacket mark Fila worth

-

750.00

Wrangler long pants

color white

-

150.00

Adidas shoes for men

-

900.00

Otafuku

-

250.00

Assorted perfume

-

600.00

with a total value of P176,250.00, belonging to the said Teresa Estrella y Santos, to the damage and prejudice of the latter in the said sum of P176,250.00 and that simultaneously or during the commission of the robbery, the said accused Nenito C. Ferrer alias Chito, Rodolfo Zulueta alias Boy Negro and Nelson Maico y Hidalgo alias Dennis conspiring with their other co-accused, by means of violence, threats and intimidation and with lewd design have carnal knowledge of one Lena Estrella, daughter of Teresa Estrella y Santos, alternately, against her will and by means of force." (pp. 4-5, Rollo)

Upon arraignment, Rodolfo Zulueta, Nenito Ferrer and Nelson Maico, all pleaded guilty. Nonetheless, the trial court received the evidence of the prosecution "to satisfy itself that the crime was really committed as charged." (p. 8, Rollo)

In finding appellants guilty of the crime charged, the trial court stated in its decision -

"There is no doubt from the testimonies of the witnesses presented by the prosecution that there was a robbery and multiple rapes committed by the three accused, each one taking Lena Estrella, to her room and there sexually abusing her over her implorings and resistance of the victim. All the four malefactors including the three herein accused who entered the house of the victim, Teresa Estrella, were armed with gun and knife. The only require-ment under the amendment under PD 767, Sec. 1, is that two or more persons committing the robbery with rape must be armed with a deadly weapon. Here four of the malefactors were armed and each of the three accused used either a gun or a knife, all deadly weapons.

"The proper penalty therefore is reclusion perpetua to death.

"However, the evidence also shows that aggravating circumstances were attendant in the commission of the

offense, which the Court enumerates as follows:

"1. The crime was committed in the dead of the night, 12:00 midnight, and ended when the malefactors ordered Mrs. Estrella to drive them to Manila on her car at 4:30 o'clock of the same morning.

"2. The crime was committed by a band. All the four accused, Rodolfo Zulueta, Nenito Ferrer, Nelson Maico, and one person still at large, were armed with a gun and kitchen knives, who acted together during the commission of the crime. This qualifies the robbers, including the one still at large, as a band.

"3. Advantage was taken of superior strength, or means employed to weaken the defense. Here, the accused, acting in concert, all hogtied the members of the household of Mrs. Estrella, except Mrs. Estrella and Lourdes Gonzales, which weakened the defense that the victims may make. Superior strength was also employed. A household where the only man old enough to make a defense who was surprised in his sleep when his wife wakened him up, after the latter was threatened with the possible death of his son Narciso who was held by one of the accused by the neck and who was ordered by the accused to knock at his mother's room, can not be a match to four armed men who had conspired to rob them.

"4. The crime was committed after an unlawful entry. The grills of the window at the front of the house were bent with the use of a stout piece of wood, and the glass jalousies were broken by Boy Negro or Rodolfo Zulueta, who used the same to enter the house and open the door for his other companions to come in.

"5. The malefactors used the car of Mrs. Teresa Estrella with her acting as driver, to escape from the scene of the crime after commission thereof, up to España corner Mayon Street, where two of the accused alighted, and at Dewey Boulevard (Roxas Boulevard) where the last two accused also alighted.

"On the other hand, the plea of guilty of all the accused made several times in court, cannot be considered as mitigating to offset the aggravating circumstances above enumerated, because the pleas of guilty were made after the presentation of the testimony of the witness Lourdes Gonzales and part of the testimony of Teresa Estrella had already been made by the prosecution." (pp. 25-27, Rollo)

It is the submission of the appellants that while they admit to have committed the crime of robbery they vehemently deny having raped Lena Estrella, and thus, there was an error on the part of the trial court to have sentenced them to suffer the maximum penalty of death and to indemnify the said offended party in the amount of P50,000.00 as moral damages.

We are not persuaded. Appellants, on arraignment, pleaded guilty to the information for robbery with multiple rape after the trial court had repeatedly apprised them of the consequences of their admissions of guilt. Besides, Lena Estrella, a child in her early teens, testified on how she was sexually abused by appellants Rodolfo Zulueta, Nenito Ferrer and Nelson Maico. She had no ill motive in testifying against them and would not publicly proclaim her dishonor were she not actually ravaged by them. As stated in *US vs. Ramos*, 1 Phil. 81, "when a woman testifies that she has been raped she says, in effect, that all that is necessary to constitute the commission of this crime has been committed." The testimony of Lena was corroborated by Dr. Ruperta Caluag who examined her and found lacerations in her organ "to be fresh and swelling." In *People vs. Selfaison*, 1 SCRA 235, We held that "the lacerations in the hymen and the contusions on the walls of the labia minora of the genitals of the complainant show that the copulative act had been penetrated by means of force and violence."

The imposable penalty for the crime of robbery with rape is reclusion perpetua to death. In the case at bar, the aggravating circumstances of night time to facilitate the commission of the offense; the use of motor vehicle to facilitate their escape, and the use of means employed to weaken the defense - all members of Estrella household were hogtied by electric cords and gagged with pieces of clothes - all having been proved during the trial, the proper penalty is death under Article 63 of the Revised Penal Code. However, for lack of necessary votes the death penalty is commuted to reclusion perpetua.

WHEREFORE, with the modification in the sense that appellants Rodolfo Zulueta, Nenito C. Ferrer and Nelson Maico are to suffer the penalty of reclusion perpetua, the appealed decision is **AFFIRMED** in all other respects.

SO ORDERED.

Fernando, C.J., Aquino, Guerrero, and Escolin, JJ., concur.

Teehankee, J., on leave.

Makasiar, J., for Death penalty.

Concepcion, Jr., J., took no part.

Abad Santos, J., votes for the imposition of the death penalties.

De Castro, J., on sick leave.

Melencio-Herrera, J., votes to affirm the judgment of the Lower Court, in toto.

Plana, J., the circumstances of the case more than justify affirmance of the judgment and review.

Gutierrez, Jr., J., votes to affirm the appealed judgment.

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