

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONSTANTINO PERALTA Y DASUGA ALIAS OG,
ACCUSED-APPELLANT.**

G.R. No. 61870, November 05, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Constantino Peralta y Dasuga alias "Og" and Antolin Pua y Mateo alias "Bondying" were charged with the crime of rape in an information filed with the Court of First Instance of Isabela. The information states:

"That on or about the 25th day of April, 1975, in the municipality of Alicia, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with John Doe, whose real identity is still unknown, conspiring and confederating together and all helping one another, did then and there will-fully (sic), unlawfully and feloniously by means of force, violence and intimidation, have carnal knowledge, one after the other, with Thelma E. Agustin, against the latter's will and consent."

After due trial, accused Constantino Peralta was found guilty as charged while Antolin Pua was acquitted for insufficiency of evidence. The dis-positive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered: (1) SENTENCING the accused Constantino Peralta to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal and to pay the offended party the sum of P50,000.00 without subsidiary imprisonment in case of insolvency and the costs; (2) ACQUITTING the accused Antolin Pua for insufficiency of evidence with costs de oficio and the cancellation of the bail bond." (Rollo, p. 13)

Peralta appealed the trial court's decision to the Court of Appeals.

The Court of Appeals affirmed the judgment of conviction. However the appellate court in the light of the circumstances of the case, found that the penalty imposed by the trial court was not correct. In its decision, the Court of Appeals said:

"The decision of conviction must be affirmed. However, it was error for the lower court to sentence appellant to 17 years, 4 months and 1 day of reclusion temporal, the crime of rape having been committed on April 25, 1975 when the penalty for said crime has been raised to reclusion perpetua to death (Republic Act No. 2632, enacted June 18, 1960, and Republic Act No. 4111, June 20, 1964). Even when there are no aggravating circumstances and there are mitigating circumstances, the imposable penalty will still be reclusion perpetua because that is an indivisible penalty (People vs. Arizala y Flores, G.R. No. 59713, March 15, 1982)." (Rollo, p. 31)

In view of the foregoing findings, and pursuant to the People v. Daniel (86 SCRA 511) decision, the Court of Appeals certified the case to us.

The facts of the case are correctly summarized in the decision elevated to us as follows:

"On the afternoon of April 25, 1975, 17-year old Thelma Agustin of barrio Linglingay, Municipality of Alicia, Isabela, as well as her cousin Fideliza Agustin, went to the Poblacion of said Municipality to watch a movie. In the moviehouse, the two separated as Thelma transferred to the balcony upon seeing that the orchestra section was overcrowded. Fideliza, on the other hand, remained in the orchestra. After the show, about 7:30 o'clock in the evening, Thelma waited for Fideliza in front of the theatre. When Fideliza failed to appear, Thelma decided to go home alone. At first, she tried to get a tricycle for barrio Linglingay, about two (2) kilometers away, but when she could not find one, she just walked by herself towards home. (pp. 26-28, tsn., April 22, 1976; pp. 78-82, tsn., Dec. 15, 1976).

"Along the way, after negotiat-ing a distance of one-half (1/2) kilo-meter, Thelma was waylaid by three (3) men. As the moon then was bright, Thelma easily recognized accused-appellant herein Constantino Peralta, accused Antolin Pua, and the third man whose identity, however, is unknown to her. (pp. 30-32, tsn., April 22, 1976).

"Thelma first met Peralta at a dance in barrio Linglingay during the wedding of her cousin on April 23, 1975, or two (2) days earlier. She remembers him, as Peralta danced with her practi-cally all night on said date, and persistently proposed his love to her. She, however, did not accept his love, nor did she give him any hope, as she does not believe in what he was saying, (pp. 52-55, id.).

"Upon being accosted, Peralta, Pua, and the third man immediately grabbed Thelma and started kissing her. Peralta held Thelma's hands, Pua pulled her long hair, while the third man held her feet. Thelma struggled and fought hard to save her honor. When she tried to shout, however, Peralta boxed her in the abdomen, knocking her down uncon-scious (pp. 30-34, tsn., April 22, 1976).

"When Thelma regained con-sciousness, the trio were no longer around. Thelma found herself naked, her vagina painful, and her whole body especially her buttocks were aching. Her clothings were scattered near her feet, while her panty was nowhere to be found. (pp. 34-41, id.). Feeling very weak, Thelma first stayed still, trying to regain strength. With tears in her eyes, she then put her pantsuits, bra and poloshirt-like-blouse. She noticed that the zipper of her pant-suit was broken and the buttons of her blouse missing. Still weak and dizzy, she tried her best to walk home towards barrio Linglingay. When she was about twenty (20) meters away from their house, she collapsed and again lost consciousness (pp. 41-44, tsn., id.). Two children found her at the side of the barrio road. Immediately, the two kids called her aunt, Carolina Agustin, who was then relaxing in their yard. Upon reaching the place pointed to by the two children, Carolina was surprised to see Thelma lying down on the road, face upward and unconscious, and in dishevelled con-dition. Thelma's unzipped pantsuits was below her hip, thus exposing her vagina, as she was then without a panty. Her blouse was also open as it was without buttons. (pp. 5-7, tsn., Sept. 30, 1975). Hurriedly, Carolina pulled up Thelma's pantsuits and arranged her blouse. With the help of her son, Carolina carried Thelma to their (Thelma's) house. At that time, Thelma's mother was in the kitchen. Upon learning what had happened, Thelma's mother was taken aback, and dropped the plates she was hold-ing. Thelma's father who was in the Poblacion was immediately summoned. (pp. 7-10, 13, 16-17, tsn., id.). A few minutes later, Thelma regained consciousness. Upon seeing her aunt who was beside her - her mother was at that moment getting water - Thelma informed her aunt at once that three men, one of whom is Constantino Peralta, abused and raped her. (p. 11, id.; p. 45, t.s.n., April 22, 1976).

"The father of Thelma, Fidelino Agustin, who was informed by his son, Merlito, that Thelma was abused and raped, immediately went home aboard a hired tricycle. (p. 55, t.s.n., March 9, 1976). Upon reaching home and seeing the pitiful condition of his daughter, Fidelino carried Thelma in his arms, and brought her aboard a tricycle, to go to the Poblacion for medical treatment. (pp. 55-59, id.) Thelma's mother went with them. On board the tricycle, Thelma narrated to her father how she was waylaid and raped by three (3) men, naming Constantino Peralta as one of her three (3) attackers. (p. 66, id.) The father first brought Thelma to the Chief of Police of Alicia, Isabela, to report the incident (p. 60, id.). From there, they proceeded to the house of Dra. Arcinas for treatment. Upon advice of Dra. Arcinas, Thelma was brought to the Emergency Hospital in Cauayan, Isabela, accompanied by her parents, Dra. Arcinas, and Municipal Judge Egipto who happened to be

in the house of Dra. Arcinas at that time. They used the car of Judge Egipto in going to Cauayan (pp. 62-63, id.) A medical examination was conducted on the person of the victim with the following findings:

"I - Contusion with hematoma medial aspect rt. arm.

"II - Marked Ayperemia Vestibule

"III - Laceration vulva left Microscopic Findings: Positive for Sperm (Exh. 'A-1', Record)

"After the medical examination and treatment in the hospital, Thelma and her parents went back to the Chief of Police at Alicia, Isabela. Earlier, the Chief of Police had ordered his men to get Constantino Peralta. In front of the Municipal building, Thelma and her parents were made to sit inside the police patrol jeep, the headlights of which were turned on. Peralta and one policeman, together with the Chief of Police, then stood in front of the light of the said jeep. Then, policeman Pfc, Pablo asked Thelma the following: 'You try to recognize who is that. Will you recognize who is that?', to which Thelma replied, 'he is the one, sir.' pointing to the accused Constantino Peralta. (pp. 83-87, t.s.n., March 9, 1976; pp. 32-33, t.s.n., Sept. 30, 1975). There and then, Peralta was detained (id.)

"On April 26, 1975, a complaint for rape against Constantino Peralta, John Doe and Peter Doe, was filed by Thelma and her parents before the Municipal Court of Alicia, Isabela (Exh. 'B', Rec.). Thereafter, Antolin Pua was arrested and was likewise identified by the complainant. Thus, on April 29, 1975, an Amended Complaint for rape against Pua alias 'Bondying', and John Doe, was filed (Exh. 'C', Rec.)."

The defendant-appellant and his co-accused denied the rape charge imputed to them. They asserted that they did not know the complainant, and that they had never gone to Linglingay because they did not know where that barrio was located. They invoked the defense of alibi which was summarized in the appellant's brief as follows:

"x x x The two accused claimed that on the afternoon of April 25, 1975 after coming from their trips from San Guillermo, Isabela, as they are both drivers of weapons carriers, were at the Macaraeg Restaurant owned by Felicidad Macaraeg; that they stayed in said restaurant until about past 9:00 o'clock that night after which, they left and went to sleep in their respective weapons carriers which were parked near the Macaraeg Restaurant by the road in the public market of Alicia, Isabela. That these assertions of the accused were corroborated by witnesses, especially those of Mrs. Felicidad Macaraeg, Pat. Federico Valdez of the Alicia Police Force, and the old man Crispin Cabantac who also was at the restaurant and who slept in the weapons carrier of Constantino Peralta that night.'

The substance of the witnesses' testimonies is summarized in the appellant's brief as follows:

"(a) Felicidad Macaraeg, the owner of the restaurant where they went and stayed before they went to sleep, declared that she was the owner of the Macaraeg Restaurant where drivers used to have snack or meals; that on the night of April 25, 1975, she saw Constantino Peralta and Antolin Pua in her restaurant; that she also saw old man Crispin Cabantac; also Pat. Federico Valdez and the Chief of Police Gerardo Llarinas; That the two boys, accused Constantino Peralta and Antolin Pua, left her restaurant and immediately went to their respective weapons carrier to sleep; that she is sure that the two boys went directly to sleep after they left her eating place; That when she learned that the two boys were suspected of having committed rape that night, she was surprised -- she even told and reminded Pat. Federico Valdez that it was impossible because the two boys were in her restaurant.

"(b) Pat. Federico Valdez, in his testimony, asserts that he was in the company of his Chief of Police, Gerardo Llarinas, when they entered the Macaraeg Restaurant; that they saw the two accused, Constantino Peralta and Antolin Pua, in said restaurant at past 7:00 p.m. that night; that when he and the Chief of Police left the restaurant, the two accused were still there; that when the two accused were incriminated and suspected to have committed the alleged rape, he even told the Chief of Police that the two could not have committed the crime

because they were at the Macaraeg Restaurant that night.

"(c) Crispin Cabantac declared that he was a resident of San Guillermo, Isabela but was at Alicia, Isabela on April 25, 1975 because Board Member Efren Ambrosio requested him to repair the water system in Atty. Ambrosio's home which was destroyed; that he saw the two accused, Constantino Peralta and Antolin Pua, because he wanted to board any of their weapons carrier in going home to San Guillermo, Isabela; that as it was already late in the afternoon, as there were no other passengers, either Constantino Peralta or Antolin Pua wanted to make a trip to San Guillermo, so he decided to sleep with the two boys in their weapons carrier. That he knew very well that the two boys did not go places that night because when the two boys, Constantino Peralta and Antolin Pua, left the restaurant to sleep, he was with them; that the following morning, April 26, 1975, he boarded the weapons carrier of Antolin Pua in going home to San Guillermo."

Constantino Peralta made the following assignments of errors in his appeal:

I

First Assignment of Error

THAT THE COURT ERRED IN NOT HOLDING THAT THE ASSERTIONS AND ALLEGATIONS OF THELMA AGUSTIN, THE COMPLAINANT, WERE EXAGGERATED AND UNBELIEVABLE.

II

Second Assignment of Error

THAT THE COURT ERRED IN HOLDING THAT THE APPELLANT CONSTANTINO PERALTA HAS BEEN FULLY IDENTIFIED AS ONE OF THE CULPRITS WHEN THE EVIDENCE IS VERY WEAK ON THIS POINT.

The issues hinge on credibility of witnesses.

After a rigid scrutiny of the records, we find no reasons to disturb the finding of facts of the trial court, sustained by the Court of Appeals.

The commission of rape against the person of Thelma Agustin was proved clearly and convincingly not only by her own account of the incident but by the other evidence as well.

Thelma, on the witness stand, recalled the incident as follows: That when she was about 500 meters away from the poblacion of Alicia, Isabela at around 7:30 o'clock in the evening of April 25, 1975 walking alone on her way home to Linglingay, three men waylaid her; that immediately after she was grabbed, the three men started kissing her; that one man held her hair; that another one held her legs and put her down; that the third one whom she recognized as Constantino Peralta held her hands; that she tried to shout but was boxed by Peralta knocking her unconscious; that when she regained consciousness the three men were gone and she found herself naked and her clothes scattered on the premises of the incident; that she put on her torn blouse and pantsuit but could not find her panty anymore; that she rested for a while before starting to walk home and that she felt pain all over her body including her buttocks and her vagina.

The force and intimidation and the commission of rape were confirmed by the findings of Dr. Alfredo Balayan, a resident physician of the Emergency Hospital at Cauayan, Isabela, who examined Thelma a few hours after the incident. Thus, he stated: (1) As regards the contusion with hematoma at the medial aspect on the right forearm this was probably due to the fact that the "x x x patient was forced x x x or was boxed;" (2) As regards the marked hyperemia of the vulva – "probably the penis of the man came (sic) inside through the vagina;" and (3) As regards the laceration of vulva left - "probably due to the same process" or that which caused hyperemia of the vulva. He

further testified that he got some smear from the vagina of Thelma which he found to be positive of sperm. He further explained that the said aypereemia, "x x x is a reddish swelling in the vestibule in the vagina" and that the laceration was fresh at the time of his examination which confirmed that the rape was recent. There is no doubt, therefore, that the pain Thelma felt on her vagina upon regaining consciousness was due to her being raped and not "because her pain-ful vagina is congenital or is painful due to other causes other than penetration or sexual intercourse."

With the foregoing evidence, the appellant's contention that Thelma's non-revelation of the incident to her parents at the first opportune time renders her rape charged doubtful deserves scant consideration. Besides, Thelma did reveal the in-cident at the first opportune time. As correctly found by the Court of Appeals:

"The complainant's narrative of her ravishment is not only prob-able and spoken with candor but was amply supported by evidence aliunde. A few minutes after regaining consciousness, she told her aunt that she was raped by three (3) men. On the way to the poblacion in a try-cycle, she also told her father that she was raped. In the munici-pal building, she repeated her story in her investigation. She was me-dically examined and her vulva was found lacerated and her vagina po-sitive for sperm. (Exh. A-1). The following day, April 26, 1975, a complaint for rape was filed by the complainant, Thelma E. Agustin, and her parents against appellant and two (2) Does. These are the normal behaviours of a woman who had just been violated (People vs. Ilagan, 64 SCRA 171).

The second assignment of error has no merit. Constantino Peralta was positively identified. On April 23, 1975 or only two days before Thelma's ordeal, she met the appellant during a dance at barrio Linglingay. The two danced constantly up to the wee hours of the morning and all the while the appellant was proposing his love for her. Under these circumstances, it was impossible for Thelma not to remember what the accused looked like. There is no basis for the appellant's surmise that Thelma made a false identification because the incident happened during a "moonlight night." (T.S.N., April 22, 1976, p. 33). The appellant's conten-tions that Thelma's identification of him was hasty, that she was coached into stating that the man shown to her was the man who raped her, and that she pinpointed Peralta as the culprit because he was the one whom Patrolman Valdez and the Chief of Police practically shoved in front of her while she was seated in a police jeep are contrary to the facts in the records. Thelma identified the defendant-appellant as the perpetrator of the crime before he was apprehended. Shortly after the incident and immediately after recovering consciousness in her aunt's house, Thelma told the aunt, Carolina Agustin, that three men, one of whom was Constantino Peralta, abused and raped her. And while her father, Fidelino Agustin was bringing her to the poblacion in a tri-cycle for medical treatment, she narrated to him how she was waylaid and raped by three men, again posi-tively naming Constantino Peralta as one of the attackers. It was this identification of the defendant-appellant which Fidelino Agustin relayed to the Chief of Police. And it was on the basis of this identification that the Chief of Police sent his men to apprehend Peralta. Thus, when Peralta was brought before Thelma Agustin, the procedure was not so much the method used in police line-ups where the victim does not previously know the perpetrator of the crime and must identify him from among several in the line-up, but only to assure the apprehending officers that they had arrested the correct person. There was nothing which was "kempetai" in the procedure which followed the arrest. The police knew whom they were after. Peralta had earlier been identified. The appellant has shown no sinister motive on the part of Thelma Agustin why she should falsely implicate him in the commission of such a heinous crime, not only at the moment of confrontation but throughout the long drawn trial.

In view of the positive identification of the appellant, his defense of alibi cannot be believed. (People vs. Lucero, 96 SCRA 694). Besides, the record shows that the appellant's defense of alibi was shaky and not satisfactorily proven. Defense witness Felicidad Macaraeg's testimony that she was certain that the accused never left her restaurant until 9:00 o'clock that fateful night and that she even talked to them was impugned by appellant himself

when on cross-examination, he said that he, together with the other accused Pua, had no occasion to converse with Macaraeg as the latter was inside the kitchen and that she was busy. (TSN., February 8, 1979, pp. 156-157). The situs of the crime was only 500 meters away from the poblacion. And defense witness Crispino Cabantac, on cross-examination said that there were many people inside the restaurant. As observed by the trial court:

"The defense is one of alibi but the accused testified that the Chief of Police and Pat. Federico Valdez went out of the restaurant after 7:00 o'clock. The accused had their weapons carrier and they could easily go to the place of the incident which is only two (2) kilometers from the poblacion.[*] The testimony of Mrs. Macaraeg to the effect that they stayed from 6:00 o'clock to 9:00 o'clock is too good to be true. It is common knowledge that there are many people going in and out of the restaurant and she being the manager and server at the same time could not have been fixing her eyes on the two accused for three hours, 6:00 o'clock until 9:00 o'clock, because she had many chores to do. It could be possible that she saw them eat at 7:00 o'clock but between 7:00 o'clock and 9:00 o'clock, they could have gone easily somewhere and then returned before 9:00 o'clock to the restaurant and because 10:00 o'clock is the closing hour of the restaurant, the manager Mrs. Macaraeg could have seen them leave the restaurant the second time at 9:00 o'clock." (Decision, p. 4)

Therefore we are morally certain and convinced beyond reasonable doubt that on April 25, 1975 between 7:30 and 8:00 o'clock in the evening, appellant Peralta together with two other men committed the crime of rape against the person of Thelma Agustin.

Considering that on April 25, 1975, the crime of rape committed by two or more persons was punishable by Reclusion Perpetua to Death (Article 335, Revised Penal Code as amended); and considering further that there are no aggravating circumstances in the commission of the crime, the correct penalty imposed should have been reclusion perpetua. Reclusion perpetua is an indivisible penalty and as such cannot be affected by the presence of either or both aggravating circumstances and mitigating circumstances. (People v. Arizala, 112 SCRA 615)

WHEREFORE, the judgment convicting Constantino Peralta for the crime of rape is hereby affirmed. The defendant-appellant is sentenced to suffer the penalty of RECLUSION PERPETUA. The award of P50,000.00 made by the trial court in favor of the offended party is modified to moral damages in the amount of P12,000.00. The appellant shall pay the costs.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Vasquez, and Relova, JJ., concur.

Teehankee, (Chairman), on leave.

[*] Barrio Linglingay is two kilometers from the poblacion but the complaint was waylaid when she was only 500 meters from the poblacion on her way home to Barrio Linglingay.

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