

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MURPHY BANZALES Y ILAGAN AND JOSEPHINE DIALOLA, ACCUSED-APPELLANTS.*G.R. No. 63260, March 20, 1987*

Ponente: FERNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-63260/>**FERNAN, J.:**

Murphy Banzales and Josephine Dialola appeal from the judgment of the then Court of First Instance of Quezon, Lucena City, Branch 2 in Criminal Case No. 3622[1], convicting them of rape and sentencing them to an indeterminate penalty ranging from reclusion temporal as minimum to reclusion perpetua as maximum and to pay an indemnity of P30,000.00 to the victim, Rosalina Ricafort [Records, p. 108].

The evidence for the prosecution shows that at about three o'clock in the afternoon of June 17, 1982, Rosalina Ricafort, then a seventeen-year-old cosmetology student residing at Riverside Subdivision, Lucena City, visited her elder half-sister Nida [Leonida Obenza] at the resthouse of the family-owned resort in the university site [Luzonian University]. They exchanged pleasantries and munched coconut meat. After an hour or at around four o'clock in the afternoon, Rosalina decided to leave for home. She took the shortcut route leading to the "burol", an uphill road which is the usual stopping place for jeepneys plying the university area. The shortcut is a narrow footpath in the middle of tall cogon grasses, thick underbrushes, trees and bamboo groves [Exh. B; TSN, 39-43, 92, 177].

As Rosalina was nearing a turning area, a woman approached her and requested that they both look for a boy who had died in that area. That woman was the accused-appellant Josephine Dialola. Rosalina hesitated but Dialola quickly assured her that she would be safe with her since they were both girls. Rosalina acquiesced. But after taking a few steps, Dialola pulled her towards a thickly forested area, about 10 meters away from the path, where the other accused-appellant Murphy Banzales emerged from his hiding place and suddenly grabbed Rosalina from behind. Then together he and Dialola forcibly laid Rosalina down on a grassy portion. While Dialola covered Rosalina's mouth with her hands, Banzales pinned the struggling girl down with his thighs. He threatened to kill her if she shouted [TSN, pp. 44-46, 105, 180].

Rosalina tried to break free and turned her head from side to side but Banzales boxed her on the stomach, rendering her unconscious. When she came to, Banzales was on top of her, his private organ inserted in her private part. She moaned. Noticing that she was already awake, Dialola covered her mouth again. To create noise, Rosalina kicked the ground with her feet. Banzales gave her a heavy blow on her thighs and stomach and she fainted for the second time. When she regained consciousness, it was almost dark. She noticed that she was almost naked except for her bra which was up in her neck and her panties dangling from her right leg. Her shirt and pants were missing [TSN, pp. 47-49, 114-120].

Banzales was seated beside her, facing the path used for leaving the area. He warned her that he would kill her parents if she reported the matter to the police. Then he left. There was no sign of the other accused [TSN, pp. 49,

121-122].

Feeling weak and dizzy and clad only in her underwear, Rosalina trudged back to the resthouse and called out for her sister Nida. Noticing a piece of clothing hanging on a nearby cacao tree belonging to one of their workers, she reached for it and wrapped it around her body. When Nida appeared, Rosalina immediately told her that she had been raped. Nida returned to the house, took a blanket and placed it around her distraught sister. Then she ran to the diversion road where she hailed a passing jeep belonging to the National Irrigation Administration and brought Rosalina to the Quezon Memorial Hospital where the latter was examined by the resident physician at seven o'clock in the evening of that same day [June 17th]. Examination of the victim's genitalia showed congestion on the anterior fourchette left and posterior left and hymenal laceration at the 5:00 o'clock position. The vagina which admitted one finger with difficulty bore dark blood and traces of sperm cells. There was multiple linear abrasion at the anterior chest [upper torso] which could have been caused by sharp instruments or fist blows. The physician also found blood on Rosalina's lower cheeks near the lip area. Her findings were consistent with the conclusion that coitus with the injured girl was obtained through force [Exh. A; TSN, pp. 8-14, 49-51, 123-125].

Shortly thereafter, the police arrived and asked Rosalina for a description of the rapists. She told them that although she did not know their names she could recognize them by their faces. She described the woman as of medium height with a high-bridge nose and wearing T-shirt with green stripes, maong pants and a pair of Adidas shoes. Rosalina described the man as quite fat, tall with thick curly hair and a protruding stomach [TSN, pp. 52-54, 110-11, 130].

Guided by that description, the police apprehended Banzales and Dialola, and in the morning of June 18, 1982 brought them separately before Rosalina in the hospital ward where she was confined. In between sobs, she identified them as the man and woman who had sexually abused her [TSN, pp. 54-57, 145, 155-158].

At three o'clock in the afternoon of June 18, 1982, Rosalina was discharged from the hospital. At about midnight, she and her foster parents were invited to the police headquarters where she again pinpointed the two accused in the police lineup as her attackers. Rosalina also executed a sworn statement narrating the details of the rape [Exh. B; TSN, pp. 58-70, 80-81].

A complaint for rape signed by the victim herself and sworn to before the city fiscal was filed on June 21, 1982 with the Court of First Instance against Murphy Banzales as principal by direct participation and Josephine Dialola as principal by indispensable cooperation [Records, pp. 1-2]. On arraignment, both accused pleaded not guilty [Records, p. 20]. After hearing, they were found guilty as charged but the mitigating circumstance of voluntary surrender was appreciated in their favor [Records, p. 108].

Accused-appellants Banzales and Dialola, through their counsels de parte, contend that the trial court erred in not giving credence to their defense of alibi and in holding that Rosalina's testimony was sufficient to overcome the presumption of innocence [Rollo, pp. 170, 240].

Appellant Banzales, high school graduate, twenty-four years old, married, a public utility jeepney driver and residing in Lucena City, denied the accusation that he had raped Rosalina. He testified that on June 17, 1982, between the hours of four and six in the afternoon, he was out plying his Lucena City-university site route. At about four, he was at the marketplace picking up passengers. A friend, Philippine Constabulary Sergeant Charlie Tolopia, boarded his jeepney. Upon reaching the university site, his other passengers alighted, leaving only Tolopia. He brought Tolopia to his residence at Madrid Street where they talked for about fifteen minutes while remaining inside the vehicle. At 5:20 in the afternoon, Banzales resumed his driving and picked up passengers bound for the public market. Upon reaching the town proper, a tire started to wobble so he brought the jeep over

to his parents' house at the university site for repairs. After ten minutes or around 5:35 p.m., he decided to call it a day, joined a fellow-jEEPney driver named Junior in his route, and later had drinks with him until 9:30 in the evening in the house of a certain Aling Delia, also at the university site [TSN, pp. 417-431].

The next day, June 18, 1982, Banzales drove his jEEPney till noon. Having heard that the police were looking for a tall man [he was about five-foot-eight] in connection with a rape that occurred near the resort, he decided to present himself before them to deny any involvement. Patrolman Ginauli and Corporal Lequin brought him to see Rosalina at the hospital. He maintained that she remained silent throughout the confrontation and did not respond when the police asked her if Banzales was the one who had abused her. Left with no other alternative, the police released him and he resumed his driving. At around midnight, while he was drinking with friends in the house of Aling Delia, the police picked him up and took him to the police station where he was pinpointed by Rosalina, once inside the interrogation room, and again in the police lineup [TSN, pp. 433-441, 445-447].

Josephine Dialola, the other appellant, twenty years old, single, jEEPney conductress and residing in Red V, Lucena City, testified that from nine in the morning until 8:30 in the evening of June 17, 1982, she was working as a conductress in the red Tamaraw jEEPney driven by Rolando Lopez. They plied the same university site route being serviced by Banzales which began at the public market and ended at the "buro!" after circling the university area. That day she made around twelve complete trips [TSN, pp. 275, 307, 325].

Reportedly a tomboy, Dialola was the lone female conductress among the PUJs operating at the university site. She worked with Lopez continuously for six months, except for the two months when she was incarcerated in the city jail for several robbery cases [Exh. C; TSN, pp. 318-319, 321]. She declared that she never saw Rosalina before in her life.

There is no doubt in our mind that Rosalina was raped. The medical report confirms this. The question now remaining is whether appellants Banzales and Dialola have been definitely identified by the seventeen-year-old rape victim and whether their respective alibis are sufficient to exculpate them.

To corroborate his story, Banzales presented Tolopia as his witness. Upon cross-examination, however, it was elicited from Tolopia that he was a long-time acquaintance of Banzales and a comrade-in-arms of his father in the Philippine Constabulary [TSN, p. 405]. Dialola, for her part, presented Rolando Lopez, her jEEPney driver, and Dionisio Dialola, her father, to convince the trial court that between the hours of four and six in the afternoon of June 17, 1982 she was out plying the university site route [TSN, pp. 340-346, 236-237]. It is readily apparent that corroborative testimony as to appellants' being elsewhere at the time of the commission of the offense came from either a relative, a close friend or an associate which led the lower court to doubt its veracity considering that the appellants could have easily secured the testimonies of so many drivers, conductors and passengers using the same route. But independently of the suspicion naturally engendered by such biased testimony, this Court is convinced that the offended party has positively identified the appellants.

To begin with, Rosalina had ample opportunity to recognize and remember her two attackers. Prior to the rape, Rosalina used to see Dialola at the Obar Ricemill in Red V whenever complainant went there to have palay milled. As for Banzales, Rosalina met him once on board a jeep on her way to the resort about a month before she was criminally assaulted. She remembered him because they were sitting opposite each other. They had a conversation. When Rosalina alighted at the "buro!", the appellant did likewise and pointed to her a shortcut to the resort. Rosalina took the suggested path, the very place where she would be abused a month later. After that, she again saw Banzales hanging around her neighbor's house which is about twenty meters from the "buro!" [TSN, pp. 38-39, 195-196, 210, 468].

When Rosalina was raped, it was broad daylight. Dialola covered her mouth but not her eyes. She was lying face

up when Banzales was astride her. Though she fainted twice, there were moments when she was awake and aware of what was being done to her.

Less than 24 hours later, the police brought the two appellants separately before her in the hospital ward where she was confined. To demonstrate how meticulous the police were in ascertaining the identity of the offenders, they showed another tomboy to complainant to test the latter's recollection. They also told the appellants to enter the room twice to ensure that there would be no mistake on Rosalina's part. Afterwards at the police station, the law enforcers once again required Rosalina to identify Banzales and Dialola in a police lineup. All throughout, she remained unwavering [TSN, pp. 54-57, 60-61].

Subsequently, at the witness stand and in a straight-forward manner, Rosalina narrated how she was ravished and positively affirmed that it was Dialola who waylaid her towards a forested area into the waiting arms of Banzales who then succeeded in abusing her in spite of her resistance.

In the face of such unequivocal identification by the rape victim whose testimony the trial court had given full credence, as well as the incontrovertible fact that there was no physical impossibility on appellants' part to reach the scene of the crime which is but a few minutes away from their respective routes as public utility jeepney driver and conductress, appellants' defense of alibi must necessarily fall and the lower court properly disregarded the same.

The minor inconsistencies in Rosalina's testimony are to be expected. The gruelling cross-examination of a seventeen-year-old girl, unaccustomed to a public trial, would inevitably produce contradictions which nevertheless would not destroy her credibility [People vs. Gozum, G.R. No. 66970, February 28, 1985, 135 SCRA 295; People vs. Garcia, G.R. No. L-45280-81, June 11, 1981, 105 SCRA 6].

On matters of credibility this Court has accorded the highest degree of respect for the findings of the trial judge because he had the opportunity to hear the witnesses testify and observe their demeanor. Evidently, in the instant case, he found the complaining witness more credible. In line with the rule above-stated, We affirm.

The trial court correctly found Dialola, a woman, equally culpable as a principal together with Banzales for the crime of rape. Appellants' combined actions easily induce the belief that everything had been prearranged between them in order that Banzales might carry out his bestial designs upon the victim. Dialola cooperated in the perpetration of the rape by Banzales by acts without which the crime could not have been consummated. She paved the way by luring the unsuspecting victim into a secluded wooded area, delivering her to Banzales and then covering the girl's mouth so that she could not summon for help. The criminal responsibility of Dialola has been established [People vs. Andal, G.R. No. L-39763, March 8, 1976, 70 SCRA 30; US vs. Javier, 31 Phil. 235].

However, We find that the lower court erred in appreciating the attenuating circumstance of voluntary surrender in appellants' favor. In order that voluntary surrender may be taken into account, "it is necessary that the same be spontaneous in such manner that it shows the intent of the accused to surrender unconditionally to the authorities" [People vs. Sakam, 61 Phil. 27, 34; People vs. Hanasan, G.R. No. L-25989, September 30, 1969, 29 SCRA 534]. The evidence disclosed that both accused were picked up by the police several hours after they were definitely identified by Rosalina in the hospital [TSN, pp. 278, 297, 446-448]. Where the record does not clearly show that the accused voluntarily surrendered to the authorities, the doubt cannot be resolved in their favor [People vs. Lopez, 107 Phil. 1039]. The fact that Banzales and Dialola went willingly with the police does not amount to voluntary surrender [People vs. Dimdiman, 106 Phil. 391].

Likewise, the trial court erroneously applied the Indeterminate Sentence Law after it improperly lowered the penalty of reclusion perpetua to reclusion temporal by reason of the extenuating circumstance of voluntary

surrender. The crime committed in this case is rape by two or more persons falling under paragraph 3 of Article 335 of the Revised Penal Code. It is punished by reclusion perpetua to death which are two principal indivisible penalties.

Two vital points must be made clear. Firstly, the indeterminate sentence covers only divisible penalties and does not include indivisible penalties [People vs. Asturias, G.R. No. 61126, January 31, 1985, 134 SCRA 405; People vs. Arizola, G.R. No. 59713, March 15, 1982, 112 SCRA 615; People vs. Roque, G.R. No. 53470, June 26, 1981, 105 SCRA 117]. Secondly, in all cases in which the law prescribes a penalty of two indivisible penalties and there are neither mitigating nor aggravating circumstances present, as in the case at bar, the proper penalty is the lesser penalty or reclusion perpetua. [Revised Penal Code, Article 63(2); People vs. Lamberte, G.R. No. 65151, July 11, 1986, 142 SCRA 685].

WHEREFORE, the judgment of conviction is affirmed but the penalty is modified. Accused-appellants Murphy Banzales and Josephine Dialola are hereby sentenced to reclusion perpetua and to indemnify the victim, Rosalina Ricafort, in the amount of P30,000.00. Costs against accused-appellants.

SO ORDERED.

Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

[1] Penned by Judge Benigno M. Puno

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.