

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABINO VERONAS, RODRIGO CAÑETE, NELSON C. ABALA AND ANACLETO ASISTER, ALIAS ‘ANNIE’; DEFENDANTS. NELSON C. ABALA AND ANACLETO ...

G.R. No. 64414. November 15, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Anacleto Asister has appealed the decision of the Court of First Instance (now Regional Trial Court) of Cebu, Branch XII, in Criminal Case No. CU-7690 entitled "The People of the Philippines vs. Sabino Veronas, Rodrigo Cañete, Nelson C. Abala and Anacleto Asister alias ‘Annie’," convicting him together with the other accused of the crime of robbery with rape and sentencing them to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the rape victim, Marciana Legaspi, in the sum of P30,000 and to pay the costs of the action.

On November 20, 1980, at about 7:30 in the evening, Marciana Legaspi, a sixty-five (65) year old widow, was rolling tobacco for a cigar on the bamboo bed inside her house in the distant barrio of Tubod, Barili, Cebu, while her younger widowed fifty-four (54) year old sister, Demetria Mancao, was sitting by the door about five feet away, watching a "siga" (small fire) which she had earlier built to smoke the flowering fruit trees in their yard. From where she was seated, Demetria saw three men squatting under the pomelo tree which was around three armslength away. Although she did not recognize them, she could see their faces clearly under the full moonlight, prompting her to shout "why are you hiding there?" Thereupon, one of the men, whom she later came to know as Sabino Veronas, rushed at her, pushing her down while pointing a kitchen knife at her. Demetria shouted for help and tried to grapple with the man for possession of the knife but she was wounded on the left hand. Veronas boxed her, hitting her on the right cheek and when she again shouted for help, Veronas cut out a piece of cloth from her dress, stuffed it into her mouth, then tied a handkerchief over it around her neck. The second man, whom she later recognized as Nelson Abala, kicked her three times and tied her legs with a piece of rope.

Marciana Legaspi heard her sister's cry for help but before she could do anything, the third man, whom the sisters later recognized as Rodrigo Cañete, ran directly toward her, pointing a knife at her mouth, threatening to stab her if she shouted. Abala tried to stab her in the abdomen but she parried the thrust with her left hand, causing the weapon to penetrate her left palm. Both Cañete and Abala hogtied her with a piece of rope and divested her of her earrings, wrist watch, spiritual ring, transistor radio, a pair of eyeglasses, money amounting to P500 from a shoulderbag worth P110 and a US\$100 bill hidden inside a money belt tied around her waist, all worth P3,320. Thereafter, Nelson Abala took off his pants, stripped Marciana of her underwear and proceeded to have sexual intercourse with her against her will and despite her entreaties for him to desist from his evil design because he was even younger than her own grandson. Cañete followed suit and succeeded in having sexual congress with her.

Afterwards, Abala, with the use of his knife, dug a hole under the staircase and under the earthen stove looking for something and muttering in the Cebuano dialect: "Ingon ni Annie, бага, wala man lagi." (According to Annie,

she is wealthy, but there is nothing.) Veronas suggested that he "go and ask Annie where the money is buried." Abala left to talk to someone outside. When he came back to the house, the three men huddled and spoke in whispers. Probably realizing that they could not get more than what they had already taken, they left the two sisters who were still tied with ropes.

Demetria Mancao struggled to free herself from her bonds after which she untied her sister Marciana. Both of them went out of their house through a hole in the window. Outside, they saw Anacleto Asister, sitting on a piece of bamboo near the mudhole a few meters away from their house. He did not speak a word and neither did they. As their nearest neighbor was nearly one kilometer away, they proceeded toward the Poblacion of Barili to report the crime to the police. Afterwards, they went to Cabuangan to see Dr. Claro Villegas, the Municipal Health Officer of Barili, Cebu, for treatment of their wounds. Meanwhile, a PC detachment headed by Sgt. Cortes combed the nearby towns in search of the perpetrators of the crime. They succeeded in apprehending them in Ka-ipilan, Guadalupe, a barrio between Mantalongon and Carcar. At about 2:00 o'clock the following morning (November 21, 1980), Marciana Legaspi and Demetria Mancao were summoned to the PC headquarters in Mantalongon, Barili, where the three men were detained. The sisters positively identified them as the ones who had robbed them and raped Marciana.

In an information dated February 23, 1981 filed by the Office of the Provincial Fiscal in the Court of First Instance of Cebu, Anacleto Asister and his three friends were charged with the crime of robbery with rape and double less serious physical injuries. On arraignment, they all pleaded not guilty.

During trial, the accused were positively identified by the offended parties. A bus conductor of the Amadora Transportation also recognized them as the persons who rode on his bus from Cebu City to Tubod, Barili on November 20, 1980, with Asister paying for all their fares.

Abala admitted his participation in the robbery. He was corroborated by Veronas. They admitted that on November 20, 1980 at around 1:00 p.m., they and Cañete met outside the Lane Theatre to watch a movie. They encountered Annie Asister, who invited them to the South Expressway Terminal for drinks. After four hours of drinking, they proceeded to Asister's house in Barili. In Asister's house, they ate and drank tuba to their heart's content. During their drinking spree, Asister revealed to them his grudge against Marciana Legaspi because he had taken care of her carabao but when she sold it for P1,000, she gave him only P20 as his share. Asister induced them to rob Marciana, also known as Emma, because she had a son working abroad and supposedly had much money. They all agreed to execute the plan. Asister guided them to the house of Marciana, but hid himself a few meters away while his friends entered the house.

Abala and Cañete denied having raped Marciana, but the trial judge, observing how the two sisters testified with utmost sincerity and candor, rendered judgment finding all the accused guilty beyond reasonable doubt as co-conspirators in the commission of the crime charged.

Asister and Abala, represented by different counsel appealed the judgment. However, Abala later withdrew his appeal.

The lone appellant, Asister, alleges that the trial court erred in finding him guilty as a co-conspirator in the commission of the crime of robbery with rape and in denying his motion for new trial.

His appeal has no merit. The findings of the trial court are supported by the evidence on record and its decision is in accordance with law.

Asister's defense of alibi (that he was plowing Josefa Deluna's land until 5:00 in the afternoon and attended the barangay procession the whole night of November 20, 1980) aside from being inherently weak, is not supported

by clear and convincing evidence. It cannot prevail over the positive identification made by the prosecution witnesses who saw him at the scene of the crime and the interlocking confessions of his co-accused who implicated him as the mastermind of the robbery. It was he who led them to Marciana's house. He watched everything that transpired therein, but made no attempt to prevent the commission of the crime by his companions. The rule is well-settled that in a conspiracy, the act of one is the act of all, and each of the conspirators is liable for all the crimes committed by the other conspirators.

“The rule in conspiracy is that all those who participated in the conspiracy are liable for the crime, unless there is proof that they tried to prevent it.” (People vs. James Arbis, 144 SCRA 687 [citing People vs. Atencio, 22 SCRA 88; People vs. Reyes, 4 SCRA 807].)

"The evidence shows that it was Benito Garcia only who clubbed Lontoc twice on the head but because the appellants manifested a community of purpose indicative of conspiracy, all are equally guilty." (People vs. Benito Garcia, et al., 141 SCRA 337.)

Hence, even if only Abala and Cañete committed rape during the robbery, their companions who lifted not a finger to prevent it, are equally guilty.

With respect to the appellant's motion for new trial on the ground that the other accused retracted their testimonies in court, the trial court correctly denied the motion for the retractions were made after it had rendered its decision convicting the accused. The retraction of previous testimony is not a ground for new trial (People vs. Navasca, 76 SCRA 70).

WHEREFORE, the assailed decision is affirmed in toto.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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