

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO ALMENARIO, PEMPIN BAHIA, REYNALDO CAYOBIT & HILARIO MAAT, ACCUSED, GERARDO ALMENARIO, ACCUSED-APPELLANT.

G.R. No. 66420. April 17, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Robbery in band with rape a heinous crime more so when in the course of the robbery, as in this case, four men took turns in raping a married woman in the presence of her husband. They certainly deserve the four death penalties imposed on them by the Regional Trial Court of Palo, Leyte, with the corresponding instruction that they indemnify the spouses Candido Caindoy and Marciana Cabos Caindoy in the amount of P3,088.00 actual damages and to Marciana P5,000.00 moral damages without subsidiary imprisonment and the costs. However, none of said death penalties can be imposed under the Constitution.[1]

At about 2:00 o'clock in the early morning of December 10, 1979, while Marciana Cabos Caindoy, her husband Candido Caindoy and their child Lito were sleeping in their house located in the outskirts of Barangay Sto. Nino, Julita, Leyte, the couple were roused from their sleep by the barking of their dogs. Candido peeped through the door and saw several hooded persons in fatigue uniform outside. He became apprehensive, so he closed the door.[2] The men said that they were members of the Philippine Constabulary and were after Candido's guns.[3] Whereupon, the intruders went up the house through the threshing-shed which was an extension of the house. The threshing shed has a modest roof but does not have any walls. It is separated from the house with a sack as the divider.

The Caindoy couple recognized the men as Gerardo Almenario, Reynaldo Cayobit, Hilario Maat and Pempin Bahia.[4] Once inside, Gerardo Almenario pushed Candido towards the floor face downward, poked a gun at him and rode on his back.

For his part, Reynaldo Cayobit grabbed Marciana with his left hand while his other hand pointed a bolo towards Marciana's abdomen. Reynaldo then brought her to the threshing area which was about four meters from where her husband was lying face down.[5] He kicked Marciana on her right leg which made her fall on the threshing floor face up. Both Hilario Maat and Pempin Bahia pinned the arms of Marciana to the floor. Reynaldo took off Marciana's panties, opened his trousers, put out his sexual organ forced open the thighs of Marciana, mounted her and inserted his penis inside Marciana's vagina against her will. Although Marciana put up a struggle in order to prevent the rape, Reynaldo was able to have carnal knowledge of Marciana by threatening her with his bolo. Reynaldo commenced the push and pull movements until he ejaculated. He then stood up and called Gerardo Almenario to tell him that it was his turn to rape Marciana.

Reynaldo went to Candido and sat on the letters back relieving Gerardo. So, while Reynaldo kept close watch over Candido, Gerardo approached Marciana who was still supine on the threshing floor. Gerardo pointed his gun at Marciana who was already scared and crying. Then, Gerardo took off his pants, brought out his male organ,

pried open Marciana's thighs and succeeded in inserting his penis inside Marciana's despite the latter's struggle. While Gerardo was raping Marciana, Hilario Maat was holding her right hand and Pempin Bahia, her left hand.[6] After Gerardo was through raping Marciana, he stood up and told Hilario that it was now his turn to rape the victim.

Gerardo took over from Hilario in holding the right hand of Marciana. Hilario succeeded in raping Marciana despite the latter's moving her body in an effort to make it difficult for Hilario to consummate the act.

After raping Marciana, Hilario told Pempin Bahia to take over. Hilario stood up and relieved Pempin in pinning Marciana's hand. In similar fashion, Pempin succeeded in having carnal knowledge of Marciana, after which he stood up and closed his pants.

Gerardo thus held Marciana's hand and made her sit near her husband who was still lying face downward. Gerardo asked Marciana where they kept their money. Out of fear, Marciana told him that their money was in the threshed palay. Whereupon, Gerardo got the money consisting of ten (10) P100.00 peso bills and ten (10) P50.00 bills in the total amount of P1,500.00 and placed it inside a sack. He also got some of the couple's personal belongings which were never recovered by them. The articles stolen were the following:[7]

1. Cash- -----

----- P1,500.00

2. 8 pairs of pants

480.00

3. Radio (Rems)

150.00

4. 5 lady's wear at P20 each

100.00

5. 2 sacks of palay at P40 each

80.00

6. 1 mosquito net

45.00

7. 1 bolo

30.00

8. 1 can (Petroleum) of rice

36.00

9. 1 kettle

30.00

10. 1 frying pan

20.00

11. 1 pregnant pig

500.00

12. 10 hens

150.00

13. fish

3.00

TOTAL P3,088.00

After taking the couple's personal belongings and cash money, Reynaldo told the Caindoy spouses, "If you will report this matter to the police we will come back and kill you all." [8]

The four accused were all armed. Gerardo held a gun, while his companions were all armed with bolos about 81 cm. long. The rapists-robbers left the house of their victims at about 3:30 o'clock in the morning. The Caindoy spouses reported the incident to the Barangay Captain at about 8:00 o'clock of that same morning. [9]

The nearest neighbor of the Caindoy spouses was Pedro Bertos whose house was about 45 meters away from theirs. The next nearest houses were already in the poblacion of Barangay Sto. Niño, which was more than a kilometer away. [10]

The four malefactors were familiar to Marciana since she often saw them pass by the trail near their house whenever they were on their way to Barangay Sto. Niño. [11]

Upon arraignment before the court a quo on April 15, 1980, the accused Gerardo pleaded "not guilty" to the crime charged in the information. The other three accused, Pempin Bahia, Reynaldo Cayobit and Hilario Maat could not be arraigned since they are still at large up to this date. Thereafter, the case was set for trial on the merits.

On October 24, 1983, the trial court rendered the judgment earlier stated finding the accused guilty.

Hence, this mandatory review. However, upon the ratification of the 1987 Constitution, the death penalty may no longer be imposed and unless Congress provides otherwise, there is no longer an automatic review of a judgment of conviction. The review must be at the initiative of the accused. Thus, this case is treated as an ordinary appeal filed by the accused Gerardo Almenario.

The accused contends that the lower court committed the following errors to wit:

”I

THE TRIAL COURT ERRED IN FINDING THE APPELLANT GUILTY OF ROBBERY IN BAND WITH RAPE DESPITE EVIDENCE SHOWING THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE OFFENDED PARTIES TO HAVE POSITIVELY IDENTIFIED APPELLANT AS THE PERPETRATOR OF THE CRIME.

II

THE TRIAL COURT ERRED IN RELYING SOLELY UPON THE TESTIMONY OF THE ALLEGED RAPE VICTIM AS THE BASIS OF APPELLANTS CONVICTION FOR THE CRIME CHARGED, DESPITE HER INCREDIBLE AND IMPROBABLE VERSION OF HOW THE CRIME WAS

COMMITTED.

III

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE INCONSISTENCY AND CONTRADICTIONS IN COMPLAINANT'S TESTIMONIES, WHICH PLACED SERIOUS DOUBT ON THE TRUTH OF THEIR STATEMENTS." (Pages 5-6, Appellant's brief, pages 94-95, Rollo.)

After a careful assessment of all the evidence on record, We find that the above contentions do not deserve serious consideration and do not warrant a reversal of the judgment of conviction.

With respect to the first assigned error, appellant argues that on the night the alleged crime took place, it would have been inherently improbable, if not impossible, for the prosecution witnesses to have positively identified the appellant as one of the four armed men who robbed the house of Candido Caindoy and who raped his wife, Marciana

The appellant wants to impress upon this Court that it was impossible for the Caindoy spouse, to positively identify appellant as one of the four robbers-rapists since the illumination was poor. The appellant alleges that it was pitch black outside and that the beaming of the flashlight upon the witness partially if not entirely impaired his vision.

There is no basis for the preceding assertions.

It must be noted that on the occasion of the commission of the crime there was a kerosene lamp which provided illumination.[12] A kerosene lamp gives off sufficient illumination like a "gasera" or "lamparahan" and in previous cases, this court has held that the illumination produced by these gadgets is sufficient for the identification of persons.[13] Furthermore, contrary to appellant's contentions, the moon was shining that night which helped increase visibility.[14] The beaming of the flashlight on Caindoy's face was not sufficient to impair his vision since he had already identified the accused prior to that event and he was familiar with the accused's facial features and mannerisms. There was also sufficient opportunity to identify the accused as one of the robbers-rapists for when they were already inside the house whereby they were in close contact with their victims for a full hour and a half.

Appellant contends that Candido could not have possibly identified the assailants who were wearing hoods. Suffice it to say that a hood is defined as "a covering usually of cloth or leather for the head and neck and sometimes the shoulders that is attached to a garment or worn separately and is made with a loose or close-fitting opening for the face.[15] A hood must be distinguished from a mask which is a covering for the face. If the appellant wore a mask, it is very probable that his identification would have been difficult. Since appellant never wore a mask, there was no way the victims could have been mistaken in their identification of the culprits. The positive identification of appellant as one of the perpetrators of the crime is clearly established. The denial of appellant cannot prevail over his positive identification by the Caindoy spouses whose version of the incident bear all the earmarks of candor, credibility and spontaneity.

Anent the second assignment of error, appellant argues that the lower court should not have relied solely upon Marciana's testimony since the absence of any manifestation of outrage or tenacious resistance to the alleged sexual assault on her renders the rape charge dubious.

Again, this is devoid of merit. At the outset, it must be stated that this Court has consistently sustained conviction by the trial court of the accused in rape cases based on the sole testimony of the offended party.[16] The trial court is in the best position to assess the demeanor of the witnesses and such assessment has been accorded the highest

respect by this Court. Furthermore, Marciana's continuous moving of her body from left to right while she was being raped constitutes sufficient resistance considering that her assailants were numerous, armed with bolos and a gun and were holding her arms while she was being raped. Such acts by Marciana may be considered as sincere efforts to resist the assault on her virtue by her abductors.

Appellant contends that it is beyond human comprehension for one raped and robbed to refuse to identify their attackers. The fact that the assailants were never identified by the spouses to the police or to the barangay official to whom they reported the incident is but reasonable under the circumstances. The Caidoy spouses explained this by stating that they feared that their assailants would make good their threat to kill them.[17] The victims had every reason to fear for their lives considering the gravity of the offenses already perpetrated upon them.

Marciana's reluctance to submit herself to a medical examination does not in any way affect her credibility. In fact, a medical certificate is not indispensable to prove the commission of rape.[18] Marciana explained her omission by stating that she lost her proper state of mind at that time and it took her four days to recover the same.[19] We find no reason to doubt her statement, considering that Marciana was the victim of not one, but four separate acts of rape.

Finally, there is no merit in the third assigned error that complainant's testimony is scarred by numerous inconsistencies and unfounded statements which place serious doubts upon the truth of the testimonies of the Caidoy spouses. True, there are indeed a few discrepancies and inconsistencies in the testimonies of the witnesses for the prosecution. Nevertheless, these are not of a nature and magnitude that would impair the credibility of the said witnesses. The inconsistencies and contradictions attributed to complainant are merely de minimis. The alleged inconsistencies refer to minor details and "do not, in actuality, touch upon basic aspects of the who, the how and the when of the crimes committed." [20] On the contrary, such minor discrepancies as in the present case are but natural and would even enhance the credibility of the Caidoy spouses as witnesses, because these indicate that the responses given were honest and unrehearsed.[21] Such minor discrepancies are earmarks of verisimilitude.

Appellant's defense is one of alibi. He testified that on December 10, 1979 at 2:00 o'clock in the morning, he was at home in Barangay Del Carmen, Duag, Leyte, which is about three (3) kilometers from Barangay Sta. Niño. Stronger proof is needed to overcome the findings of the trial court. Well-settled is the rule that alibi as a defense is weak and that it cannot prevail over the positive identification by the prosecution's witnesses of the accused as the perpetrator of the crime especially when there was no physical impossibility for the accused to be at the scene of the crime at the time of its commission.[22]

From the facts established, this Court finds appellant guilty beyond reasonable doubt of the crime of robbery with rape penalized under the provisions of Article 294, paragraph 2 of the Revised Penal Code, attended by the aggravating circumstances of nighttime, dwelling and abuse of superior strength. In this case, band may be considered as a generic aggravating circumstance.

Nighttime is appreciated as an aggravating circumstance in that it facilitated the commission of the crime.[23] The aggravating circumstance of dwelling exists since the crimes were committed in the home of the victims who never gave provocation to the appellant and his cohorts. Present, likewise, is the aggravating circumstance of abuse of superior strength since there was an attack by a man with a deadly weapon upon an unarmed and defenseless woman.[24]

In view of the presence of the aforementioned aggravating circumstances without any mitigating circumstances, the penalty of death which is the greater penalty was correctly imposed by the trial court. However, in the light of Section 19(1), Article III of the 1987 Constitution which prohibits the imposition of the death penalty, the penalty

that must be meted on the appellant is reclusion perpetua. The offended party is also awarded moral damages of P25,000.00,[25] to be paid by appellant.

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the MODIFICATION that the penalty is reduced to reclusion perpetua but the indemnity for Marciana Caindoy is increased to TWENTY-FIVE THOUSAND PESOS (P25,000.00). With costs against appellant.

SO ORDERED.

Cruz, (acting Chairman), Griño-Aquino and Medialdea, JJ., concur.
Narvasa, J., on leave.

[1] Section 19(1), Article III of the 1987 Constitution provides: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides, for it. Any death penalty already imposed shall be reduced reclusion perpetua."

[2] TSN. p. 30, March 14, 1983.

[3] TSN, pp. 77-78, April 12, 1982.

[4] TSN. pp. 76-78 April 12, 1982; pp. 60-65, July 8, 1982.

[5] TSN. p. 67, July 8, 1982.

[6] TSN. p. 6, March 14, 1983.

[7] Decision of Regional Trial Court, p. 114, Record.

[8] TSN, pp. 14-19, March 14, 1983.

[9] TSN, pp. 19-21, March 14, 1983.

[10] TSN, pp. 22-25, March 14, 1983.

[11] TSN, p. 33, March 14, 1983.

[12] TSN, p. 55, March 14, 1983.

[13] *People vs. Detuya*, 120 SCRA 420 (1983); *People vs. Reana*, 120 SCRA 592 (1983).

[14] TSN, p. 55, March 14, 1983.

[15] Webster's Third New International Dictionary, 1971 Edition. (Underscoring supplied.)

[16] *People v. Managbanag*, 155 SCRA 674 (1987).

[17] TSN, p. 124, July 18, 1983; p. 19, March 14, 1983.

[18] *People vs. Managbanag*, 155 SCRA 669 (1987); *People vs. Manaay*, 151 SCRA 31 (1987).

[19] TSN, pp. 50-51, March 14, 1983.

[20] *People vs. Cabeltes*, 91 SCR 208 (1979).

[21] *People vs. Agudo*, 137 SCRA 516 (1985).

[22] People vs. Picardal 151 SCRA 170 (1987).

[23] People vs. Lorenzo, 130 SCRA 311 (1984).

[24] People vs. Braña, 30 SCRA 307 (1969); People vs. Quesada 62 Phil. 446 (1935); U.S. vs. Consuelo, 13 Phil. 612 (1909).

[25] People vs. Deus, 136 SCRA 660. (1985).

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