

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORETO PILAPIL WITH FOUR (4) OTHER JOHN DOES,
ACCUSED-APPELLANTS.**

G.R. No. 72307. January 30, 1987

Ponente: PARAS, J.

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PARAS, J.:

Before Us is the appeal interposed by the accused Loreto Pilapil from a decision of the trial court[1] finding him guilty beyond reasonable doubt of the crime of robbery with rape, the dispositive portion of which reads as follows:

"WHEREFORE, the court finds the accused guilty of Robbery with intimidation of person accompanied by rape, defined and penalized in Article 294, paragraph 2, as amended by P.D. No. 767, beyond reasonable doubt, and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify Lily Abogada and Jimmy Plaza the amount of P1,000.00 each, representing their belongings taken, jointly and severally with the four (4) other John Does still at large; to pay Lily Abogada P10,000.00 as moral damages jointly and severally with the four (4) John Does still at large, without any subsidiary imprisonment in case of insolvency; to suffer the accessory penalties provided for by law, and to pay the costs.

SO ORDERED."

Evidence for the prosecution shows that in the afternoon of December 28, 1984, at around 3:00 o'clock p.m., Lily Abogada and Lolita Flores were passengers of a motorcycle driven by Jimmy Plaza and bound for Barangay (Bgy.) Diwalwal, a mining area, from Bgy. New Visayan, Trento, Agusan del Sur. On their way, they were stopped by armed men who ordered them to alight from the motorcycle. The passengers were at gunpoint divested of their belongings and valuables with a total estimated worth of P2,000.00 and the motorcycle was pushed towards an embankment by accused Loreto Pilapil.

With their arms tied behind their backs, the three passengers were led down the cliff towards a forested area. Lily Abogada was sexually abused, at the point of a gun, first by the leader of the group and then followed by four others. Lily Abogada recognized appellant, Loreto Pilapil, as one of those who assaulted her because the latter's mask had accidentally been removed from his face. Lily Abogada knew her lady co-passenger Lolita Flores was also being abused because the rape of the latter was taking place in a bushy place about three meters away. Thereafter, the five armed men fled leaving the hapless victims crying.

Lily Abogada, still with hands tied, crawled towards Lolita Flores and asked her to bite off the knot. Jimmy Plaza, who was able to untie himself, retrieved his motorcycle. He gave his jacket and shirt to the two lady - passengers who had no blouses on.

They proceeded to the Airborne detachment at Trento where Lily Abogada collapsed. Jimmy Plaza went to Pulang-lupa to report the incident to the Philippine Constabulary (PC) soldiers. The PC soldiers set up a check

point for the buses that passed by. Jimmy Plaza recognized accused Loreto Pilapil aboard a "Bachelor Bus" and seated beside a stout person who claimed to be a soldier. To be sure of appellant's identity, witness inquired from the conductor if anybody boarded the bus in Pulang-lupa. The conductor replied one boarded in Cuevas and another in Trento. When the stout man was asked to open his bag, Jimmy Plaza saw a hand grenade and a short arm inside the bag. Jimmy became scared, ran to the back of the bus and told the soldiers to "handle the man." The soldiers brought him to the check point and questioned him. But he was frightened and got rattled. They even had to massage his breast. Since he was so scared, he asked that he be allowed to go home.

Accused who was arrested on January 23, 1985, alleges on the other hand, that in the afternoon of December 28, 1984, he was in Trento but bound for Davao, together with David Boloran to purchase necessary materials for their gold panning activities with cash money borrowed from their financier, Lourdes Malasarte. When the bus reached Pulang-lupa, a male passenger boarded the bus and sat beside the accused. Later, upon reaching a check-point soldiers stopped and boarded the bus together with witness for the prosecution, Jimmy Plaza. Upon inquiry by the soldiers as to who were the last persons to board the bus, the bus conductor pointed to the big person seated beside the accused. The conductor also gave the information that accused and his companion boarded the bus at Trento.

After being interrogated, the big person was allowed to return to the bus. Accused and companion were only asked by the soldiers to show their tickets. The bus arrived at Davao that night.

In the morning of January 23, 1985, appellant was at the Trento terminal to wait for the transportation bound for Mt. Diwalwal. He drank coffee inside a store where he saw some policemen. He went back to the terminal to get his things but he was arrested upon his return by the policemen informing him that he is wanted for the crime of robbery with rape. He was allegedly asked by the police as to the whereabouts of his alleged partners-in-crime. Despite his firm denials, he was incarcerated at the Municipal jail.

On the same day of the arrest, Lolita Flores, together with Jimmy Plaza and Pat. Conde appeared at the detention cell but she failed to identify the accused. Later however, upon the prompting of the witness by Jimmy Plaza and Pat. Conde, she pointed to the accused as one of the robbers. When accused shouted his demands for his release since Lolita Flores allegedly confirmed the fact of his innocence by her failure to identify him, accused was reportedly boxed by the policeman and Jimmy Plaza. He also alleged that his relatives were allowed to visit him, only after a period of more than 2 weeks of detention. Pilapil's wife was summoned to Trento by the policemen who according to the accused demanded money for his release.

In convicting the accused, the trial court declared thus:

"In the light of the foregoing considerations, the following incidents are established:

- A robbery was committed by five (5) armed malefactors on December 28, 1985, at New Visayas, Trento, Agusan del Sur;
- In the course thereof, Mrs. Lily Abogada was raped by the five male-factors.

The first question is whether accused Loreto Pilapil is one of the five who robbed the victims.

The answer is the positive and direct identification of the said accused by Lily Abogada and Jimmy Plaza.

The second question is was Lily Abogada raped and by whom.

Again, the narration of Lily Abogada on the sexual abuse was straightforward and credible. Her identification of the accused was positive. Her testimony is confirmed by circumstances following the incident. For instance, Jimmy Plaza saw the two women minus their upper dresses, so he gave his jacket to Lily Abogada and T-shirt to

Lolita Flores. Lily Abogada collapsed at the Airborne Headquarters.

The following day, Lily Abogada had an abortion attended by one Dr. Sarsona. This was followed by illness preventing her from going to Trento to identify the accused, when apprehended in January, 1985. All these, plus the fact that Lily Abogada is a married woman and has nothing to gain but the hurt and shame that has befallen on her. Besides, no motive has been shown why she would lie about her identifying the accused.

The defense of alibi put up by the accused is not convincing. In fact, it admits that in the afternoon of December 28, 1985, accused was in the vicinity of the scene of the crime. He admitted he was in the Bachelor Bus that was stopped and checked by the PC soldiers at Langkilaan at 7:00 P.M. same day. He was in Trento, Agusan del Sur, from 3:00 to 5:00 P.M. The court noted that the crime scene is only 30 minutes travel from Trento, or a distance of 15 kilometers, per testimony of Lily Abogada.

The defense further relied so much on the alleged non-identification of Lolita Flores at the Trento Municipal Jail. All the defense witnesses corroborated the incident when Lolita Flores failed to identify accused Loreto Pilapil. The only hitch is that David Baloran and Lourdes Malasarte claimed that they witnessed this particular incident on January 23, 1985, the day accused Pilapil was apprehended. Yet, it is an established fact that Lolita Flores was subpoenaed from Mt. Diwalwal and came down to Trento only on the 25th day of January, 1985.

Even allowing that Lolita Flores failed to identify the accused which is probable, this will not in any manner diminish the identification of the accused by Lily Abogada, pointing to a scar and her looking at the face of the accused whose T-shirt hood was removed at the height of his ecstasy.

The foregoing considerations inevitably lead to no other conclusion, that accused was one of the five (5) malefactors who robbed Jimmy Plaza and Lily Abogada of their personal belongings, to wit:

Jimmy Plaza — one eyeglass worth P900.00, pocket money and wallet with a total of P1,000.00;

Lily Abogada — two (2) denim pants, T-shirts, blouses, wrist watch amounting to P1,000.00, and then sexually abused Lily Abogada against her will and without her consent with the use of firearms.”

Appellant now assigns 2 errors:

I

THE COURT A QUO ERRED IN HOLDING THAT THE IDENTITY OF THE ACCUSED LORETO PILAPIL WAS POSITIVELY ESTABLISHED BY THE PROSECUTION.

II

THE COURT A QUO ERRED IN CONVICTING THE APPELLANT DESPITE THE ABSENCE OF EVIDENCE REQUIRED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Appellant's contentions hold no water. The finding of acts made by the trial court establishing the guilt of the accused beyond reasonable doubt is sufficiently substantiated by evidence on the records.

Appellant's defense consists mainly in denial of the crime charged and alibi. In support of his defense, appellant alleges that: (a) It is unnatural for Jimmy Plaza not to have him identified and arrested when the former saw appellant for the first inside the bus (b) the prosecution suppressed the sworn statement of Jimmy Plaza which purportedly stated that the robbers covered his face and body with an empty sack, and hence it would have been impossible for him to identify the malefactors (c) contrary to the claim of the victim Lily Abogada, his mask was not removed and she could not have therefore, recognized him.

The abovementioned defense is belied by the positive identification of the accused by witnesses as brought out in their resolute testimonies, to wit:

Witness Lily Abogada

"x x x

x x x

x x x

"a. When the five of them took thereon they abused us and there was one of them whom I identified.

"q. When you say you were taken out?

"a. Yes, sir.

"q. After your dress was taken out what did he do?

"a. After the five persons who took thereon for having a sexual intercourse with us there was one of the persons who has the mask I saw the mask in his arm.

"q. Who was that person?

"a. Loreto Pilapil." (pp. 6-7, t.s.n., April 16, 1985, p. 9, Brief for the Plaintiff-Appellee, p. 58, Rollo).

When asked further, Lily Abogada unhesitatingly mentioned the appellant as one of the armed men:

"q. Before you still remember even if Jimmy Plaza did not inform you, you still remember Loreto Pilapil and it is still fresh in your mind that you know him before?

"a. I can identify his face and when he committed the crime I can identify him but I do not know his name.

"q. This is a very serious question, could you tell to this Honorable Court, whether you are sure of this that you could identify to this accused?

"a. He is the one, sir." (p. 22, id.)

The witness' identification of the appellant was further strengthened when the latter returned to the scene of the crime and she could clearly see him because her blindfold was removed by that time (p. 9, id.) and she recognized him because of the scar in his arm (p. 2, id.).

Appellant's identification was also established by Jimmy Plaza as one of the armed men who robbed and molested his companion. Jimmy Plaza testified, thus:

"x x x

x x x

x x x

"q. What happened?

"a. After we get off from the motorcycle one of the three men drop the motorcycle to the cliff.

"q. Do you know that man driving the motorcycle?

"a. Yes, sir.

"q. Who was he?

"a. Loreto Pilapil.

"q. If he is in Court, will you please point to him?

"a. Loreto Pilapil.

INTERPRETER:

Witness pointing to a person who when asked answered to the name of Loreto Pilapil.

PROSECUTION TO WITNESS:

"q. How did you identify Loreto Pilapil at that time?

"a. Because when he get off from the motor the T-shirt which he used to cover his face, the portion was hanged when he was on the act of going down.

"q. What happened after that?

"a. So when he pushed the motorcycle down to the cliff one of his companions telling him to use the cloth to cover the face." (pp. 42-43, t.s.n., April 16, 1985; Underscoring supplied)

Likewise, Jimmy Plaza testified:

"x x x

x x x

x x x

"a. When I saw the fat man who boarded from Cuevas and Loreto Pilapil from Trento, and when I looked at them, their hands were wet and I said 'that was the one' and I requested that this fat man will be called to step down.

"q. And you were not able to point to the other person?

"a. I also pointed to Loreto Pilapil, but I asked that the fat man shall go down first for he might be able to ran away." (pp. 4-5, t.s.n., April 17, 1985)

As to the allegation that the prosecution suppressed the evidence that the face of the witness was covered by an empty sack rendering appellant's identification by the witness doubtful this fact is of no moment. The aforesaid evidence or statement is merely collateral and does not affect appellant's identification as his positive identification was already established by the testimony of the victim herself. Considering further that the issues being raised by the appellant is on credibility of witnesses, We have consistently held in a number of recent decisions that,

"x x x (U)nless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the trial court. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to gauge their credibility, and properly appreciate the relative weight of the often conflicting evidence for both parties (People v. Mercado, 131 SCRA 501 [1984]; citing People v. Ablaza, 30 SCRA 173 [1976]). (p. 13, Brief or p. 62, Rollo)

Lastly, appellant's defense of alibi was discredited by the trial court by finding that appellant was admittedly in

the vicinity of the scene of the crime, wherein the distance is only 15 kilometers away from Trento or only a matter of 30-minutes travel time. For the accused to be credited with the defense of alibi, it has been ruled that:

"The defense of alibi, however, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and veracity. He (appellant herein) must not only prove that he was somewhere when the offense was committed, but also that it was physically impossible for him to have been at the scene of the offense at the time. x x x." (People v. Jacinto, 133 SCRA 498 [1984]). (p. 14, Brief; p. 63, Rollo)

WHEREFORE, finding the appealed decision in accordance with law and the evidence, We hereby AFFIRM the same with costs against appellant, but the indemnity for the rape is hereby increased to P20,000.00.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, and Bidin, JJ., concur.

[1] The Judge was Carlo Lozada.

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