

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAURICIO PLAGA, ACCUSED-APPELLANT.

G.R. No. 73462. September 30, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In an information filed on January 14, 1981, accused-appellant Mauricio Plaga, together with three other persons known only by their aliases and who have remained at large, was charged before the then Court of First Instance of Agusan del Sur with the crime of robbery with homicide and rape.[*]

When arraigned, accused-appellant, assisted by counsel de oficio pleaded not guilty. In due course, the trial court rendered its judgment of conviction on August 27, 1985 and sen-tenced accused-appellant Plaga to death and ordered him to pay P30,000.00 to the heirs of the deceased Hermoso Franco, P30,000.00 to the widow Florenda Franco and P700.00 to the com-plaining witness.[1]

In his appeal to this Court, accused-appellant Plaga contends that the lower court erred in finding that the composite crime of robbery with homicide was committed, that the widow Florenda was raped and that he was guilty thereof beyond reasonable doubt.

The version of the prosecution as upheld by the court a quo is as follows:

At about seven o'clock on the rainy night of April 5, 1980, while the couple Hermoso and Florenda Franco, with their child, were taking their supper inside their house situated in Barangay New Visayas, San Francisco, Agusan del Sur, they heard a call from the outside asking for a light in going to the house of the barangay captain. Because they were eating, the couple ignored the call. Suddenly, the kitchen door was flung open and two (2) masked men, armed with a gun and a bolo, appeared. The Francos were ordered to lie on the floor, face down. Then Florenda was told to stand up, go to their bedroom and get money. Florenda did as she was told and handed over a suitcase containing P700.00 to the two intruders. Not satisfied, the masked men ransacked the house in search of other belongings of the couple.[2]

A few minutes after, a third man, also wearing a commando mask, with only his eyes and nose visible, entered the house through the balcony. He pulled Florenda downstairs but later decided to bring her up to the balcony. There he ordered Florenda to undress. Frightened that she was going to be harmed if she refused, the woman removed her clothes. The masked intruder placed himself on top of her and as he was about to abuse her, Florenda suddenly pulled the mask off his face and he turned out to be the accused-appellant Plaga. After the appellant was through with Florenda, he went to the kitchen where Hermoso Franco was being held. Several moments later, one of the two other masked men went to Florenda and likewise ravished her. After the second rape, the three malefactors proceeded to leave. The appellant wanted to bring Florenda with them but he was prevailed upon by one of his companions to leave her alone for the sake of her child. After tying Florenda's hands, the trio left.[3]

With the intruders gone, Florenda untied herself and hurriedly went to her room and picked up her child who was

crying. She lit a lamp and went to the kitchen. She saw the inert form of her husband, with half of the body under the stove. His hands and feet were bound and his mouth was gagged with a bloody sando. She untied him and turned him over and found a stab wound on his right armpit. Hermoso was already dead. Startled by what she saw, Florenda ran to the house of her cousin-in-law Romeo Gerano (Herano), about sixty meters away, to seek help. Florenda narrated to Romeo and his wife what had happened: the robbery, the rape against her person, and the death of her husband. She named appellant Mauricio Plaga as one of the three felons.[4]

The body of the deceased Hermoso Franco, 42 years old, an engineer employed at the National Irrigation Administration, was examined by a municipal health officer on April 7, 1980 at 6:00 in the morning. The postmortem report disclosed that Hermoso had sustained two wounds: a fatal stab wound at the armpit, hitting the apex of the right lung and a lacerated wound at the forehead, just above the right eye. Death was due to external and internal hemorrhage caused by the stab wound at the right armpit.[5]

It was only three days after the reported rape, or on April 8, 1980, that Florenda submitted herself to a vaginal smear examination. Florenda was found negative for spermatozoa and the examining physician saw no contusions or other signs of violence on her vagina and thighs.[6]

On the strength of Florenda's written statement sworn before the municipal mayor, a warrant of arrest was issued for the apprehension of appellant Plaga.[7] The police eventually tracked appellant down six kilometers from the poblacion of Kalilangan, Bukidnon on May 5, 1980. Appellant was threshing rice. He did not resist arrest.[8]

It appears that in the morning of April 6, 1980, after a brief appearance outside the house of the Francos, ostensibly to help prepare the coffin for Hermoso, the appellant had left his ailing wife and went to Bukidnon "to harvest rice".[9]

The appellant gave a statement admitting his participation in the violent crime but insisted that he would only sign the document after his other co-accused have been arrested. That statement was never signed.[10]

Appellant Plaga submits that the crime of robbery was not conclusively proven. He insists that the Franco spouses were financially strapped because they had just bought his land on March 24, 1980 for P3,000.00. If ever there was a person to be robbed, it should have been him.

It all boils down to credibility.

The lone eyewitness, the widow Florenda, narrated in detail what transpired on the night of April 5, 1980. She described how two armed men, whom she failed to recognize, barged into their kitchen and demanded money ("ilabas ang pera"), that petrified with fear, she brought out their suitcase ("malita") containing P700.00 in cash; and that still not contented with their loot, the two robbers ransacked their house for almost an hour.

Florenda's harrowing account was corroborated by Romeo Gerano, her deceased husband's first-degree cousin who lived nearby. Romeo testified that there was a heavy downpour in the evening of April 5, 1980. He was at home with his wife and four children when unexpectedly, he heard a woman's voice crying "help". The sound came from under the stairs of his house. He recognized the voice as belonging to Florenda. He immediately went down and opened the door and there stood Florenda, soaked to the skin, crying and trembling and clutching her five-month old baby. She entreated: "Nong Roming, please help me because we were robbed, I was raped and our money was taken." She pleaded with him to go to their house and look after his cousin Hermoso who was still partially tied. She mentioned the name of appellant as among the three men who held them up.[11]

After informing the barangay captain of the tragedy that occurred in the Franco household, Gerano repaired to the house of Hermoso. When he entered the house, he saw suitcases and clothing scattered on the floor. The room

was illuminated by a gas lamp. Then he found his cousin in the kitchen and the sight made him cry. Hermoso was lying down on the floor with half of his body under the stove. There was a bloodstained T-shirt beside him. Gerano finished untying him and dragged him away from the stove. Hermoso had wounds, one on the armpit and another on the eyebrow.[12]

The Court is convinced by the testimonies of Florenda Franco and Romeo Gerano that the Franco spouses were robbed of P700.00 right in their own abode and in the course thereof, Hermoso was stabbed to death and Florenda was raped. The spontaneous declarations of the widow soon after the incident and while she was clearly in a state of shock, even as she sought help from her neighbor, as well as the physical state of the scene of the crime are strong indications that the complex crime of robbery with homicide had indeed taken place.

Appellant likewise claims that the offense of rape has not been established, insisting that the physical evidence belied the commission of rape against the person of Florenda. In support of his argument, appellant cites the medical examination conducted on Florenda and concludes that with the absence of any physical evidence of rape, Florenda could have only fabricated the charge.

The absence of the so-called physical evidence of rape can well be explained by the fact that the examination was made on April 8, 1980 or three days after the assault. By that time, the spermatozoa (if any) would have disintegrated. As for the lack of bruises on the body of Florenda, the law does not require that the force employed on the victim must be great or irresistible. It is only necessary that the force used is sufficient to consum-mate the rape.[13]

If there was no actual physical force applied on Florenda, there was certainly intimidation. Florenda's two sexual attackers were armed. To resist would have meant certain death to her and her family. The fact that her husband was slain showed that Florenda's fears were not unfounded.

Appellant denies complicity and interposes an alibi, maintaining that on the night of the supposed robbery, he was attending to his pregnant wife who was having stomach pains.[14] He presented one Rodrigo Gonzales to corroborate his statement that they were together in his (appellant's) house from seven in the evening of April 5, 1980 until five in the morning of the following day and neither of them ever went out.[15]

Appellant's alibi is not worthy of belief. His supposed companion Rodrigo testified that appellant had asked him to come over to his house to assist him in case his wife would go into labor and give birth. Considering that Rodrigo was not even a "herbolario", his presence was doubtful and too farfetched.

Furthermore, appellant resides in the same Barangay New Visayas, a mere 500 meters away from the house of the Francos. It was therefore not impossible for the appellant to be at the scene of the violent incident.

But more importantly, appellant's alibi cannot prevail over the damning eyewitness account of the victim's widow.

Appellant has tried to discredit the testimony of Florenda by alleging inconsistencies in her statements before the trial court. While contradictions and flaws have been observed during the period she was on the witness stand, the same are minor and cannot detract from her convincing declarations that she and her husband were the helpless victims of appellant and his two cohorts.

Florenda could not have been wrong in her positive identification of the appellant. She has known him for a long time. They were neighbors in Barangay New Visayas. She often saw him. Barely a month before the robbery, they bought Plaga's three-hectare land but allowed him to remain there for the time being. Her recognition of appellant as her rapist became more certain after she succeeded in pulling Plaga's mask from his face before he sexually assaulted her.

That Florenda admitted in court that she did not actually witness who among the three malefactors killed her husband is of no moment. Conspiracy has been amply demonstrated. Appellant's two companions carried out the initial step of frightening the Franco couple into submission by brandishing their weapons at them and demanding where the money was. And while his friends were preoccupied with searching the house, appellant satisfied himself with Hermoso's wife, after which he was followed by another. After robbing the Franco spouses, killing the husband and raping the wife, the three men then left together and disappeared into the night.

The crime committed was erroneously denominated by the provincial fiscal as robbery with homicide and rape, a mistake perpetuated by the trial court.[16] As correctly pointed out by the Solicitor General, the proper designation is robbery with homicide, with rape considered as an aggravating circumstance. But aside from rape, the lower court should have appreciated dwelling as an additional generic aggravating circumstance, the reason being that dwelling is not inherent in robbery since the perpetrator thereof could have accomplished his heinous deed without having to violate the domicile of the victim.[17]

WHEREFORE, the judgment of conviction is AFFIRMED. Accused-appellant Mauricio Plaga is declared guilty of the special complex crime of robbery with homicide as defined under Article 294, paragraph 1 of the Revised Penal Code. Considering the attendance of the generic aggravating circumstances of rape and dwelling, the prescribed penalty of reclusion perpetua to death is imposed in its maximum period which is death. But in view of the abolition of capital punishment in the 1987 Constitution, the Court hereby MODIFIES the decision under review and decrees the reduction of the penalty from death to reclusion perpetua. The civil indemnity of P30,000.00 for rape and the award of P700.00 as restitution for the money stolen are SUSTAINED except the death indemnity which is increased from P30,000.00 to P50,000.00. Costs against the appellant.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[*] The correct definition of the offense is robbery with homicide, as provided in Article 294, paragraph 1 of the Revised Penal Code, with rape considered as an aggravating circumstance.

[1] Criminal Case No. 1263, Original Records, pp. 312-313.

[2] TSN, October 8, 1982, pp. 108-112, 148.

[3] TSN, October 8, 1982, pp. 112-115, 180; July 21, 1981, p. 280.

[4] TSN, October 8, 1982, pp. 116-117; June 30, 1981, 233-234; July 21, 1981, p. 276.

[5] Exh. A.

[6] Exh. K.

[7] Exh. D.

[8] TSN, July 20, 1981, pp. 24-26.

[9] TSN, September 30, 1982, pp. 358 and 370.

[10] Exh. H; TSN, July 20, 1981, pp. 28-30 and 49.

[11] TSN, June 30, 1981, pp. 231-234.

[12] TSN, June 30, 1981, pp. 235-237.

[13] People vs. Ronquillo, G.R. No. 76213, April 6, 1990; People vs. Abonada, G.R. No. 50041, January 27, 1989, 169 SCRA 530.

[14] TSN, September 30, 1982, pp. 353-354.

[15] TSN, August 30, 1982, pp. 60-61.

[16] Original Records, p. 31.

[17] People vs. Mesias, G.R. NO. 67823, July 9, 1991; People vs. Pecato, No. L-41008, June 18, 1987, 151 SCRA 14; People vs. Capillas, No. L-27177, October 23, 1981, 108 SCRA 173.

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