

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE ABAYA, RODRIGO GANDOL AND NELSON PASCUA, ACCUSED-APPELLANTS.

G.R. No. 77980, February 27, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the judgment of conviction rendered by the Regional Trial Court of Ilocos Sur, Branch 23, on 10 December 1986 in Criminal Case No. 916-C, the dispositive portion of which reads:

“IN VIEW OF THE FOREGOING, the Court finds and holds:

(a) Rodrigo Gandol and Nelson Pascua guilty beyond reasonable doubt of the offense of Robbery with Rape and each is hereby sentenced to suffer the penalty of reclusion perpetua;

(b) Eddie Abaya guilty beyond reasonable doubt of the crime of Robbery under Article 294, par. No. 5 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty of TWO (2) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS as minimum to SIX (6) YEARS, one (1) MONTH and ELEVEN (11) DAYS as maximum; and ordering:

1. Rodrigo Gandol and Nelson Pascua to pay jointly and solidarily Chita Galibuso the sum of P35,000.00 as actual and moral damages;

2. Eddie Abaya, Rodrigo Gandol and Nelson Pascua to pay jointly and solidarily the sum of P200.00, value of the necklace, to Annie Galao;

3. Eddie Abaya, Rodrigo Gandol and Nelson Pascua to pay jointly and solidarily the sum of P20,000.00 as exemplary damages to Chita Calibuso and Annie Galao;

4. And Eddie Abaya, Rodrigo Gandol and Nelson Pascua to pay jointly and solidarily the costs of the proceedings.” (pp. 76-77, Rollo)

The trial court summarized the facts as follows:

“The Hon. Provincial Fiscal of Ilocos Sur filed with this Court on October 8, 1984 an information charging Eddie Abaya, Rodrigo Gandol and Nelson Pascua of the crime of Robbery with Rape, committed as follows:

“That on or about the 29th days of August, 1984, in the municipality of Candon, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain, with the use of violence and intimidation against persons and also by means of force upon things, that is, by forcibly opening the door of the house of Mrs. Castora Quisora, and once inside, did then and there willfully, unlawfully and feloniously take, steal and carry away, without the consent of the owner thereof, one (1) lady’s necklace, valued at TWO HUNDREDE PESOS (P200.00) Philippine Currency, belonging to Annie S. Galao, and Hope cigarettes of undetermined amount belonging to the owner of the house, Castora Quisora, and by reason or on the occasion of the robbery and in

the furtherance of their conspiracy in order to accomplish their purpose, the said accused, conspiring together and mutually helping one another, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Chita Calibuso against her will and consent.”

Subsequently, an amended information was filed by 2nd Assistant Provincial Fiscal Isabelo de Gracia, quoted as follows:

“That on or about the 29th day of August, 1984, in the municipality of Candon, province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with gun and bladed instruments, conspiring together and mutually helping one another, with intent to gain, with the use of violence and intimidation against persons and also by means of force upon things, that is by forcibly opening the door of the house of Mrs. Castora Quisora and once inside, did then and there, willfully, unlawfully and feloniously take, steal and carry away, without the consent of the owner thereof, one (1) lady’s necklace, valued at TWO HUNDRED PESOS (P200.00), Philippine Currency, belonging to the owner of the house, Castora Quisora, and by reason and/or on the occasion of the robbery and in furtherance of their conspiracy in order to accomplish their purpose, the accused conspiring together and mutually helping one another by means of force, threat and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with one of the occupants of the house in the name of Chita Calibuso against her will and consent.”

When arraigned on the amended information, Eddie Abaya, Rodrigo Gandol and Nelson Pascua, duly assisted by counsel, pleaded not guilty. After having pleaded not guilty, they waived their right for a pre trial hearing. Consequently, trial proceeded.

The prosecution presented six witnesses, namely: Annie Galao, Dr. Ricardo Gacula, Helen Valdez, Chita Calibuso, Pat. Rlando Galicia and Police Sgt. Arnulfo ABaya. In addition to the testimonies of the six witnesses, prosecution offered in evidence several documents marked and identified as Exhibits A, B, C, D, E, F, G, H, and I.

Taken as a whole, the evidence adduced by the prosecution tends to show the following:

“Around 9:00 o’clock on the night of August 29, 1984 at Barangay Paypayad, Candon, Ilocos Sur, during a strong typhoon and heavy downpour of rain, Annie Galao, 16 years old, Chita Calibuso, 19 years old, Helen Valdez, 20 years old, and Lester Quisora, 5 years old, were in the house of their aunt, Mrs. Castora Quisora, lying. The doors and windows of the house were closed, no electric lights because of the strong wind, and the only light inside the house is a lighted kerosene lamp. While they were lying in their sala, the door was opened and, instantly, Eddie Abaya, Rodrigo Gandol and Nelson Pascua, who were all armed, entered into the house saying, ‘This is a hold up. We are NPA. Bring out your money.’ Shocked and afraid, Annie Galao, Helen Valdez, Chita Calibuso and Lester Quisora remained at the place where they were lying. Immediately, Eddie Abaya poked his gun at Helen Valdez. Nelson Pascua pointed his knife at Annie Galao. Rodrigo Gandol pointed his knife at Chita Calibuso, dragged her inside a room, forced her to lie on a bed and threatened her that if she shall not submit to his lustful desire, he will kill her including her companions. Chita Calibuso resisted but failed to overcome the strength of Rodrigo Gandol and because an injury has already been inflicted on her neck and became weak, besides being afraid, Rodrigo Gandol succeeded to remove her panty and, subsequently, inserted his penis into her vagina. Having satisfied his savage desire, Rodrigo Gandol went out from the room. Nelson Pascua entered into the room and took his turn in abusing Chita Calibuso who was already helpless, until Eddie Abaya told his companions to stop. Nelson Pascua went out from the room. Eddie Abaya asked the key of the store in the house. Afraid, Annie Galao handed it to him. Eddie Abaya opened the store and took cigarettes, liquor and goods. Rodrigo Gandol opened the cabinet inside the house and took a necklace worth P200.00, cartridges and a soldering iron. After taking the things they wanted to get, Eddie Abaya, Rodrigo Gandol and Nelson Pascua left the place. Surmising that the three men had already gone far,

they sought the assistance of their grandfather, reported what happened and, subsequently, went to their Barangay Captain. The following morning, Annie Galao, Helen Valdez and Chita Calibuso went to the Municipal Building of Candon, Ilocos Sur and reported to the police authorities what happened to them on the night of August 29, 1984 and, subsequently, to the Gacula Clinic where Chita Calibuso was physically examined by Dr. Ricardo Gacula, whose findings (Exhibit "D") are as follows:

"GACULA EMERGENCY HOSPITAL

Candon, Ilocos Sur,

TEL. NO. 280

RICARDO R. GACULA, M.D., EPCCS, FICS
SURGEON

LUZ G. GACULA, M.R.
OB-GYN
ANESTHESIOLOGIST

30 August 1984

This is to certify that Miss Chita Calibuso has been examined Internal vaginal examination and has been to have (sic) a deposit of seminal fluid and with vaginal abrasion and reddening.

(SGD) (Illegible)

M.D.

There is an Incised wound, superficial neck, Left middle. It will heal in 1 week.

(SGD) (Illegible)"

The defense of Rodrigo Gandol and Nelson Pascua is alibi. Rodrigo Gandol testified that on the night of August 29, 1984, he was sick and was inside their house at San Isidro, Candon, Ilocos Sur, lying. Nelson Pascua testified that he was at Barangay Tamurong, Candon, Ilocos Sur on the night of August 29, 1984.

The defense of Eddie Abaya, who was assisted by Trial Attorney Romeo Corrales of the Citizens Legal Assistance Office, during the trial is denial. He testified that on the night of August 29, 1984, while in the house of his brother at Paypayad, Candon, Ilocos Sur, Rodrigo Gandol and Nelson Pascua persuaded him to go and buy cigarette and liquor in the store of Mrs. Castora Quisora. He acceded and accompanied them. When they entered into the house, Rodrigo Gandol pulled Chita Calibuso inside a room. Later, Nelson also entered into the room. Noticing that Rodrigo Gandol and Nelson Pascua are committing abusive acts, he stopped them. Thereafter, they left the place. (pp. 69-72, Rollo)

From the aforementioned decision of the lower court, only Nelson Pascua appealed. In his appeal brief, he enumerates the following errors of the trial court:

"1. THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF APPELLANT AND HIS WITNESSES AS AGAINST THE DUBITABLE CREDIBILITY OF WITNESSES FOR THE PROSECUTION.

2. THE LOWER COURT ERRED IN CONSIDERING THE TESTIMONY OF ACCUSED EDDIE ABAYA AGAINST THE IDENTITY OF APPELLANT TO FORTIFY THE EVIDENCE FOR THE PROSECUTION." (p. 62, Rollo)

This appeal is bereft of merit.

The first assigned error urges this Court to look into the credibility and probative value of the evidence presented by the appellant and weigh the same in relation to that submitted by the prosecution. This the court may not do because it is not our function to analyze or weigh evidence all over again (*Banigued v. Court of Appeals*, 127 SCRA 596 [1986]). Moreover, it is settled jurisprudence that when the issue is credibility, the trial court's findings are entitled to the highest respect (*People v. Veloso*, 148 SCRA 60 [1987]; *People v. Acelajado*, 148 SCRA 142 [1987]; *People v. Egas*, 137 SCRA 188 [1985]; *People v. Tuscano*, 137 SCRA 203 [1985]), as it is the peculiar province of the trial court to resolve problems of credibility (*People v. Bania*, 134 SCRA [1985]). This Court held in the aforecited *Bania* case that:

“Unless it can be shown that the appraisal is tainted by ‘something impeaching by fair interpretation the resolution of the trial court on that question,’ this Court ‘will assume that [it] acted fairly, justly, and legally in the exercise of that question.’ The more common formulation is what was set forth in *People v. de Otero* by Justice Malcolm. Thus: ‘After everything is said and done, we come back, as we invariably do in case of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight or influence, which has been overlooked or the significance of which has been misinterpreted.’ (at p. 353)

We have gone carefully over the records of the case and found no strong and cogent reason sufficient to persuade us to depart from the established rule or to view this case as an exception to the rule.

The defense of the appellant is alibi. This defense is inherently weak (*People v. Parante, Jr.*, 143 SCRA 56 [1986]) and cannot prevail over positive identification made by witnesses (*People v. Cruz*, 142 SCRA 576 [1986]) who had no motive to falsely accuse the appellant. For alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. (*Ibid.*) It must affirmatively appear not only that the accused was at some other place at the time of the perpetration of the offense but also that the circumstances are such as logically to generate the conclusion that it was physically impossible for him to be present at the scene of the crime at the time of its commission (*People v. Atencio*, 156 SCRA 242 [1987]).

The appellant testified that on the day the crime was committed, he was asked to drive a jeep for and accompany one Eufigio Pascua to Tamurong, Candon, Ilocos Sur, to look for an embalmer; that his errand was finished at around 6 o'clock in the evening, and; that because of the storm, he did not go home but spent the night in the house of Marcos Mata, the barrio captain of Tamurong. (TSN, September 10, 1986, pp. 16-17; Records pp. 174-175)

To corroborate his testimony, however, only Eufigio Pascua was presented as witness. Eufigio Pascua, on the other hand, attested only to the fact that they went to Tamurong on the afternoon of that day and that they parted ways after their errand was accomplished at around 5 o'clock in the afternoon. (TSN, September 8, 1986, pp. 3 and 7; Records, pp. 149 and 153) There was no corroboration of the fact that the appellant spent the night over at Tamurong.

The barrios of Tamurong and Paypayad are both situated in Candon, Ilocos Sur. Being places near each other, they could not have been so far apart that the appellant may not be at Tamurong at 5 or 6 o'clock in the evening and then at Paypayad at 9 o'clock in the evening, even during stormy weather. In the recent case of *People v. Sotero Luardo, et al.*, (G.R. No. L-36788, November 24, 1988), this Court citing the case of *People v. Cruz*, *supra*, held that considering modern means of transportation, a distance of thirty (30) kilometers between the place where appellant claimed to be and where the crime was committed does not rule out the possibility of appellant being at the latter place when the crime was committed. In this case, it is not shown that the said barrios which are accessible to each other by modern means of transportation are so difficult to reach from one place to the other

that two or three hours would not suffice. More important, however, is that his alibi is not supported by credible evidence.

As to the second issue, we find no error in the trial court's appreciation of the testimony of Eddie Abaya, the appellant's co-accused. The admission made by Eddie Abaya were made in open court and he was cross-examined by no less than the fiscal and the appellant's counsel. His admissions merely corroborated the positive identification made by the prosecution witnesses and dovetailed with a lot of the details in the latter's testimonies. His testimony was not the key evidence in this case. He was identified by the very victim he abused. He was placed at the scene of the crime by the victims of the robbery. In the case of *People v. Guiapar*, (129 SCRA 539, 550 [1984]), this Court held:

“Appellee reiterates the lower court's proposition that Sapal Dadas' testimony, being one of a co-accused, is polluted and undeserving of credence. We modify this proposition. What is clear from our past decisions is that the testimony of a co-accused is subject to grave suspicion insofar as it may benefit such co-accused/witness (*People v. Canete*, 30491, 43 SCRA 14 [Jan. 21 1972]; *People v. Orzame*, L-17773, 17 SCRA 161 [May 19, 1966]; *U.S. v. Manabat*, No. 16717, 42 Phil. 569 [Dec. 22, 1921]). Where no such benefit is expected, such testimony may be afforded credence. In this latter case, what matters is the cogency or inherent probability of the testimony (*People v. Orzame*, *supra*) viewed with other competent corroborating testimonies (*U.S. v. Remegio*, No. 12822, 37 Phil. 599 [Feb. 11, 1918]).”

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the appealed judgment is hereby **AFFIRMED** in toto.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan, C.J., No part, counsel for accused. Appellant is the father of his special assistant.

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