

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
EDUARDO DEBERTO, JUNITO ARENA, MARCIAL AMADO AND
RODULFO ONSEPEGO, DEFENDANTS/APPELLANTS.**

G.R. No. 78358. January 23, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Marcial Amado, Rodulfo Onsepego and appellants Eduardo Deberto and Junito Arena were charged with the crime of robbery with rape in an information which, as amended, read:

"The undersigned Acting Provincial Fiscal accuses EDUARDO DEBERTO, JUNITO ARENA, MARCIAL AMADO, alias 'BOY' and RODULFO ONSEPEGO of the crime of ROBBERY WITH RAPE, committed as follows:

That in or about the evening of June 7, 1985, in Barangay Magsaysay, Municipality of Jabonga, Province of Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and a grenade, conspiring and confederating together and mutually helping one another, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away therefrom a gold necklace, seiko wrist watch, four (4) reams of cigarettes and cash money all valued at NINETEEN THOUSAND SEVEN HUNDRED FIFTY PESOS (P19,750.00), Philippine Currency, with intent to gain and against the will and consent of the owner, Gunigonda Monton, to her damage and prejudice in the aforesaid amount; that on the occasion of said robbery, accused Eduardo Deberto and Junito Arena, in accordance with and in pursuance to their conspiracy, with lewd design and by means of the same force, threats and intimidation, did then and there willfully, unlawfully and feloniously take turns in lying with and having carnal knowledge of one Pilar M. Serrano, a married woman, against her will.

That in the commission of the crime the following aggravating circumstances are present:

1. Dwelling;
2. Nighttime; and
3. Abuse of superior strength.

Contrary to law."^[1]

On arraignment, three (3) of the accused -- Deberto, Arena and Amado -- pleaded not guilty. The accused Onsepego was not arraigned since he was, and has remained, at large.

After trial, the court a quo rendered judgment, the dispositive portion of which read as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

- a) Eduardo Deberto and Junito Arena are found guilty beyond reasonable doubt of the crime of robbery with rape with the aggravating circumstances of abuse of superior strength, nighttime and in the dwelling of the

offended parties, and hereby sentences each one of them to reclusion perpetua with all the accessory penalties thereto; that each of them shall pay the amount of P25,000.00 to Pilar Serrano as moral damages, and to pay proportionate costs.

b) Finding Marcial Amado guilty beyond reasonable doubt of the crime of robbery in conspiracy with Eduardo Deberto and Junito Arena with the aggravating circumstances of abuse of superior strength and nighttime, without any mitigating circumstance, and hereby sentences him to an imprisonment of seventeen (17) years, four (4) months and one (1) day as minimum to twenty (20) years as maximum of reclusion temporal, and to pay the proportionate costs.

c) Ordering Eduardo Deberto, Junito Arena and Marcial Amado to pay Gunigonda Monton, jointly and severally, the amount of P500.00 as reparation for the cash and cost of the Mark Cigarettes; and the additional amount of P5,000.00 as moral damages.

SO ORDERED.[2]

Eduardo Deberto, Junito Arena and Marcial Amado appealed to this Court, but pending disposition, Amado and Deberto moved to withdraw their appeals. The Court directed the Citizens' Legal Assistance Office, counsel for appellants, to confirm the voluntariness of the withdrawal of appeal by Eduardo Deberto and Marcial Amado and to inform the Court of the results thereof. In a Compliance and Manifestation dated 13 April 1988, the Citizens' Legal Assistance Office stated that accused-appellant Marcial Amado had confirmed that he was voluntarily withdrawing his appeal in the instant case, while accused-appellant Eduardo Deberto changed his mind and decided to reinstate his appeal. The Court therefore granted only Marcial Amado's motion for withdrawal of appeal.[3]

Appellants' Brief assigns the following as errors allegedly committed by the trial court:

1. the court a quo erred in allowing the information dated 22 August 1985 to be amended in violation of the substantial rights of the accused and procedural due process.
2. the court a quo erred in convicting the accused despite the fact that at the time of their custodial investigation they were not apprised of their constitutional rights.
3. the court a quo erred in convicting the accused despite serious contradictions in the testimonies of the prosecution witnesses.

The facts which the evidence for the prosecution tended to establish, have been summarized in the Solicitor General's Brief in the following manner:

“In the evening of 7 June 1985, spouses Pilar M. Serrano and Fajardo Serrano, Jr. and their two sons, Dennis and Ronald, were in the house of Pilar's parents (Gonigonda and Pacifico Monton), taking their supper with the Montons as they usually do. In the house of the Montons is a store. While the occupants of the house were eating, a certain Angelito Ranin knocked on the door and bought 'Mark' cigarettes from the store. After Angelito Ranin left, two persons (whose faces were covered from the nose downward with their shirts, armed with short firearms and later identified as Eduardo Deberto and Junito Arena) barged into the house, announced a hold-up and ordered everybody to lie face down, which all the occupants of the house did.

In this hold-up, another man (not wearing a mask and later identified as Marcial Amado) stood at the main door while another man who was not seen but whose voice could be heard was outside the kitchen door.

During the hold-up, Deberto demanded money from Gonigonda. Gonigonda replied that they have no money, so Deberto forced her to go with him upstairs to look for money, while Arena remained at the store guarding the rest of the family with his gun. After going upstairs Deberto ransacked the store and took some cigarettes, some cash, a gold necklace and a Seiko wrist watch.

Then the hold-uppers herded the victims outside of the house and threatened to kill all of them if they could not give the money. Consequently, Fajardo told them that he will get his wallet from his house (located 30 meters more or less from the house of the Montons), but Arena insisted that Pilar should get the wallet instead.

With Arena pointing a gun at her, Pilar went to their house. But while looking for the wallet of her husband, Arena forced Pilar to lie down on the floor. Pilar resisted. So, Arena, with a gun in hand, pushed Pilar to the floor. Arena instructed Pilar to take off her panties, but, she refused. As a result, Arena forcibly lowered down her underwear, placed himself on top of her and succeeded in having sexual intercourse with her. But, during coition the mask covering Arena's face was removed giving Pilar an occasion to view his uncovered face.

After the rape in the house of the Serranos; Pilar was made to join the rest of the group in the house of the Montons. In the house of the Montons, Deberto forced Pilar to go with him to the upper floor of her parents' house, ostensibly to look for money. While upstairs, Deberto opened a wardrobe with the key earlier taken from Pilar's mother and searched the contents thereof. However, while doing this, his mask slipped down, thus revealing his bare face to Pilar. After ransacking the wardrobe and finding no money therein, Deberto ordered Pilar to lie down on a 'sleeprite bed.' At first, Pilar refused; but Deberto pushed her with his gun. Then Deberto took off her panties and managed to ravish her.

After Deberto satisfied his sexual desire, Pilar returned downstairs, as directed, where the rest of her family and parents were herded.

Eventually, the malefactors left, telling the victims to prepare P5,000.00 as they will return the following week. The malefactors also warned the victims not to report the incident to the police authorities, otherwise their necks will be cut off.”[4] (Citations omitted)

After the culprits left, Pilar told her husband Fajardo that she had been sexually abused by appellants Arena and Deberto. The next morning at around 8:30 A.M., Fajardo brought Pilar to her sister Dr.Nilda Monton-Lozada, a private practicing physician for a dilation and curettage examination or to have the uterus cleaned of any foreign matter. Dr. Lozada found sperm cells in the scrapings from Pilar's uterus which she personally and immediately brought to the Butuan Maternity and General Hospital and presented the specimens to Michaela Rosales Gabriel, a Medical Technologist at that hospital for examination.[5] Michaela, upon microscopic examination, found that some of the sperm cells were still alive and they appeared to have been ejaculated within the preceding 12-hours into Pilar's vaginal canal.[6]

The appellants offered a radically different version of the facts. Appellants denied having committed the crime charged and claimed that it was in fact five (5) men armed with armalites and pistols and dressed in military garb who had committed the robbery with rape. They narrated that on the evening of 7 June 1985, appellants took a jeepney bound for Butuan City but that the jeep instead proceeded to Jabonga. When the jeep reached Barangay Magsaysay, Jabonga, the five (5) armed men alighted and asked a man named Lito to buy cigarettes from a nearby store. The armed men followed Lito and there shouted to the occupants of the store that they were being held up; at the same time, appellants said the five (5) armed men instructed them and the other passengers of the jeepney to get off the jeep and stand in the shadow of a nearby tree. The armed men brought the six (6) occupants of the house with a store to the front yard. One of the armed men, a tall one, brought one of the victims -- a young woman who turned out to be Pilar M. Serrano -- inside the house for about ten (10) minutes. Another of the armed men later brought the same woman to a house not far from the house-cum-store, and that there they stayed for sometime. Before leaving the Montons house with a store, the armed men told the occupants to prepare P5,000.00 for they would come back for the money. In the meantime, one of the armed men gave the appellants and co-accused Amado P500.00 each, and the Seiko wrist watch and gold necklace to appellant Deberto. Later, appellant Deberto sold the gold necklace for P150.00 and the wrist watch for P30.00 to someone and used the proceeds to pay for their trip to Moncayo, Davao del Norte.

Turning to the first assignment of error, appellants contend that the trial court had grievously erred in allowing amendment of the information after the appellants had pleaded to the charge, the amendment having been made in violation of appellants' right to be informed of the charges against them. In their Brief, appellants[7] counsel make the following contentions:

"x x x Based on the original information dated August 22, 1985 the three accused pleaded not guilty to the charge. However, in a motion dated October 2, 1985, Assistant Provincial Fiscal Orlando F. Doyon moved for the amendment of the Information in order to delete the name of Julito Arena in the body of the information and stated that the amendment was, 'merely of form and does not affect the substantial rights of the accused x x x.' Attached to the Motion was the proposed Amended Information. On October 25, 1985 the trial court allowed the Information to be amended. At that time, the counsel de parte, Atty. Sinforoso Grana for the accused Eduardo Deberto and Junito Arena and the counsel de oficio, Eduardo Casals for the accused Marcial Amado offered no objection. However, the amended Information dated October 11, 1985 which was allowed by the court was not the same amended information dated October 3, 1985 attached to Motion dated October 2, 1985 which was served on both counsels for the accused. Clearly, the two counsels relied that the amended Information allowed by the trial court was that dated October 3, 1985, which the prosecution alleged that the amendment would be formal and that Junito Arena's name was to be deleted. But instead, a different amended Information dated October 11, 1985 was submitted to the trial court. Certainly, the subterfuge employed by the prosecution is reprehensible and in total violation of the Rules of Court which provides that:

'Rule 15, Sec. 4. Notice -- Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion. x x x'

The amended Information dated October 25, 1985 submitted by the prosecution and allowed by Court was without proper notice because the Motion dated October 2, 1985 did not allege said amended Information. The counsels de parte and de oficio were obviously not aware that the amended Information dated October 25, 1985 allowed by the trial court was not the same amended Information served upon them for their perusal and objection. x x x.[8]

It appears to the Court, however, that either the above quoted argument is an unusually inept piece of pleading on the part of the attorneys of the Citizens' Legal Assistance Officer who signed the Brief for the Accused-Appellants, or that those Citizens' Legal Assistance Office attorneys have not been completely honest and forthright with the Supreme Court in making the above argument. For, as the Solicitor General points out, the Citizens' Legal Assistance Office attorneys have failed to make clear that there was only one amended information which was proposed by Assistant Provincial Fiscal Orlando F. Doyon in his Motion dated 2 October 1985[9] which proposed amendments consisted of: (a) correction of the name of Julito Arena so as to read "Junito Arena;" and (b) addition of the following aggravating circumstances: (1) dwelling; (2) nighttime; and (3) abuse of superior strength. Moreover, the Citizens' Legal Assistance Office attorneys failed to point out that after the trial court admitted the amended information on 11 October 1985, the appellants were re-arraigned on 25 October 1985,[10] and with the assistance of their respective counsel (Eduardo Deberto and Junito Arena assisted by their counsel de parte, Atty. Sinforoso Grana; Marcial Amado assisted by Atty. Eduardo S. Casals, Citizens' Legal Assistance Office, Butuan City, as counsel de oficio) entered a plea of not guilty to the charge set out in the amended information.

We are accordingly unable to see any deprivation of appellants of their right to be informed of the charge made against them. We should note, further, that the defense counsel who appeared before the trial court had themselves obviously not seen any adverse effect upon the rights of their respective clients; for neither of the two (2) defense lawyers objected to the proceedings prior to and at re-arraignment. It is certainly far too late to raise such a question before this Court at this time. Finally, we should note that the amendments to the original information

were not substantial in character. The correction of the spelling of the name of Junito Arena was certainly an amendment of form. The aggravating circumstances alleged in the amended information were generic aggravating circumstances; they could not serve to qualify the original offense charged into some other offense. And it is, of course, settled doctrine that generic aggravating circumstances duly proven in the course of trial maybe taken into account by the trial court in determining the proper imposable penalty although such circumstances were not alleged in the information.[11]

So far as we can understand it, the principal argument of appellants in their second assignment of error relates to their identification by the rape victim, Pilar Serrano, and other members of the household who were there in the Montons house on 7 June 1985. In their Brief, appellants argue as follows:

"x x x The victims were just led by the police directly to the three suspects as if they were really guilty. The fact is that before that day and even during the preliminary investigation, the victims could not positively identify the malefactors. Close scrutiny of the victims' affidavits to the police and their actuation during the preliminary investigation show that they could not even give the most general descriptions of the malefactors. Instead of having made to stand in a police line-up in accordance with the normal police procedure, the police directly led the victims to the three detained suspects and let them identified same suspects. The use of a line-up for identifi-cation may indeed be a mere preparatory step in the gathering of state's evidence and the practice in itself said to be not a violation of the accused's right against self-incriminations. But in the case at bar, there is a great possibility that the police used improper suggestion which contributed to erroneous identification. The number of cases where improper police procedures have resulted in misidentification of persons and conviction of innocent persons have become so widespread that this practice must be properly used. x x x"[12] (Emphasis supplied)

We note, in the first place, that there is here no extrajudicial confession or other statement made by any of the accused, admission of which is being objected to by appellants upon the ground that such confession or statement had been taken without accused being assisted by counsel. In the second place, appellants do not assert that their identities or guilt had been merely suggested, without objective basis, by the police to the prosecution witnesses. All that appellants suggest is that "in the case at bar, there is a great possibility that the police used improper suggestion which contributed to erroneous identification." It should be stressed, however, that the three (3) prosecution witnesses -- i.e., Pilar Serrano (who had been sexually ravished), Fajardo Serrano (Pilar's husband), and Gonigonda Monton (Pilar's mother) -- were physically in a position to have seen the faces and persons of the men who robbed their house on 7 June 1985, considering that the dining room of the house of the Montons was lighted with a 20-watt flourescent lamp; the kitchen was lighted with a 50-watt bulb; a 25-watt bulb lighted the outside or yard; while a 20-watt flourescent lamp lighted the second floor of the Montons house. The room where Pilar was sexually abused by Deberto was lighted by a kerosene lamp and illuminated by the flourescent lamp located upstairs.[13] While the room in the nearby house where she was raped by Junito Arena had no lamp, the same was illuminated by a light right outside the door of that room.[14] Further, it should not be overlooked that co-accused Marcial Amado, who was pointed to as the chief or "commander" of the accused, did not try to mask or cover his face at all while the robbery was in progress; and the masks worn by Deberto and Arena covered only part of their faces, i.e., from the nose downward. Arena's mask slipping off his face in his effort to get on top of the struggling Pilar before penetrating her female part. Deberto's mask, too, slipped down as he went about ransacking a wardrobe in a room in the Montons house, searching for valuables and items worth taking away.

Lastly, we must note that the appellants were actually identified by the prosecution witnesses twice, outside the courtroom of the trial court. The decision of the trial court makes this clear:

"On the robbery angle of this case, the testimonies of prosecution's witnesses, namely, Pilar Serrano, Fajardo Serrano, Jr., and Gunigonda Monton positively pointed to the accused as the persons who perpetrated the

robbery in Gunigonda's house although they did not know the names of the accused at that time. They later pointed each one of the accused who were then suspects in the investigation at the Chief of Police Office in Jabonga, Agusan del Norte and, later, during the preliminary investigation on July 11, 1985 conducted by Judge Quirico M. Battad, Jr. of the Municipal Circuit Trial Court of Jabonga ? Kitcharao, Agusan del Norte (pp. 17-27, Records) upon which the order for the arrest of the accused was issued by Judge Battad, Jr. on the same date. Although the accused waived their right to present evidence during the second stage of the preliminary investigation (Order of Judge Battad, Jr. dated July 25, 1985, p. 38, Records) the same witnesses again pointed to and identified the accused in this court during the trial as the perpetrators of the crime.”[15] (Emphases supplied)

In their third assignment of error, appellants assert that the testimonies of the prosecution witnesses were flawed by serious contradictions.

Appellants cite the following as an inconsistency in the testimony of Pilar Serrano. Pilar on direct examination before the trial court said:

“Q: The one who went up with your mother, can you recognize the man if you can see him again.

A: Yes, sir.

Q: The other man who was below guarding you, your husband and children, if he is here in the courtroom, please point him out?

A: (Witness pointing to a person in the courtroom who when asked for his name answered that he is Junito Arena.)”[16]

The statement given by Pilar earlier at the police station of the Municipality of Jabonga, as translated into English, said in part:

“Q: Can you identify them?

A: No, sir, because some of them covered their faces aside from that they are all strangers.”[17]

The contradiction, if any, is however, more apparent than real. On cross-examination, Pilar testified in part as follows:

“Q: But are you also sure that these two were wearing mask when they entered the house.

A: Yes, sir.

Q: As a matter of fact you cannot identify them?

A: I don't know their names but their faces I can identify them.”[18] (Emphasis supplied)

Evidently, when Pilar indicated at the police station of Jabonga that she could not identify the robbers and rapists, she meant that she did not know their names or that she did not see the faces of all the malefactors. She did subsequently make clear that she would recognize the faces of the two (2) men who had covered the lower part of their faces (but whose coverings or masks later slipped off) if she saw them again although she did not know their names.

Appellants also claim that the testimony of Pilar in respect of the sexual abuse inflicted upon her was similarly flawed. Appellants point out that her sworn statement at the police station contained the following questions and answers:

"10. Q: What happened next?

A: After I lied down, he placed himself on top of me and inserted his penis inside my vagina thereafter began to move his body with a pushed and pulled motion.

Q: How many times did he inserted his penis to your vagina?

A: Only one time.”[19] (Underscoring supplied)

On the witness stand, however, when she was asked “[H]ow many time did the penis enter [her] vagina?” Pilar answered, “[I]t cannot be counted but he made it one round.”

We do not believe that the above inconsistencies, if that is what they were, substantially affect the credibility of Pilar Serrano as a witness. It is too well-settled to require much documentation that testimonial inconsistencies relating to minor matters do not affect the credit worthiness of the witness testifying and that minor inconsistencies tend to show that the witnesses were not coached or rehearsed.[20] In any case, the alleged inconsistencies are entirely ineffectual to overturn the finding of the trial court that Pilar Serrano had in fact been raped by appellants Arena and Deberto and that the appellants, along with Marcial Amado, had taken valuable items by force from the victims.

The trial court found the testimonies of the prosecution witness to be

"x x x worthy of credit, reliable and credible, natural, reasonable and probable and, therefore, believable (People v. Macatongay, et al., 107 Phil 188; Tuason v. Luzon Stevedoring Co., 111 Phil. 789; People v. Alvarez, 55 SCRA 81 and People v. Santos, 94 SCRA 87)."[21]

Upon the other hand, the trial court found the appellants' version of the facts to be deeply flawed and non-credible. The appellants' story was essentially that the actual malefactors, five (5) armed men in military dress, compelled the appellants to be spectators of the crime charged and that after the robbery, the five (5) armed men; in a spasm of inexplicable generosity; rewarded the spectators with P500.00 each, and gave one of them (Deberto) in addition a Seiko wrist watch and a gold necklace. We agree with the trial court that this story is “full of holes and incredible,” and so contrary to ordinary human experience as to seem an almost pathetic invention:

“The version of the accused that it was the group of the armed men who, at gun point, robbed the victims is full of holes and incredible. It could not be possible that the said armed men would commit the robbery themselves and, later on, give P500.00 each to Junito Arena, Marcial Amado and Eduardo Deberto, the latter given further the seiko wrist watch and the gold necklace. If it is true that the three accused were given by the armed men P500.00 each, there is no necessity of selling the gold necklace for P150.00 and the seiko wrist watch for only P30.00 the following day as the accused had already money to spend. The P500.00 each that the three accused allegedly received could have been sufficient enough for Marcial Amado to go home to Butuan City, and for Eduardo Deberto and Junito Arena to spend in going to Diwalwal, Moncayo, Davao del Norte. Also, it would be inconceivable for these armed men who were in uniform and believed to be rebels (although there was no evidence to this effect) to rob innocent civilians x x x and give money to persons unknown to them as what happened in this case according to the version of the accused. For whatever money may be raised by the armed men will be used to support and enhance their cause and not to be given as charity to persons not known to them.”

We are, in short, unable to see any basis or reason for overturning the conclusions of fact of the trial court.

WHEREFORE, for all the foregoing, the Court hereby AFFIRMS the Decision of the trial court dated 12 January 1987, but modifies the award of indemnity or moral damages due to Pilar Serrano from P25,000.00 to P30,000.00 due from each of the two (2) -- Eduardo Deberto and Junito Arena -- convicted of rape, or a total indemnity of P60,000.00. Costs against appellants.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Rollo, pp. 17-18.

[2] Id., pp. 33-34.

[3] Id., 67.

[4] Id., pp. 74-80.

[5] TSN, 18 November 1985, pp. 5-6; 10-11.

[6] Rollo, p. 19-20; TSN, 15 January 1986, pp. 5-7.

[7] Appellants' Brief, pp. 8-9.

[8] Appellants' Brief, pp. 10-11.

[9] Record of Criminal Case No. 2698, Regional Trial Court of Agusan del Norte and Butuan City, p. 49.

[10] Order of Trial Court, dated 25 October 1985, *ibid.*, pp 56-57.

[11] E., *People v. Martinez Godinez*, 106 Phil. 597 (1959); *Almeda v. Villaluz*, 66 SCRA 38 (1975); *People v. Butler*, 120 SCRA 281 (1983); *People v. Estillore*, 141 SCRA 456 (1986).

[12] Appellants' Brief, p. 14.

[13] TSN, 18 November 1985, pp. 48-52.

[14] Id., p. 20.

[15] Trial Court Decision, p. 15.

[16] Rollo, p. 90.

[17] Id., p. 91

[18] Id.

[19] Record, p. 5.

[20] *People v. De las Piñas*, 141 SCRA 379 (1986); *People v. Polo*, 147 SCRA 551 (1987).

[21] Trial Court Decision, p. 15.

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