

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID CINCO, FELICITO TUS-CANO, VIRGILIO NUIZ, @ ROGE-LIO NUIZ, LORETO CASTRO @ “OLYER” CASTRO, ARMANDO CINCO, TEOFILO (LULU) ...

G.R. No. 79497. February 27, 1991

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is an appeal from the decision dated December 16, 1986, in Criminal Case No. BN-2259 of the Regional Trial Court, Branch XV, Palo, Leyte, which found the appellants, David Cinco, Rogelio Nuiz, alias Virgilio, Teofilo Tuscano, alias Lulu, and Felicito Tuscano, alias Etok, guilty beyond reasonable doubt of the complex crime of robbery in band with multiple rape and physical injuries and sentenced them to suffer the death penalty.

The facts, as found by the trial court, are as follows:

On April 14, 1985, at about 9:00 o'clock in the evening the house of Marianito Minok at Brgy. Hitomnog, Dagami, Leyte, was robbed by the accused David Cinco, Felicito Tuscano, Rogelio Nuiz alias 'Virgilio Nuiz,' Teofilo Tuscano alias 'Lulu,' Loreto Castro alias 'Olyer Castro,' Maning Ballanad, Willing Disabelle, Erning Tuscano and their unidentified companions in the total amount of P1,885.00 belonging to Marianito Minok, consisting of P500.00 cash, one-half sack of rice valued at P165.00; a 30 kilo pig worth P600.00; wrist watch worth P500.00 and four (4) long bolos worth P120.00; that by reason of or on the occasion of the above-mentioned robbery the two accused particularly Rogelio Nuiz and Felicito Tuscano and their companions manhandled Jerico Buhalog, Edmundo Minok and Rogelio Caseres who all sustained the following injuries:

- Medical Report (Exhibit 'B') for Edmundo Minok with the following finds:
 - Hematoma with abrasion lower jaw, left measuring 1 x 1 x 3.5 AML
 - Tenderness on the above area
 - Tenderness anterior portion of the neck
 - Tenderness right chest

It is estimated that the above injury will heal in 4 to 6 days.

- Medico Legal Report (Exhibit 'C') for Jerico Buhalog with the following findings:
 - Abrasion lower eyelid measuring 1.5 x 3 cms. AML
 - Abrasion, left mandibular region
 - Hematoma, right mandibular region, measuring 3 cms.
 - Tenderness, left iliac region

It is estimated that the above injuries will heal in 5 to 7 days.

- Medico Legal Report (Exhibit 'D') for Rogelio Caseres with the following findings:

- Swelling, right lower jaw measuring 4 cm. in length
- Hematoma, left auricular region, measuring 2 x 2 x 8 cms. AML
- Abrasions with hematoma left upper quadrant of the abdomen measuring 4 cms. in length
- Tenderness on the area affected.

It is estimated that the above injuries will heal in 5 to 7 days.

The three boys, Jerico Buhalog, Edmundo Minok, and Rogelio Caseres together with Gloria Cinco were brought by the accused to a forested area, where they beat up the three boys. About two kilometers from the house of Gloria Cinco, the three boys were separated from Gloria Cinco who was brought to a grassy area where she was beaten, stripped of her clothes and gang-raped by the six accused David Cinco, Felicito, Tuscanco, Rogelio Nuiz, Teofilo Tuscano, Maning Ballanad, and Willing Disabelle who took turns in sexually assaulting her.[*]

Dr. Angel Cordero, Captain MC (PC), Chief & Medico-Legal Officer [who] conducted an examination on Gloria Cinco on April 16, 1985 at 2:30 o'clock in the afternoon and issued a Medico Legal Report (Exhibit "1") confirming that she was raped and that the hematoma on her right forearm was inflicted at about the time of the multiple rape.

The defense of the accused Teofilo Tuscano, Armando Cinco, David Cinco, and Felicito Tuscano was an alibi. They alleged that on April 14, 1985, they were separating the meat from the coconut shell from 6:00 o'clock in the morning to 12:00 midnight at the copra drier of Teofilo Tuscano in Brgy. Maca-alang, Dagami, Leyte, and all through the next day April 15, 1987. On April 16, 1985, they smoked the coconut meat until April 18, 1985 when the copra was sold.

Brgy. Hitomnog, the scene of the crime is about two kilometers from Brgy. Macaalang.

To support their alibi, they presented Francisco Justo, an 81 year old widower who testified that on April 15, 1985, he was also in the house of Teofilo Tuscano to help the four accused Teofilo Tuscano, David Cinco, Armando Cinco, and Felicito Tuscano extract coconut meat from their shells up to 12:00 o'clock midnight.

The alibi of Rogelio Nuiz was that on April 14, 1985, he was in Tacloban City in the house of his cousin Imelda Sudario because the birthday of Imelda's child was on April 15, 1985. His alibi was not supported by Imelda Sudario or anyone else.

Loreto Castro's alibi was that on April 14, 1985, he was at home the whole night at Brgy. Hitomnog, Dagami, Leyte. He admitted that his house is not far from the house of Gloria Cinco. It is midway between Brgy. Macaalang and Brgy. Hitomnog. The alibi of Lorete Castro was not corroborated by anyone.

The Police Logbook of Dagami, Leyte was presented in Court by the defense thru Pat. Diorico Timonera to show that in Entry No. 417 dated April 15, 1985, at 9:00 o'clock in the morning, Marianito Minok, husband of Gloria Cinco, reported to the police the information given to him by his wife, Gloria Cinco, in the morning of April 15, 1985, that his house was robbed by Lulu Tuscano, Armando Cinco, David Cinco, Felicito Tuscano, Rogelio Nuiz, and six (6) other unidentified persons allegedly with firearms. The items taken were cash of P500.00; wrist watch worth P600.00; four long bolos valued at P120.00. His children were maltreated by the robbers. His two sons and his wife were kidnapped by the robbers. There was no mention of rape.

On the other hand, Marianito Minok testified that when the incident happened he was not at home because he was out pasturing his carabao. He reported to the police in the morning of April 15, 1985, what his wife told him about the robbery but his wife was not able to reveal to him that she was gang-raped because she was still nervous.

After he came home from the police station at about 1:00 o'clock in the afternoon of April 15, 1985, his wife related to him that she was also raped by the six accused the night before, Minok immediately went back to the

police station in Dagami, to report the rape against his wife but he did not know if his additional report was entered in the Police Log Book. He was however, advised by Pat. Perido to have his wife examined by a doctor. She was examined by Dr. Angel A. Cordero on April 16, 1985 (Exh. "A")." (pp. 29-33, Rollo.)

On September 10, 1985, the Provincial Fiscal Josephine K. Bayona, filed the following information against nine accused:

"The undersigned Provincial Fiscal accuses DAVID CINCO, FELICITO TUSCANO, ROGELIO NUIZ, LORETO CASTRO, alias 'Olyer Castro', ARMANDO CINCO, LULU TUSCANO (at large)[*] MANING BALLANAD (at large), WILLING DISABELLE (at large), and ERNING TUSCANO (at large), of the crime of Robbery in Band with Multiple Rape and Physical Injuries, committed as follows:

"That on or about the 14th day of April, 1985, in the Municipality of Dagami, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and acting in concert with one another, armed with long and short firearms and bolos which they provided themselves for the purpose, with deliberate intent to gain and by means of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously take, steal, rob and carry away the following, to wit:

Cash

P500.00

One-half sack rice.....

165.00

30 kilos pig.....

600.00

wrist watch.....

500.00

four (4) long bolos.....

120.00

all in the total amount of One Thousand Eight Hundred Eighty-Five Pesos (P1,885.00), belonging to Marianito Minok, against his will and without his consent, and to his damage and prejudice in the aforementioned amount of P1,885; and that by reason of or on the occasion of the above robbery, the above-named accused inflicted upon Marianito Minok physical injuries which required medical attendance from five (5) to seven (7) days and incapacitated him from performing his customary labor for the same period of time.

"That on the occasion of said robbery, said accused, conspiring, confederating, and acting in concert with one another, with lewd designs and by means of force, violence and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of one Gloria Cinco, against her will and consent." (pp. 16-17,

Rollo.)

Only six, namely: David Cinco, Rogelio Nuiz, Teofilo (Lulu) Tuscano, Felicito Tuscano, Loreto Castro and Armando Cinco were brought to trial as the others were still at large. Armando Cinco died during pendency of the case.

On December 16, 1986, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the four accused, David Cinco, Rogelio Nuiz alias 'Virgilio Nuiz,' Teofilo Tuscano alias 'Lulu' and Felicito Tuscano alias 'Etoc' guilty beyond reasonable doubt of the crime of Robbery with Multiple Rape and the Court hereby sentences them to the penalty of DEATH to indemnify Gloria Cinco jointly and solidarily in the sum of P20,000.00.

"Judgment is also rendered finding the accused, Loreto Castro, alias 'Olyer Castro,' guilty beyond reasonable doubt of the Crime of Robbery in Band and hereby sentences said accused to an indeterminate penalty of ONE (1) YEAR, SEVEN (7) MONTHS AND ELEVEN (11) DAYS of Prision Correccional as Minimum to SIX (6) YEARS, ONE (1) MONTH, AND ELEVEN (11) DAYS of Prision Mayor, as Maximum, to indemnify with David Cinco, Rogelio Nuiz, Teofilo Tuscano, and Felicito Tuscano, jointly and severally, the owner of the property, Marianito Minok, in the amount of P1,885.00 without subsidiary imprisonment in case of insolvency, and each to pay one-fifth of the costs.

"It appearing that the accused David Cinco and Rogelio Nuiz have been detained since April 15, 1985, Loreto Castro and Felicito Tuscano have been detained since June 6, 1985; and Teofilo Tuscano has been detained since August 3, 1985; when they were arrested by the police authorities of Dagami, Leyte, they should be credited with full time of their preventive imprisonment if the record shows that they have signed an agreement to abide by the same rules and regulations imposed upon convicted prisoners; otherwise, they should be credited with 4/5 only of such preventive custody." (pp. 35-36, Rollo.)

Only David Cinco, Rogelio Nuiz, Teofilo Tuscano, and Felicito Tuscano, who were meted the death penalty, have appealed. They allege that the trial court erred: in giving credence to the testimony of the complainant Gloria Cinco: in not giving credence to the testimony of the defense witness Francisco Justo: and in finding them guilty of robbery with multiple rape and physical injuries.

The appellants allege in their first assignment of error that the lower court erred in giving full credit to Gloria Cinco's identification of them because she could not have recognized her rapists in the darkness of the grassy field where she was raped at around ten o'clock at night. Furthermore, it was highly unnatural that after Maning Ballanad had consummated his lustful attack against her, she did not get up and run, but instead lay inert on the ground until his five companions had finished taking their turns in abusing her without further resistance on her part.

The Solicitor General pointed out, however, that the night of April 14, 1985 was a moonlit night, hence, there was ample illumination in the grassy field. It was easy for the complainant to recognize her attackers for they made no attempt to conceal their identities from her, and in the ordinary course of things, a rape victim would strive hard to recognize and identify her rapists.

As for the fact that after Ballanad had raped her. Gloria did not attempt anymore to fight off, or escape from, her attackers. Gloria explained that she was already too weak to run after struggling hard to free herself from Ballanad who hit her with blows to quiet her.

Gloria's credibility cannot be doubted, not only because her testimony his sufficiently corroborated by medical findings, but because she had absolutely no motive to falsely implicate the accused (People vs. Valdez, 150 SCRA 405). A married woman with a husband and teenage son would not publicly admit that she had been criminally

abused by six men unless that was the truth. (People vs. Gan, 46 SCRA 667.)

The appellants' second assignment of error is likewise devoid of merit. Their alibis are unconvincing. David Cinco, Teofilo Tuscano and Felicito Tuscano alleged that on April 14, 1985, they were in Barangay Macaalang, Dagami, Leyte, making copra from morning until midnight. However, they admitted that Brgy. Macaalang and Brgy. Hitomnog (where the crimes were committed) are connected to each other by a foot path. No evidence was presented to show that it was impossible for them to reach Brgy. Hitomnog from Brgy. Macaalang which is only two kilometers distant, considering that both are barangays of the municipality of Dagami. Rogelio Nuiz, on the other hand, claimed that on April 14, he was in Tacloban, Leyte and returned to Brgy. Hitomnog Dagami, Leyte on April 15, 1985, but his alibi was uncorroborated by reliable evidence.

Alibi is the weakest defense an accused can concoct. "In order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission" (People vs. Sato, 163 SCRA 607). In the face of positive identification of the accused by eyewitnesses, an alibi crumbles like a sand fortress.

The appellants' allegation that the trial court erred in finding them guilty of robbery, despite the fact that none of the prosecution witnesses saw them enter and cart away things from the house of Marianito Minok is not well taken, for even if they did not enter Minok's house during the robbery they were positively identified as part of the group which entered and robbed the house. Being co-conspirators in the robbery, they stand equally guilty with those who actually committed it. "In robbery by a band, all the members of the band are presumed to be conspirators or co-principals in the assaults committed by the band, unless he who claims to be a non-conspirator proves that he attempted to prevent the assault." (People vs. Bazar, 162 SCRA 609.)

The guilt of the appellants was proven beyond reasonable doubt. The Court affirms their conviction for the crime of robbery in band with multiple rape. Under Article 294 of the Revised Penal Code, as amended by P.D. No. 77, "when the robbery accompanied with rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death." However, since the death penalty is no longer imposable under the 1987 Constitution, the Solicitor General correctly recommended that the death penalty imposed upon the appellants by the trial court should be commuted to reclusion perpetua.

WHEREFORE, the appealed decision is hereby affirmed with modification as to the penalty imposable on the appellants. David Cinco, Rogelio Nuiz alias Virgilio Nuiz, Teofilo Tuscano alias "Lulu," and Felicito Tuscano alias "Etoc" which is reduced to reclusion perpetua but each of the individual appellants is ordered to pay damages in the increased amount of Thirty Thousand Pesos (P30,000), or the total sum of P120,000 to the aggrieved woman, Gloria Cinco. Costs against the appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

[*] Prosecution witness Jerico Bulahog testified that Armando Cinco was also in the group that brought Gloria to the grassy place.

[*] Teofilo (Lulu) Tuscano was later arrested and tried.

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