

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE APAWAN AND RUBEN SAUSE, ACCUSED-APPELLANTS.

G.R. No. 85329. August 16, 1994

Ponente: PUNO, J.

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PUNO, J.:

In an Information dated December 3, 1985, accused-appellants EDDIE APAWAN and RUBEN SAUSE were charged with the crime of ROBBERY WITH RAPE,[1] allegedly committed as follows:

"That on or about the 19th of September, 1985 at about 10:00 o'clock in the evening thereof, at Sitio Crossing Sulit, Barangay Sulit, Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, in (the) company with (sic) three (3) other persons whose names, identities and whereabouts are unknown, conspiring and confederating together and mutually helping one another, with deliberate intent, intent of (sic) gain, by means of force, violence and intimidation, without the consent and against the will of the owner thereof, did then and there willfully, unlawfully and feloniously take and carry away the following:

1.

One (1) unit cassette (valued at)

P 40.00

2.

One (1) wrist (S)eiko watch xxx

500.00

3.

One (1) leather bag.....

30.00

4.

One (1) blanket.....

200.00

5.

One-half (1/2) (sack) clean rice.....

275.00

6.

Assorted personal belongings.....

3,000.00

7.

Groceries.....

200.00

8.

Cash money.....

600.00

TOTAL –

P 5,205.00

to the damage and prejudice of Mrs. Fe Palmon in the aforementioned amount of Five Thousand Two Hundred Five (P5,205.00) pesos; that after taking the above-enumerated items and on the occasion of said robbery, accused Eddie Apawan held Fe Palmon by the hand and forcibly pulled her towards the kitchen of the house and by means of threat, force, violence and intimidation, and against her will, did then and there willfully, unlawfully and feloniously have carnal knowledge with her.

"CONTRARY TO LAW."

When arraigned, Eddie Apawan and Ruben Sause pleaded not guilty.[2] They underwent trial.

The records reveal that FE PALMON is a married woman and a mother of five children. She resides with her family in Crossing Sulit, Polomolok, South Cotabato.

In the evening of September 19, 1985, Fe was at home looking after her children. That night, her mother, Candelaria Junsay, and her younger brother's wife, Seremia Junsay, stayed with her as her husband and younger brother were in Banga to harvest palay.[3]

At around 10:00 P.M., Seremia heard someone forcing to open the door leading to the kitchen. She went to the kitchen and saw that the kitchen door was being opened with a knife. Seremia hurriedly woke up Fe and Candelaria. They heard voices downstairs. The intruders were saying: "We are members of the walay sapatos, abrehe kami." Someone said further: "Allow us to go upstairs because we want to eat." The intruders commanded the women to switch off the lights.[4] Fe followed.

Two (2) of the intruders, later identified as accused Ruben Sause and Eddie Apawan, entered the kitchen. Ruben was holding a flashlight.[5] The beam coming from the flashlight illuminated the area, allowing Fe, Candelaria, and Seremia to see the faces of Ruben and Eddie. Ruben's head was shaved, while Eddie, who was in fatigue uniform, had long hair. Armed with a knife,[6] Eddie immediately grabbed Fe, poked the knife at her neck and demanded fifty thousand pesos (P50,000.00) from her. When she denied having that sum of money, Eddie ordered her to open the "aparador" (cabinet), but the latter only found P100.00. Upon searching the house, Eddie and Ruben managed to take several items, viz: a wrist watch, a cassette, a bag, a blanket, a half sack of rice, some grocery items, and five hundred pesos (P500.00) cash from Candelaria. The loot, valued at approximately five thousand two hundred five pesos (P5,205.00), was gathered in the kitchen.[7]

Thereafter, Eddie led Fe to the kitchen, saying he would tell her about the "way sapatos." Apparently, Eddie had other sinister intent in mind. He made Fe sit on a stool and threatened her to let him have sexual intercourse with him, otherwise, he would kill her child. Appalled, Fe was unable to speak. Eddie then laid her on the floor and took her panty off. He lifted her skirt and, without much ado, mounted her. They had coitus. Fe was too nervous to remember for how long Eddie stayed on top of her as his threat, that he would kill her child, lingered on her mind.[8] She did not shout or resist, fearful that Eddie would kill her if she did.[9] She could see Seremia and Candelaria, who were in the adjoining room barely two (2) meters from her, but Ruben Sause was guarding them.[10]

During the rape, Ruben indiscriminately focused the flashlight towards the kitchen, thus, albeit there was a "transparent" curtain covering the door between the kitchen and the room where Candelaria and Seremia had been kept at bay, they saw the bestial act.[11] Fifteen minutes later, Eddie and Fe emerged from the kitchen. Fe was crying as she told Seremia and Candelaria that she was raped. They cried as they, too, saw what happened.[12]

After the robbery and rape, accused-appellants left but warned the three (3) women not to report the incident to the authorities, otherwise, they would be killed.[13]

That same evening, Candelaria, Seremia, Fe, and her children proceeded towards the house of Fe's mother-in-law. There, Fe recounted her ordeal to her mother in-law who advised her not to immediately divulge her misfortune to her husband, Errol Palmon, as he might take some drastic action on the matter.[14]

The following morning, September 20, 1985, Fe reported the robbery to the authorities but withheld the rape from them since her husband had yet to be informed about it. On September 24, 1986, Fe, accompanied by her husband and her mother in-law, reported the rape to the authorities.

Policeman Rodolfo Buenavidez investigated the case. Among those he investigated was Eddie's wife, Jovelyn Apawan. Upon Buenavidez' request, Jovelyn handed to Buenavidez a solo black and white photograph of Eddie who was then in military uniform.[15] Subsequently, said photograph was shown to Fe and she recognized Eddie as the rapist.[16]

Accused-appellants hoisted the defense of denial and alibi. Eddie Apawan and Ruben Sause, both residents of Barangay Sulit (proper), Polomolok, South Cotabato, claimed they were in their respective houses when the incident happened.

Ruben averred he was sleeping in his house the night the robbery and rape were committed as it was already late. The following day, he was arrested by the authorities. He denied knowing the complainant, Fe Palmon, prior to the incident.

Eddie, for his part, alleged he stayed in his house, from 6:00 P.M. of September 19, 1985 until 6:00 A.M. the following morning, as his child was sick. He admitted having a fatigue uniform, claiming he was a former member of the army. In the early morning of September 20, 1985, he allegedly went to the 3rd Infantry Battalion, in Polomolok. He averred he was in the company of some CHDF members from said date until his arrest on September 24, 1985. At the police station, he met the victim for the first time, and the victim cried upon seeing him.

Eddie's wife, Jovelyn, corroborated the testimony of her husband that he stayed in their house the whole evening of September 19, 1985 and left for the 3rd Infantry Battalion the following morning.

After trial, the lower court, in its Decision dated August 2, 1988, convicted Eddie Apawan and Ruben Sause of the complex crime of Robbery with Rape. The dispositive portion of the Decision[17] of the trial court reads:

"ACCORDINGLY, finding the accused Eddie Apawan and Ruben Sause guilty beyond reasonable doubt of the complex crime of robbery with rape attended by the aggravating circumstances of nocturnity and abuse of superior strength without being off-set (sic) by any mitigating circumstance, they are both sentenced to suffer the supreme (sic) penalty of RECLUSION PERPETUA, to jointly and severally pay the aggrieved parties Fe Palmon and Candelaria Junsay compensatory damages of P5,000.00, (and) moral damages to (sic) the rape victim in the amount of P5,000.00 (sic) plus costs.

"SO ORDERED."

Hence, this appeal.

These are the assigned errors:

I

THE TRIAL COURT ERRED IN NOT TAKING INTO ACCOUNT THAT ACCUSED-APPELLANT EDDIE APAWAN WAS NOT PUT IN A POLICE LINE-UP FOR IDENTIFICATION BY THE OFFENDED PARTY BUT WAS INSTEAD IDENTIFIED THROUGH HIS PICTURE SHOWN BY THE POLICE TO THE OFFENDED PARTY PRIOR TO HIS ARREST.

II

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANTS FOR THE CRIME CHARGED WAS PROVEN (SIC) BEYOND REASONABLE DOUBT.

We affirm the judgment of conviction.

Accused-appellants claim they were not properly identified by prosecution witnesses, viz: Fe, Seremia, and Candelaria, as there was no police line-up conducted before they were pinpointed as the culprits. Specifically, the defense assails Eddie's identification, claiming that the act of Pat. Buenavidez, i.e., in borrowing Eddie's photograph and showing it to the victim, Fe, prior to Eddie's arrest, was pointedly suggestive. The defense, further alleges, that using Eddie's picture for identification purposes departs from the standard police procedure of placing the suspects in a police line-up to test the accuracy of the offended party in identifying the real culprit. We are not persuaded.

There is no rule requiring that before a suspect can be identified as the culprit, he should first be placed in a police line-up and then pinpointed by the victim. What is important, is the positiveness of the victim that the persons charged were the malefactors. Such identification goes to the credibility of the witness which was tested at the trial.[18]

We have examined the records of this case and we agree with the findings of the trial court on the positive identification of the accused-appellants.

The records reveal that accused-appellants stayed in the victim's house for almost an hour.[19] While searching for some valuables to rob, the flashlight held by Ruben Sause was on, thus allowing prosecution witnesses Fe, Candelaria, and Seremia to see the faces of accused-appellants. Moreover, Eddie Apawan constantly held Fe close to him, particularly during the rape, thus giving her enough time to take a good look at him. As regards Ruben Sause, his shaved head left a distinctive mark in the minds of the witnesses, not to mention that he, too, was seen at close range by witnesses Seremia and Candelaria, while he was keeping an eye on them during the rape.

We have ruled that it is the most natural reaction for victims of criminal violence to strive to see the appearance of their assailants and observe the manner in which the crime was committed. Most often, the face and body

movements of the assailants create a lasting impression which cannot be easily erased from their memory.[20]

The records are bereft of any evidence that the prosecution witnesses have improper motives to falsely point to accused-appellants as the culprits. Significantly, accused-appellants were not known to these women prior to the incident. Thus, we adhere to the established rule that in the absence of any evidence to show that the witnesses for the prosecution were actuated by any improper motive, their identification of the accused-appellants as the assailants should be given full faith and credit.[21]

The allegation of Fe Palmon that she was raped by Eddie Apawan inspires belief as it is unlikely for her, a married woman with five children, to contrive such a painful experience. Her failure to resist during the carnal act is of no moment since the rapist had already intimidated the victim with his continued threats on the victim's life and children. In this jurisdiction, the testimony of a woman, whose morality is beyond dispute, carries a lot of weight. For no decent Filipina would publicly admit that she has been abused and ravished unless it is the truth. Her natural instinct is to protect her honor.[22]

Fe's conduct immediately after the assault, particularly, (1) in immediately telling her sister-in-law, Seremia, that she was raped, and (2) consulting her husband's family on whether or not to inform her husband of the incident, bolters her claim that the robbery was accompanied by rape.

In contrast, the denial and alibi interposed by accused-appellants fail to persuade us that they are innocent of the crime imputed against them. Alibi is a weak defense, particularly, when it is not physically impossible for accused to be at the scene of the crime at the time of its commission.[23] In the case at bench, it was not physically impossible for accused-appellants to be at the scene of the crime at the time of its commission as their houses were only about one and one-half kilometers away from the residence of Fe Palmon.

We agree with the trial court's conclusion that accused-appellants are liable as co-conspirators considering these circumstances: (1) accused-appellants acted in unison and cooperated with each other during the robbery; (2) while Eddie was raping Fe, Ruben kept Seremia and Candelaria at bay, and he was nonchalant; and (3) accused-appellants left together and warned the three (3) women not to report the incident to the authorities. Since conspiracy had been established, all the conspirators are liable as co-principals regardless of the extent of their participation because in contemplation of law, the act of one is the act of all.[24]

All things considered, we hold that accused-appellants Ruben Sause and Eddie Apawan are guilty beyond reasonable doubt of the crime of Robbery with Rape, as defined in Article 294 (2) of the Revised Penal Code.[25] Considering the presence of aggravating circumstances of dwelling, nighttime, and abuse of superior strength, without any mitigating circumstance to offset the same, accused-appellants should be sentenced to death penalty. In view, however, of the constitutional prohibition on the imposition of death penalty,[26] accused-appellants were correctly meted the penalty of reclusion perpetua.

WHEREFORE, premises considered, the decision appealed from is **AFFIRMED** with modification. Thus, the moral damages awarded in favor of Fe Palmon is increased from five thousand pesos (P5,000.00) to fifty thousand pesos (P50,000.00).[27] Costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Docketed as Criminal Case No. 4037 before the Regional Trial Court of General Santos City (Branch XXII).

[2] See Order, dated January 17, 1986; Original Records, p. 39.

- [3] TSN, October 2, 1986, pp. 12-13; TSN, April 16, 1986, p. 4.
- [4] TSN, April 16, 1986, p. 5.
- [5] Ibid, p. 7.
- [6] TSN, April 16, 1986, pp. 5 and 15; TSN, October 2, 1986, p. 21.
- [7] October 2, 1986, pp. 15-16.
- [8] Ibid, p. 18.
- [9] Ibid, pp. 20, 26-27.
- [10] Ibid, p. 26.
- [11] Ibid, p. 22.
- [12] TSN, April 16, 1986, pp. 9-11; TSN, May 14, 1986, p. 10; TSN, October 2, 1986, p. 22.
- [13] TSN, October 2, 1986, p. 22.
- [14] TSN, April 16, 1986, p. 12; TSN, October 2, 1986, pp. 22-23.
- [15] TSN, June 24, 1987, p. 46; TSN, September 30, 1986, pp. 10-11.
- [16] TSN, September 30, 1987, pp. 5-6.
- [17] Penned by Presiding Judge Abednego O. Adre.
- [18] People vs. Villagracia, et al., G.R. No. 94311, September 14, 1993, 226 SCRA 374.
- [19] TSN, October 2, 1986, pp. 21-22.
- [20] People vs. Sartoga, G.R. No. 97525, April 7, 1993, 221 SCRA 251, 257.
- [21] People vs. Bolado, G.R. No. 105375, September 28, 1993, 226 SCRA 800.
- [22] People vs. Domingo, G.R. No. 97921, September 8, 1993, 226 SCRA 156.
- [23] People vs. Villagracia, et al, G.R. No. 94471, March 1, 1993, 219 SCRA 212.
- [24] People vs. Base, G.R. No. 92124, May 6, 1991, 196 SCRA 688; People vs. Rostata, Jr., G.R. No. 91482, February 9, 1993, 218 SCRA 656.
- [25] "Art. 294. Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
- "xxx x x x x x x.
- "(2) The penalty of reclusion temporal in the medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if the reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, that when the robbery shall have been committed with the use of deadly weapon by two or more persons, the penalty shall be reclusion perpetua to death (As amended by PD 767)." (emphasis ours)
- [26] Death penalty was subsequently restored by Congress when it approved Republic Act 7659 (An Act to Impose Death Penalty on Certain Heinous Crimes xxx) on December 13, 1993.

[27] People vs. Villagrancia, G.R. No. 94311, September 14, 1993, 226 SCRA 374.

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