

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY V. MAÑAGO, ACCUSED-APPELLANT.

G.R. No. 90669. November 21, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Gerry V. Mañago was charged with the crime of Robbery with rape before the Regional Trial Court of Pasig, Metro Manila, Branch 156 under an Information which reads:

"That on or about the 14th day of November, 1987, in the Municipality of Marikina, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one John Doe whose true identity and present whereabouts are still unknown, and mutually helping and aiding one another, with intent of gain and by means of force and violence, did, then, and there willfully, unlawfully and feloniously take, steal and carry away the handbag containing P160.00; that on the occasion of the robbery said accused by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge to (sic) said Ernefe Devierte y Tiapon against her will and consent." (Rollo, p. 3)

The evidence for the prosecution shows the following attendant facts:

"Complainant Ernefe Devierte, 21 years old, single, was walking home to her aunt's place along Granite St. Twin River, Parang, Marikina, Metro Manila at around 7:00 o'clock in the evening of November 14, 1987 after coming from her work at Pepsi Cola Bottling Company where she was employed as a washer. She had taken a jeep and alighted along the highway and thus walked along the stretch of Granite Street leading to Lot 15, Block 12 where her aunt Evelyn Marshall's house was located. (t.s.n. pp. 3-4, April 26, 1988). Suddenly, in the middle of Granite Street about ten meters from her aunt's house (t.s.n. p. 13, May 17, 1988), appellant, whom she recognized as also living in Granite St., having passed her aunt's house several times, but did not know his name, poked a knife at her neck while his companion whom she had not seen before snatched her bag containing an amount of P160.00, a new pair of pants worth more than P200.00 and a bottle of lotion valued at P82.00 (t.s.n. p. 11, April 26, 1988; t.s.n. p. 8, September 15, 1988). Appellant then dragged her to a vacant lot which had a Meralco lightpost, and inside a construction site of a house under construction or unfinished. (t.s.n. pp. 4-5, April 26, 1988). That place was near the street corner and isolated from the rest of the other houses along Granite Street. (t.s.n. p. 15, August 25, 1988). Since there was a lighted Meralco post nearby, Ernefe immediately recognized appellant, a reputed trouble maker in their neighborhood (t.s.n. p. 24, April 26, 1988). When they were already in the construction site, appellant undressed Ernefe (t.s.n. p. 6, April 26, 1988) while threatening to kill her if she shouted with the stainless knife he was holding (sic). Then appellant also took off his clothes and ordered Ernefe to lie down. Then appellant placed himself on top of her, kissed her breasts and nipples and inserted his finger inside her vagina for quite a time after which he inserted his sex organ inside her vagina. She felt pain. (t.s.n. pp. 8-9, April 26, 1988). Finished, appellant again kissed Ernefe on her breast, her nipples and all over her body. Appellant repeated the sexual intercourse several times. (t.s.n. pp. 10-11, April 26, 1988).

After appellant was exhausted, his companion 'John Doe' took his turn and had sexual intercourse with

Ernefe twice. Thereafter, appellant and his companion told Ernefe not to leave the place for about an hour after they had left. There were no passers-by at that time because it was drizzling (t.s.n. p. 18, August 25, 1988). After about an hour, she left the place and when she reached her aunt's house, it was already about 11:00 o'clock in the evening. (t.s.n., p. 11, April 26, 1988).

"Outside the gate of the house, Ernefe called out the name of her cousin Glenda Edaño who was then lying down inside her room. When Glenda heard Ernefe's voice she went out of the house and opened the gate. Ernefe's hair was disarranged, she was wet and she had a wound in one of her fingers and her clothes were bloodied and she was barefooted (t.s.n., p. 5, September 15, 1988). So Glenda asked her what happened. Ernefe told her that she was raped and robbed in the unfinished house by two men whom she could recognize only by their faces, height and built but whose names she did not know. As soon as she entered the house, her aunt Mrs. Evelyn Marshall and her other cousins were surprised because she was bloodied all over her body and her clothes and hair were all in a mess. (t.s.n., p. 12, April 26, 1988). Her aunt cried upon learning that she was raped and said that the incident should be reported to the police. Ernefe, accompanied by her aunt Evelyn and two uncles Cuesta Marshall and Noel de los Reyes went to the police station at Edwardson, Parang, Marikina and reported the incident. (t.s.n., pp. 12-13, April 26, 1988; t.s.n., pp. 7-8, June 28, 1988; t.s.n., pp. 7 & 14, September 15, 1988). After a brief interrogation by some police officers, the report was blotted and then Ernefe and her relatives were instructed to proceed to the Criminal Investigation Division (C.I.D.) of the Marikina Police Station. They proceeded to the C.I.D. that same evening where Police Officer Pat. Efren Jota, after questions were propounded about the incident, gave them a referral letter (Exhibit "C", p. 61, Records; t.s.n. pp. 13-14, April 6, 1988; t.s.n. pp. 8-9, June 28, 1988) for a Medico-Legal Examination at the PC Crime Laboratory at Camp Crame, Quezon City. (t.s.n. pp. 4-5, August 25, 1988). The following morning of November 15, 1987, Pat. Efren Jota and Leo Pasicolan accompanied by Ernefe and her aunt Evelyn proceeded to the place where the rape and robbery happened. Pat. Jota conducted an ocular inspection of that place, while Leo Pasicolan took some pictures of the crime scene. (Exhibits "E", E-1" and "E-4", inclusive; pp. 79-82, Records; t.s.n. p. 13, April 26, 1988; t.s.n. pp. 6-10, August 25, 1988).

That same morning of November 15, 1987, Evelyn and Ernefe went to Camp Crame, but, as it was a Sunday, there was no medico-legal officer available. On November 16, 1987, Ernefe returned with her aunt Evelyn to Camp Crame and was finally examined by the medico-legal officer on duty that day at the PC Crime Laboratory. (t.s.n. p. 9, June 28, 1988). A Medico-Legal Report No. M-2434-87 (Exhibit "D") was subsequently submitted by Dr. Desiderio A. Moraleda reading as follows:

"FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pinkish areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft. There is a laceration wound at the right index finger, measuring 3 cm. long."

CONCLUSION:

Barring unforeseen complications, it is estimated that the above injury will resolve in 6 to 9 days.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa." (t.s.n. pp. 4-7, August 5, 1988).

Dr. Moraleda confirmed on the witness stand his conclusion that Ernefe lost her virginity recently within 24 to 48 hours based on the fresh laceration of her hymen at 6:00 o'clock position and also a healing laceration at 9:00 o'clock position. He also found an open wound on her right index finger. (t.s.n. pp. 7-9, August 5, 1988).

Two (2) days after the incident, appellant purposely went to the residence of the Marshalls looking for Ernefe. Upon seeing him enter their gate, Ernefe was shocked and terrified that she rushed inside the house. It was her cousin Evelyn Marshall who confronted appellant and stopped him from accosting Ernefe. Appellant threatened the Marshall children with a knife and his eyes were bloodshot. (t.s.n. pp. 19-21, April 26, 1988; t.s.n. pp. 26-27, June 28, 1988; t.s.n. p. 9, September 15, 1988).

Ernefe and her aunt went back to Camp Crame on November 22, 1986 to get the medico-legal report of Dr. Moraleda and brought it to the C.I.D. office at Edwardson, Parang, Marikina with her aunt Evelyn where Ernefe executed her sworn statement. (Exhibits "A", "A-1" to "A-4, inclusive, pp. 14-16, April 26, 1988; t.s.n. p. 12m August 25, 1988). Then Ernefe was brought to a jail to point to the person who raped and robbed her in the evening of November 14, 1987. There were about 100 inmates inside the jail cell and they were made to form 15 files. Ernefe pointed to the appellant from those in the second file as the person who raped and robbed her. (t.s.n. pp. 21-24, April 26, 1988; t.s.n. pp. 12-13, June 28, 1988; t.s.n. pp. 10-11, 18-23, August 25, 1988). She recognized appellant only by face because he used to pass by her aunt's house along Granite St. for quite sometime. (t.s.n. p. 10, April 26, 1988). Ernefe informed Pat. Jota that appellant was then wearing a pair of short pants which was retrieved when appellant was arrested on November 24, 1987 and was presented to him by Ernefe as additional evidence against appellant. (t.s.n. pp. 18-20, August 25, 1988)." (Rollo, pp. 4-13)

The defense, however, presents its version in the following manner:

"xxx [A]ppellant denied that he had anything to do with the rape of Ernefe and robbery question. He insists that it was highly improbable for him to have raped and robbed Ernefe T. Devierte since he was then at the house of his sister-in-law Margie Mañago at Lot 2, Block 10, Parang, Marikina together with Janette Enriquez, a boarder of his sister-in-law, his mother, nephews and nieces. At around 6:00 in the evening of November 14, 1987, Janette invited him to accompany her to go shopping at Cubao to which he agreed. They reached Cubao at around 6:30 in the evening and shopped for about 1-1/2 hours. They returned home at 9:00 in the evening. At about 9:20 in the evening, after supper, he and Janette went to Modesta Village at San Mateo to negotiate with a prospective tenant of his parents, a certain Lourdes Crame. Upon reaching Lourdes' place, he found Lourdes all packed up and ready to transfer to his parents' house that same evening. Janette decided to go home alone leaving appellant behind with Lourdes Crame at Modesta Village. He left Modesta village with Lourdes Crame at about 11:00 in the evening of November 14, 1987.

On November 19, 1987, at around 11:30 in the evening, while he was attending a wake of a certain Mang Temi at the Twin River Chapel, a barangay tanod named Ramon Juanillo on board a blue car alighted. He was forced to board the blue car to answer some questions regarding an important manner. When he resisted, the other barangay tanods approached him and advised him to follow. Peeping through the window, appellant saw a woman with partially covered face with another woman seated beside her. On the driver's seat was a man with a gun tucked at his right waist. The driver alighted and talked with the woman and he overheard the woman vehemently saying: 'Hindi, hindi iyan.' He remembers the woman as Ernefe. After that confrontation, the barangay tanods apologized to him for the inconvenience they caused him. When the car left, the brother of the aunt of Ernefe uttered to him: 'Kung ikaw lang, kaya kong bayaran ang buhay mo'. To which remark appellant answered: 'Bakit?' But that man left. Appellant stayed overnight at the wake and went home the following day.

On November 20, 1987, appellant went to the prospective lessee Lourdes Crame to collect the agreed rental but since Lourdes Crame offered a check and not cash, he told her to leave the house but she did not leave because she was waiting for a policeman from Quezon City. He also went to the residence of the Marshall to ask Ernefe's uncle to retract what he said in the evening of November 19, 1987. But he was confronted by a daughter of Evelyn Marshall who berated him. He had an altercation with her and when he realized that he was quarrelling with a woman, appellant decided to leave the Marshall's residence.

On November 21, 1987, while appellant was again attending the wake, Lourdes Crame arrived with a male

companion and told him that she would already pay the rental in cash. But he was surprised when Pat. Jack Miranda suddenly handcuffed him for threatening the lessee and he was brought to the police sub-station 1 at Edwardson, Parang, Marikina where he met Cpl. Pasanans where Lourdes Crame charged him of grave threats but the case was later dismissed. In connection with this case, appellant executed a Joint Affidavit (Exhibits "G" & "G-1") together with Janette Enriquez. To support his alibi, appellant presented Janette Enriquez who testified that appellant was with her shopping at Cubao until they went home at Parang, Marikina at 9:00 in the evening of November 14, 1987. Then they both went to the Modesta Village where she left appellant and went home alone. Appellant also presented Leonardo B. Requinala who testified that a confrontation occurred in the evening of November 19, 1987 between appellant and Ramon Juanillo where the complainant was asked to identify him and she told them that appellant was not the one who raped and robbed her.

Appellant denied that the short pants presented by the prosecution was his but when he was asked to try the pants on it was observed that it fitted him." (Rollo, pp. 13-17)

Accused-appellant Gerry Mañago was arrested ten days after the incident and was arraigned and tried separately since his companion was at large.

Upon arraignment on March 28, 1988, Mañago, assisted by counsel, pleaded not guilty to the offense charged. Trial proceeded and a judgment of conviction was rendered on October 25, 1989. The dispositive portion of the decision reads:

"PREMISES CONSIDERED, the Court finds the accused GERRY V. MAÑAGO also known as Gerry V. Maniano guilty beyond reasonable doubt of the crime of Robbery with Rape and hereby sentences said accused GERRY V. MAÑAGO to suffer the penalty of reclusion perpetua, to indemnify the complainant-victim, Ernefe T. Devierte in the amount of P160.00 by way of reparation of the stolen cash money and the further sum of THIRTY THOUSAND PESOS (P30,000.00) in compliance with the mandate in Articles 100, 104 (3), 107 and 345 of the Revised Penal Code both without subsidiary imprisonment in case of insolvency and to pay the costs." (Rollo, p. 31)

Not satisfied with the above decision, the accused interposes this appeal. He claims that the trial court committed the following errors:

I

"THE COURT A QUO ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF ROBBERY WITH RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT." (Rollo, p. 40)

There is only one issue to be resolved in this case - whether or not the accused is guilty of the offense charged.

We sustain the trial court's conviction. The accused-appellant's defense of denial and alibi cannot stand against his positive identification by the victim (People v. Guevarra, G.R. No. 65017 [1989]; People v. Salita, G.R. No. 76531 [1989]; People v. Millarpe, 134 SCRA 555 [1985]).

The appellant contends that it was improbable for him to have committed the crime considering that he was then at the house of his sister-in-law, Margie Mañago at Parang, Marikina. He and Janette Enriquez, a boarder of his sister-in-law later went to Cubao to go shopping. Thereafter, they went home to eat supper and both proceeded to Modesta Village, San Mateo, Rizal to meet with a certain Lourdes Crame.

The alibi of the accused-appellant hardly inspires belief. For one, there was no single proof of purchase which would prove that they indeed went shopping and no reason was given to explain the urgency of the shopping. Neither was her supposed meeting with their prospective lessee believable. It is totally contrary to human experience to negotiate a contract such as a lease during the late hours of the night. It is likewise perplexing why Janette Enriquez would opt to board in the house of the appellant's sister-in-law in Parang, Marikina during that month when her permanent residence which is at Matatag Street, Diliman is nearer to Morayta where she was then attending review classes for her board examination.

The above facts render the testimonies of the accused and Janette Enriquez doubtful.

The same is true with regard to the testimonies of the Barangay Tanods who claim that the accused was not pinpointed by the victim when the latter was in a car together with some police officers and was asked to identify who was her assailant. On the contrary, it can be said that the testimonies of these barangay tanods are not far from being coached and fabricated because the records show that the victim positively identified the accused in a police line-up. Furthermore, the 3-hour ordeal suffered by the victim in the hands of her tormentors in a place which was sufficiently lighted by a Meralco post gave Ernefe, the victim, sufficient opportunity to see their faces.

There can be no mistaken identity as claimed by the accused-appellant because the face of the accused was familiar to the victim, the former having frequently passed by the house where she was staying. Both lived in the same street and the accused was known to be a trouble-maker in their place. Moreover, the short pants which was presented by the prosecution as belonging to the assailant fitted the accused.

Appellant's defense of denial and alibi pales in comparison with the victim's positive and straightforward declaration. Between the version of the complainant and appellant, complainant's version is more credible (*People v. Fajardo*, 151 SCRA 696 [1987]) because when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape was committed provided her testimony is clear and free from contradiction (*People v. Alcid*, 135 SCRA 280 [1985]; *People v. Alfonso*, 153 SCRA 487 [1987]). There is no reason to doubt the complainant's narration and testimony that she was threatened with death, was robbed, and raped.

Furthermore, the appellant has not shown any improper motive on the part of the victim for her to testify as she did (*People v. Esquillo*, 171 SCRA [1989] citing *People v. Ocampo*, 143 SCRA 428 [1986]). On the contrary, the crime was corroborated by physical facts gathered at the crime scene.

The accused's insinuation that he was charged by the complainant because of the misunderstanding which ensued between him and the victim's uncle is without basis. The remark from the victim's uncle presupposes an incident before it. It was uttered precisely because he was identified as a suspect.

The basic issue involved in this case is the credibility of the witnesses. This is left primarily to the Trial Judge to assess in view of his advantage in observing their demeanor on the stand (*People v. Lisbon and Bebanco*, G.R. No. 63396, November 15, 1989; *People v. Canamo*, 13 SCRA 141 [1985]). This is an oft-repeated fundamental rule in criminal as well as civil cases (*Montañez v. People*, G.R. No. 72199, November 29, 1989).

More importantly, for the defense of alibi to prosper, it does not suffice to prove the whereabouts of the accused at the time the crime was committed; it must be undisputedly demonstrated that at the time of the commission of the crime, it was physically impossible for the suspect to have been at, or near, the scene of the crime (*People v. Aragona*, 138 SCRA 569 [1985]; *People v. Manzanares*, 177 SCRA 427 [1989]; *People v. Cruz*, 177 SCRA 451 [1989]). In the case at bar, the distance between the scene of the crime in Parang, Marikina, and Cubao is only a 30-minute drive by any kind of motor vehicle.

In view of all the foregoing, we find no reversible error in the trial court's finding that the appellant, Gerry V.

Mañago is guilty beyond reasonable doubt of the crime of robbery with rape and that the appealed decision with the exception of the amount to be paid by way of reparation of the stolen cash and other personal belongings of Ernefe Devierte which should be increased to P440.00 is in accordance with law and the evidence. The records show that Ernefe was robbed of P160.00 cash, a pair of pants worth P200.00 and a bottle of lotion valued at P80.00.

WHEREFORE, the appealed Decision is hereby AFFIRMED with the aforementioned modification.

SO ORDERED.

Fernan, C.J., (Chairman), and Bidin, JJ., concur.

Feliciano, J., on leave.

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