

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIAN ROSTATA, JR., ALFREDO ROTAP, MELITON VERANA, ANDRES VERMUG, RUBEN VERANA, VITALIANO DEVIO, JOHN DOE, PETER DOE AND PAUL...

G.R. No. 91482. February 09, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

At midnight of 18 February 1982 in barangay Caulangohan of the Municipality of Caibiran, Province of Leyte, nine (9) armed persons forced their way into the house of the spouses Calixtro and Aprosa Rosario by breaking the kitchen door. Once inside, one (1) of them kicked and manhandled Calixtro, inflicting upon him physical injuries, two (2) of them raped the spouses' daughter Gemma and, thereafter, all of them took and carried away cash in the amount of P5,400.00 and a wristwatch valued at P500.00.

The incident was reported to the authorities at the Integrated National Police (INP) Sub-Station at Caibiran on 19 February 1982. Per the said Sub-Station's police blotter, the following entry is recorded:

"1069. 2/18/82 One CALIXTO (sic) ROSARIO reported this (sic) Station that at about more (sic) 12:00 o'clock midnight of February 18, 1982 unidentified persons in Fatigue Uniform (sic) entered their residence at Bgy. Caulangohan, Caibiran, Leyte while thereat steal (sic) their wrist watch, suspects remain (sic) from them one hand drill and one of their daughter (sic) was raped, Gemma Rosario." [1]

Thereupon, the Sub-Station Commander of Caibiran ordered Patrolmen Eduardo Llorno and Romulo Viros to conduct an on-the-spot investigation at the scene of the incident. The two (2) immediately complied with this order and were able to interview Calixtro Rosario and Aprosa Rosario who both confirmed the fact of robbery and the rape of Gemma. The spouses Rosario, however, did not divulge to the policemen the names of the perpetrators of the crime. Gemma Rosario was not around and could not be interviewed.

On 22 February 1982, Calixtro Rosario proceeded to the office of the Municipal Health Officer of Caibiran for treatment. The medical certificate [2] issued by the Municipal Health Officer, Dr. Teodoro C. Perez, states that Calixtro "came to the office x x x with complaints of pains at the left side of his body since four days ago after having been allegedly maltreated by 'thieves' in his residential house at around 12:00 o'clock midnight of February 18, 1992," and enumerates the following findings:

- "1. Contusion with pain and tenderness at anterior aspect and lower portion of left lumbar area
2. Contusion with pain and tenderness at anterior aspect of left inguinal area
3. Contusion with pain and tenderness at anterior aspect and middle third of left thigh.

Duration of Healing: Above injuries will heal in ten (10) days, barring complications."

On 15 April 1982, a complaint for Robbery with Rape and Physical Injuries, dated 14 April 1982, was filed by the Sub-Station Commander of the INP of Caibiran with the Fifth Municipal Circuit Court of Caibiran-Culaba.

Charged for the said offense were the above-named accused. The complaint was docketed as Criminal Case No. 5833.[3] Attached thereto were the sworn statements of Aprosa Rosario, Calixtro Rosario, Trinidad Banquilay and Gemma Rosario; the joint affidavit of Patrolman Eduardo Llorno and Romulo Viros;[4] and the medical certificates issued to Calixtro Rosario[5] and Gemma Rosario.[6] All the sworn statements and the joint affidavit are dated 14 April 1982 but were subscribed and sworn to before Municipal Judge Pepe Domael on 15 April 1982. The medical certificate for Gemma Rosario was prepared and issued also on 14 April 1982 by Dr. Perez and reads as follows:

x x x

"THIS IS TO CERTIFY that GEMMA ROSARIO, 17 years of age, female, single, college student, and a bonafide resident of Bo. Kaulangohan, Caibiran, Leyte came to the office of the undersigned on April 14, 1982 at 10:15 A.M. for consultation/ medical check up for allegedly having been raped in her residential house at around 12:00 o'clock midnight of February 18, 1982. The patient showed the following findings:

I. External Genital Examination:

1. Lacerations (healed) at upper 4th portions of left and right labia minora
2. Laceration (healed) at middle portion of left labia minora

II. Internal Genital Examination:

(microscopic examination of vaginal and pericervical smears by Med-Tech at the Caibiran CHHC):

Smear Examiner reported: 'Positive for the presence of sperm'

Impression: - Rape."

A warrant for the arrest of the accused was forthwith issued on 15 April 1982, but only accused Julian Rostata, Jr., Meliton Verana, Andres Vermug, Ruben Verana and Vitaliano Devio were arrested. They were admitted to bail and were released upon approval of their bail bonds.[7]

As a result of the agreement between the prosecution and the defense, the Municipal Circuit Court issued an Order on 28 April 1982 allowing the parties to submit their respective affidavits and counter-affidavits to constitute their evidence for the second stage of the preliminary investigation.[8] The prosecution relied on the sworn statements and joint affidavit attached to the Complaint, and the medical certificates. The defense, on the other hand, submitted the affidavits of Jesus Maderazo, Sub-Station Commander of the INP of Culaba, Leyte, Macaria Verana, Vitaliano Devio and Vicente Rotap, and the counter-statement, under oath, of accused Rostata, Jr., Meliton Verana, Ruben and Andres Vermug.[9] In this counter-statement, the said accused claim that the charge is false, as they were never involved in the alleged robbery and rape, and concocted for if indeed the crime was committed and they were the perpetrators, the offended party should not have delayed the filing of the case for two (2) months since they (accused) reside at Alegria, Caibiran -- near the place where the crime was allegedly committed.[10]

On 22 June 1982, the Municipal Circuit Court issued an order provisionally dismissing the case on the ground that it is "convinced that a crime has been committed, but to its regret, it pains to state that the criminals are unknown and unidentified." [11] The records of the case were then forwarded to Branch VII of the then Court of First Instance (CFI) of Leyte at Naval in the Sub-province of Biliran which in turn indorsed the same to the Office of the Provincial Fiscal of the said Sub-province.[12]

On 30 August 1982, First Assistant Provincial Fiscal Quirino N. Oriel of the Sub-province of Biliran filed with

Branch VII of the aforesaid court an Information charging the accused Julian Rostata, Jr., Alfredo Rotap, Meliton Verana, Andres Vermug, Ruben Verana, Betillano (should be Vitaliano) Devio, John Doe, Peter Doe and Paul Doe with the crime of Robbery with Rape and Physical Injuries, defined and penalized under paragraph 2, Article 294 of the Revised Penal Code, and committed as follows:

"That on or about the 18th day of February, 1982, in the Municipality of Caibiran, Sub-Province of Biliran, Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent of gain and with the use of an unlicensed firearm which the accused purposely provided themselves, did, then and there, for the purpose of robbing, wilfully, unlawfully and feloniously, by means of force and violence against the persons of the spouses Calixtro Rosario and Aprosa Rosario, rob them in the amount of FIVE THOUSAND NINE HUNDRED PESOS (P5,900.00), Philippine Currency, the amount of P5,400.00 being in cash while the amount of P500.00 is the value for the wristwatch taken and that on the occasion and by reason of the said robbery, a crime of rape has been (sic) committed upon the person of Gemma Rosario, daughter of the said spouses and that likewise Calixtro Rosario was maltreated, thereby inflicting him (sic) physical injuries, to the damage and prejudice of the aforementioned persons in the amount above-stated.

CONTRARY TO LAW."[13]

No bond was recommended for the temporary liberty of the accused and Fiscal Oriel's motion for the issuance of the warrant of arrest[14] was granted by the court in its Order of 12 October 1982.[15] Again, only accused Julian Rostata, Jr., Meliton Verana, Ruben Verana, Andres Vermug and Vitaliano Devio were arrested. However, on 7 February 1983, the trial court, per Judge Adriano R. Villamor, issued an order granting bail to the arrested accused in the amount of P30,000.00 each.[16] Thereafter, the said Judge ordered the release of accused Julian Rostata, Jr. and Ruben Verana[17] upon the reinstatement of the bonds they had filed in the Municipal Circuit Trial Court, and of accused Andres Vermug and Vitaliano Devio after they had filed their respective bonds.[18]

Accused Alfredo Rotap and the three (3) Does remain at large.

Upon their arraignment on 1 June 1983, accused Julian Rostata, Jr., Meliton Verana, Andres Vermug, Ruben Verana and Vitaliano Devio each entered a plea of not guilty.[19] Trial on the merits immediately followed.

The prosecution presented as its witnesses Patrolman Eduardo Llorno, Dr. Teodoro Perez, Trinidad Banquilay, Apolonio Rosario and the victims Calixtro Rosario, Aprosa Rosario and Gemma Rosario. For its part, the defense presented as its witnesses Jose Eraño, Faustina de Guia, Sgt. Vicente Guirendola, accused Julian Rostata, Jr., Meliton Verana, Andres Vermug, Ruben Verana and Vitaliano Devio.

In the meantime, Vitaliano Devio jumped bail and an order for his arrest was issued.

It was only on 20 August 1986 that the trial court declared the case submitted for decision.[20] Thereupon, promulgation of the decision was first set for 29 August 1989.[21] It was, however, postponed to 28 September 1989 because of the non--appearance of accused Devio and Rostata, Jr. On the latter date, only accused Julian Rostata, Jr., Meliton Verana and Andres Vermug appeared as accused Devio had not yet been re-arrested and the trial court was informed that accused Ruben Verana had died. The latter's death was later ascertained to be true on the basis of the death certificate submitted by the Office of the Local Civil Registrar of Caibiran.[22] The decision was therefore promulgated only on accused Rostata, Jr., Meliton Verana and Andres Vermug. The decision's[23] dispositive portion reads:

"WHEREFORE, premises considered, while positively there were two rapes committed on the occasion of the robbery but because only one is charged in the information, the Court finds all the accused GUILTY beyond reasonable doubt of ROBBERY WITH RAPE AND PHYSICAL INJURIES defined and penalized under

article 294 sec. 2 of the revised penal code as amended by PD 767.

The penalty imposable the crime (sic) having been committed with the use of a deadly weapon and by two or more persons is reclusion perpetua to death. There being no mitigating or aggravating circumstance the penalty shall be applied (sic) in its medium period which is reclusion perpetua. (People vs. Almario, G.R. No. 69374 March 16, 1989).

Hence the Court sentences all the accused to suffer and undergo imprisonment of reclusion perpetua; to indemnify Gemma Rosario P20,000.00 pesos, the spouses Calixtro and Aprosa Rosario P5,900.00 and Calixtro Rosario P3,000.00 jointly and severally and the (sic) one fifth of the costs each."[24]

The judgment of conviction is based on the evidence for the prosecution which the trial court accorded full faith and credit and the summation of which is herein quoted verbatim, to wit:

"From the testimony of Calixtro Rosario, his wife Aprosa Rosario and their daughter Gemma Rosario the prosecution established that on February 18, 1982 at about midnight some persons entered the fenced premises of the residence of Calixtro Rosario at barangay Caulangohan, Caibiran, Leyte. There was a whistle which awakened the spouses. Calixtro peeped through the window and saw the persons asking to be allowed to enter as they were authorities. Aprosa answered by telling them to return the following day as it is already past (sic) in the evening.

The persons instead racked at the kitchen and forced it (sic) open using a hand drill. Calixtro went downstairs as the persons tried to open the kitchen door. A shot was fired which scared them. The persons were able to force open the door and they entered. Beting Devio immediately poked a short firearm at Calixtro and asked for his gun and money. When he replied none (sic), he was kicked and manhandled him (sic). The accused Jun Rostata, Fred Rotap and Meliton Verana went upstairs. The other two accused Ruben Verana and Andres Vermug brought his son Benedicto Rosario outside the house and has manhandled (sic) too.

Upstairs Aprosa said she was made to lie down facedown on the floor together with her child Edna. Jun entered the next room where Gemma Rosario, her 20 year old, single and college graduate daughter was sleeping. Gemma was awakened with a gun pointed at her head. Jun asked where they kept their gun and money. She answered they had no money much more a gun. She was dragged out of the room and asked about the gun and money.

As she could not tell him about either money (sic) or gun she was slapped four times. Then she was forced to return to the room. She was asked to undress. She refused. Jun pushed her down on her buttocks. Then she was pushed down again and she fell face upward. June (sic) inserted his hand into her pantie (sic) and tore it off. He took off his brief and trousers and mounted her after raising her duster. He Transferred his gun to his left hand and held her knees with his right hand. He inserted his knees between her legs and then his organ into her vagina. She struggled hard and scratched Jun on his face. She shouted to her mother for help but Jun covered her mouth. She felt intense pain as his organ penetrated her vagina. She tried to push him but failed. After about 2 minutes Jun satisfied her (sic) bestial lust.

Then accused Fred Rotap took his turn in raping Gemma who pleaded not to be touched again. She was already very weak and she could not offer any resistance. Fred satisfied his lust too in about the same time.

Meanwhile Jun was ransacking her cabinet looking for a gun and money. After Fred was thru they both went to the adjoining occupied (sic) by her mother. Gemma could only keep on crying. She saw and felt her vagina bleeding, She lay face down in tears, weak and weary. She could hear the ransacking in the next room. Aprosa who was made to open her aparador said the robbers even search (sic) the beams for a gun. But they succeeded in finding their cash of P5,400.00 and the wrist watch of their son Benedicto worth P500.00.

The robbers stayed in the house for almost 2 hours but before leaving warned them that should they tell the authorities they will come back to kill them all. When they left Aprosa who could not do anything for her

daughter's cries for help immediately went to Gemma's room when the robbers left. She found Gemma sobbing. She told her of her ordeal at the hands of Jun Rostata and Fred Rotap. She also told her father when he came up to find out what happened to them. They all cried.

The court noted how Gemma cried unashamedly when she took the stand; and how her eyes were almost afire when she identified Jun Rostata as the first to rape her. Also her mother Aprosa could not help hold back her tears when she testified about finding her daughter after being raped twice. The next day Calixtro asked his brother to report the incident as he could walk (sic) because of the maltreatment he received from accused Vitaliano Devio.

Ruben Verana says Aprosa is her (sic) nephew being the son of her (sic) cousin. Andres Vermug is the husband of her (sic) niece. All the accused except Vitaliano Devio are from the same barangay Caulangohan, Caibiran, Leyte where the Rosarios' reside. Devio is from Culaba, Leyte.

Calixtro Rosario had himself examined of (sic) the physical injuries he sustained by Dr. Teodoro C. Perez (Exh. "B"); her (sic) daughter Gemma was also examined by Dr. Perez and issued a medical certificate Exh. "D"). The lacerations at the upper 4th portions of left (sic) and right labia minora and the middle portion of left (sic) labia minora although already healed are clearly indicative of the forced sexual intercourse with the victim." [25]

The trial court said that it was "impressed with the sad but straightforward testimonies of the victims of the robbery-rape tragic incident," and found "no reason why they would falsely implicate the accused of this heinous crime if they were not the actual perpetrators." [26] It thus completely disregarded the defense of denial and alibi interposed by the appellants, which it likewise summarized as follows:

"The defense of all the accused are (sic) denial and alibi.

Julian Rostata said he at (sic) sea fishing with his neighbor Jose Eraño on February 18, 1982. They left at about 6:00 P.M. and returned at 6:00 A.M. of the following day. The fishing ground is a one hour trip from the shores of barangay Alegria, Caibiran, Leyte where they live. Jose Eraño corroborates him. He said he was not asked by Julian to testify but he volunteered on his own. He was testifying only for Julian on his own. He pitied the other accused because he was not asked by them to testify for them. It would seem that he is ready to testify if he were asked which would make (sic) him in a tight spot as the other accused had different alibis. The court noted the evasiveness of the accused at cross-examination.

Vitaliano Devio said he was just at home in Culaba, Leyte. On February 18, 1992 he was sleeping from 9:00 P.M. to 4:00 A.M. of the next day. He denied the imputation of Calixtro for he does not even know him. Nor could he kick as imputed because he is even limping as his foot was injured when pinned by a log in 1972. He did not know all the (sic) his co-accused. He came to know them only in jail. This accused is prevaricating because his sister is the husband (sic) of his co-accused Ruben Verana. This was testified to by Meliton Verana an uncle of Ruben also a co-accused.

Meliton Verana's alibi is also fishing in the open sea from 4:30 of Feb. 18 to 5:00 A.M. of Feb. 19, 1982 with a certain Antonio Maderazo.

Ruben Verana the husband of Devio's sister was also out fishing from 5:00 P.M. of February 18 to 5:00 A.M. of Feb. 19, 1982 in the waters of barangay Alegria, Caibiran where he lives.

Andres Vermug said he was at his farm in sitio Calambis, barangay Binohangan, Caibiran, Leyte watching his palay. This is a 2 hour walking distance (sic) to the residence of Calixtro Rosario." [27]

The lower court rejected such defense for "lack of proof of the impossibility of their (accused's) being in the scene of incident (sic) at the time of its occurrence (sic) and from where they allege they were instead. They provided the possibility which is merely one or two or three rowing or walking distance (sic)." [28]

On 9 October 1989, accused Julian Rostata, Jr., Meliton Verana and Andres Vermug, hereinafter referred to as the Appellants, filed a Notice of Appeal informing the trial court that they were appealing the decision to this Court.[29]

In their appeal, the appellants urge this Court to reverse the challenged decision on the ground that the trial court committed the following errors:

"I

THAT THE TRIAL COURT ERRED IN NOT GIVING DUE WEIGHT TO THE REPORT OF THE OFFENDED PARTY HIMSELF CALIXTRO ROSARIO (EXHIBIT 6) TO THE POLICE THAT HE WAS NOT ABLE TO IDENTIFY ANY OF THE PERPETRATORS.

II

THAT THE TRIAL COURT ERRED IN NOT APPRECIATING THE LATE FILING OF THE COMPLAINT AS EVIDENCE OF DOUBT AS TO THE IDENTITY OF THE ACCUSED.

III

THAT THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONIES OF THE OFFENDED PARTIES, CALIXTRO ROSARIO, APROSA ROSARIO WERE CONCOCTIONS, BIASED AND SELF-SERVING.

IV

THAT THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONY OF DR. TEODORO PEREZ, RURAL HEALTH OFFICER OF CAIBIRAN, LEYTE AS TO HIS FINDING OF THE ALLEGED RAPE DESPITE SETTLED MEDICAL EVIDENCE.

V

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED APPARENTLY ON THE BASIS OF SENTIMENT AND COMPASSION IN DISREGARD OF THE TIME-HONORED PRINCIPLE OF MORAL CERTAINTY IN THE GUILT OF THE ACCUSED, AND THEIR RIGHT TO A SPEEDY TRIAL."[30]

As to the first and second assigned errors which were discussed together, the appellants insist that the entry in the police blotter of the INP Sub-Station of Caibiran for 8 February 1982 (Exhibit "6") speaks for itself, i.e., the report was made by Calixtro Rosario and the parties who committed the crime were not identified by the victims. The lack of positive identification is further bolstered by Calixtro's and Aprosa's failure to reveal to Patrolmen Llorno and Viros in the morning of 19 February 1982 the names of the perpetrators of the crime, Gemma's inability to make herself available for interview and the complaint's belated filing. The victims had remained silent for two (2) months; it was only on 14 April 1982 that they disclosed the names of the perpetrators.

The appellants further sought to diminish the effect of Apolonio Rosario's testimony -- that it was he, not Calixtro, who reported the incident and that since he was not at the scene of the crime, he could not identify the culprits; hence, the entry in the police blotter is still correct -- by claiming that "Calixtro Rosario himself made no move to testify that it was not he who made the report but his brother in order to rectify the error in the police report." [31] Moreover, Apolonio declared that he knew the robbers but could not make a report because some of them were following him and even went inside the police headquarters. Thus, his failure to inform the police that they were the ones who committed the robbery and rape is alleged to be "contrary to the natural behavior of mankind." [32]

With respect to the third and fourth assigned errors, which they also jointly discuss, appellants, while still alluding to the correctness of the police blotter entry which shows that the perpetrators of the robbery and rape were "unidentified," vigorously harp on the failure of the victims or their neighbors to come forward and denounce any of the accused during the on-the-spot investigation conducted by Llorno and Viros. They further submit that the

trial court should not have believed the entry in the medical certificate issued by Dr. Perez to Gemma -- showing that the vaginal smear taken from her on 14 April 1982, when she was examined for the alleged rape committed on 18 February 1982, was positive for sperm -- because it was medically impossible for the sperm introduced during the rape to last until 14 April 1982.

Anent the fifth assigned error, appellants direct the attention of this Court to the delay in the disposition of the case by the trial court. According to them, while trial actually commenced on 1 June 1983 and terminated on 17 June 1986, the decision of the trial court was "pinned (sic) on July 31, 1989 and promulgated thereafter." [33] The right to a speedy trial, they stress, is guaranteed by the Constitution; in the instant case, "it has been unwittingly violated by pretexts and excuses on the part of courts." [34]

In refutation, the People, through the Office of the Solicitor General, [35] belittles the appellants' contentions and characterizes them as untenable and devoid or bereft of merit. [36] It is then argued that (a) it was actually Apolonio, and not Calixtro, who reported the incident to the police station in the morning of 19 February 1982; since he was not actually present during the incident, Apolonio may not be expected to know the identities of the perpetrators; moreover, even if he had been informed of the criminals' identities after conferring with Calixtro and his family, Apolonio may have felt incompetent to divulge the said identities to the police authorities; furthermore, he was scared to divulge such identities because Andres Vermug, Meliton Verana and Ruben Verana followed him to the police station, entered the same and watched him while he was informing the police authorities about the incident; (b) "it is well nigh impossible for complainants not to know the identities of appellants and their other co-accused as the perpetrators of the crime at bar, considering the fact that, except for Vitaliano Devio, all of them are complainants' barrio and townmates and acquaintances whom they have known since said perpetrators' childhood and complainants' house was lighted with a big oil lamp at the time of the incident in question;" (c) the slight delay in the filing of the complaint is not indicative of the complainants' doubt as to the identities of the perpetrators; it was brought about by the fact that being simple barrio folks unaccustomed to the complexities and intricacies of legal actions and remedies, they could not act promptly and immediately; (d) scrutiny of the transcripts of the proceedings will readily indicate that the appellants' and their witnesses' testimonies are the ones obviously concocted, unnatural and inherently unworthy of belief, while those of the complainants and the other prosecution witnesses are straightforward, firm, logical, natural and in harmony with ordinary human experience; (e) Dr. Perez' conclusion that Gemma Rosario had sexual intercourse and was apparently the victim of rape was not anchored solely on the presence of sperm in her vaginal canal but also on the findings of healed lacerations in the upper and middle portions of her left, and the upper portion of her right, labia minora; and (f) the appellants' convictions were anchored on clear and incontrovertible evidence adduced by the prosecution. Upon the other hand, it is averred that the appellants' defense is based on a simple denial and alibi; such denial cannot prevail over the positive declarations of prosecution witnesses. Furthermore, for alibi to prosper, the appellants must show -- and this they failed to do -- that they were not or could not have been at the scene of the crime but at another place and that because of the distance involved, it was impossible for them to have been present at said crime scene at the time of the crime's commission.

In their Reply-Brief, [37] appellants seek to dilute the force of the People's contention that their defense of denial and alibi is weak by asserting that while alibi is indeed a weak defense, it does not necessarily follow that conviction will inevitably follow in every case where it is interposed. In the absence of the positive identification of the perpetrators, as in this case, alibi must prevail. Appellants again stress their main arguments as presented in their Brief and point out to this Court the failure of the Solicitor General to take issue with the fifth assigned error that there was a "long delay in the rendition of the judgment" which "amounted to a violation of the rights of the accused to speedy justice and indicative (sic) of doubt of the guilt of the accused." [38]

We are not impressed by the appellants' submission, arguments and pleas.

It is, of course, correct that although the crime was committed on 18 February 1982, the complaint was filed only on 15 April 1982, or one (1) month and twenty-three (23) days thereafter. However, the delay was not due to the failure of the victims to identify the appellants, but to the threats made by accused Vitaliano Devio, Alfredo Rotap and appellant Julian Rostata, Jr. to the effect that the victims would be killed if they reported the incident to the authorities. On direct examination, Calixtro Rosario testified as follows:

"ATTY. VILLALUNA:

Q

Immediately before Berting Devio left your house was there any conversation between you and him?

A

Yes sir.

Q

What was that about?

A

He told me, if ever you will file a complaint I will come back and kill you all."[39]

On direct examination, Gemma Rosario testified:

"ATTY. VILLALUNA:

x x x

Q

After that sexual intercourse, after you were raped by Fred Rotap, what did Fred Rotap do, if any?

A

He told me that if I told that incident to any authorities, he will come back and they will kill us.

Q

To whom are you referring to to (sic) the word us?

A

Fred Rotap told me that if I told this incident to any authorities, they will come back and they will kill us.

ATTY. VILLALUNA:

Q

At the time Fred Rotap was telling you where was John (sic) Rostata?

A

John (sic) Rostata was behind him.

Q

What John (sic) Rostata tell you also, if any?

A

He also told me that if I tell this incident to the authorities, he will come back and he will kill us.

x x x

Q

So after ransacking your (sic) cabinet by John (sic) Rostata, what did they do next if any?

A

He again told me that if I tell this incident to the authorities, they will come back and they will kill us."[40]

Devio and Rostata, Jr. did not deny or rebut these direct and positive statements of Calixtro and Gemma.

Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained.[41] The law on prescription of crimes[42] would be meaningless if We were to yield to the proposition that delay in the prosecution of crimes would be fatal to the state and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty prescribed therefor, the law takes into account or allows reasonable delays in the prosecution thereof.[43] In the instant case, the delay was satisfactorily explained.

Besides, the appellants failed to prove any ulterior or improper motive which could have induced the victims to testify against or falsely implicate them in the commission of the crime. When there is no evidence to show improper motive on the part of a prosecution witness to testify falsely against an accused or falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive existed and his testimony is worthy of full faith and credit.[44] Indeed, if an accused had really nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that the prosecution witness would falsely testify against the former.[45] Hence, there is the need for proof of ulterior or improper motive on the part of the witness. In the present case, the appellants were hard put to find such a motive and were even candid enough to admit its absence. Thus, Devio declared on direct examination:

"ATTY. GENEROSO CASIMPAN:

x x x

Q

Do you know the reason why you were included as co-accused in this case?

A

That I do not know sir."[46]

Rostata, Jr. likewise made the following declarations during direct examination:

"ATTY. GENEROSO CASIMPAN:

x x x

Q

Could you tell us reason (sic) or reasons why you were implicated by the Rosario FAMILY?

A

I do not know, maybe they have ill feeling with ky (sic) parents."[47]

The police blotter entry (Exhibit "6"), insisted upon with unusual vehemence by the appellants as evidence of the non-identification of the perpetrators, does not appear to be as persuasive and weighty as the former would claim. Firstly, the evidence for the prosecution shows that it was Apolonio -- not Calixtro -- who reported the incident. The entry, which identifies Calixtro as the reporter, is obviously inaccurate. That Calixtro was not the person who reported the incident was further established by the un rebutted evidence that by reason of the injuries he had sustained on the occasion of the robbery, Calixtro could not walk. Thus:

"ATTY. CASIMPAN:

x x x

Q

Did you not make a report to the authorities?

A

I requested my brother to report the incident because I could not walk.

Q

Why you could (sic) not walk?

A

Because of the pain due to that maltreatment.

Q

Are you sure that you were not the one who personally made the report to the police authorities of Caibiran?

A

Yes, sir.

Q

It was your brother Apolonio?

A

Yes, sir.

Q

What instruction did you give him?

A

That we were robbed last night and my daughter was raped.

Q

That was all?

A

Our money in the amount of P5,400.00 and a wristwatch worth P500.00.”[48]

Furthermore, it was proven that immediately after the said report was made, Pats. Llorno and Viros were ordered to conduct an on--the-spot investigation; they therefore interviewed Calixtro and Aprosa.[49] If Calixtro had indeed come to the police station to make the report, he should have been interviewed at the station.

Besides, We have held that the entry in a police blotter "is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject.”[50] The lack of material particulars in the entry in question is too obvious; in short, it is just so incomplete. Such deficiency could only be explained by the fact that the person who recounted the incident is not the victim and, therefore, could provide no additional information. Furthermore, there is no evidence at all to show that the relator -- be he Calixtro or Apolonio -- saw or read what was written on the police blotter. Hence, he was not afforded an opportunity to correct any misstatement of facts. Having thus been so prepared, it cannot conclusively bind the relator or the victims who were not even present when the report was made.

It is true that Gemma submitted to a medical examination only on 14 April 1982. Such a delay does not, however, diminish the credibility of her declaration that she was raped. A medical examination is not an indispensable element in a prosecution for rape as the finding of guilt on the part of the accused depends upon the evidence offered; as long as the evidence on hand convinces the court, a conviction for the crime of rape is proper.[51] The testimony of the offended party may suffice. An examination of the victim's testimony in the case at bar proves beyond reasonable doubt that she was raped by appellant Julian Rostata, Jr. and accused Alfredo Rotap. She had clearly weathered a grueling cross-examination which even provided her an opportunity to explain the delay in the filing of the case. During such questioning, the cross-examiner recklessly asked questions on details the answers to which even firmed up her positive identification of the rapists and enhanced her sincerity, candor and credibility. All told, We find nothing in her testimony to establish, or even suggest, an improper motive which could have induced her to falsely implicate Rostata, Jr. and Alfredo Rotap. It is thus difficult to think of a reason that would have motivated Gemma to undergo the embarrassment and humiliation of a public trial affecting her honor and submit to the examination of her private parts other than for the purpose of bringing her defilers to justice.[52]

The fifth assigned error must also fail. The prosecution successfully discharged its burden of ascertaining the guilt of the appellants by proof beyond reasonable doubt. Anent the alleged violation of their right to a speedy trial, a right solemnly enshrined in the Bill of Rights of the Constitution,[53] even if We are to assume that such violation existed, it would not, by itself, entitle the accused to an acquittal. We have earlier observed that although the trial court declared the case submitted for decision on 20 August 1986, after a trial that had begun on 1 June 1983, the decision, dated 31 July 1989, was initially set for promulgation only on 29 August 1989; this promulgation was further postponed to 28 September 1989. The Judge who had penned the decision has not given any reason for this unusual delay in the rendition of the judgment. Since the case was filed, heard and submitted for decision under the aegis of the 1973 Constitution, the trial court had three (3) months from 20 August 1986 within which to render a decision thereon.[54] The date of the filing of the decision with the clerk of Court is the date of rendition.[55] The records do not even reveal when the said Judge filed the aforesaid decision, although it is dated 31 July 1989. Obviously, the latter rendered his decision way beyond the period. Notwithstanding such defect, however, the trial court was not, for that reason alone, divested of its jurisdiction. Of course, administrative sanctions could be imposed on the Judge.[56]

Presently, the 1987 Constitution also provides for the same period, and with reference to the expiration of the

period without a decision having been rendered, the third and fourth paragraphs of Section 15, Article VIII thereof provide:

"(3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay."

We note, however, that the appellants tolerated the delay. The records fail to disclose that at any time between 20 August 1986 and 28 September 1989, they had filed any pleading invoking their right to a speedy disposition of the case. Hence, their present lament bears no earmark of sincerity and is nothing but a delayed afterthought. *Vigilantibus, non dormientibus jura subveniunt.*

All told, this Court is convinced that the appellants and their co-accused conspired and confederated together to rob the spouses Calixtro and Aprosa Rosario; there is also no doubt that its commission was accompanied by the rape, on two (2) counts, of Gemma Rosario, and the infliction of less serious physical injuries[57] on Calixtro Rosario. Said injuries are only less serious because per the doctor's findings, the same "will heal in ten (10) days, barring complications." Conspiracy having been sufficiently established, all the accused are equally liable for the robbery, rape and physical injuries despite the fact that only Rostata, Jr. and Rotap committed the rape and Devio inflicted the injuries. Where conspiracy is established, the act of one is the act of all.[58]

Although two (2) rapes were committed -- the first by appellant Julian Rostata, Jr. and the second by Alfredo Rotap -- both are to be considered absorbed in the special complex crime of robbery with rape punished under paragraph 2, Article 294 of the Revised Penal Code. Moreover, since the said rapes were committed with the use of a deadly weapon and by two (2) persons, the imposable penalty is reclusion perpetua to death.[59]

If only less serious physical injuries had been inflicted during the robbery, the appellants would have been liable for simple robbery under paragraph 5 of Article 294,[60] an offense which carries the penalty of prision correccional in its maximum period. Considering, however, that a graver crime accompanied the robbery, the robbery with rape must, in this case, be deemed to absorb the simple robbery.

The crime having been committed in the residence of the offended parties, dwelling,[61] though not alleged in the information, should have been appreciated by the trial court as a generic aggravating circumstance.[62] Furthermore, since no mitigating circumstance attended the commission of the crime, the imposable penalty should have been death pursuant to the rule prescribed in Article 63 of the Revised Penal Code. In view, however, of the constitutional provision prohibiting the imposition of the death penalty,[63] only reclusion perpetua may be imposed upon the appellants. The penalty ultimately imposed by the trial court -- reclusion perpetua -- is then correct. There are, nevertheless, portions of the decretal part of its decision which should not be allowed to rest without Our comment. The first paragraph thereof reads:

"WHEREFORE, premises considered, while positively there were two rapes committed on the occasion of the robbery but because only one is charged in the information, the Court finds all the accused GUILTY beyond reasonable doubt of ROBBERY WITH RAPE AND PHYSICAL INJURIES defined and penalized under Article 294 sec. 2 of the revised penal code as amended by PD 767."

It is thus suggested that if the two (2) rapes had been properly alleged in the Information, two (2) convictions for robbery with rape would have been proper. This is an erroneous conclusion for even if multiple rapes were

committed, only one (1) penalty for the special complex crime of robbery with rape may be imposed.

The trial court should have used the language of the second paragraph of Article 294 in reference to rape. Thereunder, the law speaks of robbery accompanied by rape, and not rape committed by reason or on the occasion of the robbery. This latter phrase, it is to be observed, is used in reference to the special complex crimes of robbery with homicide and robbery with physical injuries which are defined and penalized in subdivisions 1 and 2, Article 263 of the Revised Penal Code.

The second paragraph of the decretal portion correctly rules that the imposable penalty is reclusion perpetua to death. However, it erroneously states that "[T]here being no mitigating or aggravating circumstance the penalty shall be applied (sic) in its medium period which is reclusion perpetua." Since the prescribed penalty for the offense is composed of two (2) indivisible penalties, they cannot be divided into minimum, medium and maximum periods. In the consideration of the attendant modifying circumstances, the second paragraph of Article 63 of the Revised Penal Code speaks only of the greater or the lesser of the two (2) indivisible penalties.

Finally, in the third paragraph of the said decretal portion, the trial court "sentences all the accused to suffer and undergo x x x" the penalty imposed therein, thereby giving the impression that all the accused, including those who were not arrested namely, Alfredo Rotap and the three (3) DOEs, were likewise convicted and sentenced to serve the penalty. As to the accused who remain at large, no valid judgment could be entered against them for obvious reasons. Thus, the words "all the accused" should refer only to those who were arraigned and stood trial.

In conclusion, We affirm the challenged decision, subject to the foregoing observations and the further modification of the indemnity awarded to Gemma Rosario which, conformably with the current policy of this Court, should be increased to P50,000.00.

WHEREFORE, the Decision of Branch 16 of the Regional Trial Court of the Eighth Judicial Region at Naval, Sub-province of Biliran, Leyte, in Criminal Case No. N-893, dated 31 July 1989 and promulgated on 28 September 1989, is, insofar as appellants Julian Rostata, Jr., Meliton Verana, Vitaliano Devio and Andres Vermug are concerned, **AFFIRMED**, subject to the modification with respect to the indemnity awarded to Gemma Rosario which is hereby increased to P50,000.00.

The trial court is hereby directed to take immediate steps for the arrest of accused Vitaliano Devio for service of sentence and judgment on the bond, as well as the other accused who still remain at large.

Costs against the Appellants.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.
Gutierrez, Jr., J., (Chairman), on leave.

[1] Exhibit "6"; Original Records, 27.

[2] Exhibit "B"; Id., 9.

[3] Original Records, 1.

[4] Id., 2-8.

[5] Id., 9.

[6] Exhibit "D"; Id., 10.

- [7] Original Records, 91.
- [8] Original Records, 16.
- [9] Id., 28-32.
- [10] Id., 32.
- [11] Id., 84-90.
- [12] Original Records, 92.
- [13] Id., 93-94.
- [14] Original Records, 95-96.
- [15] Id., 97.
- [16] Id., 111.
- [17] Id., 117.
- [18] Id., 149; 156.
- [19] Id., 539.
- [20] Original Records, 543.
- [21] Id., 546.
- [22] Id., 563; 572.
- [23] Id., 556-560; Rollo, 25-29. Per Judge Adriano R. Villamor.
- [24] Original Records, 560; Rollo, 29.
- [25] Original Records, 557-558; Rollo, 26-27.
- [26] Id., 560; Id., 29.
- [27] Original Records, 559; Rollo, 28.
- [28] Id.; Id.
- [29] Id., 568.
- [30] Brief for Appellants, 1; Rollo, 42.
- [31] Rollo, 50.
- [32] Id.
- [33] Rollo, 53.
- [34] Id., 54.
- [35] Brief for Plaintiff-Appellee; Id., 69, et seq.
- [36] Brief for Plaintiff-Appellee, 13; 18.
- [37] Rollo, 71-76.

[38] Id., 75.

[39] TSN, 7 October 1983, 24.

[40] TSN, 8 May 1985, 14-15.

[41] People vs. Obngayan, 55 SCRA 465 [1974]; People vs. Roxas, 73 SCRA 583 [1976]; People vs. Elizaga, 73 SCRA 524 [1976].

[42] Articles 90 and 91, Revised Penal Code.

[43] See U.S. vs. Briones, 28 Phil. 367 [1914].

[44] People vs. Mercado, 38 SCRA 168 [1971]; People vs. Cabiling, 74 SCRA 285 [1976]; People vs. Angeles, 92 SCRA 432 [1979]; People vs. Belibet, 199 SCRA 587 [1991]; People vs. Doctolero, 193 SCRA 632 [1991].

[45] People vs. Balili, 92 SCRA 552 [1979].

[46] TSN, 30 October 1985, 5.

[47] TSN, 17 September 1985, 13.

[48] TSN, 7 March 1984, 10.

[49] TSN, 1 June 1983, 6.

[50] People vs. Santito, Jr., 201 SCRA 87, 94-95 [1991].

[51] People vs. Belandres, 85 Phil. 874 [1950]; People vs. Selfaison, 1 SCRA 235 [1961]; People vs. Orteza, 6 SCRA 109 [1962]; People vs. Dalinog, 183 SCRA 88 [1990]; People vs. Dolores, 188 SCRA 660 [1990]; People vs. Camasis, 189 SCRA 649 [1990]; People vs. Godines, 196 SCRA 765 [1991].

[52] People vs. Detuya, 154 SCRA 410 [1987]; People vs. Muñoz, 163 SCRA 730 [1988]; People vs. Casinillo, G.R. No. 97441, 11 September 1992.

[53] Section 14(2), Article III, 1987 Constitution.

[54] Section 11(1), Article X, Id.

[55] Marcelino vs. Cruz, 121 SCRA 51 [1983].

[56] Marcelino vs. Cruz, *supra*.

[57] Article 265, Revised Penal Code.

[58] People vs. Alonzo, 73 SCRA 484 [1976].

[59] Paragraph 2, Article 294, Revised Penal Code, as amended by P.D. No. 767.

[60] PADILLA, A., CRIMINAL LAW, The Revised Penal Code, vol. III, 1977 ed., 153; U.S. vs. Barroga, 21 Phil. 161 [1912].

[61] Article 14(3), Revised Penal Code.

[62] People vs. Aquino, 57 SCRA 43 [1974]; People vs. Lucero, 96 SCRA 694 [1980].

[63] Section 19(1), Article III, 1987 Constitution.

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