

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN MORENO Y ULTRA, AND PAULINO DELORIA, ACCUSED, REYNALDO MANIQUEZ, ACCUSED-APPELLANT.

G.R. No. 92049, March 22, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

Accused Juan Moreno, Paulino Deloria and lone appellant Reynaldo Maniquez were charged with the Crime of "Robbery with rape" in an information quoted as follows:

"That on or about May 31, 1985, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, with intent of gain, and by means of force, violence and intimidation and by means of force upon things, to wit: by forcibly destroying with the use of cutter and screw driver the window of the ground floor of House No. 1291 Paz St., Paco, this City, an inhabited house being used as a dwelling place of RAJ MOHNANI and his family, and entering the said window, an opening not intended for entrance or egress, did then and there wilfully, unlawfully and feloniously break into and enter inside the said house and once inside, poked their respective bladed/pointed weapons to said Raj Mohnani and his wife, Sundri Mohnani, telling to call their maids, and ordering them including their three (3) children to lie face down, took, stole and carried away the following, to wit:

One (1) SONY TV 21" colored valued at

P 10,000.00

One (1) Betamax valued at

11,000.00

One (1) ROLEX wristwatch, gold

10,000.00

One (1) PEGOT wristwatch blue w/ gold

10,000.00

One (1) Citizen quartz w.watch, gold

2,000.00

One (1) Computer Sharp Model 1500

10,000.00

One (1) Seiko wristwatch, silver

1,200.00

One (1) Citizen quarts, gold

1,500.00

One (1) Casio wristwatch

500.00

One (1) Cartier black

500.00

Six (6) assorted wristwatches

3,000.00

One (1) gold ring with initial "R"

5,000.00

Two (2) Gold bracelets

15,000.00

One (1) pair of gold earrings

2,000.00

Three (3) wallets with cash money

3,000.00

and US \$134.00

Two (2) pairs of Bally shoes

5,000.00

One (1) bicycle

850.00

One (1) bottle Black Label whisky

500.00

One (1) Dunhill cig. Lighter

7,000.00

One (1) Win electro lighter

500.00

One (1) Sony TV 16"

One (1) Headphone radio

Four (4) betamax tapes

One (1) Bally shoes

One (1) bag of assorted slippers

One (1) Yasaki rubber shoes

One (1) ROTA AIRE SUNBEAM

all valued at P98,550.00, Philippine Currency and US\$134.00 or its equivalent to P2,412.00, or all valued at P100,962.00 more or less, belonging to said RAJ MOHNANI against his will and consent, to the damage and prejudice of said owner in the aforesaid amount of P100,962.00, more or less, Philippine Currency; that on this occasion, the robbery was immediately accompanied by rape, the said accused, did then and there wilfully, unlawfully and feloniously, and by means of force, violence and intimidation, to wit: by using and poking their respective bladed weapons on the person of Marry Ann Galedo y Caledo and Narcisa Sumayo y de Alagdon, succeed in having sexual intercourse with them against their will and consent.

Contrary to law."^[1]

Upon arraignment, all the accused pleaded not guilty.

During the trial, all three accused jumped bail. Accused-appellant Reynaldo Maniquez was, however, reapprehended. The other two, Juan Moreno and Paulino Deloria, could not be found, although Juan Moreno has been reported dead. On the other hand, the victims of the alleged rape, Mary Ann Galedo and Narcisa Sumayo, left their employer's house shortly after the alleged robbery and rape for an unknown province, and thus neither of them could testify at the trial.

On September 11, 1987, after trial on the merits, the lower court rendered a judgment of conviction, the dispositive portion of which reads as follows:

"WHEREFORE, the Court hereby renders judgment against all the Accused, as follows:

1. The Court finds the Accused Juan Moreno y Ultra, guilty beyond reasonable doubt, as principal, for the crime of robbery as defined in and penalized by Article 294, paragraph 5 of the Revised Penal Code, as amended and hereby sentences him to suffer imprisonment for an indeterminate period of from four (4) years and two (2) months of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, with the accessory penalties of the law;
2. The Court finds the Accused Reynaldo Maniquez y de la Merced and Paulino Deloria y Ramilla, guilty beyond reasonable doubt, as principal, for the crime of robbery with rape and hereby sentences each of them to suffer the penalty of reclusion perpetua with all the accessory penalties of the law and hereby orders the Accused Reynaldo Maniquez to pay Mary Ann Galedo and the Accused Paulino Deloria to pay Narcisa Sumayo, the amount of P10,000.00, Philippine Currency, by way of damages, without subsidiary imprisonment in case of insolvency;
3. Ordering all the Accused to return to the Spouses Mohnani Raj and Sundri Mohnani all the goods and appliances stolen by them as listed in the aforementioned Information and if they failed and/or refused to do so, to pay, jointly and severally, to said Spouses the value of said goods, in the amount of P98,550.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED."^[2]

Since the decision involved the penalty of reclusion perpetua, the records of the case were transmitted to this Court for review. Notice was sent to counsel of the accused to file Appellants' brief but such notice was returned unclaimed. However, Reynaldo Maniquez, who was detained at the New Bilibid Prison in Muntinlupa, signified his intention to plead his case, at the same time requesting this Court to appoint a counsel de oficio since his previous counsel had allegedly abandoned him. His request was granted, and counsel de oficio filed his brief,

raising only one assignment of error: that "the lower court gravely erred when it convicted the appellant with the crime of rape on the basis of the affidavit of the alleged offended party, without hearing her testimony in open court".[3]

Accused-appellant is contesting, not his conviction for robbery, but only his conviction for rape of Mary Ann Galedo, who was not presented as a witness during the trial.

The following facts as found by the trial court are undisputed:

"As can be synthesized from the evidence in the record, it appears that between 4:00 and 4:30 o'clock in the early morning of May 31, 1985, the Spouses Mohnani Raj and Sundri Mohnani, both Indian nationals, but residing in the Philippines, were sleeping in their house at No. 1291 Paz Street, Paco, Manila, with their three (3) children. The couple had two maids, namely, Mary Ann Galedo and Narcisa Sumayo, who were sleeping in another room near the sala of the house.

The three (3) Accused agreed to rob the house of Mohnani Raj and Sundri Mohnani. At first, the Accused Juan Moreno had, in mind, robbing a house in Makati but when he saw that there were policemen in the vicinity, the house of the Indian couple became their prime target. Seemingly, aside from the three Accused, they had another confederate, a jeepney driver, who agreed to use his jeepney on which to load the loot taken by the Accused from the house of the couple. When the Accused reached the vicinity of the house of the couple, the jeepney was parked nearby about four (4) meters away from the house of the couple.

The Accused Juan Moreno entered the house first by cutting the iron grills of the window of the house. In the meanwhile, the Accused Paulino Deloria patrolled the street nearby for any persons or tanod in the vicinity. The Accused Reynaldo Maniquez, on the other hand, acted as the look-out. After a while, Juan Moreno emerged from the house, with a pair of scissors. The Accused Juan Moreno handed over to the Accused Reynaldo Maniquez the pair of scissors and ordered the latter to look for Paulino Deloria.

Thereafter, the trio entered the house together, using a flashlight.

It was at that point in time that the son of the couple, Pran, was going out of the bedroom of the couple to urinate. The spouses were awakened when the three Accused Juan Moreno, Reynaldo Maniquez and Paulino Deloria entered their bedroom. The Accused Paulino Deloria, who was armed with a gun covered with a towel, switched on the lights inside the bedroom of the couple and stood by the door. The Accused Reynaldo Maniquez, on the other hand, sat on the stomach of Mohnani Raj, at the same time, warning the latter not to shout, while poking the pair of scissors on him. The Accused Juan Moreno posted himself beside where Sundri Mohnani Raj was lying down, while poking his knife at her.

The Accused Juan Moreno told Sundri Mohnani to remove all her belongings and her handbag and warned her not to shout. The said Accused was able to take from her a watch, two (2) Indian bangles, two (2) rings and P1,000.00 cash. The Accused Paulino Deloria also told Sundri Mohnani to remove her watch and other personal belongings and asked her if she had money. Sundri Mohnani gave the said Accused her money. The Accused Reynaldo Maniquez asked Sundri Mohnani for the wallet and the latter told the Accused that the wallet was on top of the airconditioning unit. The Accused Paulino Deloria asked her where her maids were and Sundri Mohnani told the Accused where their maids were sleeping. Sundri Mohnani, thereupon, accompanied Paulino Deloria and Reynaldo Maniquez to the room of their maids, near the sala. When Sundri Mohnani and the two (2) Accused entered the room of the maids, Sundri Mohnani instructed her maids not to shout and to go to the room of the Spouses.

However, the Accused Paulino Deloria and Reynaldo Maniquez told the maids to go with them stead. Reynaldo Maniquez brought Mary Ann Galedo to the bathroom of the house while Paulino Deloria brought Narcisa Sumayo to the sala.

Sundri Mohnani was afraid to go out of the bedroom. However, she peeped through the door of the bedroom which was then open. Although she could see the bathroom, the door to the bathroom was closed. She could not, moreover, see the sala from where she was.

After about five (5) minutes, Paulino Deloria and Reynaldo Maniquez and the two (2) maids returned to the room of the couple. Sundri Mohnani saw that the zipper of the pants of Reynaldo Maniquez was still open. Narcisa Sumayo was crying while Mary Ann Galedo was lying in bed, quiet. The two (2) maids were told to lie down. Sundri Mohnani asked Narcisa Sumayo why she was crying, but the latter did not respond. The Accused Paulino Deloria told Narcisa Sumayo to stop crying. After two or three minutes, Reynaldo Maniquez closed the zipper of his pants and went out of the bedroom and took the wallet of Mohnani Raj on his way out.

Thereupon, the Accused left the room and ransacked the house. The Accused Juan Moreno took the television and Betamax set from the room of the couple while the Accused Reynaldo Maniquez took a Betamax and the wallet of Sundri Mohnani Raj.

The three Accused forthwith carted from the house the belongings and things they took from the house. They waited for the jeepney to arrive. After a while, the jeepney parked nearby came along. The three Accused thereupon loaded their loot inside the jeepney. Juan Moreno rode in the jeepney while the Accused Reynaldo Maniquez walked home.

After the Accused left the residence of the couple, Sundri Mohnani locked their door while Mohnani Raj shouted "Nakaw, nakaw". When the couple went out of their room, they saw their door to the house opened and the iron bars on the window were destroyed.

The couple called up the police who later responded and arrived in their house. There were also about twenty or so people who offered succor to the couple. The police officers were told of the circumstances of the robbery-rape perpetrated by the Accused.

The couple were able to recover, from across the street from their house, some of their belongings stolen by the Accused, namely, one (1) rota air, one (1) Sony television, head phone, four (4) Betamax tapes, one (1) pair Bally shoes and one (1) pair of rubber shoes. One bag of assorted slippers was found near the gate of their house.

Mohnani Raj, his brother-in-law and his son later proceeded to the police station at about 5:45 o'clock that morning to make a formal report of the robbery. The police investigators were furnished with a list of the belongings stolen by the Accused. Forthwith, Pat. Rodolfo Soriano, of the Theft & Robbery Unit of the Crimes Against Property Section of the Western Police District prepared and signed, on May 31, 1985, an Alarm Report, based on the investigation of the police officers wherein is listed the properties stolen by the Accused, and the values thereof, thus:

x x x x x

It is alleged in said Report that after the accused ransacked the house of the couple and took their appliances and belongings, the two maids were dragged to the sala and bedroom and were sexually abused, and that the two (2) maids will be furnished with the request for a medico legal examination of said maids (Exhibit "J-1").

x x x x x

Further investigation of the case was turned over to Pat. Cecilio Banzagales, Jr. the next day, June 1, 1985. On June 12, 1985, the police investigators received information that the Accused Juan Moreno could be found at Union Street, Paco, Manila. The police thereupon arrested the Accused Juan Moreno. At 12:00 noon of the same day, the Accused Reynaldo Maniquez was apprehended by the police officers. The said Accused informed the police officers of the whereabouts of the Accused Paulino Deloria at Taguig, Metro Manila. The latter Accused was arrested at about 3:00 o'clock that day in said place."^[4]

"On June 14, 1985, at 8:30 o'clock in the afternoon, Mary Ann Galedo and Narcisa Sumayo had themselves examined by Dr. Marcial Ceñido of the Medico Legal Section of the Western Police District. On his physical examination of Mary Ann Galedo, the doctor made the following findings:

- "1. Breasts are fairly developed, conical in shape, pendulous and soft and with dark brown prominent nipples and areolae;
2. Abdomen is flat, soft and with striae of pregnancy;
3. Multiple old healed lacerations at 3, 6 and 9 o'clock positions extending to the base, while hymen as a whole is thick;
4. Introitus vagina admits two (2) examining fingers with moderate resistance;
5. Vaginal wall is lax and with flapping of rugosities; and
6. Last menstrual period - June 11, 1985 for 4 days.

O P I N I O N:

The above findings is consistent with a woman who has already given birth."

- Exhibit "M".

which findings are "consistent with a woman who has already given birth (Exhibit "M"). On his examination of Narcisa Sumayo, the doctor made the following findings:

- "1. Breasts are fully developed, firm, hemispherical in shape and with small brownish nipples and areolae;
2. Abdomen is flat, firm and without striae of pregnancy;
3. Hymen is relatively thick, circular in shape and intact;
4. Introitus vagina admits one (1) examining finger with moderate resistance and would not admit the tip of two (2) examining fingers;
5. Vaginal wall is firm and with prominent rugosities; and
6. Last menstrual period - May 25, 1985 for 4 days.

O P I N I O N:

The above findings is consistent with a woman who is a virgin."

- Exhibit "M".

which findings are consistent with a woman who is a virgin (Exhibit "M")."[5]

The trial court in convicting appellant and accused Deloria of the crime of rape stated as follows:

"x x x While concededly, there is no direct evidence to prove the crime of rape considering that Mary Ann Galedo and Narcisa Sumayo, after they executed their respective statements before the police investigators, left for their respective provinces and that their whereabouts were unknown to the Prosecution, nevertheless, there is sufficient, ample and convincing circumstantial evidence in the record proving the guilt of the Accused beyond peradventure of doubt for the crime of rape.

The testimony of Sundri Mohnani is vital. Thus, she positively and spontaneously testified that he saw the Accused Reynaldo Maniquez bring Mary Ann Galedo from her room to the bathroom. The two of them, the Accused Reynaldo Maniquez and Mary Ann Galedo staying inside the bathroom for about five (5) minutes. After the lapse of said time, Mary Ann Galedo and the Accused Reynaldo Maniquez went out of the bathroom. Mary Ann Galedo proceeded to the bathroom of the couple. Sundri Mohnani saw the zipper to the pants of the Accused Reynaldo Maniquez still open. It was only after two (2) minutes that the Accused Reynaldo Maniquez bothered to close the zipper of his pants.

The Accused Paulino Deloria and Narcisa Sumayo likewise stayed in the sala of the house for about said

period of time of five (5) minutes after said Accused brought her from her room. When Narcisa Sumayo returned to the bedroom of the couple, she was crying profusely, most possibly because of the emotional shock and traumatic experience she went through in the sala. Mary Ann Galedo, on the other hand, sat on the bed quiet. Because of her persistent cries, Narcisa Sumayo had to be ordered by the Accused Paulino Deloria to stop crying.

While it may be true that when Sundri Mohnani asked Narcisa Sumayo why she was crying, the latter did not respond, and that Mary Ann Galedo was lying in bed, quiet, however, the failure of Narcisa Sumayo to respond and the silence of Mary Ann Galedo is understandable. It is to be noted that the Accused Reynaldo Maniquez and Paulino Deloria were still inside the bedroom standing guard and holding their weapons. The two Accused had threatened the two maids that they would be killed. There was thus the ever-present possibility that if the two maids talked about what happened to them, the two Accused might kill them.

When the police investigators responded to the calls for succor from the couple and proceeded to the house of the latter immediately after they received said calls that early morning, the police officers were forthwith informed of the sexual abuse the two maids suffered at the hands of the two Accused and this is reflected in the Alarm Report prepared by Pat. Rodolfo C. Soriano Exhibit "J-1", on May 31, 1985, x x x:

x x x x x x

The testimony of Sundri Mohnani was partially corroborated by no less than the Accused Reynaldo Maniquez himself when he affirmed and confirmed on the witness stand the allegation of Sundri Mohnani that the Accused brought Mary Ann Galedo to the bathroom and stayed with her inside the bathroom, although the Accused averred that they did so only for less than two (2) minutes."[6]

"Although Mary Ann Galedo and Narcisa Sumayo were not presented by the Prosecution as its witnesses, however, when the Prosecution offered the aforementioned written statements of the two (2) maids, the counsel of the accused did not object to the admission of said evidence:

x x x x x x

Consequently, the Accused thereby waived their right to cross-examine the said affiants and such statements are admissible in evidence and the Accused became bound to any favorable or unfavorable effects resulting from said evidence:

x x x x x x

Moreover, the contents of the Alarm Report, Exhibit (sic) "J" and "J-1" anent the rapes of the two maids, prepared by the police in the performance of his duties as such police officer and investigator are prima facie of the facts contained therein:

"Section 38. Entries in official records. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty especially enjoined by law, are prima facie evidence of the facts therein stated."

- Section 38, Rule 130, Rules of Court.

Considered from another angle, the Alarm Report, Exhibit "J" was prepared on the very day when the two maids were raped. The informations about the rapes of the maids were relayed to the police officers shortly after the rapes were committed and the same reported to the police investigators. Patently, therefore, the declarations of the two maids who forthwith informed the police officers of the rapes are admissible in evidence as part of the "res gestae" and as an exception to the hearsay rule:"[7]

In effect, there are two issues raised in this appeal:

- (1) Whether the affidavit executed by Mary Ann Galedo narrating the circumstances of her rape was properly considered as evidence without her testimony in open court, and
- (2) Whether, without such affidavit, there was sufficient circumstantial evidence to prove beyond a reasonable doubt that the alleged rape was committed by the accused-appellant, Reynaldo Maniquez.

Counsel for appellant claims that in the absence of Galedo's testimony in court, her affidavit is hearsay evidence and was thus inadmissible for the purpose of proving the allegation of rape.

Admittedly, Galedo's affidavit would be hearsay evidence if she did not testify as to its contents at the trial. The accused was not given the opportunity to face and cross-examine her on her accusations, a right guaranteed to him by the Constitution. However, there are exceptions to the rule on inadmissibility of hearsay evidence, and one of these is when it is part of the *res gestae*. Section 42 of Rule 130, Rules of Court, provides:

"SEC. 42. Part of the *res gestae*. - Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*. x x x."

This exception is based on the belief that such statements are trustworthy because made instinctively, "while the declarant's mental powers for deliberation are controlled and stilled by the shocking influence of a startling occurrence, so that all his utterances at the time are the reflex products of immediate sensual impressions, unaided by retrospective mental action".[8] Said natural and spontaneous utterances are perceived to be more convincing than the testimony of the same person on the witness stand.[9]

Immediately after the three accused left the house where the crime was committed, and the threatening presence of the accused was gone, both Mary Ann Galedo and Narcisa Sumayo told their employers, the Mohnani spouses, that they were raped. The latter later testified in court as to these statements. These were thus part of the *res gestae* since they were spontaneously made after their harrowing experience, as soon as the victims had the opportunity to make them without fear for or threat to their lives.

More important even is the straightforward and clear testimony of Sundri Mohnani, wife of Raj Mohnani, their employer. She testified in court that she saw appellant enter their bathroom with Galedo. She saw him close the door and later come out after about five minutes, with the zipper of his pants still unzipped. She saw him zip it up some minutes later. This testimony was partly corroborated by appellant himself who admitted on the witness stand that he went inside the bathroom with Galedo, but denied having raped her.

Aside from the testimony of the victim herself, it is not often that direct evidence of rape is available. The act of rape itself is rarely witnessed by a third party. More often than not, only circumstantial evidence can be given. And such evidence can be the basis of conviction, provided certain requisites are present. Section 4 of Rule 133, Rules of Court, provides:

"SEC. 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt."

Although the medical examination of Galedo was inconclusive as to whether she was raped, there are several other circumstances tending to prove that she was, namely: the act of appellant in taking her to the bathroom, closing the door and leaving it only after about five minutes; the fact that his fly was open when he left the bathroom; and spontaneous statement of Galedo to her employers that she was raped. These facts were all part of the testimonies of witnesses who were given credence by the trial court and must thus be considered as proven.

We find no reason to question the latter's judgment as to the truth of these testimonies. Finally, taking all these facts together, We are convinced beyond a reasonable doubt that appellant is guilty of having raped Mary Ann Galedo.

With respect to Paulino Deloria who was also found guilty by the trial court of the crime of Robbery with rape against Narcisa Sumayo, the circumstantial evidence presented against him consists of Sumayo's statement to Raj Mohnani that Deloria raped her, and the testimony of Sundri Mohnani to the effect that Deloria took Sumayo to the sala. Although Sundri did not see what happened in the sala as it was out of everybody's sight, she stated that when Deloria and Sumayo came back after about five minutes, Sumayo was crying profusely. Raj Mohnani also testified that Sumayo was crying for some time and could not stop until she was threatened by Deloria. It is true that the medical examination of Sumayo showed that her hymen was intact. However, this fact alone does not necessarily signify that Sumayo was still a virgin, and does not preclude the fact that she may have had sexual intercourse. A well-known authority on Legal Medicine has this to say on the subject:

"Although unruptured hymen is commonly mentioned as a distinguishing feature of virginity, it is not always a sure indication of preservation of virginity. A woman might have had previous sexual intercourse and yet the hymen remains unruptured, while others might have experienced sexual relations, but with laceration of the hymen." [10]

This Court has previously held that an intact hymen does not preclude rape.

"The ruling of the court below as regard Pastores must be affirmed. It must be remembered that the fact that a woman's hymen has no sign of laceration does not preclude a finding of rape. For the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape; it is enough that there is proof of entrance of the male organ within the labia of the pudendum." [11]

Thus, despite the fact that the medical examination of Sumayo showed that the hymen was still intact, it is not inconsistent with a finding that Deloria raped her. Why did he bring her to a place where no one could see what he intended to do? Why did Sumayo cry so violently that she could not stop until her tormentor Deloria threatened her and ordered her to stop crying? Why did she tell her employer as soon as the three accused left, that she was raped? We are convinced that there is only one answer to these queries: because she was indeed violated by Deloria.

With respect to the charge of robbery, appellant does not question his conviction by the lower court. The records show strong and ample evidence more than sufficient to support the conviction of all three accused of the crime of robbery. They all conspired to rob the victim's house; they cut the iron grills of the window for the purpose of gaining entry into the house; Moreno was armed with a .38 paltik gun and appellant with a pair of scissors; they hogtied and intimidated Raj and Sundri Mohnani; and they carted away in a waiting jeep everything they could get from the Mohnani household - from big appliances like 21" TV set, to several kinds of watches and jewelry, to shoes and slippers. Appellant, who was the only one of the three accused who testified in court, practically admitted all these facts, although he tried to minimize his share of the loot.

Therefore, accused Juan Moreno, who took no part in the rape, is guilty of robbery only under Article 294, No. 5 of the Revised Penal Code but as to appellant Reynaldo Maniquez, who is herein found to have raped Mary Ann Galedo, he should be guilty of the special complex crime of robbery with rape, under Article 294, No. 2 of the Revised Penal Code, as correctly found by the lower court. However, the trial court in fixing the penalty imposed on the accused failed to take into consideration the aggravating circumstances of dwelling, nocturnity and the use of a motor vehicle. The aggravating circumstance of dwelling is considered because the crime was committed in the place of abode of the victims. It is obvious that the accused used the cover of the night to facilitate the commission of the crime, and intentionally contracted for and used a motor vehicle to insure the success of their

criminal plot.

But since it was only accused Reynaldo Maniquez who appealed the lower court's decisions, the corresponding increase in the penalty brought about by the appreciation of the mentioned aggravating circumstances will not affect the sentences imposed upon the two other accused - Deloria and Moreno - who did not appeal.

In view of the foregoing, the judgment of the trial court finding the accused-appellant Reynaldo Maniquez guilty of the crime of robbery with rape, and sentencing him to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties of the law, is hereby AFFIRMED. We furthermore order the accused-appellant Reynaldo Maniquez to pay Mary Ann Galedo, the sum of P30,000.00 by way of damages without subsidiary imprisonment in case of insolvency.

SO ORDERED.

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

[1] Filed by then Second Assistant City Fiscal Ramon O. Santiago; Records, p. 1-2.

[2] Penned by Hon. Romeo J. Callejo of the Regional Trial Court of Manila, Branch 60; Records, pp. 215-216.

[3] Rollo, Appellant's Brief, p. 250.

[4] Decision, pp. 2-6; Records, pp. 182-186.

[5] Ibid., pp. 187-188.

[6] Ibid., pp. 197-198.

[7] Ibid., pp. 202-204.

[8] FRANCISCO, BASIC EVIDENCE 234 (1991), citing *State v. McLaughlin*, 138 La. 598, 70 So. 925 (1916).

[9] Ibid.

[10] SOLIS, LEGAL MEDICINE 339 (1964 Ed.).

[11] *People vs. Pastores*, 40 SCRA 498, 509 (1971) citing *People vs. Canastre*, 82 Phil. 480 (1948) and *People vs. Hernandez*, 49 Phil. 980 (1925). See also *People v. Conchada*, 88 SCRA 683 (1979) and *People v. Basas*, 130 SCRA 178, 182 (1984).

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