

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR BASE, ALFREDO BASE, ROGER CARIÑO, ROQUE CARIÑO, AND JOHN DOE, DEFENDANTS. OSCAR BASE, ALFREDO BASE AND ROQUE CARIÑO, DEF...

G.R. No. 92124. May 06, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Oscar Base, Alfredo Base, Roque Cariño, Roger Cariño, and one John Doe were charged with the crime of robbery with multiple rape in an information filed with the Regional Trial Court of Legazpi City, Branch X (docketed as Criminal Case No. 4440), which states as follows:

“That on September 6, 1988 about 9:15 o’clock in the evening, at Pigbucan, Caracaran, Rapu-Rapu, Albay, Philippines, within the jurisdiction of the Honorable Court, the above-named accused, the true name and identity of one still unknown, hence, the appellation, with intent to gain, conspiring together and helping one another for a common purpose, did then and there wilfully, unlawfully, feloniously, with the use of force upon things, firearm and bolos, by means of violence and intimidation against person, inside the dwelling of spouses DOMINGO BISTA and VILMA BONGOR BISTA, take and carry away P450.00, wrist watch, fishing nets with floats, fighting cocks, other personal belongings, goods and sundries owned by and belonging to said couple; then and there during or on the occasion of the taking of the personal belongings/properties, OSCAR BASE and ‘JOHN DOE,’ conspiring with their co-accused, by means of force and intimidation, have sexual intercourse with VILMA BONGOR BISTA, against her will, one after the other, inside her dwelling, in the presence of her husband and the other accused, to the prejudice and damage of the couple DOMINGO BISTA and VILMA BONGOR BISTA, in the total amount of P3,172.00.” (pp. 29-30, Rollo.)

Upon arraignment, the brothers Oscar and Alfredo Base and Roque Cariño pleaded “not guilty.” (p. 30, Rollo.) Roger Cariño remains at large.

The prosecution evidence, upon which the decision of conviction was based, is summarized by the Solicitor General in the appellee’s Brief as follows:

“On September 6, 1988, at about 9:00 p.m., spouses Domingo and Vilma Bista with their eight (8) minor children, were preparing to retire for the night in their unfinished and unpartitioned house with a small store at sitio Pigbucan, barangay Caracaran, Rapu--Rapu, Albay. Domingo, with his six (6) children, slept on the floor while Vilma, a daughter and a four (4) month old son slept on a bed. Placed on top of a cabinet which served as a divider was a lighted kerosene lamp. Their house is located in an isolated sitio where there are only three (3) houses, the nearest of which is about 50 meters away. A brother of Domingo owns one of these houses (TSN, Feb. 10, 1989, pp. 2, 5-8, 15-20; March 17, 1989, pp. 3-4).

“Suddenly, the front door which was closed without a lock and only fastened with a nylon cord was forced open. Vilma stood to check, but 2 men, brothers Oscar, and Alfredo Base, who had already been inside, met her. She recognized them not only because of the light from the kerosene lamp but also because both, like

herself, were members of an organization in their place. Oscar poked a gun at her (TSN, Feb. 10, 1989, pp. 9-12).

Almost simultaneously, brothers Roque and Roger Cariño, also moved inside and pointed their long bolos at Domingo who was awakened but rendered defenseless (TSN, Feb. 10, 1989, pp. 15-16; Mar. 17, 1989, p. 10).

Oscar fired his gun twice towards the outside, while his brother Alfredo started ransacking the house including the store where he got a Seiko watch, 1/4 kilo of octopus, rice, cigarettes, match, pinilpil for chewing, soap, powder, milk and 2 fighting cocks which he handed to a fifth man who was outside serving as a look-out (TSN, May 12, 1989, pp. 6, 8; Feb. 10, 1989, p. 17; Feb. 16, 1989, pp. 8-9).

“Meanwhile, Oscar turned to Vilma. With the gun poked at her head, then at her waist, he ordered her to undress but she refused. Oscar grabbed her short pants and panty pulling them down her legs. Because she was resisting, he pushed her to the bed and raped her for about 6 minutes. Domingo, the husband, could not do anything because the brothers, Roque and Roger Cariño, were poking their bolos at him. Satisfied with his lecherous act, Oscar zipped his fly and stood up. But Vilma’s sexual agony was not over. Someone put off the lamplight and he in turn abused Vilma. Alfredo, Oscar’s brother, was recognized as the second rapist by Domingo, Vilma and their daughter Azonem, when a flashlight was switched and Alfredo was seen zipping his fly (TSN, Feb. 10, 1989, pp. 21-25; Feb. 16, 1989, pp. 2-8; May 12, 1989, pp. 7-8; Mar. 17, 1989, pp. 19-27)

“After the robbery and rape, the culprits started to leave after warning the victims to keep quiet or else they would kill them (TSN, Feb. 16, 1987, p. 8).

“The incident was immediately reported to the barangay captain who also helped the couple in making a report to the police of Rapu-Rapu. Vilma could not be medically examined because the doctor, who happened to be the assigned government physician and the only doctor in town was out of the island. The couple wanted to proceed to the Albay Provincial Hospital in Legazpi City in order that Vilma could be examined, but in view of the distance which was accessible by an hour boat ride from Rapu-Rapu to Legazpi and of the need afterwards to go back home for the children, they could not do so. It was only on September 9, 1988, the third day after the incident, when the couple was able to proceed to Legazpi. However, the doctor at the Albay Provincial Hospital did not examine Vilma anymore. He told the spouses that married women who were victims of rape have to be examined within 24 hours otherwise the traces of rape would be washed or wiped out (TSN, Feb. 16, 1989, pp. 9-10; Apr. 21, 1989, pp. 3-6; May 11, 1989, pp. 2-5).” (pp. 5-9, Appellee’s Brief.)

The defense version of the incident is as follows:

“On September 6, 1988, accused Oscar and Alfredo Base, Filomeno Vergara and Diosdado Baja, Jr. went on fishing. All of them being from Sto. Cristo, they started from their barrio at 5:00 p.m. and walked to Butoan where they arrived at about 6:00 p.m. Then, they sailed on two ‘cascos,’ with brothers Alfredo and Oscar in one banca, while Filomeno and Diosdado on the other. They first speared fish only near the shore of Butoan. At about 9:00 in the evening, they went to the spring (saguring) where they cooked and dined. After eating, or about 10:00 p.m., they went fishing again and went home at about 5:00 a.m. of September 7 already. (T.S.N., July 21, 1989, pp. 7-15; T.S.N., August 10, 1989, pp. 2-13).

“Accused Roque Cariño had a different version but corroborated the version of accused Alfredo and Oscar Base that at the time of the incident, the two were not at the house of the alleged rape victim, Vilma Bista. According to Cariño, immediately before the incident, he and Domingo Bista were on the same boat from Legaspi to Caracaran. In the boat, Domingo bragged that anybody from Sto. Cristo who is seen diving for fish in their place, Pigbucan, should be bombed. Roque felt that he was being alluded to by Domingo as he was the only person from Sto. Domingo (sic) in the boat. He reported the matter to his uncle. Infuriated of Domingo’s bragging, on that evening of September 6, 1988, his uncle Marianing Cariño, his brothers Roger and Percy, Nelio Base, a cousin of Alfredo and Oscar Base, together with him, went to Domingo Bista’s house all armed with bolos. Upon arrival at the victim’s place at about 9:00 p.m., they asked for the bombed (sic) but Domingo

was not able to produce any. They therefore talked, whereby Vilma Bista even joined the conversation. They went home about 3:00 a.m., of September 7, 1988 peacefully. (T.S.N., August 11, 1989, pp. 13-17.)” (pp. 74-75, Rollo.)

After trial, the trial court, on December 22, 1989, rendered judgment adverse to all the three named accused, the dispositive portion of which reads:

“WHEREFORE, premises considered and there being conspiracy in the commission of the crime proven, all accused Oscar Base, Alfredo Base and Roque Cariño are found to be guilty beyond reasonable doubt of the crime of Robbery with Multiple Rape.

“Oscar and Alfredo Base are hereby sentenced to undergo imprisonment of RECLUSION PERPETUA, and to pay complainant the sum of P3,407.00 for the value of the goods taken plus P50,000.00 moral damages on Vilma.

“Roque Cariño, although he was not able to produce his birth certificate, is believed by this court, based on his looks, to be really 17 years old when the crime was committed and therefore, is credited with the privileged mitigating circumstance of minority. His hapless ignorance, which is an alternative circumstance, is likewise credited as ordinary mitigating circumstance in his favor. Roque is therefore sentenced to undergo imprisonment of from 8 YEARS AND 1 DAY OF PRISION MAYOR MEDIUM, TO 12 YEARS AND 1 DAY OF RECLUSION TEMPORAL MINIMUM.” (pp. 44-45, Rollo.)

In their appeal to this Court, the appellants allege that the trial judge erred:

1. In giving weight and credence to the testimonies of the prosecution witnesses despite the fact that the same are replete with material and grave contradictions and inconsistencies, and in totally disregarding the theory of the defense; and
2. In convicting the accused-appellants of the offense charged despite the fact that the prosecution failed to prove their guilt beyond reasonable doubt.

The appeal must fail.

The trial court correctly rejected the defendants’ defense of alibi for -

“Alibi his one of the weakest defenses. Easily susceptible of concoction, it is invariably to be viewed with suspicion and may be considered only when established by positive, clear and satisfactory evidence. To be given credence, it must not only appear that the accused interposing the same was at some other place, but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.” (People vs. Marayo, L-4800, May 9, 1965; People vs. Baniaga, L-15905, January 28, 1961, cited in Justice Florenz D. Regalado’s Remedial Law Compendium, p. 878)

In the case at bar, the positive identification of the accused by the victims, who have no motive to testify falsely against the accused cannot be overcome by the latter’s alibi (People vs. Boado, 103 SCRA 607). The victim, Vilma Bista, testified that she was able to recognize Oscar as the first rapist, because his face was illumined by the light from the kerosene lamp (p. 6, Appellee’s Brief). She also recognized the second rapist, Alfredo, when a flashlight was switched on and she saw him in the act of zipping the fly of his pants (p. 8, Appellee’s Brief). Moreover, the Base brothers and she belong to an organization in their barrio (p. 6, Appellee’s Brief). The testimony of a married woman with eight children, who has braved the shame and humiliation of a public trial in order to exact justice for the abuse she suffered at the hands of the appellants, is entitled to full faith and credit (People vs. Partulan, 156 SCRA 489). The Court is convinced that she did so for no other motive than her honest desire to vindicate her honor and have the offenders brought to justice (People vs. Francisquite, 56 SCRA 764). Besides, the Court finds the defendant’s alibi utterly weak, for the site where they claimed to have been fishing

during the night of the crime was less than 30 minutes' walk from the victim's house hence, it was not impossible for the accused, Oscar and Alfredo Base, to have slipped away from their banca without the knowledge of their two companions, to commit the crime at the house of Domingo and Vilma Bista.

Appellants allege that the trial court overlooked the following "material and grave contradictions, inconsistencies, and improbabilities" in Vilma's evidence (p. 9, Appellants' Brief), namely:

1)

She testified that 2 men, Oscar and Alfredo Base, entered her house, while in her affidavit, she declared there were 3 persons who entered, viz: Oscar Base, Roger Cariño, and Roque Cariño.

2)

In her testimony, she said Oscar Base fired his gun before raping her, while in her affidavit, she declared that she only learned from neighbors that one of the suspects fired a gun two times.

The alleged inconsistencies in the complainant's testimony are minor ones and do not affect her credibility.

Whether two or three men entered her house was explained away by the victim when she testified that:

"A.

It is like this. At first three men entered and the one poked a bolo at my husband and the other one poked a gun at me and the other was coming in and out of my house." (p. 4, t.s.n., March 10, 1989.)

"... .."

Whether the shots were fired by the accused while they were still inside the house or they were about to leave, was explained by the victim as follows:

"FISCAL REAL:

. . . Why did you say before that Oscar Base fired his gun twice while inside your house but while (sic) in this statement of yours, you did not mention the name of the persons, is there a way by which you could explain that?

"A.

You know at that time when I went to Rapu-Rapu, I suffered from nervousness, my senses were affected by the incident but today it is already gone as it has been a long time already.

"Q.

Particularly, what part of the incident affected you so much emotionally?

“... ..

“A.

After I was raped. (pp. 7-8, t.s.n., March 10, 1989.)” (pp. 11-15, Appellee’s Brief.)

Appellants cite the “very unnatural” reaction of Domingo Bista, the husband, who did nothing while his wife was being abused in full view of himself and his children (p. 8, Appellants’ Brief). Bista explained however that he could not do anything because Rogue and Roger Cariño had their long bolos trained at him. Besides, Oscar Base, the first rapist, carried a gun (p. 18, Appellee’s Brief).

Appellants’ attempt to discredit the couple’s young daughter Azonem, is futile. Azonem, young though she was, related in a clear straightforward and natural manner how her mother was raped in the presence of her helpless father, while their house was being ransacked and robbed (pp. 2-9, t.s.n., May 11, 1989). The trial court believed her story.

The victims did not delay in reporting the crime to the authorities. Barangay Captain Emerciana Banzuela testified that Domingo Bista came to her house immediately and reported the robbery as well as the rape of his wife (p. 6, t.s.n., April 21, 1989; pp. 19-20, Appellee’s Brief).

The trial court believed that the crime was indeed committed and was not a mere fabrication:

“The above incident cannot be said to be a mere afterthought of complainant because on that very morning itself of September 7, 1988, the victim reported already the matter to the barangay captain of the place who confirmed the report in court of both robbery and rape. On the first opportunity, the robbery with rape incident was also placed in the police blotter of the island Municipality of Rapu-Rapu, although the formal sworn statement was subscribed only on September 9, 1988 because of the distance of the 2 places.” (pp. 11-12, RTC Decision; pp. 39-40, Rollo.)

In view of the peculiar circumstances of this case, the absence of medical findings by the medico-legal officer did not disprove the commission of rape for the following reasons: (1) the attending physician at the Albay Provincial Hospital (p. 9, Appellee’s Brief) ruled out the need for a physical examination because the victim is a married woman, with eight children; (2) the victim was unable to resist because of the threat to her life, hence, the absence of physical signs of injury on her private parts; and (3) the examination could not yield any conclusive results since the victim had washed herself days before reaching the police station. Those circumstances did not negate the commission of rape as we have reiterated in a long line of decided cases “that in a prosecution for rape, the accused may be convicted even on the sole basis of the complainant’s testimony if credible.” (People vs. Tabago, 167 SCRA 65.)

Furthermore, the prosecution witnesses were corroborated by 17-year-old accused, Roque Cariño, who admitted that he was at the scene of the crime with four companions, and that all of them were armed with bolos.

The trial court found that the appellants had conspired to commit the crime. Conspiracy may be inferred and proven by the acts of the accused which point to a joint purpose, concert of action, and community of interest (People vs. Verzo, 65 SCRA 324). Conspiracy having been established, all the conspirators are liable as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one is the act of all (People vs. Chan Lit Wat, 50 Phil.182; People vs. Reyes, 17 SCRA 309.)

WHEREFORE, the decision of the trial court is affirmed in toto. In view of the atrocious manner of committing multiple rape against the victim, Vilma Bista, in the presence of her husband and young children, and with wanton

disregard for their feelings and sensibilities (People vs. Corrales, 182 SCRA 429), the award of the P50,000 as moral damages is affirmed. Costs against the accused-appellants.

SO ORDERED.

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

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