

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO PRECIOSO, ALIAS “BODOT,” GERARDO MONFORTE, JOHN DOE AND PETER DOE, ACCUSED, ROLANDO PRECIOSO, ALIAS “BODOT,” AND GERAR...

G.R. No. 95890. May 12, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants Rolando Precioso, alias "Bodot," and Gerardo Monforte have come to us for a second opinion and the reversal of their conviction for the composite crime denominated as robbery in band with multiple rape. Although not raised in issue, we are persuaded that they were indicted and condemned for the wrong offense; but, although assigned as error, we are not convinced that they are innocent of the felonious acts that they actually committed, as we shall shortly explain after the factual backdrop recounted hereunder.

In an amended information dated October 14, 1985, the accused were charged in Criminal Case No. 144 of the Regional Trial Court, Branch 7 at Bayugan, Agusan del Sur of the aforesaid offense of robbery in band with multiple rape allegedly committed as follows:

"That on or about the 6th day of August, 1985 at about 9:30 o'clock in the evening more or less, particularly at the residence of Mrs. Irene Galvadores situated at Sitio Andanan, Barangay Maygatasan, Bayugan, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with unity of purpose conspiring, confederating and mutually helping one another, armed with a firearm (short arm) with intent to gain and by means of force and violence against persons, did then and there wilfully, unlawfully and feloniously take, steal and carry away cash money in the amount of SIX THOUSAND (P6,000.00) PESOS, Philippine Currency, jewelries valued at FOUR THOUSAND (P4,000.00) PESOS, car stereo valued at TWO THOUSAND (P2,000.00) PESOS, three (3) pieces of calculator(s) valued at ONE THOUSAND (P1,000.00) PESOS, assorted personal belongings valued at SEVEN THOUSAND (P7,000.00) PESOS to the total amount of THIRTY THOUSAND (P30,000.00) PESOS, Philippine Currency, belonging to Mr. and Mrs. Rafael Galvadores and on the occasion thereof the above-named accused, did then and there wilfully, unlawfully and feloniously by means of force and intimidation and in pursuance to (sic) their conspiracy succeeded (sic) in having sexual intercourse with Leah Alimpoos three (3) times and Teresita Pescador once both of minor age against their (sic) will and a woman (sic) of good reputation.

CONTRARY TO LAW, Art. 294 Par. 1 of the Revised Penal Code."[1]

to which indictment herein appellants, when arraigned with the assistance of counsel, pleaded not guilty.[2]

The crime was committed, according to the Solicitor General in the brief filed for the People, in the following manner, to wit:

"About 9:30 p.m. of 6 August, 1985, Leah Alimpoos, who was sleeping at the Galvadores' store at Sitio Andanan, Maygatasan, Bayugan, Agusan del Sur, with her niece, Maryjane, and Paquito Camarin, a househelp,

was awakened by four armed men. The faces of the four were covered with handkerchiefs and stockings and only their eyes and mouths were visible. Despite this, the frightened girl recognized appellant Rolando Precioso, a neighbor, through his voice and general physical appearance. The men instructed her to wake up her elder sister, Irene Galvadores, on the pretext that Maryjane was suffering from a stomach ache (May 2, 1986 tsn, pp. 3-8).

"Appellant Precioso and two of his companions then escorted Leah to the house, which was ten (10) meters away from the store. As instructed, the hapless girl shouted, 'Ne, mata kay guisakitan si Maryjane ng tiyan' (Ne, you wake up because Maryjane has a stomach ache) (Ibid., p. 9; April 21, 1986 tsn, p. 10; August 18, 1986 tsn, pp. 10, 22).

"Rafael Galvadores and his wife, Irene, were roused from their sleep. Rafael called out to Teresita Pescador, a househelp, who was sleeping with their daughter, Ana, in another room to open the door (August 18, 1986 tsn, p. 22).

"Teresita, who had just awakened, did as told and was surprised to see the three armed men rushing inside and telling her not to move and to keep quiet. She immediately recognized appellant Precioso, one of their neighbors who frequented the store, through his physical appearance, his clothes, and his voice (May 2, 1986 tsn, pp. 38-40).

"The three intruders then told Teresita to wake up the Galvadores couple. When the couple went out of their room, appellant Precioso herded them to the sala of the house, and forced Teresita and Ana into the couple's room. At the sala, Rafael was made to lie down on his stomach, as the men ransacked the house looking for valuables (Ibid., pp. 39-42; August 18, 1986 tsn, pp. 11, 14, 24).

"Later, Rafael and Leah were brought to the store by appellant Precioso, where Rafael was made to lie down on his stomach again. While one of the men pointed a gun at him, appellant Precioso forced Leah to lie down, removed her panties, and raped her in the presence of Rafael, Paquito and Maryjane, all the time threatening Leah with death if she would not keep quiet and submit to his lust. The poor girl was unable to do anything, but cry. Appellant Precioso removed the cover of his face to kiss Leah, allowing Leah and Rafael to recognize him (May 2, 1986, tsn, pp. 12-14; August 18, 1986 tsn, pp. 24-28).

"Back at the house, appellant Monforte dragged Teresita to the garage where he removed her panties and raped her at gun point. Struggling and crying, Teresita scratched his face, as a result of which his mask fell off, allowing her to see his face. When he was finished, appellant Monforte sent her back to the room of the Galvadores couple (May 2, 1986 tsn, pp. 44-47).

"After raping Leah, appellant Precioso brought her back to the sala of the house. A few minutes later, appellant Monforte brought her to the pigpen at the back of the house. He threatened her with a gun, told her to lie down, hit her at the back just at the top of the shoulder, and then raped her. At the time of the rape, Leah was able to see his face since the handkerchief over his face was removed (May 2, 1986 tsn, pp. 15-17).

"After raping her at the pigpen, appellant Monforte brought Leah to the side of the house and raped her there a second time. Afterwards, he brought her to the house. Leah went directly to her room where she continued crying (Ibid., pp. 19-21).

"About 11:00 p.m., appellants and their companions left, taking with them P6,000.00 cash, pieces of jewelry valued at P4,000.00, three pieces of calculators valued at P1,000.00, car stereo worth P2,000.00, personal belongings valued at P7,000.00, and assorted stocks in the store valued at P10,000.00 (August 18, 1986 tsn, p. 15)."[3]

x x x

Faced with the issue of whether or not appellants are guilty beyond reasonable doubt of the crime charged, the

trial court initially settled the question concerning the positive identification of Precioso and Monforte among the four accused who raped Alimpoos and Pescador. Then on an overall evaluation of the evidence on record, on January 29, 1990 it rendered its judgment of conviction, thus:

"ACCORDINGLY, Precioso and Monforte are sentenced:

- 1) to a penalty of reclusion perpetua each;
- 2) to indemnify complaining witnesses Irene and Rafael Galvadores (in) the amount of P30,000.00;
- 3) to indemnify complaining witnesses Leah Alim-poos and Teresita Pescador (in) the amount of P20,000.00 each;
- 4) to pay the amount of P30,000 representing moral damages;
- 5) to pay the expenses of litigation in the amount of P10,000.00;
- 6) to pay (a)ttorney's fees in the amount of P5,000.00; and
- 7) to pay the costs."[4]

In their present appeal, the defense assigns as errors the adjudication of the lower court (1) finding that the guilt of the accused had been proven beyond reasonable doubt; (2) ruling that the two accused had been positively identified by the rape victims, allegedly basing its decision not on a correct findings of facts but on inferences, surmises and presumptions; and (3) finding no motive or reason whatsoever for the complainants to charge the accused, its decision being supposedly contrary to the common experience of man, the natural course of events, and existing jurisprudence.[5]

We find no reason to disturb the findings of the trial court as adopted and amplified in appellee's brief, the pertinent portions whereof have hereinbefore been reproduced. From the narration of facts therein, the concerted acts of the accused clearly establish conspiracy.

The issues on appeal hinge on the question of credibility of the witnesses and their testimonies. Once again, we reiterate that the trial court's assessment of the credibility of the witnesses' testimony is accorded great respect on appeal,[6] and the records do not show that the court below disregarded any consideration which would warrant a departure from this jurisprudential dictum. Appellate courts will generally not disturb the factual findings of the trial court on the *raison d'être* that the latter is in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, subject to exceptions which do not obtain in the present case.[7]

The transcripts of the notes taken at the trial reveal that the witnesses for the prosecution testified in a clear, consistent and forthright manner. The testimonies of the complainants were basically congruent with and mutually corroborative of each other, and were confirmed by those of the other prosecution witnesses. Their minor errors and inconsistencies do not affect the substance of their declaration or adversely reflect on their veracity.

In contrast, the testimony of appellants consist merely of denials and alibi, without any other credible evidence to sustain their exculpatory claims and defense. We have consistently ruled that denials, if unsubstantiated by clear and convincing evidence, are negative and self-serving evidence which deserve no weight in law and cannot be given greater evidentiary weight over the testimony of credible witnesses. Ergo, as between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence.[8]

Appellants further argue that they were not properly identified. However, the records show that Precioso and

Monforte were positively identified by the two rape victims in a police line-up and in open court.[9] They were further definitely identified by complainant Irene Galvadores[10] and her husband, complainant Rafael Galvadores.[11] All these witnesses had sufficient time and ample opportunity to recognize and identify appellants. In *People vs. Calixtro*,[12] we ruled that private complainant's identification of the accused through the latter's voice may be accepted considering that they are barriomates and friends. Here, with much more reason can we accept the identification of appellants since the prosecution witnesses not only heard their voices but actually saw their faces.

We also gather from the evidence that the complainants have no ill motives or any plausible reason whatsoever to impute the commission of such serious offenses upon appellants if, in truth, the latter are guiltless as claimed. Accordingly, as we have held in a number of cases, the absence of evidence of any improper motive impelling the principal witness sustains the conclusion that his testimony is worthy of full faith and credit.[13]

The foregoing doctrine squarely applies to the multiple rapes committed by appellants on their two victims. Furthermore, considering the inbred modesty and antipathy of a Filipina to airing in public things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had undergone if it were not true.[14] Complainants Leah Alimpoos and Teresita Pescador, both young barrio girls, would not have publicly admitted that they had been criminally ravished if that was not true, for their natural instinct is to protect their honor. Their testimony given at a public trial wherein they narrated their ordeal with all the sordid details thereof, as synthesized in appellee's brief and set forth earlier, could not have been conjured and fabricated by these hapless and innocent victims.

The defense of alibi interposed by appellants is evidentially sterile and jurisprudentially weak as they were not able to demonstrate by convincing evidence that it was physically impossible for them to have been at the scene of the crime at the time it was committed. We need merely repeat the invariable rule that the defense of alibi is an issue of fact that hinges on credibility,[15] and is an unavailing defense especially if contradicted by eyewitness testimony.[16]

Precioso claimed that when the crime was committed, he was sleeping in the house of his grandmother,[17] but said house is admittedly only around 150 meters away from the house of the Galvadores spouses.[18] His pretension, therefore, cannot be sustained in the face of the settled rule that it is not enough to prove that he was somewhere else when the crime was committed but he must likewise show that it was physically impossible for him to have been at the scene of the crime.

Monforte, on the other hand, would like to convince the trial court that he was working at the time.[19] However, the lower court correctly made short shrift of said defense with this terse documented observation: "Gerardo Monforte also negated the accusation, giving as a reason thereof that they had an overtime at the bandsaw of Lucio Cortes that fateful evening. Nonetheless, the prosecution on rebuttal, presented a (c)ertification that at the time of the incident, there was no operation at the Cortes' bandsaw because their electrical power was disconnected by ASELCO on July 25, 1985 (Exhs. 'H' and 'H-1') and reconnected only on August 12, 1985 (Exhs. 'I' and 'I-1') for non-payment of electric bills. (TSN, p. 4 & 5, x x x August 8, 1989). Not a tiny thread of evidence was introduced to contradict this vital aspect nor was it shown that the Cortez sawmill has its own source of electric power or generator. As a matter of fact, sole reliance on the ASELCO electric current was confirmed by defense witness, Francisco Bolanio (TSN, p. 19, x x x September 12, 1982)."[20]

Finally, appellant Precioso's assertion that "(a) man who is guilty flees. But being a close friend and confidant, accused Rolando Precioso remained and helped the robbery victim load the latter's things preparatory to their evacuation,"[21] is a simple pettifogging argument to evade complicity. This uncorroborated imposture was

categorically belied by complainant Leah Alimpoos.[22]

Furthermore, we have ruled that an accused may not have fled from the scene of the crime, but this is not necessarily indicative of a clear conscience. The crime may have been committed with impunity and the accused may have thought that the victim or his heirs would not complain, or that eyewitnesses will not be able to identify him.[23] Appellant's pretended innocence is clearly non-sequitur to his decision not to flee. Apart from the fact that there is no case law holding that non-flight is a conclusive proof of innocence, the argument does not hold weight in the light of definite and inarguable identification of appellant. The material factor here is that there is positive identification of him as the author of the crime.[24]

From what has been established by the evidence, the defense version is entirely unbelievable. It derives no support from the facts and circumstances that have been solidly established by the prosecution. Appellants cannot, therefore, expect the absolution which they seek from this Court in their appeal.

However, the crime charged in the case at bar cannot be correctly categorized or denominated as robbery in band with multiple rape as there is no such composite crime. This is not a controversial problem nor one of first impression since this question has long been laid to rest, yet we continue to be confronted with this terminological faux pas in cases brought to us on appeal. In fact, neither the prosecution, the defense, the trial court nor the Solicitor General took note of that mistake in this case. Accordingly, it behooves the prosecuting agencies and the lower courts to review the case of *People vs. Apduhan, Jr.*,[25] wherein this Court exhaustively explained the nature of the crime and how the aggravating circumstance of band may be properly appreciated.

In that case, we ruled that:

"The afore-quoted art. 294 enumerates five classes of robbery with violence against or intimidation of persons and prescribes the corresponding penalties. The case at bar falls under art. 294 (1) which defines robbery with homicide and fixes the penalty from reclusion perpetua to death.

"Article 295 provides, inter alia, that when the offense described in subdivisions 3, 4, and 5 of art. 295 are committed by a band, the proper penalties must be imposed in the maximum periods. The circumstance of band is therefore qualifying only in robbery punished by subdivisions 3, 4, and 5 of art. 294. Consequently, art. 295 is inapplicable to robbery with homicide, rape, intentional mutilation, and lesiones graves resulting in insanity, imbecility, impotency or blindness. If the foregoing classes of robbery which are described in art. 294 (1) and (2) are perpetrated by a band, they would not be punishable under art. 295, but then cuadrilla would be a generic aggravating (circumstance) under Art. 14 of the Code (*People vs. Casunuran* L-7654, August 16, 1956; *People vs. Leyesa*, L-7842, August 30, 1956). Hence, with the present wording of art. 295 there is no crime as "robbery with homicide in band." If robbery with homicide is committed by a band, the indictable offense would still be denominated as "robbery with homicide" under art. 294 (1), but the element of band, as stated above, would be appreciated as an ordinary aggravating circumstance."

Therefore, following the aforementioned ruling which applies with equal force to paragraph 2 of Article 294, the offense in the case at bar is the special complex crime of robbery with rape. Cuadrilla, in this instance, is merely a generic aggravating circumstance.

Presidential Decree No. 767, which took effect on August 15, 1975, amended Article 294 (2) of the Revised Penal Code to provide as follows:

"Art. 294. Robbery with violence against or intimidation of persons. - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of persons shall suffer:

x x x

2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted: Provided, however, that when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons the penalty shall be reclusion perpetua to death."

Withal, the lower court did not err in imposing the penalty of reclusion perpetua, wherein it also took note of the proscription against the death penalty, and in thereafter holding that "when a penalty is single (and) indivisible, it shall be applied regardless of any mitigating or aggravating circumstances (Art. 63, Revised Penal Code). Such being the case, (the) Indeterminate Sentence Law could not be invoked (Sec. 2, [Act] 4103, as amended)."[26]

As to the awards of indemnification to the rape victims which should be paid by accused-appellants in solidum, the same are hereby increased from P20,000.00 to P30,000.00 for complainant Teresita Pescador, and to P50,000.00 for complainant Leah Alimpoos, in accordance with present jurisprudence,[27] considering the deliberate acts of appellants in augmenting the ignominious circumstances and results of their bestiality by alternately subjecting complainant Leah Alimpoos to successive rapes and assaulting her once in the presence of relatives and other persons.

ACCORDINGLY, as thus MODIFIED, the judgment of the court a quo is AFFIRMED in all other respects.

SO ORDERED.

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

[1] Original Record, 78.

[2] Ibid., 122.

[3] Brief for Appellee, 4-9; Rollo, 109-113.

[4] Original Record, 662-663; per Judge Zenaida P. Placer.

[5] Appellants's Brief, 6; Rollo, 62.

[6] People vs. Gerones, 193 SCRA 263 (1991); People vs. Natan, 193 SCRA 355 (1991); People vs. Tongson, 194 SCRA 257 (1991).

[7] People vs. Demecillo, et al., 186 SCRA 161 (1990); People vs. Toring, et al., 191 SCRA 38 (1990); People vs. Beringuel, et al., 192 SCRA 561 (1990).

[8] U.S. vs. Bueno, 41 Phil. 447 (1921); People vs. Marti, 193 SCRA 57 (1991); People vs. Song, et al., 204 SCRA 135 (1991).

[9] TSN, Alimpoos, May 2, 1986, 8, 14, 17; *ibid.*, Pescador, May 2, 1986, 39-41.

[10] *Ibid.*, Aug. 18, 1986, 12-14.

[11] *Ibid.*, *id.*, 26-29.

[12] 193 SCRA 303 (1991).

[13] People vs. Abonada, 169 SCRA 530 (1989); People vs. Rabang, 187 SCRA 682 (1990); People vs. Mañago, 191 SCRA 552 (1990).

[14] People vs. Eclarinal, 182 SCRA 106 (1990).

[15] People vs. Solis, et al., 182 SCRA 182 (1990).

[16] People vs. Francisco, et al., 182 SCRA 305 (1990).

[17] TSN, December 5, 1988, 12.

[18] Ibid., id., 29.

[19] Ibid., September 12, 1968, 49.

[20] Original Record, 659-660.

[21] Brief for Appellants, 9; Rollo, 65.

[22] TSN, May 2, 1988, 28.

[23] People vs. Songcuan, et al., 176 SCRA 354 (1989).

[24] People vs. Hangdaan, et al., 201 SCRA 568 (1991).

[25] 24 SCRA 798 (1968). See also People vs. Marquez, et al., 30 SCRA 442 (1969); People vs. Cruz, 133 SCRA 426 (1984).

[26] Original Record, 662.

[27] See People vs. Perez, 175 SCRA 203 (1989); People vs. Alegado, 201 SCRA 37 (1991).

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