

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL LIMBAUAN ALIAS ACIO, ALFREDO LAMAN, LEONOR TAMANG, ELISEO SANCHEZ, ROLANDO TANDAYU, LUCIO AFUNAY AND NESTOR LUGA, ACCUSE...

G.R. No. 99868. August 19, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Second Judicial Region, Branch 16, Ilagan, Isabela, in Criminal Case No. 778, entitled "People of the Philippines vs. Ariel Limbauan alias Acio, Leonor Tamang, Rolando Tandayu, Lucio Afunay, and Nestor Luga." The dispositive part of the decision reads as follows:

"Accordingly, accused Ariel Limbauan and Leonor Tamang are each sentenced to suffer the penalty of Reclusion Perpetua and to pay Elisa Austria civil indemnity solidarily in the amount of P50,000.00.

"The imposable penalty for robbery in band as against Luga, Tandayu, and Afunay is Prision correccional, maximum to prision mayor, medium (Art. 294, par. 5). However, there being no aggravating nor mitigating circumstances, the penalty should be imposed in its medium period.

"Accused Lucio Afunay, Nestor Luga and Rolando Tandayu are each [sic] sentenced to suffer a prison term of Four (4) years, two (2) months as minimum to ten (10) years as maximum after applying the Indeterminate Sentence Law, and to indemnify solidarily with Ariel Limbauan, and Leonor Tamang, the victim Marcela Bacani in the amount of P7,000.00.

"With Costs.

"SO ORDERED." [2]

The accused were charged with the crime of robbery with rape in the following information:

"The undersigned Provincial Fiscal accuses ARIEL LIMBAUAN alias ACIO, ALFREDO LAMAN, LEONOR TAMANG, ELISEO SANCHEZ, ROLANDO TANDAYU, LUCIO AFUNAY and NESTOR LUGA of the crime of ROBBERY WITH RAPE, provided for and penalized under Article 294, paragraph 2, in connection with Articles 296 [sic] of the Revised Penal Code, committed as follows:

"That on or about the 14th day of December, 1986, in the Municipality of Delfin Albano, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, all armed with assorted firearms, conspiring and confederating together and all helping one another, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force and intimidation against persons, take, steal and carry away cash money in the amount of P3,000.00; one (1) cassette brand AIWA valued at P2,500.00; instimatic [sic] camera valued at P300.00 and jewelries [sic] and assorted goods/items valued at P6,550.00 all belonging to Marcela G. Bacani and Armalite M16 Rifle valued at P12,000.00 belonging to

Primitivo C. Rodriguez, a member of the Integrated National Police, to the damage and prejudice of said Marcela G. Bacani in the total amount of P12,350.00 and to Primitivo C. Rodriguez in the amount of P12,000.00; that on the occasion of said robbery, the herein accused, Ariel Limbauan with the aide [sic] of Leonor Tamang, did then and there willfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge with Elisa Austria against her will and consent.'

"CONTRARY TO LAW."[3]

Upon arraignment, Ariel Limbauan entered a plea of guilty; the rest of the accused pleaded not guilty. In the course of the trial, the case against accused Alfonso Laman and Eliseo Sanchez was dismissed on 29 June 1988 on motion of the prosecution in view of the demise of the said accused as shown in their death certificates.[4] After the trial of the case, the trial court rendered the now appealed decision of 26 March 1991.

From the judgment of conviction, only accused Leonor Tamang has appealed, alleging that:

"THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT LEONOR TAMANG OF THE COMPLEX CRIME OF ROBBERY IN BAND WITH RAPE INSTEAD OF ROBBERY IN BAND ONLY."

Appellant submits that he is guilty of robbery in band but not of the complex crime of robbery with rape as charged. He maintains that the mere fact that he brought Elisa Austria downstairs and upon reaching the ground floor of the house, Ariel Limbauan took hold of Elisa and forced her to go with him outside said house of Marcela Bacani, where Limbauan raped her, does not prove that he (appellant) conspired with Limbauan in the rape of Elisa Austria.

Appellant claims that his purpose in forcing Elisa to go downstairs was for her to join the others on the ground floor but not to turn her over to Limbauan. In support of his claim, appellant refers to the testimony of Marcela Bacani who, on cross-examination, declared that Elisa was beside her when Limbauan forcibly brought Elisa outside the house to rape her. This assertion of appellant clearly lacks merit.

During the testimony of Elisa Austria, she referred to one Renzi Bacani, daughter of Marcela Bacani, who was inside the room where she (Elisa) was sleeping. When appellant entered the room, he could not have missed seeing Renzi together with Elisa inside the room.[5] If, as appellant claims, his purpose in forcing Elisa Austria to go downstairs was for her to join the others on the ground floor, why did he pick on Elisa only and leave Renzi inside the room upstairs?

Upon reaching the living room on the ground floor, appellant handed Elisa Austria over to Ariel Limbauan who forcibly took her outside the house and brought her to the banana grove to rape her. Elisa's testimony, both during direct and cross examinations, shows how appellant forced her out of the room and handed her over to Ariel Limbauan.

"xxx xxx xxx

"Q Now, you said, now, why did Leonor Tamang took [sic] you from the room. . . I reform. . . How did Leonor Tamang took in [sic] the room?

"A He pointed a gun and took hold of my right shoulder and brought me outside the room, sir.

"Q Where did he bring [sic] when he took you out of the room?

"A He brought me to the living room, sir."[6]

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"Q Now when you were in the Sala of the house of Mrs. Bacani what did Leonor Tamang and his companion do?

A Leonor Tamang passed me to Ariel Limbauan, sir.

Q If that Ariel Limbauan is in court were you able [sic] to point at him?

A Yes, sir.

Q Will [sic] point to him?

A That man, sir, wearing white T-shirt."[7]

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"Q Now, Miss Austria you stated that this Leonor Tamang forcibly took you and brought you down thereafter passed you to Ariel Limbauan is it not?

"A Yes, sir.

"Q You mean to say he passed you like a ball?

"A Yes, sir.

"Q To the waiting arms of Ariel Limbauan?

"A No, he gave me to Ariel Limbauan, sir.

"Q He passed your hands towards Ariel Limbauan?

"A Leonor Tamang brought me down and Ariel Limbauan was at the door at the house and when we were there he gave me to Ariel Limbauan, sir." [8]

Moreover, the statement (Exh. "E") given by Elisa Austria before the investigating officer on 15 December 1986, a few hours after the incident happened, states unequivocally the participation of appellant in the commission of the felony.

"Q Who is this Ariel Limbauan?

"A He is the very person who forced and intimidate [sic] me with the use of long fire arms [sic] to have a sexual [sic] intercourse, sir."

"Q How about this Eleanor Tamang?

"A He was the one appeared [sic] and beligerently inquired me [sic] to stand inside the bed room [sic] upstairs [sic] where I'm sleeping and thereafter dragged and brought me downstairs [sic].

"Q When and where [sic] the incident happen if any?

"A At the banana plantation of Mrs. Marcela Bacani at Barangay Ragan Sur, Delfin Albano, Isabela, on December 14, 1986 at around 3:30 o'clock A.M. Sir.

"Q How did the incident happen?

"A While I'm sleeping in the bedroom upstairs [sic] at the house of Marcela Bacani at said place when suddenly Eleanor Tamang appeared and pointed towards me a short gun, beligerently [sic] inquire me [sic] to stand up at this point dragged me down stairs [sic], and when we are [sic] already downstairs Ariel Limbauan took and forcibly brought me to the banana plantation.

"Q What did you do when Ariel Limbauan forcibly took and brought you to the banana plantation?

"A I tried my best to struggle to evade myself [sic] from the incident instead said Ariel Limbauan pointed and poked me with fire arms [sic].

"Q What happen [sic] next?

"A While we are struggling to [sic] each other said Eleanor Tamang appeared and pointed towards me his fire arms [sic], and immediately thereafter Arnel [sic] Limbauan bodily carried me and forced me to laid [sic] down facing up-ward, [sic] and because of my fearness and tiredness I became unconscious, when I regain(ed) my knowledge I noticed and feel [sic] that my vagina is too hurt [sic] and bleeding, and same the spermatozoa is contaminated [sic] at my private parts." [9]

A conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a crime and decide to commit it. While proof of the agreement need not rest on direct evidence, the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense.[10]

In the present case, we are fully convinced that appellant and accused Ariel Limbauan had a previous agreement relating to the commission of the felony which they decided to finally commit. From the time of the investigation and all throughout her testimony in court, Elisa Austria never diverted from her declaration positively pointing to Leonor Tamang as the person who helped and aided Ariel Limbauan in committing the felony. We quote with approval the finding of the trial court that -

"(T)he act of Tamang in handing over Elisa Austria to Limbauan however, must be construed as evidence of conspiracy. When Limbauan disappeared in the banana grove [sic] with Elisa Austria there is no doubt that Tamang knew what was the intention of Limbauan" [11]

The evidence of the prosecution has abundantly established and beyond reasonable doubt that conspiracy existed between appellant Leonor Tamang and accused Ariel Limbauan in the commission of the crime charged.

WHEREFORE, the judgment of the trial court is hereby **AFFIRMED**, with costs against appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] Penned by Judge Teodoro L. Hernando.

[2] Original record, p. 212.

[3] Rollo, p. 3.

[4] Decision, p. 2.

[5] TSN, 18 October, 1988, p. 58-59.

[6] Ibid., p. 47.

[7] Ibid, p. 48, direct examination of Elisa

[8] Ibid., pp. 62-63, Cross-examination.

[9] Exhibit "E", p. 4, Original Record.

[10] People vs. Uy, G.R. No. 84275, 14 February 1992, 206 SCRA 270.

[11] Decision, p. 14; Original Record, p. 211.

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