

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO BERINGUEL, ARTURO DEVARAS, ARTEMIO TULANG (AT LARGE), AND RUFINO CAMINONG (AT LARGE), ACCUSED. GREGORIO BERINGUEL AND...

G.R. Nos. 63753-54. December 21, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the October 29, 1979 decision* of the then Court of First Instance of Leyte, Branch II, Palo, Leyte, in Criminal Cases Nos. 3179 and 3180 for Robbery with Rape and Robbery in Band, respectively, convicting accused-appellants Gregorio Beringuel** and Arturo Devaras***. The decretal portion of the decision reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in Criminal Case No. 3179 declaring accused Arturo Devaras guilty of the special complex offense of robbery with rape punished by Art. 294, paragraph 2 of the Revised Penal Code, as amended by P.D. No. 767, with the attendance of two aggravating circumstances, not offset by any mitigating, and he is sentenced to suffer the supreme penalty of death; to indemnify Merlita Rapada in the amount of P12,000; to pay Isidro Apdo the sum of P3,460 proven value of the personal property taken away from him; and to pay 1/5 of the costs.

"Judgment is also rendered in Criminal Case No. 3179 finding accused Gregorio Beringuel guilty of the offense of robbery punished by Art. 294, paragraph 5 of the Revised Penal Code, with the attendance of two aggravating circumstances not offset by any mitigating, and he is sentenced to suffer the penalty of from FOUR (4) years and TWO (2) months of prision correccional to TEN (10) years of prision mayor, to pay Isidro Apdo jointly and severally with accused Arturo Devaras the sum of P3,460.00 and to pay 1/5 of the costs.

"The preventive imprisonment undergone by accused Gregorio Beringuel shall be deducted from the term of imprisonment imposed upon him in Criminal Case No. 3179, if he has signed an agreement to abide by the same rules imposed on convicted prisoners while in detention or only 4/5 thereof if he has not signed said agreement.

"Judgment is also rendered in Criminal Case No. 3180 declaring accused Arturo Devaras and Gregorio Beringuel guilty of the offense of Robbery punished by Art. 294, paragraph 5, of the Revised Penal Code with the attendance of two aggravating circumstances not offset by any mitigating, and each of them is sentenced to suffer the penalty of from FOUR (4) years and TWO (2) months of prision correccional to TEN (10) years of prision mayor, to jointly and severally pay to Pastor Hadlocon the amount of P300.00, proven value of the personal property robbed from him, and to pay 1/5 of the costs.

"The preventive imprisonment undergone by accused Arturo Devaras shall be deducted from the term of imprisonment imposed upon him in Criminal Case No. 3180, if he has signed an agreement to abide by the same rules imposed upon convicted prisoners while on detention, or only 4/5 thereof, if he has not signed such an agreement.

"Be it understood that the sentence imposed upon accused in Criminal Case No. 3180 shall be served by them only after completing the service of sentence imposed upon them in Criminal Case No. 3179.

"Finally, judgment is also rendered in Criminal Cases No. 3179 and 3180 finding accused Eusebio Abrio not guilty of the offense charged in the respective informations and he is therefore acquitted from said charges, with 1/5 of the costs de oficio.

"It appearing that he is under detention in the provincial jail, the officer-in--charge of said jail is hereby ordered to immediately release therefrom accused Eusebio Abrio, unless he is held therein also for other charges.

"SO ORDERED." (Rollo, pp. 58-71).

Two separate informations were filed against Beringuel, Devaras and Abrio. Artemio Tulang and Rufino Caminong who were charged with them in the informations were never apprehended. The information in Criminal Case No. 3179 for robbery with rape, reads:

"That on or about the 3rd day of September, 1976, in the Municipality of Abuyog, Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John Doe, whose identity and whereabouts is still unknown, mutually helping and aiding one another, armed with assorted firearms, with deliberate intent of gain by means of violence and intimidation upon the person of Isidro Apdo, taking advantage of nighttime to better consummate their object and committed at the dwelling, did then and there wilfully, unlawfully and feloniously take, rob, and carry away money and personal belongings, to wit:

1) Cash Money amounting to

P2, 500.00

2) Radio Phono

P 450.00

3) Five wrist watches

Two (2) serviceable

800.00

Three (3) unserviceable

300.00

4) Calculator machine

250.00

5) Eyeglasses

40.00

6) Boss and Champion

cigarettes consisting of eight

(8) reams

76.80

valued in the total sum of Four Thousand Four Hundred Sixteen and Eighty Centavos (P4,416.80) Philippine Currency, owned by Isidro Apdo without his consent and against his will, to his damage and prejudice in the said amount of Four Thousand Four Hundred Sixteen and Eighty Centavos (P4,416.80); that during or on the occasion of the robbery, the above-named accused, with deliberate intent and lewd designs and consistent force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of one Merlita Rapada, against the latter's will and without her consent, to the damage and prejudice of said Merlita Rapada.

"Contrary to law. Article 294, paragraph 2 of the Revised Penal Code." (Original Records, pp. 1-3, Rollo, pp. 4-6)

The second information, docketed as Criminal Case No. 3180, reads:

"That on or about the 3rd day of September, 1976, in the Municipality of Abuyog, Leyte, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together with John Doe, whose identity and whereabouts are still unknown, mutually helping and aiding one another, armed with assorted firearms, with deliberate intent to gain by means of violence, and intimidation upon the person of Pastor Hadlocon, taking advantage of nighttime to better consummate their object and committed at the dwelling did, then and there wilfully, unlawfully and feloniously take, rob and carry away money and personal belongings, to wit:

Cash amounting to

P300.00

Five (5) male and female trousers

100.00

One (1) radio

100.00

One (1) eyeglass

65.00

One (1) mirror

40.00

Three (3) gallons of gasoline contained

in a green plastic container

18.00

valued in the total sum of P658.00, Philippine currency, owned by and belonging to said Pastor Hadlucon without his consent and against his will, and to his damage and prejudice in the said amount of P658.00.

"Contrary to Art. 294 in relation to Art. 296 of the Revised Penal Code." (Original Records, pp. 1-3).

At the arraignment, accused Arturo Devaras, Gregorio Beringuel and Eusebio Abrio, assisted by their counsel, entered the plea of not guilty (Record, p. 74; Rollo, p. 42). Thereafter, the trials of the two cases were jointly held.

The prosecution presented their version of the crimes as follows:

At around 10:00 o'clock in the evening of September 3, 1979, Isidro Apdo, a businessman, was in his house in barrio Bulak, Abuyog, Leyte with his wife, children, housemaid Merlita Rapada and two helpers named Presing Tusloc and Bonifacio Tulang, when he heard a noise. Upon opening the door of his room, he saw three persons near him. There was then a lighted small lamp at the altar.

The three men tied his hands behind his back. They made him lie on the floor with his face down. One of the men hit him with an armalite, the other pointed a bolo at his neck and the third poked a pistol on his right ear. They looked for money and they found P2,500.00 inside an aparador. They also took Isidro's watch, calculator, eyeglasses and some commodities from his store. Isidro also saw one of them enter Merlita Rapada's room.

Apparently dissatisfied with what they got, the three persons insisted that Isidro give them P20,000.00 and continued manhandling him. Then they brought Isidro outside with his hands still tied behind him. They pushed him towards the store of Pastor Hadlucon. Isidro called Pastor and the latter opened the door of his store. The persons demanded money from Pastor who was made to lie down also with his hands tied behind his back. Isidro could not tell whether the malefactors were able to get money from Pastor. Later, he and Pastor were ordered to look for a fast motor boat. Finding Isidro's outboard motor, Isidro started the engine while one of the men boarded it. The two other men accompanied Isidro and Pastor to a rocky place called Taytay. After the older of the two persons had decided not to kill Isidro and Pastor, they left. Isidro and Pastor then ran towards their homes (TSN, Hearing of January 22, 1979, pp. 2-13).

Isidro's wife, Tarciana, was able to recognize two of the three intruders as Devaras and Beringuel because of the lighted kerosene lamp in front of her husband at the time of the commission of the crime. She failed to recognize the third person because his back was towards her. It was Devaras who demanded money and took a watch from her. When Devaras left the room, Beringuel entered and, while demanding money from her, threatened her with a pistol. Beringuel ransacked her aparador and got the P2,500.00 inside it.

As Beringuel left the room, she heard Merlita Rapada calling out to her for help. When Merlita entered the room, she told Tarciana that she had been raped. Merlita was crying when Devaras locked them in the room. It was only after the intruders had left that Tarciana and Merlita jumped out through the window (TSN, Hearing of May 11, 1979, pp. 3-8).

Merlita, who was around 16 years old when the incident transpired, was inside a room in the Apdos' house when she heard a noise outside. She opened the door and peeped. By the light of the "lamparilla", she saw one of the persons as he tied the hands of Isidro. The other person was pointing an armalite at Isidro while the third had his back towards her. She closed the door of the room and was about to jump out of the window when she saw two other persons outside near the window. She tried to go out of the room through the door but a person pushed her inside, held her hair and pointed an armalite at her. He made her lie down on the bed, removed her panties and had carnal knowledge of her. Then he went out of the room (TSN, Hearing of March 12, 1979, pp. 4-9).

On September 4, 1976, Merlita underwent a physical examination at the Abuyog General Hospital. The attending physician made the following findings:

- "1. No signs of physical injuries, conscious and coherent.
2. Mens pubis clean with sparse hair.
3. Signs of irritation at labia majora and menor.
4. Superficial laceration at fourchette.

5. Hymen not intact, freshly lacerated, admits tip of small finger, no bleeding.

6. Vaginal smear - negative for sperm cells." (Exhibit "A")

Pastor Hadlocon corroborated the testimony of Isidro on how the malefactors entered his abode. He was carrying a small lamp with his left hand when he opened the door upon hearing the call of his compadre Isidro to open up. One person who was with Isidro, carried an armalite while the other had a pistol. Pastor could not recognize the third person as he was a little apart from them. When he opened the door, they were about three meters away from him while Isidro was leaning on the door.

Three persons entered his house while two others were by the boat. The three asked for P2,000.00 from him. Pastor told his wife to give them whatever amount she had but she was able to produce only P300.00. Pastor was then lying down with his face to the floor while Isidro was by his feet. Then two of the intruders threatened to cut off their heads should they be unable to raise P2,000.00. Pleading for their lives, Pastor told the intruders to take anything they could get. Hence, they took five pants, a radio, eyeglasses, mirror and cigarettes from the store. Then they ordered Pastor to take the goods to the boat.

Pastor even had to provide them with gasoline to make the boat start running. Thereafter, Pastor and Isidro were taken to the corral reef called Taytay where, undecided as to what to do with them, the intruders left them (TSN, Hearing of February 21, 1979, pp. 8-15).

At around 7:00 o'clock in the morning of September 4, 1976, Miguel Manito was fishing with two other fishermen when he saw someone on a boat waving at them. As they got near that boat occupied by Devaras, Beringuel and three other persons, one of these men asked that their boat, which had engine trouble, be towed to Barrio Maya, MacArthur, Leyte for P30.00 plus gasoline. Upon reaching the place, the men requested Manito to continue towing them to Barrio Fatima, Dulag, Leyte for an additional P30.00 plus gasoline (TSN, Hearing of October 18, 1979, pp. 2-8).

Devaras and Beringuel both interposed alibi as a defense.

Devaras, who is from Barrio Salvacion, Dulag, Leyte and who was around 21 years old when the crimes were perpetrated, was allegedly at home in the afternoon of September 3, 1976 because his sister Noning was sick. His father, Paulino, fetched Alejandro Padilla, a quack doctor, to treat Noning. At around 6:00 o'clock in the evening, Paulino told Devaras to buy tuba. While Paulino and Alejandro were drinking tuba, Devaras was reading comics. Two hours later, Devaras went to bed and when he woke up at 4:00 o'clock a.m. the next day, he found out that the quack doctor had slept in their house (TSN, Hearing of October 22, 1979, pp. 3-6).

When the crimes were committed, Devaras was then on leave as a soldier attached to the Seventh Infantry Battalion of the Philippine Army stationed at Cotabato City. He had been issued an M-16 armalite but he deposited it at their headquarters. He claimed to have lost the deposit slip (TSN, Hearing of October 24, 1979, pp. 2-4). He was arrested in Salvacion, Dulag, Leyte by seven PC soldiers and two policemen on September 29, 1976 at 3:00 a.m. (TSN, Hearing of October 22, 1979, pp. 8-9).

Alejandro Padilla endorsed Devaras' story on his whereabouts adding that he treated Devaras' sister of dysmenorrhea (TSN, Hearing of September 12, 1979, p. 4). For his part, Paulino Devaras averred that on that fateful night he and Alejandro were drinking tuba while his son, Arturo Devaras read comics until he fell asleep.

Appellant Gregorio Beringuel, a farmer who was 58 years old when he testified in 1979, belied the accusation that he was one of the robbers because when the crimes were committed, he was at the hospital attending to his daughter Teresita who had "schistosomiasis of the brain." His daughter was confined in the hospital from July 12 to September 12. In the evening of September 3, 1976, he was at the hospital with Francisco Camero and his son,

Bebot (TSN, Hearing of October 23, 1979, pp. 4-5). He did not present any witness to buttress his testimony.

Beringuel was brought to Camp Bumpus for investigation sometime in October, 1976. He claimed that he was implicated in the crimes by Devaras because he had testified against Marcelino Devaras, Arturo's uncle, in a criminal case (TSN, Hearing of October 23, 1979, pp. 6; 8-9).

Based on these factual findings, the lower court rendered the aforementioned judgment of conviction. Beringuel filed a motion for the reconsideration of the decision alleging that he was not positively identified by the complainants and their witnesses (Record, p. 238). Seeing no reasons to disturb the findings and conclusions of the court, the presiding judge, Hon. Jose P. Arro, denied the motion for reconsideration (Record, p. 247). Hence, Beringuel filed a notice of appeal to the Court of Appeals (Record, p. 248).

Two days later, however, both Devaras and Beringuel filed a motion for new trial alleging that Beringuel was not allowed to present witness Francisco Camero on the stand because the then presiding judge was "in a hurry to terminate" the cases, and that there was a newly discovered evidence which would prove that the complainants and their witnesses did not actually identify the accused (Record, pp. 249-250). Attached to the motion was an affidavit of M/Sgt. Gaudencio Superable stating that during the investigation at Camp Bumpus in Tacloban City, the complainants did not positively identify the malefactors although they stated that the suspects looked "similar" to them (Record, p. 254).

The motion for new trial was granted (Record, p. 265) and in due course, Gaudencio Superable testified. A master sergeant at the 351st PC Company stationed at Marasbaras, Tacloban City, Superable was the chief of the Intelligence and Investigation Section when, on September 18, 1976, the instant cases were investigated. He was present when two investigators took the statements of the complainants and suspects Devaras, Beringuel and Abrio. Superable reiterated his observation that Merlita was not able to positively identify the suspects although she said that some of them looked "similar" to the intruders in Apdo's residence. Isidro Apdo and Pastor Hadlocon allegedly failed to identify the malefactors (TSN, Hearing of January 22, 1982, pp. 4-6). Camero, Beringuel's witness, could not be presented because he was allegedly not allowed to testify (Record, p. 146).

On July 12, 1982, Judge Arro rendered a decision on the motion for new trial finding that the grounds relied upon by the defendants had not been satisfactorily established (Record, p. 443). Nevertheless, Beringuel filed another motion for the reconsideration of the July 12, 1982 decision (Record, p. 452) but, after the prosecution had filed an opposition thereto, the lower court denied it (Record, p. 464). Beringuel then filed a notice of appeal to the Court of Appeals (Record, p. 480). However, in view of the fact that the death penalty had been imposed on his co-accused, the cases reached this Court for automatic review.

An assignment of error submitted by both Beringuel and Devaras for this Court's consideration is the admissibility of Exhibit "B", the sworn statement of Devaras, wherein he admitted having participated in the commission of the crimes and implicated Beringuel therein. There is merit in appellants' claim. Exhibit "B" is inadmissible because it was taken during custodial investigation unaided by counsel. Moreover, there was no valid waiver of his rights to remain silent and to counsel. This being so, Devaras' extrajudicial confession is inadmissible (*People v. Malmis*, 167 SCRA [1988]).

In view of the inadmissibility of Devaras' sworn statement, the Court has to determine whether there is ample evidence to establish the guilt of the accused to a moral certainty (*People v. Lopez*, 157 SCRA 304 [1988]) and, in these cases, the controlling issue is whether or not the appellants had been positively identified as the culprits.

It is submitted that notwithstanding Merlita Rapada's statement that she could not recognize any of the men who entered Isidro Apdo's residence (Exhibit "2"), the malefactors had been positively identified at the trial. Thus,

when asked to point out the person who had carnal knowledge of her, Merlita unhesitatingly pointed to Arturo Devaras inspite of the presence of other persons whom she might have singled out (TSN, Hearing of March 12, 1979, pp. 9-10). She testified:

"Q: How were you able to see these persons when it was already night time?

A: There was a light.

Q: What was that kind of light?

A: Lamp called 'lamparilla.'

xxx xxx xxx

Q: All right, while you were inside your room what did you do?

A: I opened the window and I was about to jump.

Q: Did you as a matter of fact jump out of the window?

A: No because I saw two persons.

xxx xxx xxx

Q: And since you did not jump what then did you do? What happened next since you did not jump?

A: I opened the door of my room because I was about to go out.

Q: And were you as a matter of fact able to go out?

A: No because a person approached me.

Q: Then what happened?

A: He held me and pushed me inside.

Q: Inside where?

A: Inside the room.

Court: Then what happened?

A: He abused and assaulted me.

Q: Can you tell the court what you mean by he abused you or how did he abuse you?

A: He held my hair pointing the armalite at me.

xxx xxx xxx

Q: What happened while you were inside the room after your hair was held and the armalite was pointed at you?

A: He took off my panty and then he had carnal knowledge of me.

Court: How did he have carnal knowlege with you, what did he do, what was his position?

A: He forced me.

Court: Forced you to what?

A: To have carnal knowledge, to make intercourse with me.

Court: Now, what did he do when he made intercourse with you, what was his position and what was your position?

A: He made me lie down.

Q: What happened next?

A: He took off his pants and after that he approached me and placed on top

Court: And then?

A: I tried to push him.

Court: Then?

A: He went out.

Court: So he was not able to have sexual intercourse with you?

A: After making intercourse with me he went out. (TSN, March 12, 1979, pp. 5-9)

She further declared on cross examination.

Court: Is it not that when the man tried sexual intercourse with you it was very dark and you could not see his face?

A: I could see his face because he was very close to me and my bed was by the window which was opened and it was a moonlight night and the light illuminated inside (TSN, Hearing of March 12, 1979, p. 15).

It is understandable why Merlita failed to identify Devaras when she executed Exhibit "2". Affidavits, taken ex-parte, are generally considered inferior to testimonies given in open court (People v. Pacola, 58 SCRA 370 [1974]) because they are almost always incomplete and inaccurate, sometimes from partial suggestions sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the suggestion of his memory and for his accurate recollection of all that belongs to the subject (People v. Loveria, G.R. No. 79138, July 2, 1990 citing People v. Gonzales, 99 SCRA 697 [1980]).

Tarciana Apdo also positively identified Devaras and Beringuel as the robbers because of the kerosene lamp on a small table in front of her husband (TSN, Hearing of May 11, 1979, pp. 4-5). Pastor Hadlocon, who was holding a small lamp when he opened the door, identified Devaras as the one carrying an armalite and Beringuel as the intruder with the pistol (TSN, February 21, 1979, pp. 10-11).

Identification of the culprits is, therefore, not difficult in these cases because the places where the crimes occurred were sufficiently lighted. Where considerations of visibility are favorable and the witness does not appear to be biased against the accused, his or her assertions as to the identity of the malefactor should be normally accepted. This is more so when the witness is the victim or his near relative because these witnesses usually strive to remember the faces of the assailants (People v. Espino, G.R. No. 88662, June 18, 1990; People v. Alvarez, 169 SCRA 730 [1989]). Moreover, the trial court gave credence to the prosecution's identification of the appellants as the culprits. Subject to exceptions which do not obtain in these cases, the trial court is in a better position to decide this question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial (People v. De la Cruz, G.R. No. 83260, April 18, 1990).

In view of the positive identification of the appellants as the culprits, alibi must be established by full, clear and

satisfactory evidence (*People v. Pili*, 56 Phil. 730 [1926]). Appellants failed to do so. The testimony of Paulino Devaras does not carry much weight because he is the father of one of the appellants. Alibi is weak if it is established mainly by the accused himself and his immediate relatives and not by credible persons (*People v. Somera*, 173 SCRA 684 [1989]). For his part, Beringuel even failed to present a witness to corroborate his alibi even after he was given the chance to do so at the new trial which he himself requested.

Furthermore, appellants failed to prove any ulterior motive on the part of the prosecution witnesses as to why they would falsely impute such a despicable crime on the accused if they did not really commit it. The testimonies of the prosecution witnesses strongly indicate their honest motivation to have the real offenders punished (*People v. Francisquite*, 56 SCRA 764 [1974]).

Beringuel's contention that the failure of the complainants to immediately submit to an investigation and their delay in the institution of the criminal charges indicate that they were not able to identify the culprits, does not hold water. This has been debunked by the positive declaration of the prosecution witnesses regarding his identity and participation in the crimes.

Robbery with rape is penalized with reclusion perpetua to death under Article 294, paragraph 2 of the Revised Penal Code. In view of the presence of the two aggravating circumstances of nighttime and dwelling which the lower court appreciated against both appellants in the two criminal cases, the death penalty was correctly imposed on Arturo Devaras in Criminal Case No. 3179. However, since the death penalty is now constitutionally prohibited, the penalty of reclusion perpetua shall be meted on Arturo Devaras instead (*People v. Munoz*, 170 SCRA 107 [1989]).

For lack of proof beyond reasonable doubt of conspiracy between Devaras and Beringuel, in Criminal Case No. 3179 Gregorio Beringuel shall only be liable for robbery under paragraph 5 of Article 294. Such offense is punishable by prision correccional in its maximum period to prision mayor in its medium period. Due to the presence of two aggravating circumstances, the proper penalty should be prision mayor in its medium period (Articles 64 and 65). Applying the Indeterminate Sentence Law, Beringuel should be imposed the indeterminate penalty of four (4) years and two (2) months of prision correccional medium as minimum penalty to eight (8) years and one (1) day of prision mayor medium as maximum penalty.

Inasmuch as in Criminal Case No. 3180 the offense was committed with the presence of the same aggravating circumstances of dwelling and nighttime with no mitigating circumstances to offset them, the same penalty imposed on Beringuel in Criminal Case No. 3179 shall likewise be imposed on both appellants.

PREMISES CONSIDERED, (a) the judgments of conviction against Arturo Devaras for robbery with rape in Criminal Case No. 3179 and for robbery in Criminal Case No. 3180, and against Gregorio Beringuel for two crimes of robbery in Criminal Cases Nos. 2179 and 3180 are hereby AFFIRMED; (b) the penalties stated above are hereby IMPOSED on appellants which they shall serve successively pursuant to the provisions of the Revised Penal Code; and (c) appellants shall jointly and severally REIMBURSE the amounts of P4,416.80 and P658.00, respectively taken from Isidro Apdo and Pastor Hadlocon, and INDEMNIFY Merlita Rapada in the amount of P30,000.00, with costs against appellants.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Jesus N. Borromeo.

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