

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERONIMO MARIÑAS, VIC AGNAEN, JOHN DOE, PETER DOE, RICHARD DOE AND JAMES DOE, ACCUSED, GERONIMO MARIÑAS, ACCUSED APPELLANT.

G.R. Nos. 97953-56. September 14, 1995

Ponente: VITUG, J.

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VITUG, J.:

Accused Geronimo Mariñas, with one Vic Agnaen[1] and four others (a.k.a. "Does"), were charged with the commission of a series of robberies in the town of San Mateo, Isabela, under separate informations that read:

In Criminal Case No. 793:

"The undersigned Provincial Fiscal accuses GERONIMO MARIÑAS y GANARIAL @ TONIO & KARATE and VIC AGNAEN of the crime of ROBBERY IN BAND, provided for in Article 308 and penalized under Article 294, paragraph 5, in connection with Article 296 of the Revised Penal Code, committed as follows:

"That on or about the 2nd day of October, 1986, in the municipality of San Mateo, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with four John Does, whose real identities are still unknown, conspiring and confederating together and all helping one another and all armed with different kinds of unlicensed firearms, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, intimidation and violence upon the spouses Dominador Apaga and Flordeliza Apaga, take, steal and carry away the following to wit: One (1) long rifle Caliber 22 with Serial No. 50778 valued at P8,000.00; one (1) airgun carbon dioxide with scope valued at P2,500.00; one (1) pump airgun valued at P600.00; one (1) graduation ring with engraved Flordeliza B. Sadang valued at P2,000.00; four (4) pairs of earring valued at P2,800.00; three (3) rings valued at P2,100.00; three (3) necklaces valued at P3,400.00; six (6) wrist watches valued at P5,000.00; one (1) necklace with locket valued at P1,000.00; two (2) pairs earring valued at P1,000.00; two (2) calculators (CASIO) valued at P450.00; one (1) electric massage valued at P540.00; assorted mechanical tools valued at P5,000.00; three (3) instematic (sic) camera valued at P1,500.00; three bottles of imported perfumes valued at P800.00; one Lady's bag valued at P120.00; two (2) clutch bag valued at P80.00; one (1) men's wallet containing driver's license, residence certificate and other pertinent papers with one bronze medallion for masonry and cash money in the amount of P35,000.00, all belonging to spouses Dominador Apaga and Flordeliza Apaga, to the damage and prejudice of said spouses in the total amount of (P67,390.00).

`CONTRARY TO LAW.'"[2]

In Criminal Case No. 794:

"The undersigned Provincial Fiscal accuses GERONIMO MARIÑAS y GRANAIL alias Tonyo and Karate and VIC AGNAEN of the crime of ROBBERY IN BAND, provided for and penalized under Article 294, paragraph (5) in connection with Article 296 of the Revised Penal Code, committed as follows:

"That on or about the 3rd day of October, 1986, in the municipality of San Mateo, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with four (4) John

Does, whose real identities are still unknown, conspiring and confederating together and all helping one another, and all armed with different kinds of unlicensed firearms, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, intimidation and violence upon the spouses Henry Carpizo and Felisa Corpuz-Carpizo, take, steal and carry away the following, to wit: one (1) Seiko 5 gold plated wrist watch valued at P1,200.00; one (1) Seiko 5 lady's watch valued at P800.00; one (1) Calculator valued at P500.00; two (2) pairs of earrings valued at P700.00; one (1) finger ring valued at P600.00; one (1) jacket valued at P200.00; cash money in the amount of P2,000.00 and one (1) Treasury Warrant in the amount of P1,193.00, all belonging to the spouses Henry Carpizo and Felisa Corpuz--Carpizo, to the damage and prejudice of said spouses in the total amount of P7,193.00.

'CONTRARY TO LAW.'"[3]

In Criminal Case No. 795:

"The undersigned Provincial Fiscal accuses GERONIMO MARIÑAS y GRANAIL @ TONYO and KARATE and VIC AGNAEN of the crime of ROBBERY IN BAND, provided for and penalized under Article 294, paragraph 5, in connection with Article 296 of the Revised Penal Code, committed as follows:

"That on or about the 3rd day of October, 1986, in the municipality of San Mateo, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with four (4) John Does, whose real identities are still unknown, conspiring and confederating together and all helping one another and all armed with different kinds of unlicensed firearms, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, intimidation and violence upon the person of Cristino Bumagat, take, steal and carry away the following to wit: one horse shoe finger ring valued at P2,000.00; one domino finger ring valued at P4,000.00; one pair pearl earrings valued at P800.00; one pair solid tambourine earrings valued at P800.00; one finger ring with Russian stones valued at P400.00; one necklace valued at P400.00; one wedding ring valued at P350.00; one Seiko 5 gold plated watch valued P1,900.00; one Seiko 5 stainless watch valued at P800.00; one citizens wrist watch valued at P600.00; one Seiko 5 E, stainless watch valued at P700.00; instamatic camera valued at P800.00; one pair earrings valued at P600.00; one AK Caliber .22 firearm valued at P8,500.00 and cash money in the amount of P10,000.00 all belonging to Cristino Bumagat, to the damage and prejudice of said owner in the total amount of (P32,650.00).

'CONTRARY TO LAW.'"[4]

In Criminal Case No. 796:

"The undersigned Provincial Fiscal accuses GERONIMO MARIÑAS y GRANAIL @ TONYO and KARATE and VIC AGNAEN of the crime of ROBBERY IN BAND, provided for and penalized under Article 294, paragraph 5, in connection with Article 296 of the Revised Penal Code, committed as follows:

"That on or about the 3rd day of October, 1986, in the municipality of San Mateo, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with four (4) John Does, whose real identities are still unknown, conspiring and confederating together and all helping one another and all armed with different kinds of unlicensed firearms, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, intimidation and violence upon the person of Calixto Bumagat, take, steal and carry away the following to wit: one reading eyeglass valued at P800.00; one Rado wrist watch valued at P1,800.00; one pair earrings valued at P2,400.00; two bolos valued at P100.00; one finger ring valued at P1,200.00; one finger and earrings valued at P2,300.00; one calculator valued at P200.00 and cash money in the amount of P3,100.00 all belonging to Calixto Bumagat, to the damage and prejudice of said owner in the total amount of P11,900.00.

"CONTRARY TO LAW."[5]

On 14 September 1987, accused Geronimo Mariñas and Vic Agnaen, when arraigned in Criminal Cases No. 793, No. 795, and No. 796 for robbery in band, both pleaded "not guilty" to the charges. On 02 October 1987, Agnaen escaped from detention; thus, only Mariñas was later arraigned in Criminal Case No. 794 for robbery with rape where he also entered a "not guilty" plea.

The four criminal cases (793, 794, 795, 796) were, upon agreement of the prosecution and the defense, consolidated and tried jointly.

The trial court, on 28 January 1991, rendered a decision summing up the evidence in this wise:

"II. FACTS OF THE CASE

"1. Evidence of the Prosecution

"Accused Geronimo Mariñas and Vic Agnaen, together with four other armed men who are unknown and still at large robbed several families, one after the other, on the night of October 2, 1986, in the barangays of Bacarena and Marasat Grande, San Mateo, Isabela, as follows:

"1.1. Crim. Case No. 793 —

"Dominador Apaga and his wife Flordeliza S. Apaga substantially corroborated each other in their testimonies (T.S.N. of Dominador Apaga, Oct. 20, 1987, pp. 1956, and November 23, 1987, pp. 141-186 and 87--264). Having computed the wages of their farm laborers in the presence of the latter, Dominador Apaga went upstairs to their room to get some cash when two armed men followed him pointing their guns at him. The four laborers and three of the Apaga children were also held up at gun point by two men in uniform. The two armed men brought Apaga and his wife downstairs, at which instance Dominador Apaga recognized one of the two men to be Vic Agnaen when the cloth covering Agnaen's face dropped. Two other armed men ushered into the sala Dominador Apaga's parent-in-laws but tarried at the porch as guards. Because the porch was brightly illuminated by a 20 watt fluorescent light and another light on the streetside, both spouses recognized one of the two to be Geronimo Mariñas because his T-shirt which was pulled up around his head did not cover his face. Mariñas and Mrs. Apaga even stared at each other briefly (both spouses identified Geronimo Mariñas in the Courtroom). Mrs. Apaga also recognized Vic Agnaen as he ransacked the room upstairs for jewelries in the presence of the spouses. The room was illuminated by a 40-watt bulb.

"Before the malefactors left, they hogtied Dominador Apaga and his four laborers downstairs and pushed a spoon down the throat of each of them. They left a threat that should they report the robbery to the police they will come back to kill all of them.

"Dominador Apaga testified that he knew Geronimo Mariñas because fourteen years ago Mariñas resided in barangay Bacarena, San Mateo, some 350 meters away from the Apaga's residence. Four years previously he also saw Mariñas. He also knew Vic Agnaen for he previously resided in District 2, San Mateo.

"Mrs. Apaga had also known Geronimo Mariñas five years ago as their neighbor and as karate demonstrator in the school where she worked. Eight years ago she had known Vic Agnaen as the neighbor 300 meters away from the Apaga's residence. She particularly remembers having seen Vic Agnaen by their window when Mr. Apaga, on passing by, had a chat with Vic's father.

"Although that night the police came to investigate the spouses did not disclose the identity of Geronimo Mariñas and Vic Agnaen because of the threat. However, when they finally mastered courage, they disclosed the identity of the two to the police and also filed their criminal complaint.

"The robbers robbed the Apaga's of the following valuables and cash: (1) one long rifle, Cal. 22, worth

P8,000.00; (2) one airgun worth P600.00; (3) one carbon dioxide airgun valued P2,500.00; (4) pieces of jewelry valued at P2,000.00; (5) mechanical tools valued at P500.00; (6) one calculator worth P540.00; (7) one electrical massager valued at P500.00; (8) P20,000.00 in cash entrusted for deposit in the Rural Bank of San Mateo with Mrs. Apaga as treasurer of Eveland School; (9) P5,000.00 in cash of the parents-in-law of Dominador Apaga; and (10) cash in the amount of P10,000.00 belonging to the spouses or a total amount of P49,240.00.

"Juanito Buenavisto, one of Mr. Apaga's laborers held up during the robbery, corroborated the testimonies of the Apaga spouses (T.S.N. March 8, 1989, pp. 2-23 and 290-349). He, too, recognized Geronimo Mariñas who stayed guard at the porch. Mariñas had a mole on the face and sported a beard (witness identified Mariñas in the courtroom). Mariñas head was covered with his T-shirt pulled up but his face was exposed. He used to meet Mariñas along the road in Barangay 2, San Mateo and in the poblacion and a few times bought from him articles for he was then an itinerant vendor of assorted goods.

"1.2 Crim. Case No. 794 —

"Arriving home in the evening of October 2, 1986, from a visit to his mother 250 meters away, Henry Carpizo and his wife were met by six armed men at their terrace, two of whom had covered faces. Bringing the spouses inside the house, two men stood guard at the terrace while the other four alternately ransacked the two rooms of their house. Mr. Carpizo was hogtied and placed in one room while his wife with her baby were placed in the other room. Mr. Carpizo was able to see the men pass by sipping coffee and he recognized one of them as Geronimo Mariñas whose mask was lowered as he drunk coffee (witness identified Mariñas in the courtroom). When the robbers noticed the curiosity of Henry Carpizo, they staffed his mouth with pieces of cloth. In the meantime, one of the men threatened Mrs. Carpizo to submission and had sexual intercourse with her. He threatened to kill her and her baby if she refused. She also recognized Geronimo Mariñas and Vic Agnaen because they lowered their masks when they sipped coffee at the sala which was fully lighted by a 'Hasag' (witness identified Geronimo Mariñas). Then, for sometime the malefactors were gone and Henry Carpizo, with the help of his wife, managed to free himself but soon the robbers returned and finding that Carpizo had freed himself they mauled him and later forced him to lead them to the house of Barangay Captain Cristino Bumagat. When Carpizo returned to his house at 1:00 to 2:00 o'clock in the morning, he learned that his wife had been sexually abused. At 8:30 the following morning, he reported the robbery to the police and identified Geronimo Mariñas and Vic Agnaen to the police but pleaded that his name be kept secret until the two were apprehended because of the threat to kill them all. They did not also disclose to the police the rape because of the woman's sense of shame and embarrassment. They were robbed of cash and valuable totalling P7,193.00.

"1.3. Crim. Case No. 795 -

"The next victim of the ruffians is Cristino Bumagat, Barangay Captain of Marasat Grande, San Mateo. Cristino Bumagat testified that he and his entire household were already asleep when he was awakened by a call of Henry Carpizo. A house helper opened the door and Henry Carpizo came in followed by two robbers who ferreted out the Barangay Captain from his room upstairs. Two of the armed men stood guard outside, one robber held up the household in the sala, and three others ransacked the rooms and found Cristino Bumagat's gun, a caliber 22 rifle, cash and valuables amounting to P33,050.00. Cristino Bumagat recognized Geronimo Mariñas and Vic Agnaen (witness identified Mariñas in the courtroom) among the robbers. He knew Geronimo Mariñas by his nickname 'karate' as the latter used to come to his house to sell insecticide. He also used to see Agnaen pass by his house.

"1.4. Crim. Case No. 796 —

"After drinking beer in the house of Cristino Bumagat, they had Cristino Bumagat lead them to his brother's house just across the fence. Having learned that Calixto Bumagat would not open his door except at the behest of Ernesto Carpizo, they fetched the latter from his house and thus gained entry to the house of Calixto Bumagat (T.S.N., Calixto Bumagat, Jan. 9, 1989, pp. 44-62). After ransacking the house of Calixto Bumagat

and divesting him of money, a bolo and a ring (amount and value not stated), the malefactors left for the house of Benjamin Antonio and Antonio Acapuyan, bringing with them Henry Carpizo, Cristino Bumagat, and Calixto Bumagat (their testimonies on this incident substantiated one another). In the house of Benjamin Antonio, they took the rings, watches and money of the people inside (amount and values not stated) and again enjoyed beer. At this instance, Calixto Bumagat recognized Geronimo Mariñas and Vic Agnaen when they dropped their face coverings to drink beer. The room was illuminated by a fluorescent light (Calixto Bumagat identified Geronimo Mariñas in the courtroom). When the robbers left, they hogtied the occupants.

"Calixto Bumagat did not report the robbery immediately to the police because of the threat to their lives. Cristino Bumagat, on the other hand, reported the incident and had it recorded in the police blotter. The police were able to recover the gun of Dominador Apaga at a certain pond. He did not file any complaint immediately because of the threat to their lives.

"Henry Carpizo testified that on October 22, 1986, he saw Geronimo Mariñas playing cara-cruz on the road near the market, so he called up Pat. Manguba at the police outpost. Mariñas ran away when he saw the police coming. It was only on October 24 when Mariñas was finally arrested.

"Pfc. Benjamin Acosta of the INP of San Mateo testified that the police tried to arrest Geronimo Mariñas and Vic Agnaen at their residences on October 4 but were nowhere to be found but finally arrested them on October 24 (T.S.N., Pfc. Benjamin Acosta, Aug. 29, 1989).

"2. Evidence of the Defense:

"Geronimo Mariñas testified that on October 3, 1986, he went to the ricefield of Cesar Sagabaen and Norberto Olay in San Mateo to help them in the threshing of their palay, finishing the same at 4:00 o'clock in the afternoon (T.S.N., Geronimo Mariñas, June 14, 1990, pp. 442-446 and 467-476). Having finished the threshing, they hauled the palay to the houses of Norberto Olay and Cesar Sagabaen in Barangay 2, San Mateo, using the tricycles of the latter two and one Justo Dres. After finishing the hauling at 6:00 P.M., they drunk a little wine from 7:30 to 8:00 before parting. Mariñas immediately went home which was adjacent to the houses of Norberto Olay and Cesar Sagabaen. Mariñas slept with his family, his wife and three children. At around 4:00 o'clock the following morning, Norberto Olay woke him up and called him up to help in drying the palay in front of the San Mateo Primary School. Mariñas admitted that the house of Dominador Apaga is just behind this place where they dried the palay. He stayed in the place until 3:00 o'clock in the afternoon when they began hauling the palay until 6:00 in the afternoon.

"Mariñas' house in Barangay 2, is just two kilometers away from Marasat Grande, connected by a rough road in which the means of transportation is a tricycle.

"Josephine Olay Mariñas, spouse of Geronimo Mariñas, corroborated the testimonies of her husband. (T.S.N., of Josephine Olay Mariñas, May 10, 1990, pp. 4.8-439. Cesar Sagabaen and Norberto Olay also corroborated Geronimo Mariñas)." [6]

The trial court, convinced of the case for the prosecution, convicted accused Geronimo Mariñas [7] and sentenced him to an indeterminate prison term of THREE (3) YEARS and TWO (2) MONTHS, as MINIMUM, to EIGHT (8) YEARS, as MAXIMUM, on three (3) counts of robbery in band and, in Criminal Case No. 794, to a prison term of RECLUSION PERPETUA. Mariñas was also adjudged to pay corresponding civil liabilities to the victims, including moral damages to rape victim Feliza Carpizo, plus costs.

Accused Geronimo Mariñas appealed to us his conviction by the trial court and interposed the following assignment of errors:

(1) The trial court erred in finding the accused Geronimo Mariñas guilty of the crimes charged beyond reasonable doubt; and

(2) The trial court erred in not applying *People vs. Basisten*, 47 Phil. 493 in the instant case.

Appellant denied having been with the armed group responsible for the series of robberies perpetrated on 02 and 03 October 1986 on four households at San Mateo, Isabela. He explained that at the time these robberies were supposed to have been committed, he was either at home or drinking with friends at Barangay 2, San Roque, Isabela.

The defense of alibi put up by appellant is evidently weak. In order that this defense may prosper, it must be established clearly and convincingly not only that the accused is elsewhere at the time of the commission of the crime, but that likewise it would have been physically impossible for him to be at the vicinity thereof.[8] Appellant has admitted that the place where he claims to have been (Barangay 2, San Roque, Isabela) on 02 October 1986, is a mere quarter of a kilometer away from Apaga's residence (at Barangay Bacarena, San Mateo, Isabela) while the scene of the robberies committed on 03 October 1986 (Barangay Marasat Grande) is just about two kilometers away from appellant's house.

The prosecution witnesses categorically declared having recognized appellant to be one of the malefactors. Dominador Apaga, a victim of the 02 October 1986 robberies, testified in this manner:

"Q:

x x x. How about the other person who was pointing his gun at your four laborers, you said at first you were not able to recognize. How about later on?

"A:

When at the first time that we were brought down the sala I was seated on a sofa with my wife on the left arm of the sofa, it was at that time that my parents-in-law were approaching the door. Behind them were two men pointing their guns against them.

"Q:

And by that fact, how were you able to recognize the other men pointing his gun at the four laborers?

"A:

The man behind my mother-in-law was Mariñas, Your Honor.

"xxx xxx xxx

"Q:

You said that one of the two men who brought in your parents-in-law is the accused Mariñas.

"A:

Yes.

"Q:

How were you able to recognize him?

"A:

Well, my porch has a very bright fluorescent. My sala was lighted also with fluorescent. It was very bright. I could recognize him.

"Q:

What was the appearance of the accused Mariñas that night?

"A:

His face was open but the neck of the T-shirt was placed around his face, Your Honor, and the remaining was placed inside.

"COURT:

You make that of record. (The witness demonstrated before the Court with both hands describing the position by placing both hands on the head and down to the neck as if something covered the head up to the neck with the full face open.)

"Q:

And with that fact, how were you able to recognize him to be the accused Mariñas?

"A:

I knew him long before so I recognized him."[9]

Corroborating Dominador was his wife, Flordeliza, who declared on the witness stand, as follows:

"Q:

No, what happened next after you and your husband were brought down from your room upstairs and you were told to keep silent?

"A:

We heard steps coming from outside going to the door bringing my mother and father, sir, following two (2) men with arms.

"Q:

Why, how far is the place of your parents from your house?

"A:

About six (6) to seven (7) meters only.

"Q:

How were you able to see the arrival of your parents followed by two (2) armed men?

"A:

Because we were seated in a butaka fronting the door, sir.

"Q:

And who were those two (2) armed men who followed your parents?

"A:

The two (2) armed men were Mariñas (karkarate) and one who was covered with handkerchief on his nose down or about 5'5," sir.

"Q:

What was the appearance of Mariñas whom you called karkarate when he and another companion followed your parents?

"A:

He camouflaged himself by covering white T-shirt leaving his face uncovered, sir, covering his head leaving his face uncovered.

"Q:

Which part of his head was covered by T-shirt, if you say that his face was fully exposed?

"A:

Let me demonstrate.

"Q:

Yes.

"A:

The head of the T-shirt was covered until here covering his head and a part of the T-shirt was inserted at the back of the polo. (The Witness with both hands demonstrated before this Court that accused Mariñas covered his face in such a way that the face was exposed by moving her hands from forehead below the chin and stated further that the face was the only one exposed while the other parts of the head was covered by T-shirt.)

"Q:

You mean the neck of the T-shirt was placed around the face of Mariñas?

"A:

Yes, sir.

"xxx xxx xxx

"Q:

And you also mentioned that Mariñas at that time had his head covered by white T-shirt with his whole face exposed.

"A:

Yes, sir.

"Q:

In such a way that the T-shirt covered the back of his head?

"Q:

Yes, sir.

"Q:

Leaving his full face exposed?

"A:

Yes.

"Q:

In such a way that it would be impossible for you not to have recognized him in that situation?

"A:

I could recognize him, sir.

"xxx xxx xxx

"Q:

In fact you knew him so well that you don't have any doubt that it was Mariñas?

"A:

Yes, sir.

"Q:

Because you have known him for five years?

"A:

Yes."[10]

Juanito Buenavista, one of the four mini-thresher operators held up with the Apagas, gave his testimony thusly:

"Q:

With these five (5) persons who entered the house were you able to identify them?

"A:

Yes, sir.

"Q:

Who is this person whom you were able to identify or recognize?

"A:

Mariñas, sir.

"Q:

How were you able to recognize this Mariñas?

"A:

When these persons suddenly entered the house some of them went up stairs where Mr. Apaga was while two of them pointed their gun to us and while we were in our place that was the time when Mr. and Mrs. Apaga was brought in and followed by this Mariñas that was the time I was able to recognize this Mariñas because he was the one who brought the two inside the house, sir.

"Q:

What was the appearance of Mariñas that time he brought the two Mr. and Mrs. Apaga?

"A:

His head was covered with T-shirt with the face fully exposed. (Witness demonstrated how the head was covered and the face fully exposed.)

"Q:

If this Mariñas is present in the court-room will you please point to him?

"A:

That man, sir, wearing that yellow sweater (and when asked his name he gave as Geronimo Mariñas)."[11]

Appellant was likewise positively identified by the 03 October 1986 robbery victims. Cristino Bumagat, the Barangay Captain of Marasat Grande, stated:

"Q:

What was the condition of their faces?

"A:

I was not able to recognize those two (2) guarding the gate. The only persons I was able to recognize were those seated in front of us.

"Q:

How did you recognize these two (2) persons who were seated in front of you?

"A:

I was able to recognize these two (2) who were seated in front of us because the other one used to come to the house to sell insecticide, DDT, while the other one used to pass by our house.

"Q:

Who is this person who used to sell you insecticide?

"A:

That man, sir. (The witness pointing to the accused.) They call him 'Karate.' (The witness in the course of his testimony pointed to the accused and when asked, he gave his name as Geronimo Mariñas.)

"xxx xxx xxx

"Q:

Now, Mr. witness, do you know who of the six (6) robbers took this firearm of yours?

"A:

Out of the six (6) robbers I was able to recognize Geronimo Mariñas.

"Q:

How were you able to recognize Geronimo Mariñas as one of the robbers who entered your house?

"A:

When they entered the house, sir, his face was covered with handkerchief just below the nose but when they

drank beer, he removed the face covering and I recognized him to be Geronimo Mariñas.

"Q:

Will you please describe the appearance of this Geronimo Mariñas whom you recognized according to you when he removed the handkerchief from his face?

"A:

The face and he has a mole on the right lip.

"Q:

The person you have pointed now has a moustache. Did you see if he has a moustache on the night they entered your house?

"A:

He was sporting that moustache when they entered the house."[12]

The spouses Henry and Feliza Carpizo, the other victims, also identified appellant as one of the armed men. Henry Carpizo declared:

"Q:

And during your stay in that room where you were hogtied, what happened next?

"A:

Some of the robbers took coffee because we have hot water, together with all the robbers, they took coffee alternately.

"Q:

Where did these robbers take coffee alternately?

"A:

In our dining table.

"xxx xxx xxx.

"Q:

You said that two (2) remained at the gate of your house and who have handkerchief covering their face. How about when they drank coffee?

"A:

They lowered the handkerchief. (The witness demonstrated as if he was removing a cover from his face by lowering the handkerchief downward.)

"Q:

How do you know that the two (2) robbers with handkerchief on their face removed the same, by lowering it when they drank coffee?

"A:

Because when they passed through the door, the handkerchief was already removed.

"xxx xxx xxx

"Q:

And if you are shown these two (2) robbers with the handkerchief covering their faces removed when they drank coffee will be shown to you again, would you able to recognize them?

"A:

Yes, sir.

"xxx xxx xxx

"Q:

Will you please look around this courtroom and tell us if these persons are present?

"A:

That man with a mole in the upper right lip. (Witness pointing to a man with a mole in the right upper lip and when asked, he gave his name as Geronimo Mariñas.)

"Q:

The person you have pointed appears to have a moustache. Did he has that moustache that night of October 3, 1986?

"A:

Yes, sir.

"Q:

How about the other one, whose handkerchief mask was lowered when he drank coffee, is he here?

"A:

He is not here, sir."[13]

Henry Carpizo's wife Feliza, in her own testimony, stated on the witness stand:

"Q:

Of the six (6) men, were you able to recognize any of them?

"A:

Two (2) of them, sir.

"Q:

Who were these two (2) whom you were able to recognize?

"A:

The two (2) men who covered their faces because they took coffee?

"Q:

Where did they take coffee?

"A:

At out table.

"Q:

Where were you then?

"A:

I was inside the room.

"Q:

How were you able to see them when they took coffee?

"A:

The door of the room was opened at that time and from inside, you can see the table.

"Q:

Was the place where the table was lighted?

"A:

Yes, sir.

"Q:

With what?

"A:

Coleman hasag.

"Q:

How were you able to recognize them when you said they wore mask?

"A:

They removed the cover of their faces when they drank coffee.

"Q:

Who were they?

"A:

I told my husband that one of them, I used to see whenever I go to the school, and the other one used to go to the barrio.

"Q:

Can you give a description of these men whom you were able to recognize?

"A:

One of them whom I was able to recognize has a mole on the face, but I do not know what part of the face; and the other one I used to see in the school.

"Q:

Will you please look around the courtroom and tell us if the two (2) men you were able to recognize are here?

"A:

One of them is here. He is that man. (The witness pointing to a man in the courtroom and when asked, he gave his name as Geronimo Mariñas.)

"Q:

How about the other one, were you able to know his name?

"A:

I came to know the name of the other one from the police and he is Vic Agnaen."^[14]

The evidence against accused-appellant is simply overwhelming. The trial court has found no reason to distrust the credibility of the prosecution witnesses and veracity of their testimonies. Neither have we. So, also, this Court will not interfere with the trial court's judgment on the trustworthiness of witnesses unless there appears on record facts or circumstances of real weight which might have been overlooked or misapprehended.^[15] Nothing has been shown, for instance, to strongly suspect that the witnesses could have been impelled by improper motives or ill-will.

While there can be little doubt on the sufficiency of the evidence to establish conspiracy in the commission of robbery and in finding herein accused-appellant himself guilty on four counts of robbery in band, evidence is wanting, nevertheless, on his criminal liability for the rape of Feliza Carpizo. There is nothing on record pointing to appellant as the rapist or as being aware at the very least of its commission. It would appear that the decision to rape Feliza Carpizo was a spontaneous act of one of the robbers. Appellant was outside the house and could not be assumed to have acquiesced to the commission of rape or to have been in a position to prevent his cohorts in deviating from the plan to merely rob the victims. We agree with the Solicitor-General that accused-appellant can only be held accountable for robbery in band.^[16]

WHEREFORE, the decision appealed from is AFFIRMED with these modifications:

1. Accused-appellant Geronimo Mariñas is FOUND guilty of four counts of robbery in band, and he shall thus SUFFER the indeterminate penalty of imprisonment of three (3) years and two (2) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, for each of the four counts of robbery in band; and
2. The award of moral damages of P10,000.00 adjudged against him is deleted.

Costs against accused-appellant.

SO ORDERED.

Romero, (Acting Chairman), and Melo, JJ., concur.

Feliciano, (Chairman), J., on leave.

[1] Agnaen has escaped from detention and is now at large.

[2] Rollo, pp. 5-6.

[3] Rollo, p. 7.

- [4] Rollo, pp. 9-10.
- [5] Rollo, p. 11.
- [6] Rollo, pp. 24-32.
- [7] Along with his co-accused Vic Agnaen.
- [8] People vs. Madriaga, 171 SCRA 103.
- [9] TSN, 20 October 1987, pp. 31-34.
- [10] TSN, 23 November 1987, pp. 149-151 & 220.
- [11] TSN, 08 March 1989, pp. 7-9.
- [12] TSN, 10 February 1988, pp. 27-28; 09 August 1988, pp. 72-74.
- [13] TSN, 06 September 1988, pp. 155-161.
- [14] TSN, 07 June 1988, pp. 55-58.
- [15] People vs. Dismuke, 234 SCRA 51.
- [16] People vs. Ompad, 26 SCRA 750; People vs. Dela Serna, 21 SCRA 569.

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