

**EN BANC**

**[ G.R. No. 122979, February 02, 2000 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
 FELIMON ALIPAYO Y TEJADA, DANILO MACABALITAO Y  
 ROMUALDEZ, JELLIE LIPA Y RUDIKE, AND VIRGILIO TAMAYO Y  
 ZALMAZAN, ACCUSED-APPELLANTS.**

**D E C I S I O N**

**PER CURIAM:**

Accused-appellants Felimon Alipayo y Tejada, Danilo Macabalitao y Romualdez, Jellie Lipa y Rudike and Virgilio Tamayo y Zalmazan were charged with Robbery with Rape under the following Information<sup>[1]</sup> -

That on or about the 13th of February 1994, in Quezon City, Philippines, the above-named accused, conspiring, confederating with and mutually helping with one another, by means of violence and intimidation against person/s did then and there, willfully, unlawfully and feloniously rob the persons of ORNELIA GELLONGOS Y PIALA and ALEXIS BARRIENTOS Y DACASIN, in the following manner, to wit: on the date and in the place aforementioned while said complainants were walking along A. Bonifacio Avenue near St. Joseph Church, this City, accused pursuant to their conspiracy and armed with bladed weapons appeared from behind and at knife (sic) points, took, robbed and carried away the following, to wit:

ORNELIA GELLONGOS Y PIALA

|   |           |
|---|-----------|
| One (1) pair of 18 karat gold earrings<br>..... | P2,000.00 |
| One (1) Lady's wristwatch<br>stainless.....     | 1,000.00  |

ALEXIS BARRIENTOS Y DACASIN

|   |        |
|---|--------|
| One (1) men's wrist watch SEIKO<br>goldplated.....                      | 350.00 |
| One (1) pair of leather shoes Two (2) pilot sign pens<br>P45.00 @ ..... | 90.00  |
| Leather wallet containing cash money<br>.....                           | 200.00 |

all valued in the total amount of ₱3,640.00, Philippine Currency, and that on the occasion (sic) of the said robbery, the said accused by means of force and intimidation took turns in sexually abusing Ornella Gellongos y Piala, 16 years of age, a minor, against her will and consent, to the damage and prejudice of said offended parties.

## CONTRARY TO LAW.

When arraigned on March 21, 1994, all the accused pleaded not guilty to the crime charged.<sup>[2]</sup>

The prosecution presented six (6) witnesses: private complainants Ornella Gellongos<sup>[3]</sup> and Alexis Barrientos;<sup>[4]</sup> SPO2 Romeo Arcenas;<sup>[5]</sup> PO3 Jerry Cervantes;<sup>[6]</sup> barangay official Alfredo Cabrito;<sup>[7]</sup> and the medico-legal officer Dr. Louella Nario.<sup>[8]</sup>

It appears that on February 13, 1994 at around 8:45 p.m., Ornella and Alexis were walking home after coming from the house of a classmate who lived along North Diversion Road. When they reached the front of St. Joseph Church on A. Bonifacio Avenue, accused-appellants, all armed with knives, approached them from behind and announced a hold-up. Virgilio Tamayo, Danilo Macabalitao and Jellie Lipa accosted Alexis while Felimon Alipayo poked a knife at Ornella's neck. They were then brought to the nearby mini-park and there, Felimon Alipayo took Ornella's Seiko wrist watch. At the same time, Virgilio Tamayo divested Alexis of his Seiko wrist watch while the other accused took his two pilot sign pens, wallet containing P200.00 in cash and pair of shoes. Danilo Macabalitao then took Ornella's 18-karat gold earrings. After robbing private complainants of their valuables, Felimon Alipayo and Danilo Macabalitao dragged Ornella about four meters away from Alexis and forced her to lie down on the grass or else they would kill her. They then pulled up her skirt and removed her panties. While Danilo Macabalitao poked a jagged-edged knife at Ornella's neck with one hand and mashed her breasts with the other, Felimon Alipayo raped Ornella. After this, the two exchanged places. This time, Felimon Alipayo held an icepick to Ornella's neck while Danilo Macabalitao raped her. While all of these were happening, Alexis pleaded with the accused to stop what they were doing to Ornella. When Danilo finished, Virgilio Tamayo, who was guarding Alexis, approached Ornella, pulled down his pants and also raped her while Felimon Alipayo continued to poke his icepick at Ornella's neck.

It was at this point that Alexis was able to escape. Alexis ran and cried for help but no one answered him. It was only when he reached a store that he met a barangay tanod who asked him what happened. They called the barangay tanod's companions and together went to the park.

In the meantime, after Virgilio finished and stood up, the last accused, Jellie Lipa, also hurriedly raped Ornella. During her entire ordeal, Ornella felt pain in her private part and was bleeding.<sup>[9]</sup> When Jellie Lipa finished, he stood up and all of the accused ran away. Ornella then forced herself to stand up and walk but had to sit on a park bench after a few steps. It was here where Alexis and the barangay tanod found her. The barangay tanod and his companions tried to look for the accused-appellants in the vicinity but could not find them. He then advised Ornella and Alexis to go back to the barangay outpost after six (6) hours to see if the accused had been arrested. Ornella was brought home by Alexis because she had difficulty walking.

Alexis then proceeded to the church where he saw Ornella's uncle, Rodolfo Taguio, and narrated the incident to him. They proceeded to the barangay ,outpost as

advised and there, Alexis identified the accused Danilo Macabalitao and Jellie Lipa.

When Ornella and Alexis arrived at the Camachile police substation to report the crime the following day, February 14, 1994, they were asked to identify the accused among four (4) persons detained in a cell. They pointed out the accused Danilo Macabalitao and Jellie Lipa, who had been transferred to the station. After one hour, accused Virgilio Tamayo was brought to Ornella and Alexis and they also identified him as one of their attackers. Ornella then proceeded to the National Bureau of Investigation (NBI) to have herself medically examined. After her medical examination, Ornella returned to the police station where she was once more asked to look inside the detention cell to identify any other accused. This time, she pointed to the accused Felimon Alipayo, whom Alexis had earlier identified. Thereafter, they filed their complaints in writing.

Prosecution witness Jerry Cervantes, a policeman assigned at the Camachile substation, testified that accused Danilo Macabalitao and Jellie Lipa accompanied him and police officer Roberto San Miguel to look for and arrest the two other accused. Accused Virgilio Tamayo was pointed out by Danilo and Jellie in the Balintawak park as their companion in the crime. Likewise, accused Felimon Alipayo, whom they chanced upon acting as jeepney barker, was pointed out by the three accused, Danilo, Jellie and Virgilio, as their other companion in the crime. When accosted, both Virgilio Tamayo and Felimon Alipayo did not resist their arrest.

All the accused-appellants took the witness stand, raising the defense of alibi. They also presented four (4) additional witnesses. Manuel Pazol, Jr.,<sup>[10]</sup> a barangay tanod of Unang Sigaw, Balintawak, Quezon City, where the crime took place, testified that when the accused Danilo Macabalitao and Jellie Lipa were brought to the barangay outpost on the night of February 13, 1994, he asked them to undress to check if there were bloodstains in their underwear, but he saw nothing. Gregorio "Ogie" Lopez,<sup>[11]</sup> the employer of accused Danilo Macabalitao, corroborated Danilo's story that at around 7:00-8:00 p.m. of February 13, 1994, Danilo was in his house delivering his daily collections. Rodolfo Ocampo,<sup>[12]</sup> a Metro Aide and barangay tanod assigned to the area of the crime, claimed that when he talked to Ornella right after the incident, she told him that they were held up and that two men raped her. Lastly, Norma Alcazar,<sup>[13]</sup> longtime neighbor of Danilo Macabalitao's family, testified that she saw a struggle between five decently dressed men and a woman on the day of the crime on the bridge near the Balintawak Market.

The Regional Trial Court of Quezon City, Branch 215, rejected the accused-appellant's defense of alibi and, on August 28, 1995, rendered a Decision<sup>[14]</sup> finding all four of them guilty as charged. The trial court ruled, viz:

Upon the evidence the court finds that accused Felimon Alipayo y Tejada, Danilo Macabalitao y Romualdez, Jellie Lipa y Rudike and Virgilio Tamayo y Zalmazan guilty as charged, the prosecution having proven their guilt beyond reasonable doubt.

Considering that the crime was committed during nighttime, the accused taking advantage of the darkness for the more successful consummation of their plans, to prevent their being recognized, so that the crime may be perpetrated unmolested, or so that they could escape more

thoroughly (U.S. v. Billedo, 32 Phil. 575, 579) as what actually happened in this case, the four (4) accused are sentenced to Death in accordance with Article 294, paragraph 1 of the Revised Penal Code, as amended by RA 7679.

The four (4) accused are jointly and severally ordered to pay the private complainant Ornella Gellongos the sum of P200,00.00 as and for civil damages; likewise, the accused are ordered to pay to the private complainant Alexis Barrientos the sum of P20,000.00 as civil damages; accused are also ordered to indemnify private complainants Ornella Gellongos P1,000.00 and Alexis Barrientos P640.00 for the loss of their personal belongings.

SO ORDERED.<sup>[15]</sup>

In this automatic review, accused-appellants contend that the trial court erred in giving full credit to the declarations of the complainants despite glaring inconsistencies in their testimonies. They also fault the trial court for totally disregarding the testimonies in their defense.<sup>[16]</sup>

Accused-appellants assail the identification made by private complainants, arguing that when they were asked at the police station whether the appellants were the ones who robbed them and raped Ornella, both of them could only answer "yata" (maybe). It appears that appellants based this argument on the testimony of police officer Jerry Cervantes narrating what happened after he apprehended accused Virgilio Tamayo and Felimon Alipayo, to wit:

Q Where did you bring them to?

A To our precinct, Camachile Station, sir.

Q What happened at Camachile Police Station?

A We turned them over to the police officer, sir.

Q Were the complainants present at Camachile Police Station after bringing them there?

A Yes, sir.

Q What happened when the private complainants confronted these suspects?

A They pointed "yata".

Q What do you mean by "yata"?

A I was not present everytime, sir.

Q Who was the investigator who was there present?

A SPO2 Arcenas, sir.

ASST. CITY PROSECUTOR

May we put on record that the identification is narrated in the salaysay of the two complaining witnesses in this case which was admitted by the defense counsel.

COURT

The two private complainants?

ASST. CITY PROSECUTOR

Yes, your honor. In the salaysay, the fact of identification was mentioned.<sup>[17]</sup>

A reading of the above testimony easily reveals that when witness Jerry Cervantes said, "they pointed 'yata'," he was expressing his uncertainty as to whether or not the complainants pointed or identified the appellants Virgilio Tamayo and Felimon Alipayo. Contrary to what appellants would like this Court believe, the word "yata" was not used by complainants but was used only by the witness. This is obvious from his answers when asked what he meant by "yata": ""I was not present every time, sir." Indeed, the trial prosecutor clarified the matter by saying that the fact of identification was already contained in the complaint-affidavit of the complainants.

We, therefore, reject accused-appellants' argument that their identification was not sufficiently established. The records are replete with facts identifying appellants as the perpetrators of the crime. Ornella and Alexis pointed out appellants Jellie Lipa and Danilo Macabalitao in the detention cell when they went to the police station on February 14, 1994.<sup>[18]</sup> When Virgilio Tamayo was brought to her, Ornella also identified him as one of her rapists.<sup>[19]</sup> When she returned to the police station later in the afternoon, she also pointed out Felimon Alipayo in the detention cell.<sup>[20]</sup> Alexis, on the other hand, further testified that when he went to the barangay outpost on the night of the crime, he confirmed that the two apprehended suspects, appellants Jellie Lipa and Danilo Macabalitao, were the ones who robbed them and raped Ornella.<sup>[21]</sup>

Accused-appellants argue that their identification by the complainants was doubtful. They stress that, the suspects approached the complainants from behind and that the scene of the crime was a dark place notorious for criminality such that positive identification could not have been possible. Again, we find no merit in this contention. After a perusal of the records of the case, we find that the identification made by Ornella and Alexis of accused-appellants is credible. While accused-appellants may have approached complainants from behind, their act of divesting the two of their personal belongings and of raping Ornella necessarily brought them face to face with the complainants. Specifically, Ornella recognized Felimon Alipayo because while the latter was poking a knife at her and removing her wrist watch, she was staring at him.<sup>[22]</sup> She recognized Danilo Macabalitao by the scar on his face which she readily saw when he approached her.<sup>[23]</sup> As to Virgilio Tamayo and Jellie Lipa, Ornella saw their faces when they raped her.<sup>[24]</sup> Alexis, too, confirmed that because of their proximity, he recognized the accused-appellants.<sup>[25]</sup> We give credence to the identification made by the complainants considering that the most natural reaction of victims of violence is to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed.<sup>[26]</sup>

While it may be true that the crime took place in a dark area, this does not prevent the identification of the criminals. As testified to by Alexis, vehicles were passing by,