

## THIRD DIVISION

[ G.R. No. 218703, April 23, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
ANTONIO LLAMERA Y ATIENZA, ACCUSED-APPELLANT.**

### DECISION

**MARTIRES, J.:**

This is an appeal from the 17 July 2014 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR. H.C.-No. 04549 which affirmed with modification the 30 April 2010 Decision<sup>[2]</sup> of the Regional Trial Court, [REDACTED], Camarines Sur (RTC), in Criminal Case No. T-2176 finding Antonio Llamera y Atienza (*Llamera*) guilty of Robbery with Rape.<sup>[3]</sup>

### THE FACTS

In an Information, dated 28 November 2000, accused-appellant and his co-accused Edwin Sical, Rodel Sical, Victorino Sical, and Alvin Adayo were charged with robbery with rape. The Information reads:

That on or about 6:30 o'clock in the morning of March 28, 2000 at [XXX],<sup>[4]</sup> Camarines Sur and within the jurisdiction of the Honorable Court, the [abovenamed] accused, with intent to gain, while armed with an armalite rifle, a shot gun, a calibre .45 pistol and a calibre .38 pistol, after conspiring, confederating and mutually helping one another, through violence and intimidation of persons, did then and there, wilfully, unlawfully and feloniously enter the house of [BBB]<sup>[5]</sup> and take, rob and carry away the following properties belonging to [BBB]:

- a) Cash in the amount of Php5,000.00;
- b) Jewelry [valued] at Php300,000.00;
- c) A licensed shotgun brand Squib with serial no. 103980 valued at Php21,000.00

Which properties have a total amount of Php326,000.00

That in the course of robbery, the accused who are more than three armed malefactors thus, constituting a band (*Cuadrilla*) hit, harm and struck [BBB] with a gun on his head causing him to suffer physical injuries and that one of the accused with lewd and carnal design, touched the breast, stripped the pants and underwear of [AAA] and inserted his left hand into her private part (genital) thereby consummating rape, all to the damage and prejudice of the offended parties in such amount as maybe proven in court.<sup>[6]</sup>

Upon arraignment, the accused pleaded not guilty to the charge.

### ***Version of the Prosecution***

On 28 March 2000, at around 6:30 A.M. in the morning, BBB and his nephew CCC were in their living room when suddenly, three (3) armed men, later identified as accused Edwin Sical (*Edwin*), Alvin Adayo (*Alvin*), and accused-appellant barged into the house. Edwin was armed with an armalite, Alvin with a .45 caliber gun, while accused-appellant was armed with a .38 caliber pistol. Edwin threatened BBB with his armalite.<sup>[7]</sup> Then, upon seeing AAA, BBB's niece, Edwin instructed her to go down the stairs and lie on the living room floor with her uncle.<sup>[8]</sup> Thereafter, Edwin ordered BBB to produce money and guns. When the latter refused, he was hit twice on the head with the armalite.<sup>[9]</sup> Edwin and Alvin then searched BBB's office and ransacked the rooms of the house where they found money, pieces of jewelry, and a shotgun. While the two accused were busy ransacking the house, AAA and CCC were able to run to the kitchen and found thereat, accused-appellant guarding DDD, BBB's wife, and the laborers of the family. Accused-appellant even made fun of EEE, one of BBB's workers. EEE, at gunpoint, was made to stand, sit, and lie down repeatedly. When accused-appellant got tired of mocking EEE, he struck his head with a gun.<sup>[10]</sup> Then, accused-appellant dragged AAA to the office of her uncle. Inside, he inserted his hands into her blouse and touched her breast. He tried to unbutton her pants and when he failed, he ordered AAA to unbutton her pants herself. Then, he inserted his left hand into AAA's pants and used his middle finger to penetrate AAA's vagina. Accused-appellant looked outside the door to check if somebody could see him and then he locked the door again. He told AAA to remove her pants and underwear, to sit on the table, and to spread her legs. Suddenly, Edwin knocked on the door. He was infuriated at accused-appellant when he discovered that AAA was inside the room with him. Edwin allowed AAA to leave the room and join the others in the kitchen.<sup>[11]</sup> The accused escaped using BBB's car. When the malefactors left the house, BBB was immediately taken to the hospital where he was treated for the injuries he sustained.<sup>[12]</sup>

### ***Version of the Defense***

Accused-appellant and his co-accused all raised the defense of denial and alibi. Edwin averred that on 28 March 2000, he was in a relative's house in Tiwi, Albay.<sup>[13]</sup>

Alvin claimed that he was attending to his store at Moriones, Ocampo, Camarines Sur. He came to know his co-accused only in August 2001 when he was arrested.<sup>[14]</sup>

On his part, accused-appellant maintained that on 28 March 2000, he was at Benitez Street, Cubao, Quezon City, working in a vulcanizing shop owned by his sister.<sup>[15]</sup>

### ***The Regional Trial Court's Ruling***

In its decision, the RTC found accused-appellant guilty of robbery with rape while his co-accused were convicted of robbery. It reasoned that the accused's denials were uncorroborated by any credible witness; whereas, the testimonies of the prosecution witnesses were clear, convincing, and corroborated each other on material points. The trial court, however, ruled that only accused-appellant could be held liable for robbery with rape because he alone perpetrated the crime of rape. It was also shown that Edwin prevented accused-appellant from further sexually molesting AAA. The *fallo* reads:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered:

In Crim. Case No. T-2176

1. Finding accused ANTONIO LLAMERA Guilty Beyond Reasonable Doubt of the felony of Robbery with Rape. The same having been committed by a band and there being no mitigating circumstance, he is hereby sentenced to suffer the penalty of Reclusion Perpetua without eligibility for parole.
2. Finding accused EDWIN SICAL, RODEL SICAL alias "Roman," VICTORINO SICAL alias "Manuel" and ALVIN ADAYO alias "Meno" guilty beyond reasonable doubt of Robbery penalized under paragraph 5, Article 294 in relation to Article 295 and 296 of the Revised Penal Code. There being no mitigating circumstance and with the aggravating circumstance of commission by a band, they are hereby sentenced to suffer the indeterminate penalty of 8 years of prision mayor in its minimum period as minimum to 9 years and 4 months of prision mayor in its medium period as maximum.

The said accused shall be credited in their service of their sentence with the full time during which they have undergone preventive imprisonment provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited with only four-fifths thereof.

All the said accused are likewise sentenced to pay jointly and severally:

- a. Actual damages in the amount of Php 326,000.00 and moral damages in the amount of Php 100,000.00 to the spouses BBB and DDD.
- b. Civil indemnity in the amount of Php 50,000.00 to AAA.

In Crim. Case No. T-2779:

ACQUITTING accused EDWIN SICAL, RODEL SICAL, VICTORINO SICAL, ALVIN ADAYO and ANTONIO LLAMERA of the charge of Carnapping penalized under R.A. 6539 for want of all the elements constituting the said felony.<sup>[16]</sup>

Aggrieved, accused-appellant appealed before the CA.

### ***The Court of Appeals Ruling***

In its decision, the CA affirmed the conviction of accused-appellant for robbery with rape but modified the award of damages. It rejected accused-appellant's claim that the police's act of showing his picture to the witnesses for identification was not free from impermissible suggestion. The appellate court opined that there was no evidence to prove that the police suggested or pointed to the witnesses a particular photograph from the set shown to them. It held that accused-appellant's identity

was duly established because the witnesses, especially AAA, had the opportunity to be physically close to him. The CA disposed the case in this wise:

WHEREFORE, the instant appeal is DENIED and the assailed Decision dated April 30, 2010 of the Regional Trial Court, [REDACTED] Camarines Sur in Criminal Case No. T-2176 is AFFIRMED with MODIFICATION on the award of damages to "AAA" in that accused-appellant Antonio Llamera y Atienza is ordered to likewise pay her moral damages in the amount of Php 50,000.00. Legal interest at the rate of six percent (6%) per annum is imposed on all the award for damages from the date of finality of this decision until full payment thereof.<sup>[17]</sup>

Hence, this appeal.

### ISSUE

WHETHER THE GUILT OF ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT

Accused-appellant asserts that the private complainants were shown photographs which contained the name and the crimes for which each person was arrested; that the identification was influenced by the notations found on the photographs; that the private complainants saw the accused for the first time during the robbery which lasted for only thirty minutes, thus, they had no ample time to remember the robbers' faces; and that as regards the rape, he merely inserted his hands into AAA's pants and not into her vagina.<sup>[18]</sup>

### THE COURT'S RULING

To assail his conviction, accused-appellant harps on the alleged invalidity of the out-of-court identification made by the private complainants. In a long line of cases, the Court has laid down the two guiding principles in order to sustain the validity of an out-of-court identification: **first**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect. In addition, photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.<sup>[19]</sup> Here, aside from the contention that the notations about the crimes committed by the persons in the photographs constituted impermissible suggestion, accused-appellant failed to aver much less prove any act on the police officers' part which indicated that he was singled out during the out-of-court identification. On the contrary, CCC testified that several photographs were shown to him and, among those, he readily recognized accused-appellant and his co-accused as the persons who robbed their house:

[Prosecutor Habana]: Now what happened during said second investigation at the police station?

[CCC]: They asked me questions and showed me pictures, Sir.

Q: Now, how many pictures if you can recall were shown to you by the authorities?

A: So many, sir.