

THIRD DIVISION

[G. R. No. 118133, February 28, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO BALACANAO Y QUINES, ROBERTO SALVADOR Y
AGCAOILI, MARTIN SORIANO, Y NARAG, ERIBERTO BATUELO Y
BALACANAO, ELPIDIO GANGAN, Y BALISI, ABRAHAM CAMAYANG
Y PAGULAYAN, TACIO ACORDA Y BISALDE, RUBEN ACORDA Y
LAYUGAN, LORENZO CARONAN Y CANAPI, ELVIS BANGAYAN, GIL
TAMBIAO, VILLAMOR AGANA, JESSIE ACORDA, HERMINIO
ACORDA Y MABUTI AND DAMASO CABANA, ACCUSED.**

**ROBERTO SALVADOR Y AGCAOILI, MARTIN SORIANO Y NARAG,
ERIBERTO BATUELO Y BALACANAO, ELPIDIO GANGAN Y BALLSI,
ABRAHAM CAMAYANG Y PAGULAYAN, TACIO ACORDA Y
BISALDE, AND RUBEN ACORDA Y LAYUGAN, ACCUSED-
APPELLANTS.**

DECISION

CARPIO MORALES, J.:

On June 24, 1990, fifteen (15) armed men stormed the house of the spouses [REDACTED] and AAA in barrio [REDACTED].

Two days after the incident or on June 26, 1990, AAA executed a sworn statement charging Eriberto Batuelo, Elpidio Gangan, Roberto Salvador, Martin Soriano and Roberto Balacanao of robbery with rape, along with five other persons.

The following day, June 27, 1990, [REDACTED] also executed a sworn statement particularly identifying Soriano as one of the reprobates.

Thereafter or on July 2, 1990, a criminal complaint for robbery with multiple rapes^[1] was filed by Police Investigator Cuntapay against Balacanao, Batuelo, Gangan, Salvador, Soriano and five John Does.

After a preliminary examination conducted by Judge Rafael P. Carag of the Fifth Municipal Circuit Trial Court of Iguig, Cagayan, an appropriate information was recommended to be filed on August 22, 1990.

The station commander of the [REDACTED] Police Station later received an anonymous letter^[2] dated "10-22-90" divulging that a certain Damaso Cabana was one of the "architects" of the June 24, 1990 incident.

Cabana was thus taken into police custody on November 5, 1990 following which he executed a sworn statement^[3] dated November 6, 1990 admitting his participation in the incident and identifying his associates as Jessie Acorda, Minio Acorda, Ruben

Acorda, Tacio Acorda, Villamor Agana, Amoy Balacanao, Elvis Bangayan, Abraham Camayang, Ensu Caronan, Gil Tambiao, and four (4) other unnamed persons who turned out later to be Batuelo, Gangan, Salvador and Soriano. A reinvestigation of the case was thus conducted.

After the reinvestigation, Cabana and the fourteen he implicated were charged, by Information^[4] dated August 29, 1991, before the Regional Trial Court Branch 1 of Tuguegarao, Cagayan for Robbery with Rape allegedly committed as follows:

That on or about June 24, 1990, in the municipality of [REDACTED], Province of [REDACTED], and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns, conspiring together and helping one another with intent to gain and by the use of force, violence and intimidation of persons entered the house of the complainant[s], Mr. and Mrs. [REDACTED], and once inside the house did then and there willfully, unlawfully and feloniously take, steal and carry away against the will of the owner, the following items:

One (1) Karaoke sing-along valued at	P4,500.00
One (1) Wall clock valued at	300.00
Assorted jewelries all valued at	3,000.00
Assorted merchandize all valued at	2,500.00
One (1) Samurai valued at	550.00
Cash money in the amount of	300.00
PNB and LAND BANK Bank Books, a wallet containing pertinent papers, assorted keys and other items	-----
TOTAL VALUE	P11,150.00

all valued at P 11,150.00 and all belonging to the complainant[s] Mr. and Mrs. [REDACTED], to the damage and prejudice of the aforesaid owner[s] Mr. and Mrs. [REDACTED] in the aforesaid amount of ELEVEN THOUSAND ONE HUNDRED FIFTY (P11,150.00) PESOS, Philippine Currency; that on the same occasion of the robbery, the above-named accused likewise armed with their aforesaid firearms, with lewd designs and by the use of force, violence against and intimidation of persons did then and there willfully, unlawfully and feloniously have sexual intercourse one after the other with the offended party, AAA against her will.

Contrary to law.

Five of those charged, namely: Jessie Acorda, Herminio Acorda, Villamor Agana, Elvis Bangayan and Gil Tambiao, eluded arrest.

Balacanao, Caronan, Batuelo, Camayang, Gangan, Salvador, Soriano and Tacio Acorda pleaded not guilty upon arraignment.

On motion of the prosecution, Damaso Cabana was discharged to become a state witness.

From its evidence, the prosecution established the following version:

Between 5:30 and 6:00 p.m. of June 24, 1990, Abraham Camayang, leader of a group of notorious characters from Solana, Cagayan (Solana group), and his henchman Villamor Agana went to the house of state witness Cabana in Casingsingan Norte, Solana, Cagayan and invited Cabana to join them for an unspecified purpose. Acceding, Cabana joined the two who were later joined by seven Solana group members, namely: Gil Tambiao, Elvis Bangayan, Lorenzo Caronan, Jessie Acorda, Herminio Acorda, Tacio Acorda and Ruben Acorda.

The Solana group, along with Cabana, then repaired to the house of the spouses [REDACTED] where another group of notorious characters from Amulung, Cagayan (Amulung group) composed of its leader Roberto Balacanao, Elpidio Gangan, Martin Soriano, Eriberto Batuelo and Roberto Salvador were already waiting in the vicinity.

Solana group leader Camayang thereupon gave directions to the two groups, he posting Cabana, Hermino Acorda and Tacio Acorda as look outs along the road south of the [REDACTED] house. Camayang, with four others, then entered the backdoor into the kitchen of the [REDACTED] house, catching by surprise AAA and her minor children 11 years old [REDACTED] and [REDACTED] who screamed. AAA's husband [REDACTED], who was in the sala, immediately dashed into the kitchen where he was met by Balacanao who pushed him back into the sala and made him lie face down. His hands were at once tied behind his back.

The second wave of malefactors soon entered the same backdoor of the [REDACTED] house, after which Camayang and Batuelo held AAA and her two young children at bay. They then demanded money from the [REDACTED]. In particular, Soriano made it appear that they are subversives who needed money for the treatment of their comrade who was injured in an encounter.

In the meantime, the [REDACTED]' neighbors Concepcion Lumboy, Celso Gorospe and Renato Corpuz passed by chance by the [REDACTED] house. Attracted by the noise and commotion inside the house, they proceeded thereto and once inside, they were pounced upon and shoved into the sala where they were ordered to lie flat in a prone position. Their hands were tied too behind their backs.

Caronan, to further instill terror, ordered one of his men to get a can of gasoline and when a can of gasoline was brought, he told his cohorts to pour gasoline on the victims and burn them.

As the crime wore on, Camayang dragged AAA and her daughter [REDACTED] into a room beside the sala, the entrance of which room was covered only by a curtain. Once inside the room, Camayang tore off the clothes of AAA and [REDACTED]. As [REDACTED] was crying, Camayang and his companions spared her and the naked girl immediately ran to her bound father in the sala. AAA was then raped by Camayang, followed by Tacio Acorda, then by Caronan, and finally by Balacanao.

The bound hands of [REDACTED] and his three neighbors were later untied by the malefactors and they were ordered to remove their clothes. Caronan thereupon

ordered Celso Gorospe to dance naked amidst the rhythmic clappings and jeers of the malefactors. The four were later ordered to put on their clothes but they were again tied and ordered to lie flat on the floor.

Herminio Acorda later shouted "get out now, people are coming," prompting the malefactors to hurriedly flee with their loot consisting of cash, pieces of jewelry, assorted goods, appliances, a samurai sword, bank books, a wallet, keys, a wall clock and other items all valued at about P11,150.00. Thus, when the people referred to by Herminio Acorda - a group of thirty men from the adjacent barangay of Calintaan headed by their barangay captain Cesar Lacuesta - arrived at the [REDACTED] house, the malefactors were gone.

On June 26, 1990, upon instruction of the police, AAA submitted herself to a medical examination. Dr. Dulce Baculi, the Municipal Health Officer of Amulung, came out with her findings embodied in her Certification (Exhibit "E")^[5] which reads:

"I. External Examination:

- a. 1. Contusion at left jaw.
2. Slight swelling of upper lip.
- b. No other external physical injuries noted on the victim.

"II. Internal Examination:

- a. Vulva on internal examination shows slight tenderness and smeared with blood.

Note: Victim is having her menstrual period."

For the defense, all the accused, disclaiming being acquainted with state witness Damaso Cabana on or before the incident, proffered alibi.

After trial, the trial court found the accused Balacanao, Caronan, Batuelo, Camayang, Gangan, Salvador, Soriano, Ruben L. Acorda and Tacio B. Acorda guilty beyond reasonable doubt of Robbery with Rape, by Decision of May 3, 1994 the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Roberto Balacanao y Quines, Roberto Salvador y Agcaoili, Martin Soriano y Narag, Eriberto Batuelo y Balacanao, Elpidio Gangan y Balisi, Abraham Camayang y Pagulayan, Lorenzo Caronan y Canapi, Tacio Acorda y Bisalde and Ruben Acorda y Layugan guilty beyond reasonable doubt of the special complex crime of Robbery with Rape **aggravated by abuse of superior strength and ignominy** and hereby imposes upon each and everyone of them the penalty of Reclusion Perpetua with all the accessory penalties provided for by law and to pay *in solidum* [REDACTED] and AAA the stolen properties in the amount of P11,150.00 and moral damages in the amount of P500,000.00 and cost.

SO ORDERED. (emphasis supplied)

The Decision has, with respect to **Balacanao** who did not appeal, become final and executory.

Caronan and Camayang jointly filed a notice of appeal on May 12, 1994. **Caronan**, however, later filed an undated letter, which this Court treated as a Motion, praying for the withdrawal^[6] of his appeal in view of the extension to him of executive clemency. This Court granted said Motion and accordingly dismissed the case against Caronan by a Resolution of April 7, 1999.^[7]

Salvador, Gangan, Soriano, Batuelo and Ruben Acorda (Salvador *et al.*) also jointly filed a notice of appeal while Tacio Acorda and Camayang separately filed theirs.

Accused-appellant Tacio Acorda assigned as lone error of the trial court its finding that he is guilty beyond reasonable doubt.

Accused-appellant Camayang challenges the trial court for having erred:

- I. IN BASING ITS DECISION OF CONVICTION OF APPELLANT (CAMAYANG) SOLELY ON THE CONFESSIONAL TESTIMONY OF DAMASO CABANS [sic] PARTICULARLY IN THE IDENTIFICATION OF ACCUSED ABRAHAM CAMAYANG AS ONE OF THE CULPRITS;
- II. IN NOT BELIEVING THE COUNTER-AFFIDAVIT OF ACCUSED-APPELLANT ABRAHAM AS CORROBORATED BY WITNESSES;
- III. IN RELYING ON THE TESTIMONY OF WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING THE EVIDENCES ADDUCED DURING THE TRIAL, THERE BEING ABSENT THE INTENT OF ACCUSED ABRAHAM CAMAYANG'S PARTICIPATION (sic) IN THE COMMISSION OF THE OFFENSE; and
- IV. IN CONVICTING ACCUSED-APPELLANT ABRAHAM CAMAYANG WHO AT THE TIME OF THE ALLEGED OFFENSE WAS COMMITTED WAS NOT AT THE SCENE [OF THE CRIME AND WAS] MERELY IMPLICATED BY [CABANA DUE TO] INTIMIDATION AND COERCION DURING THE CUSTODIAL INVESTIGATION.

And as to accused-appellants Salvador, *et al.*, they fault the trial court in:

- I. . . . FINDING THE ACCUSED-APPELLANTS ROBERTO A. SALVADOR, ELPIDIO GANGAN, MARTIN N. SORIANO, ERIBERTO B. BATUELO AND RUBEN L. ACORDA GUILTY BEYOND REASONABLE DOUBT OF THE COMPLEX CRIME OF ROBBERY WITH RAPE.
- II. . . . ORDERING THE ACCUSED-APPELLANT ROBERTO A. SALVADOR, ELPIDIO GANGAN, MARTIN N. SORIANO, ERIBERTO B. BATUELO AND RUBEN L. ACORDA TO PAY *IN SOLIDUM* THE SPOUSES [REDACTED] AND AAA, THE AMOUNT OF P11,150.00 REPRESENTING THE AMOUNT OF THE STOLEN PROPERTY AND MORAL DAMAGES IN THE AMOUNT OF P500,000.00 AND COST.

Accused-appellants' respective appeals lack merit.