

FIRST DIVISION

[G.R. No. 136394, February 15, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERSON NAAG Y LOBAS, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

One of the more interesting conceptual exercises in the field of Criminal Law is the characterization of a crime. The challenge is not only to prove existence of its elements. The challenge is to correctly categorize it. In the case at bar, a man sexually defiled then immediately divested his woman-victim of her belongings. Is he guilty of the special complex crime of Robbery *with* Rape or the separate crimes of Robbery *and* Rape? The answer lies in his intent.

The accused in this case is a certain Herson Naag y Lobas. He was indicted for Robbery with Rape under an Information which reads:

"That on or about the 8th day of January, 1996 at Daraga, Albay x x x the above named accused, armed with a screw driver, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of the complainant Desiree Gollena, against her will, by inflicting upon her with the use of said screw multiple serious physical injuries, and thereafter said accused, having been fully satisfied of his carnal lust over said Desiree Gollena and believing her to be dead, with intent of gain, divested and took her personal belongings, to wit: (1) one bag containing clothes worth P500.00 (2) one gold bracelet worth P1,500.00 (3) wallet containing P1,800.00 and (4) ladies wristwatch valued at P600.00 to the damage and prejudice of said Desiree Gollena.

ACTS CONTRARY TO LAW."^[1]

He pleaded "not guilty" during arraignment and the action proceeded to trial.

The evidence for the prosecution shows that Desiree was a singer in a band which regularly plays at the Gloss and Glitters Disco located in Tabaco, Albay. On the morning of January 8, 1996, she went home to Sipi, Daraga, Albay, to visit her family. She took the bus and by about 4 o'clock in the morning, she alighted at the town's Freedom Park in Daraga. She crossed a street where two tricycles were parked. She woke up one of the drivers and inquired whether she could be brought to Sipi. Getting a positive response, she boarded it. Upon reaching her place, she told him to stop and handed to him her fare. To her surprise, what she received in return was not loose change, but a slap.

The driver then began to maul her. Desiree fought back as hard as she could, but

this made the driver more ferocious in his assault. She was strangled, boxed and kicked. She was repeatedly stabbed with a screw driver on her face, head, and different parts of her body. Her head was banged against the sidecar. She realized that her struggle was in vain and would only put her life in greater danger. She stopped resisting and pretended to be dead.

He then transported her to another place. He lifted her from the tricycle and she thought she would be thrown to a ravine or cliff beside what appeared to be an abandoned house. Instead, she was tossed to the ground. The driver removed her pants and panties. She could not resist, fearing death. After her garments were removed, her legs were spread apart and he copulated with her.

After satisfying his lust, the driver took her wristwatch worth P600.00, a bracelet worth P1,500.00 and fled with her bag containing her clothes, wallet containing P1,800.00 in cash, and some loose change. When Desiree sensed that he has left the premises, she rolled down the ravine. She did not have the energy to stand and walk and so she crawled until she reached a house, which turned out to be the dwelling place of witness Engineer Antonio Balacano located at Sybil Subdivision, Sipi, Daraga. She cried for help.

Engr. Balacano responded to Desiree's call for assistance. He saw Desiree, a bloodied girl, cold and torn, squatting by the gate with her pants down and hanging on one leg. It was already 5 o'clock in the morning. The wife of the engineer telephoned local police authorities for assistance. In the meantime, Desiree was brought to the Albay Provincial Hospital where she was given medical treatment. Dr. Jose Solano testified that the girl was in pain when he examined her and that she sustained multiple lacerations and stab wounds on different parts of her body, and had blackening of her left and right eyes. Dr. Aileen Francis Bartilet examined Desiree's genitalia and noted the absence of any sign of injury: there was no bleeding, no laceration of the hymen, no contusion in the vulvar wall of the vagina, and no abrasion.

Later that morning of January 8, 1996, policemen came to the hospital to investigate the incident. Desiree gave a description of the suspect as well as the tricycle. The next day, on January 9, SPO1 Pastor Perena Jr. and SPO2 Domingo Mabini happened to apprehend one Herson Naag y Lobas, a tricycle driver, for driving a public utility tricycle without the necessary license. Naag and the vehicle were brought to the police station of Daraga. Perena and Mabini realized that Naag fit the description of the malefactor given by Desiree. They brought the confiscated student driver's permit of Naag (which contains his photograph) to the hospital for identification. Their hunch was confirmed when Desiree, upon being shown the permit, identified the man in the picture as the one who raped and robbed her.

When the policemen returned to the station, Naag was already gone, but not without leaving his tricycle behind. They brought the tricycle to the hospital for identification. Desiree did not have any difficulty in identifying the tricycle as the same vehicle she boarded on the morning of January 8. A criminal complaint was then filed against Naag. On February 25, 1996, he was arrested by the NBI agents of Naga City at Tagkawayan, Quezon.

The accused alleged, in his defense, that it was impossible for him to be the author of the crime at bar. He claimed that at the time and date of the incident, he was

sleeping in their house approximately seven kilometers away from where it happened. His tricycle was not in a serviceable condition then, and he was repairing it the night before. It was fixed only on January 9 since he was able to buy the spare part that he needed at about 8:30 a.m. of January 8. The previous day was a Sunday and almost all of the motor shops were closed. Hence, he alleged that he could not have operated on the Sipi route on the 8th as his tricycle was not in running condition. He explained that he was in Tagkawayan when he was arrested because he had undergone hospitalization and was on an errand.

The defense also called two other witnesses to the stand who backstopped the testimony of the accused. It presented his wife who basically reiterated the story of her husband. She said that he was with her from the night of January 7 up to the morning of January 8, at about 8:30, when he had to buy the spare part that he needed for his tricycle. Similarly, it presented a certain Lino Era, a next-door neighbor who recalled seeing the accused at about 10 o'clock in the evening of January 7 doing some repairs on his tricycle.

In the end, the trial court chose not to believe Naag. It held:

"The accused in his defense put up alibi, a shabby excuse, a defense indicies never seem to tire of. (People vs. Bracamonte, 257 SCRA 380) This defense of the accused cannot prevail over the positive identification by the victim Desiree of the accused and of the tricycle. This defense of alibi is worthless in the face of his being positively identified by the victim Desiree. (People vs. Rivera, 242 SCRA 26)"^[2]

However, the trial court did not convict him of the crime he was originally charged with, which is Robbery with Rape. Instead he was meted out two different sentences for the separate crimes of Robbery and Rape, viz:

"WHEREFORE, premises considered, the accused Herson Naag y Lobas is hereby found GUILTY beyond reasonable doubt of the crime of Rape under Art. 335 (1) of the Revised Penal Code as amended, and he is hereby sentenced to suffer the penalty of imprisonment of Reclusion Perpetua with all the accessory penalties thereto appertaining, to pay Desiree Gollena P50,000.00 as Indemnity and P50,000.00 as moral damages.

The accused Herson Naag y Lobas is also found GUILTY beyond reasonable doubt of the separate crime of Robbery under Art. 294 (4) of the Revised Penal Code, and taking into consideration the Indeterminate Sentence Law he is hereby sentenced to suffer the penalty of imprisonment of ten (10) years of Prision mayor medium in its maximum period as the minimum to fourteen (14) years, ten months and twenty (20) days of Reclusion Temporal medium period in its medium period as the maximum and to return the ladies wrist watch worth P600.00, bracelet worth P1,500.00, bag of clothes worth P500.00 or their total value of P2,600.00 if return cannot be had and the cash of P1,800.00. Costs against the accused.

SO ORDERED."^[3]

Dissatisfied with the verdict, the accused interposed this appeal. In his brief, he made this lone assignment of error: "The Lower Court erred in finding the accused guilty of the separate crimes of Robbery and Rape."^[4]

We affirm the conviction.

There is no cogent reason to disturb the findings of the lower court. Well-entrenched is the rule that an appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter, as a trier of fact, is in a better position to appreciate the same. The only exceptions allowed are when the trial court has plainly overlooked certain facts of substance which, if considered, may affect the result of the case, or in instances where the evidence fails to support or substantiate the lower court's findings and conclusions, or where the disputed decision is based on a misapprehension of facts.^[5] This case does not fall under any of the exceptions. Hence, there is no reason for us to modify the factual findings of the lower court.

Even then, the appellant raises two points in support of his assignment of error designed to sow in our minds seeds of doubt. The first relates to the medical evidence on record while the second deals with his identity.

The appellant capitalizes, firstly, on Dr. Bartilet's testimony on the absence of fresh injury on the private part of the offended party although she was examined almost immediately after the assault. According to him, the findings of said medical expert negate the charge of rape. On the other hand, the prosecution contends that the lack of injury and the healed laceration could be attributed to the sexual intercourse she had with her boyfriend.

The appellant's argument fails to impress. It is to be noted that Dr. Bartilet herself explained that her findings did not eliminate the possibility of sexual intercourse. She opined that it must have been done "only outside the vagina but within the external vulva by merely pushing and giving some force to it."^[6] She added that the appellant could have ejaculated and discharged semen on the external genitalia even without penetrating into the vagina.

In rape cases, what is material is that there is penetration of the female organ no matter how slight.^[7] In a long line of decisions, we have ruled that the only essential point is to prove the entrance or at least the introduction of the male organ into the labia of the pudendum.^[8] Hence, the moment the accused's penis knocks at the door of the pudenda it suffices to constitute the crime of rape.^[9]

The appellant next assails the identification made by Desiree. He contends that it was still dark at the time of the incident. He argues that when people board a tricycle, they do not usually focus their attention on the driver. He states that the identity of the driver could be the least of Desiree's concern for at 4 o'clock in the morning, she would have just wanted to go home and rest in the comfort of her bed.

We are not persuaded. Desiree could not have failed to recognize the appellant because she was the victim of the assault. A truism founded on ordinary experience