

FIRST DIVISION

[G.R. No. 125442, September 28, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. FERNANDO ARELLANO Y ROBLES, ACCUSED-APPELLANT.**

D E C I S I O N

PARDO, J.:

The case is an appeal from the decision^[1] of the Regional Trial Court, Makati City, Branch 138, convicting accused Fernando Arellano y Robles of robbery with rape, and sentencing him to *reclusion perpetua* and to return to complainant Francisca Magdangal the amount of P1,100.00 representing the money stolen from Francisca Magdangal and Julius Magdangal, and the jewelry stolen from her or its value, and to indemnify complainants Francisca Magdangal and Avelina Andrade in the amount of P50,000.00 each.

On September 17, 1992, assistant prosecutor Albert V. Alcala of Makati filed with the Regional Trial Court, Makati an information charging Fernando Arellano y Robles with robbery with rape, committed as follows:

"That on or about the 9th day of September 1992, in the municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon, conspiring and confederating together with another personage, whose true name and identity are unknown, with intent of gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal and rob one FRANCISCA A. MAGDANGAL of cash money placed inside her wallet worth P400.00, cash money placed inside her cabinet worth P1,000.00 and assorted jewelry worth P100,000.00; and also her husband JULIUS G. MAGDANGAL of cash money placed inside his wallet worth P600.00, to the damage and prejudice of the said Francisca A. Magdangal and Julius G. Magdangal; that by reason of or on the occasion of said robbery, the said accused, by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the aforesaid FRANCISCA A. MAGDANGAL and AVELINA ANDRADE, one after the other, against their will and without their consent.

"CONTRARY TO LAW."^[2]

On October 18, 1993, the trial court arraigned accused Fernando Arellano. He pleaded not guilty.^[3] Trial ensued.

On September 8, 1992, Francisca Alzate Magdangal, 48 years old and a teacher at Assumption College, was sleeping in the master's bedroom of her residence at 218 Doña Soledad Extension, Better Living, Parañaque. Her four-year-old daughter, Maggie, slept with her in the same room. Her husband, Julius Magdangal, slept in their son's room down the hallway and opposite the master's bedroom.

At around 2:30 in the early morning of September 9, 1992, Francisca Magdangal was awakened by a noise from her window. She went back to sleep but suddenly she was jolted awake when she heard an object thrown inside her room. She looked in the direction of the window and heard two men talking outside. Suddenly, a flashlight beamed directly into her eyes. She heard a man's voice telling her to open the door or he would kill her and her daughter. Still blinded by the flashlight on her face, she failed to notice if the man speaking carried any weapon. She unlocked the master's bedroom door then slipped back to her bed. She lay on the bed, embraced her daughter and then covered herself with a comforter blanket. A man gained access to the house through a sliding door in the living room and entered the master's bedroom. He asked Francisca where her money was. From beneath the cover of the blanket, she replied, "An dyan." The man searched the room and found money inside a bag on top of her dresser. The money amounted to P500.00, more or less. When the man asked her where her husband's money was kept, she pointed to the top of the television set. The man also found the money, approximately in the amount of P600.00. He asked her where she kept her jewelry, and she pointed to the cabinet. He could not find anything valuable inside the cabinet, so he ordered Francisca to point the place where she kept her jewelry. Francisca removed the blanket from her face and gave instructions to the man where to find the jewelry. In the process, she studied his features closely. She could see his face because the light on her dresser table was switched on. He found her jewelry and then left the room for about a minute. When the man returned, he told her not to resist and began undressing her. She started to pray. He removed his shorts and inserted his penis into her vagina. Simultaneously, her daughter, Maggie, asked what was happening. Francisca told her daughter to keep quiet and to go back to sleep. The girl obeyed. In five minutes, the man satisfied his lust. Thereafter, he left the room again. She stayed in her bed, too scared to move.^[4] She could not find the courage or strength to scream.^[5]

Avelina Andrade, househelper of the Magdangal spouses, was sleeping in her room beside the kitchen. At around 2:30 in the morning, she woke up and noticed a man in her room. The fluorescent light in the laundry area beside her bedroom window was left open, allowing her to see the features of the intruder's face.^[6] When Avelina tried to get up from her bed, the man poked a small knife at her neck. He told her not to utter any noise or he would kill her. The man pushed her to go upstairs to her mistress' room. While climbing the staircase, the man stood behind Avelina, poking a knife at her back. They reached the master's bedroom. Avelina noticed that the room was in disarray and that her mistress Francisca Magdangal was on the bed covered with blanket.^[7] Then, the man ordered Avelina to lie beside Francisca. Avelina saw the man's face through the light of the dresser.^[8] Then, the man covered her head with a thick cloth. He continued to ransack the room. Thereafter, he lay beside Avelina and ordered her to remove her shorts. When she refused, he poked his knife against her and he removed her shorts. He also took off her panties. He then inserted his penis into her vagina. She felt pain and started

crying. She kept removing the thick cloth from her head but the man kept putting it back.

During the ordeal, Francisca was beside her, still covered with a blanket.^[9] Moments later, Francisca slowly grabbed a golf club lying beside the bed. In a swift motion, she swung the golf club towards the man and tried to hit him. At the same time, she shouted at the top of her voice. The man, still naked, grabbed his shorts and ran outside, clutching the money and jewelry. Francisca chased him to the gate. The man jumped over the fence and escaped.

Meanwhile, Julius Magdangal woke up and saw his wife screaming hysterically. Francisca told him about the robbery and rape. Julius began yelling for help from the neighbors. Elmer Macquian, a *barangay tanod*, responded and came to their house. Upon being apprised of the situation, Elmer called the police. Policemen arrived and asked questions regarding the incident. After a few minutes, the policemen left.

At around 9:00 in the morning of September 9, 1992, policemen returned to the house of the Magdangal spouses and conducted an investigation. They recovered a pair of slippers, a pocket knife, and a flashlight from the master's bedroom. They were unable to take any fingerprints. Francisca Magdangal and Avelina Andrade narrated the robbery and rape to the policemen. Thereafter, Francisca Magdangal and Avelina Andrade went to the NBI to undergo medical examination.

At around 10:30 in the morning of September 9, 1992, Dr. Louella Nario of the National Bureau of Investigation conducted a medical examination of both complainants. She failed to find any external physical injury on both complainants.^[10] When Dr. Nario examined Francisca Magdangal, she found the patient's hymen reduced to *carrunculae myrtiformis*, or remnants, and positive for spermatozoa.^[11] She concluded that Francisca had sexual intercourse with a man within the last twelve hours before examination. Dr. Nario also examined Avelina Andrade and found fresh lacerations in her hymen. Her vestibular mucose, or the tissue surrounding the hymen, was very red or congested with superficial abrasion at the base.^[12] Dr. Nario likewise concluded that Avelina Andrade had sexual contact with a man not more than twelve hours prior to examination.

On September 14, 1992, agents of the National Bureau of Investigation (NBI) accosted accused Fernando Arellano while he was on the way home and invited him to the NBI office.^[13] The next day, complainants Francisca Magdangal and Avelina Andrade went to the NBI office and identified accused Fernando Arellano as the person who robbed and raped them.

Accused Fernando Arellano interposed the defense of denial and *alibi*.^[14] He alleged that on September 8, 1992, at around 7:00 in the evening, he rode a tricycle from his place of work at H. V. Lutillan Construction, Ford Estate, Paranaque, to his house at F. C. Balarao, Airport Village, Barangay Moonwalk, Parañaque. He cooked rice and then waited for his wife. He ate dinner at around 9:00 in the evening together with his wife and the spouses Clemente and Nilda Socorro who were staying in his house. After supper, he watched a television show and went to bed at 10:00 in the evening. He slept in his bedroom with his wife, while the Socorro spouses slept on a sofa in the living room, about one-meter away from the main entrance of the house.

On September 9, 1992, accused Fernando Arellano woke up at around 5 in the morning. He fed his turkey, drank coffee and left his house at 6:00 in the morning. He rode a tricycle to work and arrived there at 6:30 in the morning. Normally, he would walk to work but his right foot still hurt from an injury a week before when he accidentally stepped on a two-inch nail.

On September 14, 1992, while he was on his way home, four persons grabbed him and dragged him to a nearby store. A woman standing at the store pointed to him. Thereafter, the four persons brought accused Fernando Arellano to the National Bureau of Investigation. There, accused alleged that he was boxed and forced to admit the charges against him. After being detained at the NBI overnight, he was presented to complainants Francisca Magdangal and Avelina Andrade. Meanwhile, his wife transferred residence.

Elmer Macquian, a *barangay tanod*, testified that on September 9, 1992, he was sitting at a barangay outpost in Doña Soledad Extension, around eight (8) to ten (10) meters from the house of Francisca Magdangal. Between 4:30 and 4:45 in the morning, he saw a man jump over the fence of the Magdangal residence.^[15] He described the man as tall, with white complexion, wearing black short pants, medium built, curly hair in front, and "nakahubad."^[16] He could see the man because an electric lamppost stood about seven (7) to ten (10) meters from the house of Magdangal. The man saw him and turned to run away. Elmer gave chase, but the man disappeared behind the house of the Magdangal spouses. Moments later, Elmer heard Julius Magdangal calling for help. Elmer went to the Magdangal residence and asked what happened to them. Seeing his wife crying hysterically, Julius Magdangal told Elmer to return to the house the next day. The following morning, Elmer came back to the house of the Magdangal spouses and saw policemen conducting an investigation. Elmer informed them that he saw a man jump over the fence of complainant's house. He alleged that the fence of the Magdangal residence was only 3 ½ feet, thus, he was able to see the man coming from the house of the Magdangal spouses and leaping over the fence.

Renato Lumapat, a police officer, testified that he went to the house of the Magdangal spouses to investigate the robbery and rape. There, he saw Elmer Macquian and took the *barangay tanod's* sworn statement. He also wrote a spot report on the incident but was unable to obtain sworn statements from complainants Francisca Magdangal and Avelina Andrade. He failed to lift fingerprints, but he found a flashlight, a pocketknife and a pair of slippers at the scene of the crime.^[17]

Nilda Socorro, a cousin of the accused, testified that at the time of the commission of the crime, accused Fernando Arellano was sleeping at his house at F. C. Balarao Street, Airport Village, Barangay Moonwalk, Parañaque, with his wife.^[18]

On March 25, 1996, the trial court rendered a decision convicting accused Fernando Arellano y Robles of the crime charged.^[19] The dispositive portion of the decision reads:

"IN VIEW OF ALL THE FOREGOING, the Court finds accused Fernando Arellano y Robles guilty beyond reasonable doubt of the crime of robbery