

EN BANC[**G.R. No. 133872, May 05, 2000**]**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEXANDER TAÑO Y CABALLERO, ACCUSED-APPELLANT.****D E C I S I O N****PANGANIBAN, J.:**

The appellant cannot be convicted of the special complex crime of robbery with rape because the asportation was conceived and carried out as an afterthought and only after the rape has been consummated. Dwelling cannot be appreciated as an aggravating circumstance in this case because the rape was committed in the ground floor of a two-story structure, the lower floor being used as a video rental store and not as a private place of abode or residence.

The Case

This is an automatic review of the Decision^[1] dated April 23, 1998 of the Regional Trial Court of Caloocan City, Branch 127, in Criminal Case No. C-53066, finding Accused-Appellant Alexander Taño y Caballero guilty beyond reasonable doubt of robbery with rape and imposing upon him the supreme penalty of death. The case arose out of an Information,^[2] dated November 10, 1997, signed by Assistant City Prosecutor Salvador C. Quimpo, accusing the appellant of robbery with rape allegedly committed as follows:

"That on or about the 6th day of November, 1997 in Kalookan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and by means fo force and intimidation employed upon the person of one AMY DE GUZMAN Y MAQUINANA, did there and then wilfully, unlawfully and feloniously take, rob and carry away the following articles, to wit:

Cash money	-----	P5,000.00
Three (3)	-----	
bracelets		3,500.00
Two (2) rings	-----	5,000.00
One (1) pair of	-----	
earrings		2,000.00
One (1) Alba	-----	
wristwatch		1,500.00

TOTAL	----	P16,000.00
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with the total amount of P16,000.00 belonging to one ANA MARINAY Y SICYAN; that in the course of said robbery, said accused, with the use of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with said AMY DE GUZMAN Y MAQUINANA, against the latter's will and without her consent and with the use of a bladed weapon."

During his arraignment on November 26, 1997, appellant, assisted by his counsel de oficio, pleaded not guilty to the charge.^[3] After trial on the merits, the lower court promulgated the herein assailed Decision, the dispositive portion of which reads as follows:

"W H E R E F O R E the prosecution having established beyond an iota of doubt the guilt of Accused ALEXANDER TAÑO Y CABALLERO of the crime of Robbery with Rape, and considering the presence of the aggravating circumstance of dwelling without any mitigating circumstances to offset the same, this Court hereby sentences the Accused to suffer the maximum penalty of D E A T H with all the accessory penalties provided by law; to indemnify Victim AMY DE GUZMAN the amount of P50,000.00 and pay her actual damages of P2,687.65 and to restore to the victim her gold ring of undetermined amount as well as moral and exemplary damages in the total sum of P100,000.00; and to pay the costs."

The Facts

Version of the Prosecution

The solicitor general sums the evidence for the prosecution in this wise:^[4]

"On November 6, 1997, at around 7:30 p.m., Amy de Guzman (Amy) was tending a Video Rental Shop owned by her employer and cousin, Ana Marinay (Ana) located at 153 Loreto Street, Morning Breeze [S]ubdivision, Caloocan City (Tsn., January 8, 1998, p. 3). Thereupon, accused-appellant Alexander Taño, a relative of Ana's husband Gerry Marinay (Gerry), arrived at said shop (ibid., p. 4). Alexander Taño then asked Amy about the time when Gerry would be coming home, to which she replied, 10:00 p.m. (id.). He then asked about the time when Ana would be coming home and Amy replied that she did not know (id.).

"Thereafter, but still on the same date, Alexander Taño kept on going in and out of the Video Shop, and on the last time that he went inside said shop, he jumped over the counter of the shop to where Amy was and seized the latter by placing one of his arms around Amy['s] neck, while his other hand held a knife which he poked at her neck (id., pp. 4-5).

"Terrified by the attack, Amy started shouting for help but Alexander Taño increased the volume of a karaoke which was on at the time to drown Amy's cries for help (id., p. 5).

"Alexander Taño then dragged Amy to the kitchen of the shop where, at knife point, he ordered the latter to undress and he thereafter started raping her (id., pp. 5-6).

"However, while Alexander Taño was raping Amy, somebody knocked at the door of the shop prompting the former to stop what he was doing and ordered Amy to put on her clothes (id., pp. 6-7).

"Alexander Taño then directed Amy to go upstairs to the second floor of the shop to change clothes as he will be taking her with him (id., p. 7). But suddenly thereafter, Taño pulled her down and punched her in the stomach thrice causing her to lose her balance (id.). Taño then started cursing her and again placed himself on top of her while poking a knife at her neck (id.). Amy then pleaded with Taño to just take anything inside the shop and to spare her life, to which Taño replied 'no, I will not leave you here alive.' (id.).

"But after a while and upon Amy's pleading, Taño put down his knife and while he was kissing Amy, the latter got hold of the knife which she surreptitiously concealed under the stairs (id.).

"Therafter, Taño became violent again and banged Amy's head on the wall causing the latter to lose consciousness (id., p. 9). When she regained consciousness she found herself and Taño inside the toilet of the shop and the latter again banged her head, this time on the toilet bowl, several times causing Amy to again lose consciousness (id., pp. 8-10).

"Thereafter, Taño went upstairs and looted the place of valuables belonging to Amy's employer, Ana. Amy, herself lost her ring, bracelet and wristwatch during the incident in question (id., p. 10).

"At about 9:00 o'clock p.m. of the same day, Amy's employer Ana arrived and found the shop in disarray with the 'karaoke' in full volume (Tsn., 13, 1998, pp. 2-4). After turning off the 'karaoke[']', Ana proceeded to the toilet where she found Amy bathed in blood (ibid., p.4).

"Ana immediately sought the help of Barangay officials of the place and Amy was brought to the 'MCU' Hospital where she was initially treated of her injuries (id., p. 5). Amy was, later on, transferred to Jose P. Reyes Memorial Medical Center (JPRMMC) where she was confined for four (4) days."

Version of the Defense

On the other hand, appellant's version of the incident is as follows:^[5]

"x x x [O]n November 6, 1997, at around 7:40 p.m., he went to the house of his cousin Gerry Bautista Marinay at 113 Loreto St., Morning Breeze Subdivision, Kalookan City and upon arrival thereat he found therein Amy de Guzman alone which she greeted him because she knew that the accused was a frequent visitor thereof. Upon learning from her that Gerry was not around, accused proceeded to the kitchen to drink water and after he bought cigarettes at the nearby store, he returned to the shop and seated himself in front of Amy de Guzman's counter. After the lapse of five minutes he got bored and went out again to wait for the arrival of GERRY. After finishing his cigarette he returned to Amy and talked with her and learned that ANA was at her newly opened restaurant. After a while, the thought of

stealing his cousin's valuables struck his mind owing to his dire need of cash/money. Thus, he approached Amy and held her hands and asked her to come with him because he badly needed money, to lead him to where his cousin was keeping his money and valuables. As to Amy's surprise [sic], she shouted and to stop her, the accused covered her mouth with his right hand but Amy put up a struggle and in the process they both fell down and rolled on the floor. Thence, the accused was able to subdue Amy and forcibly took her in the upstairs where he did the ransacking of the drawers while holding the private complainant's hand. However, she was able to free herself from his hold and ran downstairs to the kitchen where she tried to get hold [of] a knife but he was able to wrest with her. As the accused was rattled, he pushed Amy inside the comfort room and shoved her head against the tiles to mumm her. He took Amy's bag wherein he placed his loot consisting of 2 wrist watches, including Amy's Alba watch, a bracelet, clothes and hair blower as well as jewelry box containing five rings which he placed in his pocket, then he proceeded to his brother's house in Taytay. Upon arrival of the police and his cousin thereat he returned the jewelry box to the latter but the same was not presented in court, that no other jewelry was taken by him from the place except those already specified, muchless has he taken any cash money from his cousin Gerry Marinay, that he has a wife staying in Iloilo and he has a girlfriend here in Manila, that he never raped the private complainant Amy de Guzman and neither [had he] courted her prior to the incident. (TSN., March 3, 1998, pp. 2-9) (TSN., March 4, 1998, pp. 2-6)"

Ruling of the Trial Court

Assessing the testimony of the private complainant, the trial judge observed:[6]

"Verily this Court finds the forthright account of the incident by the private complainant whose small and slender physique was certainly no match to the tall well-built body of an ex-convict, to be candid, straightforward, spontaneous and frank which remained consistent and unwavering despite the rigid cross-examinations of the defense counsel wherein she narrated in detail the sexual assault with the use of a knife perpetrated by the accused against her.

Parenthetically this Court has observed the deportment of the private complainant at the witness stand and certainly she did not appear to have the callousness and shrewdness of a woman capable of imputing a heinous crime against the [a]ccused if the same is not true. Besides, the defense has not shown any evil motive or ill will on the part of the private complainant for testifying the way she did in this case."

The lower court accepted the judicial admission of the accused that he stole valuables belonging to private complainant and her employer, and then proceeded to determine "whether or not the prosecution evidence has sufficiently established the rape angle of the case."

"In fine, the [a]ccused having already admitted the robbery charge coupled with the fact that the prosecution has established with clear and convincing evidence [a]ccused's culpability for sexually assaulting the pri[v]ate complainant leaves no room for doubt of the guilt of the accused for the complex crime of robbery with (aggravated) rape[.]"

Furthermore, the trial court appreciated dwelling as an aggravating circumstance because the incident took place supposedly at the residence of private complainant's employer, "which doubles as a video rental shop."^[7] Applying Article 63 of the Revised Penal Code as amended by RA 7659, it imposed the maximum penalty provided under Article 294 of the same Code as amended, which is death.

Thus, this automatic review by this Court.^[8]

Issues

In his Brief,^[9] Appellant Taño assigns only two errors or issues. These are:

I

The lower court erred in not taking into consideration the testimonies of Dr. Godofredo Balderosa and Dr. Maria Redencion Bukid-Abella which negate the rape [charge] imputed against the accused.

II

The lower court erred in finding the accused guilty beyond reasonable doubt of the crime of robbery with rape despite the prosecution's insufficiency of evidence."

In criminal cases, an appeal throws the whole case open for review and the appellate court may correct such errors it may find in the appealed judgment, even if they have not been specifically assigned.^[10] Hence, this Court likewise reviewed (a) the propriety of appellant's conviction of the special complex crime of robbery with rape and (b) the trial court's appreciation of dwelling as an aggravating circumstance. These two items will be discussed as the third and fourth issues.

The Court's Ruling

After a careful review of the evidence on record, the Court finds that (a) appellant is guilty of two separate crimes -- rape and robbery, (b) dwelling cannot be appreciated as an aggravating circumstance, and (c) the proper penalty for rape is reclusion perpetua, not death.

First Issue:

Evaluation of the Examining Doctors' Testimonies

Appellant contends that the trial court failed to give due credence to the testimonies of Dr. Godofredo Balderosa and Dr. Ma. Redencion Bukid-Abella, who both examined and treated Amy de Guzman's physical injuries immediately after the incident. Both doctors similarly stated that the victim complained to them of physical assault and attempted rape only, not of consummated rape.^[11] Additionally, the findings of NBI Medico-Legal Officer Aurea Villena were allegedly inconclusive as to whether there was sexual intercourse between the appellant and the victim.^[12] Their testimonies supposedly bolster appellant's innocence of the rape charge.