

## EN BANC

[ G.R. No. 128892, June 21, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO TEJERO Y CARANZO, ANTONIO MARCOS Y OBO, EDGAR DEL MONTE Y ALEYA, SONNY CARANZO, JOHN DOE AND PETER DOE, ACCUSED, ANTONIO MARCOS Y OBO, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

For automatic review is the Decision<sup>[1]</sup> dated March 13, 1997 of the Regional Trial Court of San Pedro, Laguna, Branch 31 in Criminal Case No. 0320-SPL finding the accused-appellant Antonio Marcos Y Obo guilty beyond reasonable doubt of the crime of Robbery with Rape and sentencing him to suffer the penalty of death and to indemnify the victims in the sum of P50,000 as civil indemnity; P100,000 as moral damages; the sums of P205,000, P17,000 and P85,000 representing the cash, jewelry and other valuables taken from the victims; and to pay the costs of the suit.

On March 12, 1996, at about 11:00 o'clock in the Municipality of San Pedro, Province of Laguna, Antonio Marcos (MARCOS), Sonny Caranzo (CARANZO), Pepito Tejero (TEJERO) and Edgar del Monte (DEL MONTE) armed with handguns entered the residence of Arnold and Aileen Orodio through the back door which was left open by Anthony Abino after answering a call of nature. The four men ransacked the house taking with them cash and jewelry. Thereafter, MARCOS and CARANZO proceeded to the residence of Magdalena Ventura located within the same compound as the house of the Orodios and robbed Magdalena and Arnold taking cash and jewelry belonging to Arnold, Magdalena and the Orodio Junk Shop. On occasion of the robbery, CARANZO and MARCOS raped Magdalena. Aileen, Arnold and Magdalena were then brought to the other house, tied and herded into the master's bedroom where TEJERO and DEL MONTE were guarding Anthony Abino, Salvador Castillo, Celia Villanueva, Joselito Ibana and May An Sevilla. All the accused then left using the Elf van of the victims as a getaway vehicle.

The accused-appellant was charged with the crime of Robbery with Rape in an information<sup>[2]</sup> that reads:

"That on or about 11:00 o'clock in the evening of March 12, 1996, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with handguns, with intent to gain, conspiring, collaborating, confederating and mutually helping one another with the use of violence and intimidation or against persons did then and there willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

1.) Jewelries and Cash belonging to Magdalena Ventura in the aggregate amount of TWO HUNDRED FIVE THOUSAND (P205,000.00) PESOS;

2.) Jewelries and Cash belonging to Arnold Orodio in the aggregate amount of SEVENTEEN THOUSAND (P17,000.00) PESOS;

3.) Cash belonging to Orodio Junk Shop owned by Vicente Orodio in the amount of EIGHTY FIVE THOUSAND (P85,000.00) PESOS

and on occasion of the said robbery, the accused Antonio Marcos and Sonny Carranzo, by use of force, violence and intimidation and while conveniently armed with handguns did then and there, one after another, willfully, unlawfully and feloniously had carnal knowledge of Magdalena Ventura against the latter's will, to the damage and prejudice of the offended party.

CONTRARY TO LAW."

The accused, with the exception of CARANZO who is still at large, pleaded not guilty to the crime charged upon arraignment.

The prosecution presented four witnesses: Aileen Orodio, Arnold Orodio, Magdalena Ventura, and Dr. Maximo Reyes.

Aileen Orodio testified that on March 12, 1996, she arrived at her house located at Adelina II-A, San Pedro, Laguna at around 11:00 p.m. from Makati together with her husband, Arnold, Salvador Castillo, and Anthony (Jun-jun) Abino. As the house was locked, Anthony and Arnold went to the office of the junk shop located within the same compound to get the keys of the house. While waiting for the keys, Celia Villanueva, Arnold's cousin, woke up and opened the door to let them inside. Arnold, however, was still in the office of the junk shop. Jun-jun then went out of the house to urinate leaving the back door of the house open. After Jun-jun returned, four (4) armed men, including accused MARCOS whom she identified in court, followed him and entered the house. She was eating on the dining table when one of the armed men pointed a gun at her while the other three stood beside her and told her not to make any noise. Salvador Castillo ran to the other room to try and get help but two of the men were able to run after him; mauled him and hit him with a gun on the head. After mauling him, Anthony Abino, Salvador Castillo, Celia Villanueva and the son of their driver were tied and herded into the master's bedroom. The four men then ransacked the house taking a total of P45,000.00 including her and Celia's jewelry valued at P7,000.00 and Celia's cash amounting to P5,000.00 as well as her own money amounting to P500.00. She was then brought to the office by MARCOS and another man whom she named as CARANZO; she informed them that there was money there after being asked for more money. The office is located in a one-story building with two rooms; one room serves as the office while the other serves as the residence of Magdalena, the aunt of her husband. When they were outside the office, MARCOS poked his gun at Arnold and ordered him and Aileen to enter the office where CARANZO had entered and was pointing his gun at Magdalena. Inside, MARCOS and CARANZO ransacked the office and took money in an undetermined

amount. CARANZO then took Magdalena inside the adjacent room while MARCOS remained with her and Arnold after cutting the telephone wire. Although the door to the room was closed, she heard Magdalena say "wag po, wag po". After twenty minutes, CARANZO stepped out of the room and MARCOS entered. She asked CARANZO what he did but he did not respond. After twenty minutes, MARCOS stepped out of the room; Magdalena was still inside in a reclined position with her nightgown folded up to her upper thigh. When Magdalena joined them, she appeared to be in a state of shock; her nightgown was crumpled. She asked Magdalena what they did to her but she did not answer. They were then brought to the house where Magdalena and Arnold were tied by MARCOS and CARANZO and placed in the master's bedroom while the two other men disassembled their stereo. Thereafter, the men asked for the key of their vehicle. As the key was in the office, she was again brought there to locate it. They then loaded the "Elf" van with the things they took from the house and left. After reporting the incident to the police, an investigation of the incident was conducted at the San Pedro, Laguna, Police Station where she executed an affidavit which she identified in court.<sup>[3]</sup>

Arnold Orodio testified that on March 12, 1996 at around 11:00 p.m., he and his aunt, Magdalena, were in the office located beside the junk shop inside their compound at Adelina II-A, San Pedro, Laguna, talking about the schedule of the trips of their trucks for the following day. Aileen, who was nine (9) months pregnant at that time, arrived with two men armed with short firearms. When inside, one of the armed men poked a gun at him while the other poked a gun at Magdalena. In court, he identified MARCOS as one of the two armed men. They then took money from the steel cabinet; Magdalena gave them the key after they asked where the money was. One of the men then took Magdalena into one of the rooms while the other man remained in the living room guarding him and Aileen after cutting the telephone wire. He did not hear anything coming from the room where Magdalena was. The man guarding them then took his wristwatch, ring and some cash. After about twenty minutes, the man with Magdalena stepped out of the room; he showed them the jewelry he took from Magdalena and asked them if the jewelry was genuine. During this time, the other man entered the room where Magdalena was and came out twenty minutes later. He, Aileen and Magdalena were then brought to the master's bedroom which was being guarded by two other armed men, TEJERO and DEL MONTE, whom he identified in court. He and Magdalena were tied and left in the master's bedroom with Celia Villanueva, Jun-jun Abino, Salvador Castillo and Lito Ibana who were also tied. Aileen then accompanied the men to the office of the junk shop to get the key of the "Elf" van which was used as their getaway vehicle.

On cross-examination, Arnold testified that he was able to identify MARCOS and CARANZO because they removed the cloth covering their faces when they entered the office and that DEL MONTE's and TEJERO's faces were not covered when he saw them in the master's bedroom. He also stated that his necklace was worth P2,000.00, his ring, P3,500.00 and his wristwatch, P1,500.00.<sup>[4]</sup>

Magdalena Ventura testified that on March 12, 1996 at around 11:00 p.m., she was in her office/residence discussing business matters with Arnold. Aileen arrived with two men wearing black jackets. Thinking that Aileen was picking up Arnold, she opened the door to let them in. CARANZO entered and pointed a gun at her and asked her where the money was. She opened her drawer to let him get what he

wanted but pleaded to him not to harm them. After he took P5,000.00 from her drawer, CARANZO asked for more money, and so she gave him the key to the filing cabinet; he opened it and took the money of the junk shop amounting to P80,000.00, her cash of P5,000.00, and her jewelry amounting to P200,000.00. Afterwards, CARANZO dragged her inside the room despite her telling him that she was recovering from a spinal operation. CARANZO ordered her to enter so that she would not get hurt, ransacked the room, took her watch and then told her to lie down and remove her nightgown and underwear while pointing his gun at her. Thereafter, he told her not to move so that she would not have a hard time. Then, he placed himself on top of her, bent her knees, pulled her from her shoulder and removed the buttons and zipper of his pants; he brought out his penis and after several attempts, was able to insert it into her vagina causing her pain not only in her vagina but also at her back. He was on top of her for about ten to fifteen minutes, moving his body upward while pulling hers down. When he was through, he gave her another panty; told her to button her gown and not to tell anyone what happened. He left the room when MARCOS, whom she identified in court, knocked at the door shouting "alis na tayo dalian mo diyan". MARCOS came in and asked if CARANZO did anything to her. Since she was in a state of shock, she just nodded. As MARCOS was ready to remove his pants, she again pleaded "huwag po"; he replied "madali lang ito, huwag ka nang maingay para hindi ka masaktan". While pointing his gun at her, he ordered her to remove her panty and unbutton her nightgown but she hesitated so he removed her panty himself; he bent her knees and inserted his penis into her vagina doing up and down movements. All this time, she protested and cried; she was exhausted because of the pain on her back and private part. MARCOS and CARANZO then brought her, Aileen and Arnold to the big house that she noticed was in disarray. Inside, she saw two other armed men, DEL MONTE and TEJERO whom she identified in court. MARCOS and CARANZO dragged the three of them into the master's bedroom where she saw Celia Villanueva, Joselito Ibana, Salvador Castillo, Jun-jun Abino and May An Sevilla tied up. She and Arnold were then tied and left inside the master's bedroom. CARANZO asked for the key of the Isuzu Elf van and when he was informed that the key was in the office, he brought Aileen there to get it. After taking the VHS and cassette tapes of Arnold, the men boarded the van and left. Afterwards, Aileen helped in untying them. Magdalena also testified that the robbers took cash and personal belongings amounting to P272,307.00 from her, Aileen, Arnold, Joselito and Celia and P80,000.00 from the junk shop. At around 1:00 a.m., she reported what happened to CJ Llamas, a friend of hers, hoping that he would help locate the van which was later recovered at Holiday Hills. Arnold also reported the incident to the police who later invited them to the police station to identify the men who robbed and raped Magdalena. At the police station, she identified MARCOS, TEJERO and DEL MONTE, who were detained, as three of the four malefactors while she identified CARANZO through a picture that was shown to her.<sup>[5]</sup> As a consequence of this incident, she was traumatized and had to undergo a psychological examination for two months, psychiatric therapy for two months, physical therapy for two and a half months, regular check-ups with her cardiologist, and underwent a genital examination given by the NBI.<sup>[6]</sup> She also executed a sworn statement,<sup>[7]</sup> which she identified in court. She added that seven months prior to the robbery and rape, she underwent an operation at the Makati Medical Center for a slipped disc which left part of her body paralyzed.

Dr. Maximo Reyes, a medico-legal officer of the NBI, testified that on March 13,

1996, he conducted a medico-genital and physical examination on Magdalena. Although he did not find any external signs of violence on her body, he noted that the vestibule or outside lining of her hymen had a congestion or inflammation/reddening as a result of a long, superficial and fresh abrasion that was not more than twenty-four hours old. Under the normal course of events, only a fully erect penis is capable of producing such a laceration or trauma to the genitalia. He also found that her hymen remained intact and that there was no sperm found in her private organ nor in her cervix.<sup>[8]</sup>

For their part, the defense presented three witnesses: Antonio Marcos, Pepito Tejero and Edgar del Monte.

All three denied their participation in the robbery.

MARCOS, a resident of Block 4, Lot 3, Barangay Riverside, San Pedro, Laguna, denied that he robbed Magdalena, Arnold and the Orodio Junk Shop on March 12, 1996. He alleged that at around 11:00 p.m. of said date, he was asleep in his house together with his wife and three children. He also denied raping Magdalena. He further stated that he only met TEJERO inside the jail of the San Pedro Police station while he had previously seen CARANZO inside the cockpit but was only introduced to him when CARANZO transferred to Barangay Riverside.<sup>[9]</sup>

TEJERO, a resident of Barangay Nueva, San Pedro, Laguna, also denied that he robbed the complainants. He claims that he was sleeping at around 11:00 p.m. of March 12, 1996 and woke up at 7:00 a.m. the next day. He sold abaca for a living and received P1,000.00 a month with free board and lodging from his employer and his highest educational attainment was Grade VI. It was only in court that he discovered that he was charged with robbery and rape and avers that he does not know why he is implicated in this case.<sup>[10]</sup>

DEL MONTE, a resident of 808 Barangay Estrella, San Pedro, Laguna, worked as a houseboy for Ginging Caviltes two weeks prior to his arrest. He does not know his age; has never attended school; and does not know how to read nor write. He is unaware of any reason why Police Officer Panganiban arrested and detained him at the municipal jail of San Pedro, Laguna. He denies robbing the complainants in this case and claims that up until the time he testified, he had no knowledge of the charge against him. He further denies knowing any of his co-accused and that he only met MARCOS and TEJERO inside the jail.<sup>[11]</sup>

The Regional Trial Court rendered its decision on March 13, 1997, the dispositive portion of which reads:

"IN VIEW THEREOF, the Court finds that the prosecution represented by Assistant Provincial Prosecutor Melchorito Lomarda has duly established beyond reasonable doubt the guilt of accused Antonio Marcos y Obo for the crime of robbery with rape and accused Pepito Tejero y Caranzo and Edgar del Monte y Aleya for the crime of simple robbery with both crimes defined and penalized in Article 294, Revised Penal Code, as amended by Sec. 9, RA 7659. Their commission of the crime was attended by the aggravating circumstances of dwelling and band without any mitigating circumstance.