

THIRD DIVISION

[G.R. No. 112035, January 16, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PANFILO CABILES ALIAS "NONOY", ACCUSED-APPELLANT.**

DECISION

MELO, J.:

Accused-appellant, Panfilo Cabiles, alias Nonoy, seeks the reversal of the decision of the Regional Trial Court of the National Capital Region (Branch 124, Kalookan City), finding him guilty of the crime of Robbery with Rape, as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds the accused Panfilo Cabiles alias Nonoy guilty beyond reasonable doubt of Robbery with Rape as charged and hereby sentences him to suffer imprisonment of Reclusion Perpetua in accordance with Paragraph 2 of Art. 294 of the Revised Penal Code to indemnify the victim Luzviminda Aquino in the amount of P30,000.00 as consequential damages. Said accused is also ordered to return to Marites Nas Atienza the stolen Seiko Wrist watch worth P1,500.00 and one gold ring worth P500.00 and if unable to do so, to pay said victim the corresponding prices of these articles as shown above to reimburse Marites Nas Atienza the amount of P1,000.00 in cash and to pay the costs.

The accused shall be entitled to the full period of his preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code provided with the conditions enumerated thereon have been complied with.

SO ORDERED.

(pp. 86-87, Rollo)

Through an Amended Information accused-appellant, together with the additional accused, was charged as follows:

That on or about the 5th day of November 1989, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused by means of force and violence, with intent of gain, conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously take, rob, and carry away one (1) gold ring worth P500.00, one (1) ladies seiko watch worth P1,500.00, cash money worth P1,000.00, one (1) bracelet worth P1,500.00 and one gold ring worth P500.00 and if unable to do so, to pay the said victim the corresponding prices of these articles as shown above to reimburse Marites Nas Atienza the amount of P1,000.00 in cash and to pay the

costs.

(p. 7, Rollo)

Accused-appellant's co-accused, Jaime Mabingnay, was neither apprehended nor arraigned, whereas accused-appellant was arraigned on both original and amended informations. After trial, following the entry of a not guilty plea, the above quoted verdict was rendered. Hence, the instant appeal.

As deduced from the prosecution's evidence which came primarily from the testimony of Marites Nas Atienza and Luzviminda Aquino, the inculpatory facts are as follows:

Marites Nas Atienza, a housewife whose husband was abroad, was residing at No. 224 Malambing St., Amparo Subdivision, Kalookan City. On the eve of November 5, 1989, she was asleep with her 1 ½-year old daughter, Erica Dianne Atienza, inside her room at her house. Approximately two steps away from her bed, Luzviminda Aquino, Marites' housemaid, was sleeping on a sofa. The house has an area of about 29 square meters. The main door is located at the kitchen. In the kitchen, there is a stairway leading to the store. To the left of the house is the bedroom where the three were asleep. The place was illuminated by the light coming from a 25-watt electrical bulb which was outside the room's window (tsn, March 5, 1990, p. 6; tsn April 5, 1990, pp. 20-24, 28; tsn, April 26, 1990, pp. 4, 6, 8, 10, 17).

At around 1:15 o'clock on the morning of November 5, 1989, a man suddenly barged into the house of Marites by destroying the kitchen door and removing the lawanit wall thereof, thus enabling him to reach the lock inside. The man suddenly poked a 6-inch knife on the right side of Marites' neck. This awakened her. She was told not to shout otherwise she would be killed. Then the man placed a masking tape on her mouth and ordered her to bring out her money and jewelry. At the point of the knife, Marites, while carrying her baby, went to the cabinet outside the room, took cash amounting to P1,000.00, a Seiko watch worth P1,500.00, a lady's wristwatch with the trademark "Chanel" (also referred to in the records as "Chanel") worth P850.00, a bracelet worth P500.00, and a ring worth P500.00 and gave them to the man. Afterwards, they went back inside the bedroom and Marites sat on her bed, still cuddling the baby (tsn, March 5, 1990, pp.7-8, 11-12, 40; tsn, April 5, 1990, pp.19, 30, 31). Marites later identified the man as accused appellant.

Meanwhile, Luzviminda was awakened by the crying of Marites' baby. When she was about to shout, the man poked the knife on her left side, causing her an injury. The man then told her, "Huwag kang sisigaw kundi papatayin kita." Meanwhile, Marites sat on her bed, trembling with fear, as she cuddled her baby. The man also placed masking tape on Luzviminda's mouth. Thereafter, he forcibly held both of her arms in front of her. Notwithstanding her struggle to hide her hands at her back, accused-appellant succeeded in tying her hands at the front with the use of a piece of shoestring (tsn, March 5, 1990, pp. 9-10, 16; tsn, April 5, 1990, pp. 34-35; tsn, April 26, 1990, pp. 6-9 27, 34, 44). Luzviminda likewise later identified the man as accused-appellant.

The man then went to the store which was only about 4-5 steps away from Marites' bed. He ransacked the same in search for more valuables. Thereafter, he took a bottle of beer from the refrigerator and began drinking. Afterwards, he returned to

the room and sat beside Luzviminda (tsn, March 5, 1990, p. 10; tsn, April 5, 1990, p. 25.)

While the man continued to hold the knife, he tapped Luzviminda's thigh. When he was about to consume the beer, he started removing Luzviminda's pants and underwear while still holding the knife with his right hand. The man then rolled down his short pants to his thighs. He poked the knife on Luzviminda's right side and despite the latter's resistance, he succeeded inserting his sexual organ into Luzviminda's private parts and forcibly lying on top of her. Luzviminda struggled and kicked, accidentally hitting with her right foot the knife thus causing her injury. All the while, Marites was still cuddling her daughter, as she sat on her bed in extreme fear. She was witnessing Luzviminda being raped by the man. While on top of Luzviminda and continuously doing the sexual act, the man uttered: "Isusunod ko ang Ate mo pagkatapos ko sa iyo." Upon hearing those words, Marites tried to escape by asking permission to prepare milk for her baby (tsn, March 5, 1990, pp. 11-14, 16-17; tsn, April 5, 1990, pp. 36, 38, 40, 42; tsn April 26, 1990 pp. 10-11, 13-14, 27).

While carrying her child, Marites was able to run to the house of her neighbor, Arnel Cericos, from whom she asked for help. Cericos' house was approximately twelve steps away from Marites' house. Marites decided to hide at Cericos house. When Cericos entered the room, the man was still on top of Luzviminda. However, upon seeing Cericos, the man stood up right away and stabbed Cericos four times. Afterwards, they chased each other outside the house. Meanwhile Luzviminda put on her pants and ran toward Cerico's house (tsn, March 5, 1990, pp. 18-19; tsn, April 26, 1990, pp. 15,18).

When Marites learned that Cericos was injured, she rushed back to her house to administer first aid to him. Cericos sustained a stab wound on his chest, two stab wounds on his left arm, and a stab wound on his right arm. Cericos then complained of difficulty in breathing. Consequently, Marites brought him to a physician, one Col. Javier, for treatment. When Cericos' complaints continued, Marites decided to bring him to the V. Luna Hospital in Quezon City at about 4 o'clock that morning (tsn, March 5, 1990, pp. 19-22).

Attending physician Dr. Emmanuel Quedding noted that Cericos sustained four stab wounds of different sizes, the most serious of which was the lacerated wound on the interior chest which required Cericos to be placed under observation for 8-12 hours. Dr. Quedding found that the wounds, if deep enough, could result in the laceration of the lung, heart and some arteries and consequently, the victim's death. After advising Cericos not to work for about one week or more, he was permitted to leave the hospital at about 1 o'clock that afternoon (tsn, April 5, 1990, pp. 4-5, 10, 12)

For her part, Luzviminda, at 9 o'clock that morning, went to the Kalookan Police Department and reported what happened to her. On November 6, 1989, upon referral by the chief of Northern Police District, Kalookan City, Luzviminda subjected herself to a physical examination conducted by Dr. Carmelita Belgica, a medico-legal officer. Resultantly, Dr. Belgica found on Luzviminda's right foot "a laceration, healing, measuring 3.5 c.m., with scab formation and peripheral edema at the medine melcolus, right side..." Her genital examination results showed an old healed laceration indicative of sexual intercourse possibly occurring three months before the date of examination. Dr. Belgica expounded that although the physical

examination results manifested that the occurrence of sexual intercourse also took place on November 5, 1989 without any injury at the genital area, as it "cannot be consulted medically because the opening is wide enough" (tsn, January 10, 1990, pp. 3-6, 8-10).

Later, on November 8, 1989, at about 1:40 o'clock in the afternoon, Corporal Luciano Cañeda and Pfc. Manuel Rodriguez of the Kalookan City Police Station, along with Romeo Nas, brother of Marites, went to a sash factory warehouse at the Marivic Compound, Kalookan City. Outside the factory edifice, they saw accused-appellant sleeping on a bench. Romeo Nas saw the accused-appellant wearing a bracelet which the former recognized as the bracelet taken from Marites. Upon being awakened, accused appellant, told the three men that the other things he took from Marites were inside a plastic bag at the factory building. Consequently, Pfc. Rodriguez went inside the building to get the plastic bag and it was found to contain a woman's undershirt, a light blue shirt, and a wristwatch with the brand name "Chanel" which was the one taken from Marites (tsn, April 10, 1990, pp. 4-5, 7-8, 11, 14, 16, 25).

The following day, November 9, 1989, at about 3:30 o'clock in the afternoon, Marites saw accused-appellant at the Kalookan City Police Station. The latter admitted his guilt and pointed to Jaime Mabingnay, Marites further recalled that she saw accused-appellant at Mabingnay's house on November 5, 1989, before the crime took place (tsn, March 5, 1990, p. 30; April 10, 1990, pp. 33-36).

Accused-appellant, on the other hand, relied and banked on denial and alibi.

Accused-appellant denied even having raped Luzviminda Aquino. He said that the first time he ever saw Marites was at the Kalookan City Police Station on November 9, 1989. He said the same thing about Luzviminda (tsn, August 23, 1990, pp. 4-6).

Regarding the day of the incident, accused-appellant testified that on November 5, 1989, at 1:30 o'clock in the morning, he was at Marivic Subdivision, sleeping with his wife. He had been residing at the Marivic Compound starting October 30, 1989 as he was designated by the owner of the place to watch over the premises (tsn, August 23, 1990, p.4).

As to accused-appellant's arrest which took place on November 8, 1989 at around 1 o'clock in the afternoon, he testified that he was lying on the bench at the Marivic Compound when three men in civilian clothes arrived. He did not know the reason for his arrest. He, however, admitted that a "Chanel" lady's watch was recovered from him at the time of the arrest but insisted that he owns the watch, the same having pledged to him by his cousin Elizabeth Abantao when he was still at Wright, Samar, and which was later sold to him. He denied that a plastic bag with stolen contents of the bag when he was under detention at the Kalookan City Jail. As regards his sworn statement containing a confession to the commission of the crime, he said he was forced by the policemen at the station to execute the same. He did not read it and was just forced to sign it. He was not assisted by counsel during that time (tsn, August 23, 1990, pp. 6-9).

Accused-appellant's version of the event was corroborated by: (a) his wife Soledad Cabiles who testified that she slept with accused-appellant at Marivic Subdivision in the evening of November 4, 1989; (b) Conrado Bacoy, Sr., owner of the woodcarving

factory watched over by accused appellant, who testified that accused-appellant and his wife were allowed to sleep within the factory premises; and (c) Melchor Mabini who aside from supporting accused-appellant's alibi, also said that accused-appellant's captors did not have a warrant when they made the arrest.

The trial court found no merit in accused-appellant's defense. It found that his identity was well established, based on the testimony of Marites and Luzviminda who were adjudged as credible witnesses. From the testimony of said witnesses, the trial court likewise observed that: (1) at the time of accused-appellant's arrest, he was wearing a bracelet which was said to be owned by Marites; (2) that a shoestring was found inside the plastic bag which accused-appellant stated as his own when he led the arresting officers to the factory compound at Marivic, Baesa, Kalookan City; and (3) that said shoestring was the one used by accused-appellant in tying Luzviminda's hands before she was raped. The trial court likewise noted accused-appellant's confession before Marites and in the presence of Amy Maliwanag, a council woman of Amparo Subdivision and Linda Pilahan, that accused-appellant robbed and raped Luzviminda, and that Jaime Mabingnay instructed him to do so, to cause the blindness of Marites, and to kill her. Mabingnay was said to have promised to help accused-appellant get a job abroad and to help the latter financially. However, accused-appellant took pity on Marites' child.

As regards the crime of serious physical injuries, which, as charged in the Amended Information, was allegedly committed by reason or on occasion of the robbery, the trial court found that the evidence is insufficient to prove the commission of the same or any of the physical injuries penalized in Subdivision 1 of Art. 263 of the Revised Penal Code.

We affirm that trial court's decision.

Accused-appellant argues as his sole assignment of error that the trial court erred in finding him guilty beyond reasonable doubt of the crime charged. He stressed the following arguments, to wit: (1) that the medico-legal officer said several times that the sexual intercourse occurred three months before the incident complained of; (2) that verbal admissions are inadmissible against the accused; (3) that the bracelet and the "Chanel" watch and even the "improbable" shoestring were the products of a poisonous tree, not having fruits of a lawful warrantless arrest; and (4) that his identification based on his built and voice is not an effective one.

We shall first discuss the procedural matters and circumstances surrounding the charge.

Accused-appellant, corroborated by defense witness Melchor Mabini, contends that his arrest was an alleged warrantless one. However, such irregularity was only raised during trial. In regard to this delay, this Court has consistently ruled that any objection involving a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived (*People v. Lopez, Jr.*, 245 SCRA 95 [1995]; *People vs. Rivera*, 245 SCRA 421 [1995]). Verily, the illegal arrest of an accused is not sufficient complaint after trial free from error; such arrest does not negate the validity of the conviction of the accused (*People vs. Manzano*, 248 SCRA 239 [1995]). And it is much too late in the day to complain about the warrantless arrest after a valid information had filed and accused arraigned and trial commenced