

SECOND DIVISION

[G.R. No. 116918, June 19, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONFILO MARTINEZ Y DE LA ROSA, JOHN DOE AND PETER DOE,
ACCUSED. BONFILO MARTINEZ Y DELA ROSA, ACCUSED-
APPELLANT.**

D E C I S I O N

REGALADO, J.:

In an information filed before Branch 121 of the Regional Trial Court of Caloocan City on March 8, 1994, accused-appellant Bonfilio Martinez and two other unidentified persons were charged with the special complex crime of robbery with rape allegedly committed as follows:

That on or about the 28th of December, 1991 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with (sic) one another, with intent of gain and by means of violence and intimidation employed upon the persons of MICHAEL BUENVINIDA Y SOLMAYOR, POL BONGGAT, SHERWIN SOLMAYOR, JONATHAN BONGGAT, JUNIOR SOLMAYOR, GLORIA SOLMAYOR and GLORIVIC BANDAYANON Y QUIAJO while the aforesaid persons were inside the house of ERNESTO BUENVINIDA viewing television program, said accused, all armed with guns of unknown caliber, tied the hands of the occupants of the house, did then and there wilfully, unlawfully and feloniously take, rob and carry away the following articles belonging to ERNESTO BUENVINIDA, to wit:

1. Radio Cassette Recorder worth P3,000.00
2. Assorted imported perfumes 30,000.00
3. Assorted imported canned goods 5,000.00
4. Cash money amounting to 8,000.00
5. Cash money in U.S. Dollar \$1,000.00

that in the course of said robbery, said accused, with the use of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with one GLORIVIC BANDAYON Y QUIAJO, against the latter's will and without her consent.^[1]

Although the two Does remained unknown and at large, appellant was arrested on March 3, 1994 for soliciting funds for a fictitious volleyball competition.^[2] After his

arrest, he was confined at the Bagong Silang Sub-station detention cell for an hour and was later transferred to the Caloocan City Jail.^[3] Appellant entered a plea of not guilty during his arraignment in Criminal Case No. C-46704 (94) on March 21, 1994.^[4]

As collated from the transcripts of the testimonies of prosecution eyewitnesses Glorivic Bandayanon^[5] and Michael Buenvinida,^[6] the indicated coverage of which yield the particular facts hereunder narrated, the circumstances attendant to the crime charged are detailed in the paragraphs that follow.

Michael Buenvinida, Michelle Buenvinida, Gloria Solmayor, Sherwin Solmayor, Junior (JR) Solmayor, Paul Bonggat, Jonathan Bonggat and Glorivic Bandayanon were in Ernesto and Cornelia Buenvinida's house situated at Lot 25, Block 20, Walnut St., Rainbow Village, Caloocan City when the crime was committed on December 28, 1991.

Michael and Michelle are the children of Ernesto and Cornelia. Gloria is a sister-in-law of Cornelia who was in the house for a visit, while Sherwin, Junior, Paul and Jonathan are Cornelia's nephews. Glorivic is a friend of Cornelia who volunteered to look after the latter's children while she is in Sweden. Ernesto was at the office at the time of the commission of the crime.

While the occupants of the house were watching a television show in the living room at around 6:30 P.M., Michael noticed a man wearing short pants and holding a handgun jump over the low fence of their house. The man entered the house through its unlocked front door and introduced himself to the surprised group as a policeman. The intruder then told them that Michael's father got involved in a stabbing incident in the local basketball court. As if on cue, two men followed the first man in entering the house and promptly thereafter covered their faces with handkerchiefs. These two were wearing long pants and also carried handguns. The first man who entered the house did not cover his face.

With guns pointed at them, the occupants of the house were brought to the master's bedroom where they were tied and detained by the three intruders.

Later, one of the armed men, identified by Michael as herein appellant, untied Michael and ordered him to pull out the plugs of the appliances in the house, such as the television set, the V.H.S. player and the radio cassette recorder. Appellant and the other masked man then began to search the house for valuables in the living room and in the kitchen.

Meanwhile, the first man remained in the master's bedroom and found cash money, in pesos and dollars, and bottles of perfume. The men then placed in a big bag the radio cassette player, canned goods, money and perfumes that they had found inside the house.

Thereafter, the first intruder, whom Glorivic referred to as the mastermind of the group, returned to the master's bedroom and asked the terrified group for jewelries. Unable to get any jewelry, he brought Glorivic to the children's (Michael and Michelle's) bedroom opposite the master's bedroom. Upon entering the room, the man turned on the lights there. In the meanwhile, his two masked companions

continued looking around the house for other valuables.

Inside the bedroom, the ostensible leader of the gang untied Glorivic and ordered her to search the room for jewelries. After Glorivic failed to find any, the man directed her to remove her clothes and pointed his gun at Glorivic's head. Despite her pleas and cries, the man removed the shirt, long pants and underwear of Glorivic while keeping the gun leveled at her. Shortly after, the man put the gun on top of the ironing board beside the bed, then pushed Glorivic towards the bed and lay on top of her. Glorivic's resistance proved to be futile as the man was able to violate her chastity.

Before the first man could leave the room, another member of the group entered and pushed Glorivic again to the bed when she was just about to put on her dress. Upon entering the room, the second man's cloth cover tied around his face fell and hang around his neck. After threatening to kill her, the man put a pillow on her face, forcibly spread Glorivic's legs and has sexual congress with her. Glorivic would later point to appellant during the trial as this second man.

After the second man was through, the third man came in. While Glorivic was still sitting on the bed and crying, the third man took the bed sheet and covered her face with it. Just like what his companions did before him, the third man had sexual intercourse with Glorivic through force and intimidation, but not without first removing the handkerchief tied over his face.

Michael was able to see the three malefactors enter and leave the room one after the other as the door of the master's bedroom was left open. He was also able to hear Glorivic crying and her implorations to her tormentors in the opposite room.

After the consummation of the odious act, the third man told Glorivic to dress up. Glorivic felt blood flowing down her thighs as she put on her clothes. Thereafter, the third man tied her up and brought her back to the company of the other occupants of the house. Michael saw Glorivic with disheveled hair and wearing her pants turned inside out, with blood on the lower parts.

The felons left after intimating to the group by way of a threat that they were going to explode a hand grenade. Around five minutes later, after ascertaining that the culprits had left, Michael and the others untied each other. Thereafter, they went to the house of his father's friend located two blocks away and, from there, they proceeded to the Urduja police detachment.

Glorivic met appellant again on March 7, 1994. Policemen came to her place of work and asked her to come with them as they had a person in custody whom they suspected to be herein appellant. At the Caloocan City Jail, Glorivic was made to face eight detainees. She was able to readily recognize appellant among the group because of the mole on his right cheek. Before she picked him out from the other men, she carefully saw to it that the one she pointed out was really appellant.

On the part of Michael, he stated that he was fetched by policemen on March 7, 1994 at his school to make an identification at the Dagat-Dagatan police station. Appellant was with six other inmates when they arrived at the station. Michael pointed to appellant as one of the robbers who entered their house, after readily remembering that he was the one who ordered him to unplug the appliances.

Michael could never be mistaken in appellant's identity because he could not forget the prominent mole and its location on appellant's right cheek.

Testifying at the trial,^[7] appellant denied any participation in the robbery with rape committed in the Buenvinida residence. Appellant claimed that it was only on March 7, 1994 that he first met Glorivic Bandayanon and insisted that he does not know Michael Buenvinida.

He claimed that he was in his house in Wawa, Parañaque together with his wife and children the whole day of December 28, 1991. He moved to Bagong Silang, Caloocan City in 1993 after he was able to find work as a mason under his brother who lives in the same district. On cross-examination, appellant denied having visited his brother at Bagong Silang from 1991 to 1992. However, upon further questioning by the public prosecutor, appellant admitted that he made several visits to his brother in 1991. Moreover, he explained that it usually took him three hours to travel to Caloocan City from Parañaque by public utility bus.

Giving credence to the testimonies of the witnesses of the prosecution and rejecting appellant's defense of alibi, the trial court^[8] found appellant guilty of the composite crime of robbery with rape. Although the proper imposable penalty is death,^[9] considering the lower court's finding of two aggravating circumstances of nocturnidad and use of a deadly weapon, appellant was sentenced to reclusion perpetua in observance of the then constitutional prohibition against the imposition of capital punishment. With regard to his civil liabilities, appellant was ordered to indemnify Ernesto Buenvinida in the sum of P73,000.00 as the value of his stolen and unrecovered personal properties, and to pay Glorivic Bandaya P30,000.00 by way of moral damages, plus the costs of suit.^[10]

In this present appellate review, appellant inceptively faults the lower court for convicting him despite the supposedly undependable and untrustworthy identification made by the eyewitnesses. He claims that Glorivic Bandayanon and Michael Buenvinida could have been mistaken in their identification^[11] because (1) of the long interval of time before they were able to confront him; (2) his face was covered with a handkerchief as they themselves narrated in court; and (3) they could have been so gravely terrified by the criminal act as to have their mental faculties impaired.

When an accused assails the identification made by witnesses, he is in effect attacking the credibility of those witnesses who referred to him as the perpetrator of the crime alleged to have been committed.^[12] The case then turns on the question of credibility.

It has long been a well-entrenched rule of evidence and procedure that the issue of credibility of witnesses is almost invariably within the exclusive province of a trial court to determine, under the principle that the findings of trial courts deserve respect from appellate tribunals.^[13] The foregoing rule notwithstanding, we expended considerable time and effort to thoroughly examine the records and objectively assay the evidence before us, considering the gravity of the offense charged. However, we find no compelling reasons to overturn the lower court's conclusion on the accuracy and correctness of the witnesses' identification of

appellant as one of the persons who robbed the house of the Buenvinidas and raped Glorivic.

The testimonies of the principal witnesses for the prosecution were not only consistent with and corroborative of each other. The transcripts of stenographic notes which we have conscientiously reviewed, further reveal that their narrations before the lower court were delivered in a clear, coherent and unequivocal manner.

There was no perceptible hesitation or uncertainty on the part of Glorivic and Michael when they unerringly identified appellant during the trial. The unhurried, studious and deliberate manner in which appellant was identified by them in court added strength to their credibility^[14] and immeasurably fortified the case of the prosecution.

The records also show that the memory of these witnesses were not in any way affected by the passage of two years and three months since the tragedy. Glorivic categorically stated on the witness stand that the lapse of those years did not impair her memory and she could still identify those who raped her.^[15] Michael asserted that he could still positively identify appellant because of the latter's mole, as well as the several opportunities of the former to take a good look at appellant's face during the robbery,^[16] and the same is true with Glorivic. Appellant's mole on his right cheek provided a distinctive mark for recollection and which, coupled with the emotional atmosphere during the incident, would be perpetually etched in the minds of the witnesses.

It is the most natural reaction for victims of criminal violence to strive to ascertain the appearance of their assailants and observe the manner in which the crime was committed. Most often, the face and body movements of the assailants create a lasting impression on the victim's minds which cannot be easily erased from their memory.^[17]

While appellant claims that his face was covered during the commission of the crime, there were providential points in time when the two witnesses were able to freely see his face and scan his facial features closely to as to enable them to identify him later on.

Although appellant placed a pillow on her face. Glorivic declared that when the latter two offenders raped her, their faces were no longer covered. In the case of appellant, the handkerchief on his face fell upon his entering the room and he left it that way while he raped Glorivic.^[18] And when the latter two transgressors entered the house, their faces were then exposed and it was only when they were already inside the house that they covered their faces with handkerchiefs.^[19] These circumstances gave Michael and Glorivic sufficient time and unimpeded opportunity to recognize and identify appellant.

There is no evidence to show that the two eyewitnesses were so petrified with fear as to result in subnormal sensory functions on their part. Contrarily, in a recently decided case, we held that fear for one's life may even cause the witness to be more observant of his surroundings.^[20] The ample opportunity to observe and the compelling reason to identify the wrongdoer are invaluable physiognomical and