

## THIRD DIVISION

[ G.R. No. 132329, December 17, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CONSTANCIO MERINO AND ARNULFO SIERVO, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

#### **PANGANIBAN, J.:**

In affirming the conviction of herein appellants, we reiterate these well-settled principles: a) the trial court's assessment of the credibility of witnesses is generally accorded great respect on appeal; b) in a conspiracy, the act of one is the act of all; and c) nocturnity, to be appreciated as an aggravating circumstance, must have purposely been sought to facilitate the commission of the crime or to prevent recognition of the perpetrator.

#### **The Case**

Constancio Merino and Arnulfo Siervo appeal the February 18, 1997 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Quezon City (Branch 215) in Criminal Case No. Q-94-55419, which convicted them of robbery with rape and sentenced them to *reclusion perpetua*.

On March 9, 1994, an Information<sup>[2]</sup> was filed by Assistant Prosecutor Enrico P. Bringas charging Siervo and Merino as follows:

"That on or about the 13th day of February, 1993, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping other persons whose true names, identities and whereabouts have not as yet been ascertained, with intent to gain and by means of violence and/or intimidation upon persons, did, then and there, willfully, unlawfully and feloniously rob the residence of one ERNESTO D. PAGADUAN located at Block 212 Lot 10, Phase III, North Fairview, this City, in the manner as follows: on the date and in the place aforementioned, the said accused, pursuant to their conspiracy, armed with handguns and bladed weapons, poked a gun at said Ernesto D. Pagaduan who was about to enter his residence and forcibly entered said residence and once inside, accused hog-tied all the members of his family and thereafter, took, robbed and carried away assorted valuables amounting to P 300,000.00 Philippine Currency; that on the occasion of said robbery, accused with lewd designs and by means of force, violence and intimidation and at the point of bladed instruments, did, then and there, willfully, unlawfully and feloniously had carnal knowledge upon the persons of JEHAN PAGADUAN and JACQUELINE PAGADUAN, 16 and 15 years of age, respectively both minors, all done against their will and

without their consent, to the damage and prejudice of the said offended parties."

When arraigned on April 4, 1994, appellants, with the assistance of counsel,<sup>[3]</sup> entered a plea of not guilty. Trial ensued. On August 8, 1994, upon discovery that another case on the same incident was pending before another judge, the trial court issued an Order enjoining the defense to file the necessary motion.<sup>[4]</sup> However, no such motion was submitted. Instead, Siervo's counsel filed a Demurrer to Evidence<sup>[5]</sup> with leave of court,<sup>[6]</sup> which was denied in a Resolution dated June 6, 1995.<sup>[7]</sup> Subsequently, both appellants proceeded to present their respective sets of evidence. Thereafter, the lower court rendered its assailed Decision,<sup>[8]</sup> the dispositive part of which reads:

"Upon the evidence, the Court finds the accused Arnulfo Siervo and Constancio Merino guilty as charged, the prosecution having proven their guilt beyond reasonable doubt.

"Considering that the crime was committed during nighttime, the accused taking advantage of the darkness for the more successful consummation of their plan to prevent their being recognized so that the crime may be perpetrated unmolested so that they could escape more thoroughly as what actually happened in this case, both accused are sentenced to suffer the penalty of reclusion perpetua in accordance with Article 294, paragraph 2 of the Revised Penal Code.

"The two (2) accused are jointly and severally ordered to pay Jehan Pagaduan and Jacqueline Pagaduan the sum of Two Hundred Fifty Thousand Pesos (P250,000.00) each as and for civil damages. Likewise, both accused are ordered to pay the private complainants the sum of Twenty Thousand Pesos (P20,000.00) each as and for civil damages and to indemnify Ernesto Pagaduan Three Hundred Thousand Pesos (P300,000.00) for the personal properties taken by the accused during the incident."<sup>[9]</sup> (citations omitted)

Siervo filed a Notice of Appeal<sup>[10]</sup> and an Appellant's Brief. Although Merino did not file any notice of appeal, he subsequently submitted a Brief. In the interest of substantial justice,<sup>[11]</sup> we will review the case and resolve the arguments raised by both appellants.<sup>[12]</sup>

### **The Facts** **Prosecution's Version**

In the Consolidated Appellee's Brief,<sup>[13]</sup> the Office of the Solicitor General narrates the facts, as viewed by the prosecution, in this wise:

"Around 7:00 in the evening of February 13, 1993, the Pagaduans, namely: Lydia, Jacqueline, Vanessa and their grandparents, were having dinner at their residence at Blk. 212, Lot 10, Phase 8, North Fairview Subd., Quezon City. Not long after, Ernesto Pagaduan and Ian Pagaduan arrived in separate cars. Faustino Pagaduan opened the gate. Ian, who was with Mark Pagaduan and Jehan Pagaduan, a cousin and visitor of the

Pagaduans, drove through the gate and parked his car in the garage. Ernesto Pagaduan followed. Right after parking their cars, six (6) men, two (2) of whom were identified later as appellants Arnulfo Siervo and Constancio Merino, alias `Kuta', barged into the premises. While Merino covered his nose and mouth with a handkerchief, the rest of the armed men did not hide their faces. Siervo ordered them to get out of their cars. Then appellants poked their guns and knives at them. The armed men entered the house through the kitchen. Once inside, Siervo announced a hold-up. They ordered the Pagaduans to lie on the floor face down. Because grandfather Faustino resisted, he was mauled and hit on the head with the butt of a gun. Mark Pagaduan shouted at the armed intruders telling them to stop beating his grandfather. A hysterical Jacqueline was slapped on the face by one of the armed men causing her to fall on the floor. The armed men then herded their terrified hostages to the sala.

"In the sala, the armed men tied the Pagaduans with extension cords and told them to surrender their jewelry. Ernesto and Lydia were brought inside a room where they were hogtied and forced to lie on the floor face down. From time to time the malefactors kicked Ernesto, stepped on him and poked their guns at the Pagaduans. Siervo forced Lydia to tell him where she kept their jewelry. When she refused, Siervo and the rest of the gang ransacked the house. One of the men asked Jacqueline to accompany him to where the jewelry were kept. Not satisfied with the jewelry he had already scooped up, the armed man kept asking where he could get some more.

"A little later, Siervo brought Jehan to the master's bedroom. Siervo told Jehan to undress. Because Siervo poked a fan knife on her chest, Jehan unwillingly obliged. Siervo then raped Jehan. After a while, Merino entered the room and said, `bilisan mo, baka may dumating na tao'.

"Back at the sala, which had a concrete divider, Jacqueline was accosted by one of the armed men whom she did not recognize and who asked her to switch off the light. Terrified, Jacqueline meekly obeyed. The man ordered Jacqueline to undress and lie down on the sofa. He started kissing Jacqueline, touched her breasts and asked her to spread her thighs. He kissed her private parts. Then, he raped her. When he was through, the man ordered Jacqueline to dress up. All this time, the man was armed with a knife. Another armed man whom Jacqueline failed to recognize and identify came. The first man told him `pare, baka gusto mo rin s'yang tikman.' The man sat beside Jacqueline, kissed her, ordered her to undress and spread her thighs. Not contented, he ordered Jacqueline to spread them some more threatening to kill her if she refused. As the man could not insert his organ, he ordered Jacqueline to do it for him but she refused. Finally, he succeeded in raping Jacqueline. Thereafter, he ordered her to dress up and join her relatives. She was hogtied again.

"The armed men took with them money, appliances, perfumes, bottles of liquor, jewelry and clothes of the Pagaduans having a total value of about P300,000.00. Merino left a warning that no one should get out of the

house because they had planted a bomb there. At that time, Merino's face was uncovered. After the robbers left, Lydia, who was able to free herself, untied the others. They asked help from their neighbors. They then proceeded to Station 5 in Lagro to report the incident. Later, they filed a complaint with the NBI.

"On February 16, 1993, Jacqueline and Jehan were examined by Dr. Florante Baltazar, Medico-Legal Officer and Chief of the PNP-Crime Laboratory, CPD 4, Quezon City. The Medico-Legal Reports which Dr. Baltazar issued on Jacqueline and Jehan showed healed lacerations on their genitals and they were[in] `non-virgin state physically.'

"About a year later, or on March 5, 1994, Mark Pagaduan saw and recognized Siervo when Mark bought fruits from Siervo's fruit stand in Balara. Mark, accompanied by Ian Pagaduan, relayed the information to the NBI. A team of NBI agents, headed by Atty. Artemio Sacaguing, arrested Siervo and later Merino.

"The Pagaduans readily identified Siervo and Merino during a line-up at the NBI. They executed sworn statements before the NBI agents."  
(citations omitted)

### **Version of the Defense**

In his Brief,<sup>[14]</sup> Appellant Siervo interposes denial and narrates his version of the facts as follows:

"Arnulfo Siervo maintained that from 3 o'clock in the afternoon and the rest of February 13, 1993, he was home resting. In March 1994, several men apprehended him while he was in his stall. He was brought to the NBI where he was branded a robber and a rapist. He was interrogated without the assistance of counsel. He never pointed to Merino as his companion. He did not admit anything. At the NBI line-up, he noticed Atty. Sacaguing coaching witness to point at him. He never heard Merino utter anything. The NBI told him to hit Merino. The cartographic sketch of a man [did] not resemble him.

"Constancio Merino maintained that he knew Ernesto and Lydia Pagaduan. He worked as a valve operator in Lagro, Quezon City. On February 13, 1993, between 2:00 o'clock in the afternoon up until 10:00 o'clock in the evening, he was at his place of work and never left the same. He [did] not know anything about the robbery incident. He was merely implicated because he refused to be a state witness. He and Siervo were not in good terms. At the NBI, Siervo punched him. Siervo thought he (Merino) was the one responsible for his apprehension. He could not retaliate because his hands were handcuffed.

"Roderick Capellan confirmed that on February 13, 1993, Merino was on duty from 3:00 o'clock in the afternoon until 10:00 o'clock in the evening but could not tell if Merino went anywhere else between those hours."  
(citations omitted)

In his scant four-page Brief,<sup>[15]</sup> Appellant Merino mainly asserts that he was on duty at the MWSS Lagro station on February 13, 1993, and that he never left his post. Although he knew Appellant Siervo, he was not with him on that day. He also admits that he knew Danilo Pagaduan because they were erstwhile neighbors in Pansol, Balara.

### **The Trial Court's Ruling**

Finding both Appellants Siervo and Merino guilty as charged, the lower court ruled:  
<sup>[16]</sup>

"From the testimonies and documentary evidence presented by the prosecution, the Court is fully convinced that on the night of February 13, 1993, the private complainants were robbed by both accused Siervo and Merino [of] money, appliances, perfumes, liquor and jewelry. All private complainants who testified sufficiently narrated the facts and circumstances of the incident as well as established the identities of both accused. They all identified Siervo and Merino at the NBI when they were arrested. Not only that, this positive identification by the private complainants of the two accused was replicated in open court when they testified. There was no hesitation on their part to point to the accused as the culprits. The only question left is whether both accused raped Jehan Pagaduan and Jacqueline Pagaduan on the occasion of that robbery.

"According to Jehan Pagaduan, she was raped by accused in the room. Accused Merino followed them in the said room and even told Siervo, 'bilisan mo, baka may dumating na tao'. Mark and Ian Pagaduan testified that they saw Siervo take [their] cousin Jehan to the bedroom and saw Merino follow them. Mark heard as if Siervo was abusing Jehan and heard the latter crying. Both likewise saw Siervo take Jehan outside of the room later.

"On the other hand, Jacqueline Pagaduan testified that she was also raped in the sala by Siervo whose face appears on Exh. B-1, which is the cartographic sketch of Siervo. She said she could not identify the second man who raped her. Mark and Ian Pagaduan saw a man take Jacqueline to the living room. Mark heard the same thing he heard when Jehan was taken by accused Siervo to the room. It was as if Jacqueline was [being] abused.

"Exhibits F and G, the Medico-Legal Reports No. M-0277A-93 and M-276A-93, respectively, conclusively show that the abr[a]ded vulvar mucosa suggests that there was recent sexual intercourse.

"The alibi put up by both accused does not inspire belief. Accused Siervo claims that he was home resting while his wife was preparing dinner, while accused Merino claims that he was on duty from 2:00 in the afternoon to 10:00 in the evening at Tank 5. However, on cross-examination, accused Siervo testified:

Q: Did you meet your co-accused Constancio Merino in the evening of February 13, 1993?