

SECOND DIVISION

[G.R. No. 179944, September 04, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO ORTIZ,
CHARITO CHAVEZ, EDWIN DASILIO AND JERRY DOE,
APPELLANTS.**

D E C I S I O N

QUISUMBING, J.:

For review on certiorari is the Decision^[1] dated July 18, 2007 of the Court of Appeals, in CA-G.R. CR H.C. No. 01305, which affirmed with modification the Decision^[2] dated August 23, 2004 of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-3064, convicting appellants Antonio Ortiz, Charito Chavez and Edwin Dasilio for the crime of robbery with rape.

In an Information^[3] dated August 14, 2000, Ortiz, Chavez, Dasilio and Jerry Doe (at large) were charged with the crime of Robbery with Multiple Rape allegedly committed as follows:

That on or about the 22nd of April 2000 at around 7:00 o'clock in the evening at Zone xxx, Brgy. xxx, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and with intent to gain and while all armed with guns, by means of force and violence against the persons of BBB and AAA^[4] at their residence, did then and there willfully, unlawfully and feloniously, take, steal and carry away the following items, to wit: 1 pair gold rings, 1 pc. Cellphone (Nokia), 1 pc. walkman, 1 pc. Radio cassette (sony), 2 pcs. wrist watch, 2 pcs. flashlights, 1 pc. emergency light, assorted ID's amounting to Thirty Thousand (P30,000.00) Pesos and cash of Three Thousand (P3,000.00), all valued at a total amount of Thirty[-]Three Thousand (P33,000.00) Pesos Philippine Currency, but before leaving with the loots the above-named accused, with violence, force and intimidation of person, at gun point succeeded in having carnal knowledge of the same AAA, one after the other, in taking their turns in satisfying their carnal desires, against her will, to the damage and prejudice of the spouses, BBB and AAA.

ACTS CONTRARY TO LAW.

Upon arraignment, appellants Ortiz, Chavez and Dasilio pleaded not guilty to the charge. Whereupon, trial ensued.

The factual antecedents follow.

On April 22, 2000 at around seven o'clock in the evening, Candido Oliva and his son, Dennis, were inside their *camalig* when they heard BBB's dog barking. This prompted Candido to go outside and verify what was happening. As it was dark outside, he decided to get a flashlight, but before he could enter the *camalig*, somebody with a revolver pushed him inside. The man who pushed him introduced himself as "Sergeant" and was later identified only as Jerry Doe.

Thereafter, Jerry Doe called Dasilio inside the *camalig*. Dasilio, who was then armed with a sword, ordered Candido to sit beside Dennis, who was interminably crying out of fear. Father and son were then made to lie face down while appellants tied their hands with a tie wire.

At about the same time, spouses AAA and BBB were watching television inside their house, which was situated just 12 to 15 meters from the *camalig*, when they heard Dennis crying. BBB proceeded to Candido's house to investigate but he was also herded inside Candido's house where he was tied by Dasilio. Thereafter, Candido, Dennis and BBB were ordered to proceed to BBB's house. On their way there, BBB saw Ortiz and Chavez.

Jerry Doe and Chavez went to BBB's house ahead of the group, and tied AAA's hands with plastic tape. After Ortiz and Dasilio arrived, appellants ransacked the spouses' house while Jerry Doe held AAA at gunpoint. Subsequently, the four victims were shoved inside the spouses' bedroom. Jerry Doe and Dasilio continued to loot the house while Chavez and Ortiz acted as lookout.

After the looting was over, AAA was asked to get food from the *camalig*. After feeding Candido, she was again ordered to get water from the *camalig*. This time, Jerry Doe and the appellants accompanied AAA.

While in the *camalig*, Jerry Doe ordered AAA to remove her shorts and panty. AAA pleaded with Jerry Doe and appellants not to rape her, but despite her pleas, the four took turns in raping her in the presence of each other.

After succeeding in raping AAA, the four all went back to the house of AAA and BBB. Before leaving, the four warned the victims not to venture out as they had allegedly placed a grenade at the door. Heeding the warning, the victims kept mum until morning. As soon as they verified that there was no grenade by the door, they went out and reported the incident to the police authorities.

During the investigation, SPO2 Nestor Huerno recovered a calculator, which was one of the items taken from AAA and BBB's house on the night of the robbery, from Asuncion Casiano. Upon the police's inquiry, Casiano declared that his neighbor, Dasilio, bartered the said calculator in exchange for some grocery items from her store. Additionally, Florentino Bueno, a friend of the appellants, emerged during the investigation. He said that Ortiz and Chavez invited him a week before April 22, 2000 to join them in robbing private complainants. Bueno also revealed that in a drinking spree, Ortiz and Chavez boasted in his presence about the robbery they committed and the rapes perpetrated on AAA.

Satisfied that the prosecution has discharged its duty to prove the guilt of the

appellants, the trial court rendered a decision on August 23, 2004 convicting appellants for the crime charged. It decreed that it cannot give credence to appellants' alibi since they failed to prove that it was impossible for them to be at the situs of the crime at the time it took place. The trial court also held that the testimonies given by the private complainants were likewise clear and convincing; hence, there was no reason to disbelieve them.

The decretal portion of the trial court's decision reads:

IN VIEW OF THE FOREGOING, judgment is rendered in favor of the People of the Philippines, and against all the accused:

1. Finding the accused Antonio Ortiz, Charito Chavez, and Edwin Dasilio (also spelled as Dacillo), guilty beyond reasonable doubt of Robbery with Multiple Rape, defined and penalized under Article 294, subsection 1 of the Revised Penal Code, as amended by R.A. 7659, and considering the aggravating circumstance that it was committed by an armed band, and with ignominy, sentences all of them, to death;
2. Ordering all of the accused to pay the spouses BBB and AAA the sum of P30,000.00 as actual damages, P50,000.00 as indemnity and P50,000.00 each as moral damages, for every rape committed by them as well as that committed by Jerry Doe, an indicted co-conspirator, to AAA, or P200,000.00 in all, solidarily, and to pay the costs.

SO ORDERED. ^[5]

On appeal, the Court of Appeals in a Decision dated July 18, 2007 affirmed the ruling of the trial court, with the modification that: (1) the penalty was reduced to *reclusion perpetua* without eligibility for parole pursuant to Republic Act No. 9346; ^[6] (2) actual damages was reduced to P28,082.00 as established from the testimony of AAA and BBB; and (3) exemplary damages was awarded in favor of AAA in the amount of P25,000.00.

The *fallo* of the appellate court's decision reads:

WHEREFORE, in view of the foregoing, the August 23, 2004 decision of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-3064 is **AFFIRMED** with **MODIFICATION**. As modified, the judgment is as follows: **Appellants Antonio Ortiz, Charito Chavez and Edwin [Dasilio] (also [spelled] as Dacillo) are found guilty beyond reasonable doubt of robbery with rape and are hereby sentenced to reclusion perpetua without eligibility for parole; to make reparation for the value of the items they unlawfully took in the amount of P28,082.00; to solidarily pay the offended parties P50, 000.00 as civil indemnity, solidarily, (sic); to solidarily pay AAA P50,000.00 each or a total of P200,000.00 as moral damages, and P25,000.00 as exemplary damages.**

Costs *de oficio*.

SO ORDERED.^[7]

Hence, the present appeal.

On June 4, 2008, this Court directed the parties to simultaneously file their supplemental briefs.^[8] Both the appellants and the Solicitor General manifested that they are dispensing with the filing of a supplemental brief as their positions have already been assiduously discussed before the appellate court.

Appellants anchor their appeal on the sole assignment of error that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF ROBBERY WITH MULTIPLE RAPE.^[9]

Appellants argue that the calculator, which was bartered by Dasilio, was not one of the items allegedly stolen from the spouses as the same was not specifically enumerated in the complaint filed by them. They assert that the inclusion of the calculator as a lost item was a mere afterthought to bolster the prosecution's theory that appellants perpetrated the crime as its possession can be easily traced to one of them.^[10]

Further, appellants assert that AAA's testimony regarding the alleged rapes should be taken with caution because she gave similar testimonies regarding the different incidents of rape. They maintain that a witness whose testimony is perfect in all aspects lays herself open to suspicion of having been coached or having memorized statements earlier rehearsed.^[11]

Finally, appellants maintain that their defense of alibi should not have been viewed immediately with disfavor since there are situations where an innocent person accused of committing a crime may really have no other defense but denial and alibi. Besides, the *onus probandi* in establishing the guilt of an accused lies with the prosecution, and conviction should not rest on the weakness of the defense.^[12]

For its part, the Office of the Solicitor General (OSG) counters that appellants' conviction was not anchored solely on the recovery of the calculator, and cites several valid reasons why their alibi was disregarded, including the fact that appellants were positively identified by the private complainants as the malefactors. The OSG further argues that appellants are now estopped from objecting to the admission of the calculator in evidence as they failed to do so when the prosecution presented SPO2 Huerno, Casiano and AAA to testify on the recovery of the calculator and its identification as one of the things stolen from the spouses.^[13]

The OSG adds that the testimony of AAA on the commission of the rapes is worthy of credence. It cites the ruling of this Court that when an alleged victim of rape says that she was raped, she says in effect all that is necessary to show that rape was