

EN BANC

[G.R. No. 171654, December 17, 2008]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDWIN
GAYETA Y ROBLO ALIAS AZCUNA, "FREDDIE," APPELLANT. D E C
I S I O N**

TINGA, J.:

Before us on automatic review is the Court of Appeals' decision^[1] dated 25 November 2005 in CA-G.R. C.R.- H.C. No. 00111 which affirmed with modifications the judgment^[2] of the Regional Trial Court (RTC) finding Edwin Gayeta (appellant) guilty of the crime of robbery with rape in Criminal Case No. P-5420 and of the crime of robbery in Criminal Case No. P-5422.

Appellant, together with a co-accused, was charged in two separate informations filed before the RTC of Pinamalayan, Oriental Mindoro, to wit:

CRIMINAL CASE NO. P-5422

That on or about the 24th day of [July 1995] at 9:00 o'clock in the evening, more or less, in [B]arangay [xxx],^[3] [P]rovince of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, while armed with a firearm, then and there willfully, unlawfully and feloniously and by means of violence and intimidation by hitting with fistic blows one BENJAMIN NICER and thereafter, with intent to gain, took and carried away cash money in the amount of TWO THOUSAND FIVE HUNDRED (P2,500.00) PESOS, more or less, from Conchita Nicer, to the damage and prejudice of the Offended Party in the aforementioned amount.

CONTRARY TO LAW.^[4]

CRIMINAL CASE NO. 5420

That on or about the 24th day of [July 1995] at 9:00 o'clock in the evening, more or less, in [B]arangay [xxx], province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, while armed with a firearm, then and there willfully, unlawfully and feloniously and by means of violence and intimidation, and with intent of gain, took and carried away cash money, wrist watch and ring with a total value of TEN THOUSAND (P10,000.00) PESOS from Spouses [AAA] and [BBB]^[5] to the damage and prejudice of the latter; that on the occasion of said robbery, the herein accused Freddie Gayeta in pursuance

of their conspiracy, did then and there willfully, unlawfully and feloniously and with lewd and unchaste design, have carnal knowledge of [AAA] against her will, to the damage and [prejudice of] the latter.

That in the commission of the crime, the aggravating circumstances of [evident premeditation], abuse of superior strength, dwelling and nocturnity are attendant.

CONTRARY TO [ART. 294], AS AMENDED [by] R.A. 7659.^[6]

The factual antecedents, as summarized by the prosecution, are as follows:

On 24 July 1995, at around 8:00 p.m., spouses Benjamin (Benjamin) and Conchita (Conchita) Nicer were drinking *tuba* when two armed men barged into their house. One of the armed men, later identified as Arnaldo Reano (Reano), was wearing a bonnet while the other, identified as appellant, was wearing a hat. The duo announced a hold-up and ordered the spouses to lie down on the floor. Conchita initially refused to lie down until appellant who incidentally had a bayonet in his other hand, poked a gun at her neck. Reano meanwhile kicked and boxed Benjamin until the latter bled and eventually lost consciousness. Appellant then ordered Conchita to hand over their money. Conchita went up to the room to get P2,500.00 and gave it to appellant. When the duo fled, the Nicer couple reported the incident to the *barangay* officials who immediately sought police assistance.

Meanwhile, spouses BBB and AAA were watching television in their living room when two armed men, also later identified as Reano and appellant, entered their house. They likewise ordered the spouses to lie down and asked them to produce their money. BBB asked AAA to get the money from their store, which was located some twenty (20) meters away from their house. Appellant accompanied AAA to the store while Reano stayed with BBB.^[7]

Upon reaching the store, AAA took P5,000.00 and gave it to appellant. While in the act of getting the money, appellant inserted one of his hands inside AAA's short pants. Afterwards, appellant ordered her to undress and lie down on the floor. Appellant also removed his pants, lay on top of AAA, and forcibly had sexual intercourse with her. They went back to the house where appellant also forced AAA to hand over several pieces of jewelry. AAA immediately told BBB that appellant had sexually abused her.^[8]

The duo fled but came back a few minutes later. Upon seeing them, BBB took the bayonet and tried to stab appellant, but it was deflected by a hard object and fell on the floor. BBB then tried to grab appellant's gun and they grappled for its possession. The gun fired, hitting BBB on his shoulder but he managed to successfully take possession of the gun and fired it twice in appellant's direction. He missed, however. BBB ran after appellant and saw the responding policemen.^[9] The two managed to escape.

SPO2 Mario Matining and SPO3 Ronaldo Morada had been conducting an investigation inside the house of the Nicers when they received a report that a robbery was then taking place at the house of Spouses AAA and BBB.^[10] They rushed to the other crime scene but failed to apprehend the suspects.^[11] They

recovered a scabbard with a "JR" marking and a bonnet with red stripes. SPO2 Matining identified the scabbard as owned by Reano, whose nickname was "Junior," having known and worked with the latter for some time.^[12]

The policemen conducted a pursuit operation in the early morning of 25 July 1995; they arrested Reano and appellant in their respective houses.

Spouses AAA and BBB, on the other hand, went to a hospital where they were subjected to a physical examination. Dr. Preciosa M. Soller examined AAA and issued the following findings in her medico-legal report:

1. scanty pubic hair
2. old healed complete laceration of hymen at 3 o'clock, 5 o'clock, 8 o'clock and 11 o'clock
3. multiparous [vagina] but rugae still present
4. 1-1/2 of thick mucoid, starchy discharge which upon microscopic exams were positive for epithelial and pus cells but no motile sperms were found
5. other parts of body unremarkable.^[13]

Likewise, upon examination, BBB was found to have sustained a gunshot wound.^[14]

For his defense, appellant claimed that he was conducting surveillance and patrol activities as a member of the *Brigada Lakas* in his *barangay* from 9:00 p.m. of 24 July 1995 to 5:00 a.m. of 25 July 1995 in Putatan, Muntinlupa City.^[15] He presented a record book containing his signature and the date and time he rendered community service. He pointed out that it was physically impossible for him to be in two different places at the same time.

Reano denied the charges against him and maintained that he was at home with his family in Barangay Tianin, Villapag-asa, Bansud, Oriental Mindoro the whole day of 24 July 1995.^[16]

After joint trial, the RTC found appellant guilty of robbery with rape while Reano was found guilty of robbery. The dispositive portion of the judgment states:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

In Criminal Case No. P-5422, the Court finds accused Edwin Gayeta alias "Freddie" GUILTY beyond reasonable doubt as principal of the crime of ROBBERY, defined and penalized under Art. 294 (5) of the Revised Penal Code with the aggravating circumstances of night time and in the dwelling of the offended party, without any mitigating circumstance, and hereby sentences him to an imprisonment of FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY OF PRISION CORRECCIONAL AS MINIMUM to TEN (10) YEARS AND ONE (1) DAY OF PRISION MAYOR as MAXIMUM, and to pay Sps. Benjamin and Conchita Nicer, in the amount of P2,500.00 as reparation for the stolen cash money.

Accused Arnaldo Reano, Jr. is hereby found NOT GUILTY in said criminal case, his [guilt] not having been proven beyond reasonable doubt and he

is hereby ACQUITTED, with cost *de oficio*.

In Criminal Case No. P-5420, accused Arnaldo Reano, Jr., in conspiracy with Edwin Gayeta alias "Freddie" is found GUILTY beyond reasonable doubt as principal of the crime of ROBBERY only, defined and penalized under Art. 294 (4) of the Revised Penal Code with the aggravating circumstances of night time and in the dwelling of the offended party without mitigating circumstance and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS, ONE (1) DAY of PRISION MAYOR as MINIMUM to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of RECLUSION TEMPORAL as MAXIMUM.

Accused Edwin Gayeta alias "Freddie" is found GUILTY beyond reasonable doubt as principal of the special complex crime of ROBBERY with RAPE defined and penalized under Art. 294 (2) as amended by R.A. No. 7659 with the aggravating circumstance of dwelling and there being no mitigating circumstance, hereby sentences him to suffer the most severe penalty of DEATH, together with the accessory penalty provided by law, and to indemnify the victim, [AAA], the amount of P50,000.00 without subsidiary imprisonment in case of insolvency.

In addition, accused Arnaldo Reano, Jr. and Edwin Gayeta alias "Freddie" is ordered to pay Sps. [AAA] and [BBB], jointly and severally, the total amount of P10,000.00 as reparation for the stolen cash money, wrist watch and ring, and to pay the cost of the suit.

In Criminal Case No. P-5421, accused Arnaldo Reano, Jr. is hereby found GUILTY beyond reasonable doubt as principal of the crime of illegal possession of firearm.

Considering that R.A. No. 8294 is favorable to the accused, he is hereby sentenced to an imprisonment of SIX (6) YEARS of *PRISION CORRECCIONAL* period and a fine of not less than FIFTEEN THOUSAND (P15,000.00) PESOS.

Accused shall be credited with the full term of his preventive imprisonment, if he [has] any to his credit pursuant to the provisions of [Art. 29 of the Revised Penal Code] as amended by R.A. No. 6127 and B.P. Blg. 85, provided that he shall have agreed to abide with the disciplinary rules imposed upon convicted prisoners, otherwise, he shall be entitled to only FOUR FIFTHS of said preventive imprisonment.

SO ORDERED.^[17]

In finding appellants guilty, the trial court relied mainly on the testimonies of the prosecution witnesses. It rejected appellants' respective alibis in the light of the positive identification made by prosecution witnesses.

As to the co-accused, Reano, Jr., who did not appeal his conviction by the lower court, its judgment must be deemed final and executory. On the other hand, the cases of appellant (Criminal Cases No. 5420 and 5422) were directly elevated to this Court for automatic review in view of the penalty imposed. However, in a resolution

dated 24 August 2004, the Court resolved to transfer the case to the Court of Appeals pursuant to our decision in *People v. Mateo*.^[18]

On 25 November 2005, the Court of Appeals affirmed the decision of the RTC. The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing, we hereby AFFIRM the Regional Trial Court's decision convicting appellant Edwin Gayeta alias "Freddie" of the crime of robbery with rape in Criminal Case No. P-5420 and of the crime of robbery in Criminal Case No. P-5422, with the following MODIFICATIONS:

A. Criminal Case No. P-5420

1. The appellant shall additionally pay the victim, [AAA], the sum of Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty-Five Thousand Pesos (P25,000.00)[,] as exemplary damages.
2. The reparation for the stolen properties that the trial court ordered is reduced from Ten Thousand Pesos (P10,000.00) to Six Thousand and Five Hundred Pesos (P6,500.00).

B. Criminal Case No. P-5422

1. In lieu of the imprisonment the trial court imposed, the appellant is sentenced to suffer the indeterminate penalty of four years (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and twenty-one (21) days of *prision mayor* as maximum.

SO ORDERED.^[19]

Giving full faith and credence to the identification of appellant by prosecution witnesses, the Court of Appeals affirmed the trial court's decision finding appellant guilty of the crime of robbery, as well as the complex crime of robbery with rape. Debunking the presence of nighttime as an aggravating circumstance in robbery, the appellate court modified the penalty in Criminal Case No. P-5422 from a maximum imprisonment of ten (10) years and one (1) day of *prision mayor* to eight (8) years and twenty-one (21) days of *prision mayor*.

On 28 March 2006, the Court required appellant and the Office of the Solicitor General (OSG) to simultaneously submit their respective supplemental briefs if they so desired.^[20] Both parties manifested that they were adopting their respective briefs filed before the appellate court.^[21] Thereafter, the case was deemed submitted for decision.

Appellant harps on the apparent inconsistencies in the testimonies of the witnesses regarding his identification as the perpetrator. He anchors his alibi on the claim that he was at Putatan in Muntinlupa City, which is nine hours away by land trip from Bansud, Oriental Mindoro where the incident occurred. Finally, appellant proffers that the alleged rape victim's account of the rape was not credible.^[22]