

SECOND DIVISION

[G.R. No. 125938, April 04, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOEL JANSON AND RICKY PINANTAO ALIAS "OGCO", APPELLANTS.

DECISION

QUISUMBING, J.:

On appeal is the decision^[1] of the Regional Trial Court, Branch XVII, Kidapawan, Cotabato promulgated on September 15, 1995, declaring appellants guilty of the crime of robbery with rape, and sentencing each of them to the penalty of *Reclusion Perpetua*, and ordering them to pay P30,000.00 and P10,000.00 in favor of AAA and ██████████, respectively.

The information filed on August 31, 1987 alleged:

That on or about the 24th day of March 1986, at about 10:00 o'clock in the evening at Barangay ██████████, Municipality of ██████████, Province of ██████████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JOEL JANSON, RICKY PINANTAO alias OGCO in company with alias ABDUL, alias PUTO, JOHN DOE and PETER DOE, who are still at large and whose names are still unknown, constituting a band and armed with long and short firearms, conspiring, confederating and mutually helping one another, with intent to gain, with force and intimidation, did then and there willfully, unlawfully and feloniously take and carry away, at gun point, cash money in the amount of P1,400.00, three (3) pieces of wrist watches, one (1) can coffee beans and one (1) chicken and if converted into cash it amounted to P1,845.00 or a total amount of Three Thousand Two Hundred Fourty (sic) Five Pesos (P3,245.00), Philippine Currency, owned by Mr. & Mrs. ██████████; and on the same occasion, the above-named accused, with the use of force, violence and intimidation and armed with firearms, did then and there willfully, unlawfully and feloniously take turns in having carnal knowledge with one AAA, a girl about 13 years old, daughter of Mr. & Mrs. ██████████, against her will and consent, to the damage and prejudice of the aforesaid persons in the aforesaid amount.

All contrary to law with the aggravating circumstances of dwelling, nighttime and the use of unlicensed firearms.

Kidapawan, Cotabato, August 31, 1987.^[2]

On December 9, 1987, both accused pleaded not guilty.^[3] Trial then ensued.

For the prosecution, the following witnesses were presented: ██████████, AAA,

██████████, ██████████, Dr. Cesar Manuel, Atty. Jorge Zerrudo, and police officers Pedro Idpan, Jr. and Ortello Achas.

██████████ testified that on March 24, 1986 at about 10:00 in the evening, the accused with six (6) other companions asked for food. She asked them to come back the following day but they threatened to strafe and burn the house if they are not let in. The accused then entered the house and once inside, made all occupants lie down before covering them with a blanket. The accused demanded money from ██████████ and she gave them P1,000. She was brought to the kitchen and someone guarded her. For a while, there was complete silence. Then she went inside the room of her daughter AAA, and saw her totally naked. Her daughter told her that she was raped. She gave an additional P1,000 to the accused who also got two (2) wristwatches worth P690.00, two (2) Seiko watches worth P443.00, a chicken worth approximately P20.00, and one can of coffee beans. The appellants were speaking among themselves in the Manobo dialect.

██████████ identified appellants Janson and Pinantao as two of the men who robbed their house and raped her daughter that night. She testified that she knew appellants since they were their neighbors at ██████████. She also claimed that while Janson and Pinantao were masked during the incident, she recognized them through their body built, physical appearance, and their voices while speaking in Manobo.^[4]

AAA^[5] testified that she was thirteen (13) years old at the time of the incident. She corroborated the testimony of her mother and added that after the group entered their house and hogtied her father, the appellants entered her room and turned off the lights inside. Someone poked a gun at her. Then Ricky Pinantao, who had an amputated right hand; Joel Janson, and Abdul Jona raped her. In open court she identified appellants Pinantao and Janson as two of her abusers, claiming that they were previously known to her. She claimed that she knew Ricky because he was their neighbor and that he often went to their house to buy bananas, while she knew Joel because he often went to their barangay to visit his relatives. She likewise claimed that while the appellants turned off the lights in their house, there was a full moon that night which gave her enough light to see her abusers. She immediately told her parents that she was raped, and she underwent medical examination the following day.^[6]

██████████ testified that on the day of the robbery he was only nine (9) years old. He said he recognized appellants Janson and Pinantao because they were their neighbors. On cross-examination, he admitted that the four robbers were masked, but the witness insisted that he was able to recognize Pinantao with his cut wrist and mustache, and also Janson because of his built.^[7]

██████████ testified that on March 24, 1986, their house was robbed and his daughter was raped. He admitted that during the incident, he was not able to identify the perpetrators since he was hogtied face downwards, and he was covered with a blanket.^[8]

The prosecution also presented DR. CESAR MANUEL. He testified that the physical examination he conducted on AAA a day after the incident revealed that there were lacerations between the labia majora, labia minora, and the prepuce caused by a sharp instrument. There was also the presence of seminal fluid in the vagina of the

victim indicating that there was actual sexual contact.^[9]

ATTY. JORGE ZERRUDO testified that he only assisted appellant Janson in waiving his right to counsel, and that the sworn statement was already prepared when he signed it. Nevertheless, he asked appellant Janson if the contents of the statement were true, and whether he wished to be assisted by counsel.^[10]

P/SGT. PEDRO IDPAN, JR. testified that he was a member of the Integrated National Police (INP), Kidapawan, Cotabato, assigned in the investigation of the crime of robbery with rape involving appellant Joel Janson. He identified Janson's sworn statement saying it was signed by him without being forced. He admitted that during the investigation, there was no lawyer present and that Atty. Zerrudo signed the affidavit only after the investigation was conducted. He claimed, however, that prior to the custodial investigation, he informed Janson of his constitutional rights and that despite being a Manobo, Janson fully understood Cebuano,^[11] which was the language used during the custodial investigation.

Finally, P/SGT. ORTELLO ACHAS testified that he was at the police station when ██████████ appeared on June 24, 1986, and requested that she be accompanied to the jail to identify the person who was earlier apprehended and detained. She identified the person as appellant Joel Janson. On cross-examination, P/Sgt. Achas admitted that he was not the one who conducted the investigation on the person of Joel Janson and that he could not remember whether appellant Janson who was then sixteen (16) years old and a Manobo was assisted by a lawyer. Neither could he remember whether a mental or physical examination was made upon Janson.^[12]

For the defense, the following witnesses were presented: Datu Amado Pinantao, Atty. Francis Palmones, Jr., and the two appellants: Joel Janson and Ricky Pinantao.

DATU AMADO PINANTAO testified that he is an uncle of Ricky Pinantao, and that they belong to a cultural minority group, the Manobos. He admitted that they lived near the house of ██████████. He said that on March 24, 1986, appellant Pinantao was in their house and that it was impossible for him to be elsewhere because earlier, in 1985, Pinantao was hacked by one Bernardo Agio resulting in the amputation of Pinantao's hand. He averred that Pinantao could not go out of their house because at the time of the incident, the wound he sustained was not yet completely healed.^[13]

ATTY. FRANCIS PALMONES, JR., testified that he notarized the sworn statement^[14] of the appellant Janson on April 3, 1987, marked as Exh. 4 and that Janson affirmed and understood the contents of said affidavit because it was translated to him in the Visayan vernacular.^[15]

Appellant JOEL JANSON, for his own defense, declared that he was assisted by a lawyer when he was investigated and made to sign a sworn statement before the police on June 26, 1986. But he denied the accusation against him and claimed that he was not assisted by counsel during the custodial investigation. He claimed that he did not know how to read or write, and that he was made to execute a sworn statement before a certain policeman named Ulep. Only after the investigation did

Atty. Zerrudo sign the document. On cross-examination, he said that he was put in jail for another crime, robbery.^[16]

Appellant RICKY PINANTAO also denied the accusation against him, saying that he did not know AAA and [REDACTED]. He claimed that he was arrested in March 1987 because he was implicated by appellant Janson as one of the perpetrators of the crime, per instruction of one Cristina Agio.^[17]

On September 15, 1995, the Regional Trial Court rendered judgment thus:

WHEREFORE, prescinding from all of the foregoing considerations, the Court hereby pronounces the accused Ricky Pinantao alias Ogco and Joel Janson guilty of the crime of Robbery with Rape beyond reasonable doubt and accordingly, sentences Ricky Pinantao and Joel Janson each to undergo a prison term of *Reclusion Perpetua* and to indemnify AAA the sum of P30,000.00; to indemnify [REDACTED] the sum of P10,000.00. No award of other damages in the absence of proof thereof.

SO ORDERED.^[18]

Both appellants filed their notices of appeal and submitted separate appellant's briefs. Appellant Ricky Pinantao averred that:

I

THE TRIAL COURT ERRED IN ADMITTING THE ALLEGED EXTRA-JUDICIAL 'CONFESSION' OF APPELLANT JOEL JANSON, SAID EVIDENCE BEING INADMISSIBLE BECAUSE IT WAS OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED AND SHOULD NOT HAVE TAKEN AGAINST HIS CO-ACCUSED RICKY PINANTAO, UNDER THE INTER ALIOS ACTA RULE AS AGAINST HIS CO-ACCUSED RICKY PINANTAO EITHER FOR PROBABLE CAUSE AND THE RESULTANT CONVICTION OF RICKY PINANTAO;

II

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES OF THE [REDACTED] FAMILY WHICH WERE SHOT THROUGH WITH MATERIAL CONTRADICTIONS, INCONSISTENCIES AND UNNATURAL TESTIMONIES; and

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE PROSECUTION MISERABLY FAILED TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, AND THAT IN FACT THERE WAS A REASONABLE DOUBT IN THE IDENTITIES AND GUILT OF BOTH ACCUSED.^[19]

Appellant Joel Janson, for his part, averred that:

I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT JOEL JANSON WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES; and

II

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT JOEL JANSON GUILTY OF THE CRIME OF ROBBERY WITH RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[20]

Simply put, the issues in this case are as follows: (1) Was the guilt of appellants Janson and Pinantao proved beyond reasonable doubt? (2) Is the extrajudicial confession of Janson admissible as evidence for the prosecution? and (3) May said confession be used against co-accused Pinantao?

We find the appeal impressed with merit. Appellants should be acquitted.

Generally, the findings of the trial court concerning credibility of witnesses are accorded great weight and respect because it had the opportunity to observe closely in the first instance the demeanor of the witnesses presented before it.^[21] However, when the trial court overlooked or misunderstood significant contrarities in the testimony of witnesses which if considered would materially affect the result of the conviction, such findings will not bind this Court.^[22] Such is the case at hand.

Consistent with the testimonies of █████, AAA, █████, and █████, we can gather that what transpired that fateful night is as follows:

In the evening of March 24, 1986, six (6) men came to the house of █████ █████ threatening to strafe and burn it should they not be let in. Once inside, the masked group of men turned off the lights, hogtied █████, pushed him facedown and covered him with blankets. They asked for money and █████ gave them P400.^[23] █████ was then led to the kitchen. During this time, her daughter AAA was raped^[24] by four men. Then AAA was led to the kitchen where the culprits threatened to abduct her if her mother would not give them money. █████ then gave them an additional P1,000 while the group took three wristwatches, one can of coffee, and one chicken. Then they left the house, all the while speaking in the Manobo dialect.^[25]

While the testimonies of the witnesses up to this point are credible and undisputed, it is unfortunate that the certainty ends here.

AAA testified in open court that she was raped by Ricky alias Ogco Pinantao, Joel Janson, and Abdul Jona.^[26] She said that she came to know Ricky Pinantao because he is a neighbor and that he often goes to their house to buy bananas. She also said that she came to know Joel Janson because he is always going to █████ since he has a relative there.^[27]

Upon cross-examination, however, AAA admitted that she was not certain of the