

## SECOND DIVISION

[ G.R. Nos. 112449-50, July 31, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCELINO SAN JUAN Y SALAZAR, ACCUSED-APPELLANT.**

### D E C I S I O N

#### **QUISUMBING, J.:**

On appeal is the joint decision dated September 1, 1993, of the Regional Trial Court of Kalookan City, Branch 129, convicting appellant (1) of robbery with rape in Criminal Case No. C-41463 and (2) highway robbery in Criminal Case No. C-41464. He was sentenced in the first case to suffer the penalty of *reclusion perpetua*; and in the second case, to the indeterminate penalty of imprisonment from 14 years, 8 months and 1 day as minimum to 17 years, 4 months and 1 day as maximum, of *reclusion temporal*.

The facts are as follows:

In an Information dated November 11, 1992, the Office of the City Prosecutor of Kalookan City, charged herein appellant, Marcelino San Juan, with robbery with rape allegedly committed as follows:

"That on or about the 6<sup>th</sup> day of November 1992, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and by means of force and intimidation employed upon the person of one GINA ABACAN y SANCHEZ, did then and there wilfully, unlawfully and feloniously take, rob and carry away the following articles, to wit:

Cash money worth	P40.00
Seiko 5 watch	P500.00
earring gold	P500.00
gold lady's ring	<u>P1,000.00</u>
Total	P2,040.00

with the total amount of P2,040.00 belonging to said GINA ABACAN y SANCHEZ, while the latter was walking along Gardenia street, BF Homes,. Phase III, Kalookan City; that on the occasion of said robbery, said accused, through the use of a knife, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said GINA ABACAN, against her will.

"Contrary to law."<sup>[1]</sup>

An Information for violation of Presidential Decree No. 532 was also filed against Marcelino, the accusatory portion of which reads:

"That on or about the 6<sup>th</sup> day of November 1992, in Kalookan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and by means of force and intimidation employed upon the person of one ANGELA ONG y YANGUES, did then and there wilfully, unlawfully and feloniously take, rob, and carry away the following articles, to wit:

"Cash money	P300.00
"College ring (gold)	P1,500.00
"Seiko lady's wristwatch	P6,000.00
"Earrings (gold)	<u>P2,200.00</u>
Total P10,000.00	

with the total amount of P10,000.00 belonging to said ANGELA ONG y YANGUES, while the latter was walking along Gardenia St., BF Homes, Phase III, a public highway, this city, to the damage and prejudice of said ANGELA ONG y YANGUES in the aforementioned total amount of P10,000.00

"Contrary to law."<sup>[2]</sup>

On December 16, 1992, appellant was arraigned, with the assistance of counsel, and entered a plea of "Not Guilty" to both charges.<sup>[3]</sup> He then waived pre-trial and agreed to a joint trial of both cases, considering that he alone stood charged in both offenses.

The prosecution's evidence in Criminal Case No. C-41463 shows that on November 6, 1992, at about 9:30 in the evening, private complainant Gina Abacan was walking home along Gardenia St., BF Homes, Phase 3, Kalookan City. She had just come from Dr. Carlos Lantin College in Tandang Sora, Quezon City where she was a senior nursing student. One meter ahead of her, a man was likewise walking in the same direction. Suddenly, the man ahead stopped. Thinking that he was just going to answer a call of nature, she ignored him and continued walking. When she came near him, however, he suddenly grabbed her and pointed a knife at her neck.<sup>[4]</sup> He then dragged her to a grassy vacant lot near the road, keeping the knife pointed at her, and warned her not to shout under pain of death. He asked for her money and jewelry.<sup>[5]</sup> Due to extreme fear, she gave him all the items mentioned in the charge sheet in Criminal Case No. C-41463, with a total value of P2,040.00.

Shortly thereafter, appellant told her to kneel and bend over, with her face almost touching the ground ("*pinatuwad ako sa damuhan*").<sup>[6]</sup> Still keeping the knife pointed at her, appellant pulled down her pants and panties, touched her private parts, and mashed her breasts. Private complainant pleaded with appellant not to

rape her, but appellant threatened her with the knife if she made any noise.<sup>[7]</sup> Appellant then forcibly thrust his penis into her vagina and had carnal knowledge of her, dog-style.<sup>[8]</sup> After satisfying his lust, appellant warned her to keep quiet about the incident.

Upon reaching home, Gina reported the incident to her brother, Erwin Abacan, who brought her to the police station where she reported the robbery with rape committed against her.<sup>[9]</sup>

On November 7, 1992, Gina submitted herself to a medical examination at the PNP Crime Laboratory. The medico-legal examiner made the following findings and conclusions:

"GENITAL:

"There is abundant growth of pubic hair. *Labia majora* are full convex and coaptated with the dark brown hypertrophied *labia minora* presenting in between. On separating the same are disclosed a fresh laceration at the posterior fourchette and an elastic, fleshy type hymen with deep, fresh lacerations at 3, 7, and 9 o'clock. External vaginal orifice offers strong resistance to the introduction of the examiner's index finger. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency with moderate amount of whitish secretion.

"Vaginal and peri-urethral smears are negative for...spermatozoa.

"CONCLUSION:

"Subject is in non-virgin state physically.

"There are no external signs of recent application of any form of trauma."<sup>[10]</sup>

In Criminal Case No. C-41464, victim Angela Ong testified that she was walking home on November 6, 1992, at about 9:15 p.m., along Gardenia St., BF Homes, Phase 3, Kalookan City,<sup>[11]</sup> having come from Ramon Magsaysay High School (Manila) where she worked as a head teacher. Suddenly a man, whom she identified in open court as appellant, repeatedly tried to lasso her neck with a piece of abaca rope. She tried to evade and as a result, fell to the ground, suffering bruises as a result.<sup>[12]</sup> Appellant then grabbed her, twisted her neck, and pointed a knife at her. She was then brought to a nearby vacant lot, where she was ordered to bend over, face down to the ground, and give him all her money and jewelry. She complied at knifepoint, with appellant all the while asking her all sorts of questions about her occupation and her family.<sup>[13]</sup> Appellant then shook her hand and asked her to accept him as a "friend."<sup>[14]</sup> She was then made to take the longer, circular way home.

Upon arriving home, Angela sought the assistance of her neighbor and prosecution witness, Antonio Borbon. The latter accompanied her to the police station where she gave her sworn statement, a few minutes ahead of Gina, private complainant in Criminal Case No. 41463.<sup>[15]</sup>

The two successive crimes were brought to the attention of the BF Homeowners Association. Its members then tried to assist the police in the manhunt for the malefactor.

On November 9, 1992, at around six o'clock in the evening, appellant and some companions, arrived at the house of prosecution witness Lilia Kibir, then president of the BF Homeowners Association, asking for the address of the "rape victim." They purportedly wanted to help the victim identify the culprit.<sup>[16]</sup> Lilia dismissed them, saying she did not know the victim's address. Five minutes later, appellant and a companion returned to Lilia's place, asking again for the address of the "rape victim." Appellant claimed that he wanted to help the raped woman identify her ravisher. Since there was a brown-out, Lilia told them to return when the lights were back.

At around 9:30 p.m. of the same date, appellant and another companion returned to the Kibir residence. Appellant was very eager to know where the rape victim's house was.<sup>[17]</sup> He claimed he could be a witness for the victim, having seen the incident.<sup>[18]</sup> In view of his insistence, Lilia and Antonio Borbon brought appellant and his companion to Gina's house. It was there that Gina told Lilia that appellant had robbed and sexually assaulted her three (3) nights earlier.<sup>[19]</sup> The police were summoned and appellant was arrested. Before the law enforcers could haul off appellant for investigation, Angela arrived and positively pointed to him as the person who had robbed her on November 6, 1992.

Appellant denied any involvement in the incidents of November 6, 1992. Appellant claimed that he was at home on said date, busy repairing his motorized tricycle from 1:00 p.m. to 11:30 p.m.<sup>[20]</sup> One of his regular fares, Violeta Guilalas arrived at his house at around 9:00 p.m. to ask why he had failed to fetch her and drive her home that evening.<sup>[21]</sup> She found him tinkering with his tricycle.

Appellant claimed that on November 9, 1992, a certain Butch Arciaga arrived and asked him to repair his tricycle. They proceeded to Butch's place and appellant fixed the tricycle.<sup>[22]</sup> That evening, Butch told him that there was another tricycle to be repaired in another house. Appellant agreed to go with Butch. They went to a certain house where several people were gathered, including Gina Abacan, Antonio Borbon, and others. Angela Ong was nowhere around. Suddenly, several policemen arrived and arrested him. He was brought to the police station where the police boxed him. They brought him next to a police safehouse where he was tortured and forced to admit having robbed and raped her. He never saw Angela, either at Gina's house or at the police station.<sup>[23]</sup>

Violeta Lusung Guilalas, a moneychanger working in Novaliches, Quezon City also testified on appellant's behalf. She claimed that appellant regularly fetched her every Friday afternoon with his tricycle and transported her home. On the evening of November 6, 1992, appellant failed to fetch her.<sup>[24]</sup> On her way home, she passed by appellant's house at around nine o'clock in the evening and found him repairing his tricycle. Appellant apologized to her for failing to fetch her and invited her to have dinner with his family. She accepted the invitation and stayed until 9:30 p.m.<sup>[25]</sup> When she left, appellant was still engaged in making repairs to his vehicle.

Appellant's spouse, Priscila San Juan, corroborated the testimonies of appellant and Violeta.<sup>[26]</sup>

On September 1, 1993, the trial court rendered its decision in the two criminal cases, the decretal portion of which reads:

"WHEREFORE, premises considered, this Court finds the accused Marcelino San Juan y Salazar in Criminal Case No. C-41463 guilty beyond reasonable doubt of Robbery with Rape as defined and penalized under Article 294, paragraph 2 of the Revised Penal Code, as amended by P.D. No. 767. Accordingly, he shall serve the penalty of *reclusion perpetua*, with all the accessory penalties under the law.

"Pursuant to Section 7, Rule 117 of the 1985 Rules on Criminal Procedure, as amended, the accused shall be credited with the period of his preventive detention.

"By way of civil liability, and pursuant to Article 2202 of the Civil Code, the accused shall indemnify private complainant Gina Abacan in the amount of P2,040.00 representing the value of articles and cash forcibly taken from her, without subsidiary imprisonment in case of insolvency.

"By way of moral damages under Article 2217 of the Civil Code, the accused shall also pay private complainant Gina Abacan the sum of P50,000.00, without subsidiary imprisonment in case of insolvency.

"As regards Criminal Case No. C-41464, this Court also finds the accused Marcelino San Juan y Salazar guilty beyond reasonable doubt of violation of the Anti-Highway Robbery Law, as defined and penalized under Section 2(e) and Section 3 (b) of P.D. No. 532. Accordingly, he shall serve the indeterminate penalty of imprisonment from 14 years, 8 months, and 1 day of *reclusion temporal*, as minimum, to 17 years, 4 months, and 1 day of *reclusion temporal*, as maximum, with all the accessory penalties under the law.

"Pursuant to Section 7, Rule 117 of the 1985 Rules of Criminal Procedure, as amended, the accused shall be credited with the period of his preventive detention.

"By way of civil liability, and pursuant to Article 2202 of the Civil Code, the accused shall indemnify private complainant Angela Ong in the amount of P9,800.00, representing the value of articles and cash forcibly taken from her, without subsidiary imprisonment in case of insolvency.

"SO ORDERED."<sup>[27]</sup>

On appeal before this Court, appellant assigns the following errors:

- I. THE TRIAL COURT ERRED IN NOT FINDING THAT BECAUSE OF THE SUBSTANTIAL AND MATERIAL INCONSISTENCIES IN THE TESTIMONIES AND STATEMENTS OF THE PROSECUTION WITNESSES THE PROSECUTION FAILED TO ESTABLISH GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.