

EN BANC

[G.R. No. 125539, July 27, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFONSO PATALIN, JR., ALEX MIJAQUE, AND NESTOR RAS,
ACCUSED-APPELLANTS.**

D E C I S I O N

MELO, J.:

Accused-appellants Alex Mijaque and Alfonso Patalin, Jr. were charged before Branch 25 of the Regional Trial Court of the 6th Judicial Region stationed in Iloilo City, with the crime of robbery.* The Amended Information dated October 11, 1985 charged:

That on or about August 11, 1984, in the municipality of Lambunao, province of Iloilo, Philippines, and within the jurisdiction of this Court, the above named two (2) accused, conspiring, confederating and cooperating with three (3) others whose identities are still unknown and who are still at large, armed with bladed weapons by means of force, violence and intimidation, taking advantage of the nighttime to better realize their purpose, and in the dwelling of the offended party, did then and there wilfully, unlawfully and feloniously take, steal and carry away, with intent to gain, cash amount of Three Hundred (P300.00) Pesos, Philippine Currency, owned by the victim Corazon Aliman and the following personal property: one (1) adjustable wrench, one (1) vise grip, one (1) screw driver, one (1) pair of levis pants, one (1) travelling bag and one (1) wallet containing ten (P10.00) pesos, with a total value of Four Hundred (P400.00) Pesos, Philippine Currency, owned by the victims Reynaldo Aliman and Josephine Belesario, the over all total of cash and personal property being SEVEN HUNDRED (P700.00) PESOS, Philippine Currency, without the consent of the above-mentioned offended parties and to their damage and prejudice in the aforestated amount; that by reason or on the occasion of said Robbery, the above named two (2) accused did then and there hack victim Reynaldo Aliman twice hitting him and inflicting wounds which required medical attendance of more than thirty (30) days, as well as inflict physical injuries to the other victims Corazon Aliman and Josephine Belesario causing them to sustain injuries requiring medical attendance for several number of days.

CONTRARY TO LAW.

(pp. 92-93, II Record.)

In a Second Amended Information also dated October 11, 1985 and docketed as Criminal Case No. 18305, accused-appellants Alex Mijaque, Alfonso Patalin, Jr., and Nestor Ras were charged before the same court with the crime of robbery with multiple rape, thusly:

That on or about August 11, 1984, in the municipality of Lambunao, province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named three (3) accused, with deliberate intent, and without any justifiable motive, conspiring, confederating and working together with Richard Doe, Philip Doe and Robert Doe who are still at large, all armed with firearms and other deadly weapons, thereby performing [sic] themselves into a band, entered the dwelling of Jesusa Carcillar, and once inside, with intent to gain and with violence against, and/or intimidation of persons, did then and there wilfully, unlawfully and feloniously take, steal and carry away Five Hundred (P500.00) Pesos in cash, one (1) ring worth Two Thousand (P2,000.00) Pesos, one (1) pair of earrings worth One Thousand (P1,000.00) Pesos, and one (1) Seiko wrist watch worth Three Thousand (P3,000.00) Pesos, making a total of Six Thousand Five Hundred (P6,500.00) Pesos, against the will and/or consent of the owner; that on the occasion thereof, the above-named three (3) accused, conspiring and working together with their companions who are still at large, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Perpetua Carcillar, Juliana Carcillar, Rogelia Carcillar and Josephine Belesario, against their will and consent.

CONTRARY TO LAW.

(pp. 90-91, II Record.)

Upon arraignment on November 12, 1985, accused-appellants entered a plea of "not guilty" to both crimes charged (p. 103, II Record).

After trial on the merits, a joint judgment was rendered, disposing:

Wherefore, premises considered there being sufficient and satisfactory proof showing that the accused in these two cases are guilty beyond reasonable doubt of the charges filed against them, they are hereby sentenced as follows:

a) In Crim. Case No. 18376 for Robbery with Physical Injuries, accused Alfonso Patalin, Jr. and Alex Mijaque are penalized to suffer the indeterminate penalty of imprisonment of Ten (10) years, and One (1) day of Prision Mayor, as minimum, to Seventeen (17) years and Four (4) months of Reclusion Temporal, as maximum, to indemnify Corazon Aliman the amount of P700.00 representing the value of her property robbed from her and also to indemnify Reynaldo Aliman the amount of P8,000.00 representing the expenses he incurred for his medication and hospitalization due to the wounds he suffered.

b) In Criminal Case No. 18305 for Robbery with Multiple Rapes, accused Alfonso Patalin, Jr., Alex Mijaque and Nestor Ras are sentenced to a death penalty and to indemnify the members of the Carcillar family the amount of P6,500.00 representing the cash and articles taken from them.

In both cases the accused are also ordained to pay the costs.

SO ORDERED.

(p. 80, Rollo.)

The trial court arrived at the aforestated conclusion based on the following findings:

Criminal Case No. 18376

The crime of robbery (with physical injuries) was indeed committed by accused-appellants Alfonso Patalin, Jr. and Alex Mijaque, as well as by their unidentified companions, based on the positive identification made by complaining witness Corazon Aliman, and corroborated by her son Reynaldo and the latter's half sister Josephine Belisario (p. 77, Rollo).

Criminal Case No. 18305

Accused-appellants Alfonso Patalin, Jr., Alex Mijaque, and Nestor Ras, as well as an unidentified companion, acted in concert to commit the crime of robbery with multiple rape. They were positively identified by the following witnesses: Juliana Carcillar who was raped twice by Alex Mijaque; Josephine Belisario who was raped once by Alex Mijaque; Rogelia Carcillar who was raped by Alex Mijaque; and Perpetua Carcillar, who was raped by Nestor Ras, after Alfonso Patalin, Jr. failed in his attempt to rape her. Accused-appellant Patalin was likewise identified by Reynaldo Aliman who personally knew him as a former barangay-mate for along time, as well as by Corazon Aliman, mother of Reynaldo. The identification of accused-appellants was facilitated and aided by a bright full moon and due to the fact that they tarried in the crime scene for a long period of time, thus allowing their victims to imprint in their memory the countenance or visage of accused-appellants. Said positive and clear identification by the complaining witnesses, who were not shown to have any ill motive to falsify the truth and to implicate accused-appellants, prevails over the latter's defense of denial. Band, nocturnity, and dwelling, were likewise appreciated against accused-appellants (pp. 78-79, Rollo).

The errors assigned by accused-appellants in their individual briefs are summarized as follows: (1) The trial court erred in finding that accused-appellants are responsible for the crimes charged; (2) The trial court erred in convicting accused-appellant Patalin notwithstanding the fact that the latter was arrested without a warrant; (3) Assuming without conceding that accused-appellants (Patalin and Ras) committed the crimes charged, the trial court erred in imposing the penalty of death as the same was suspended upon the ratification of the 1987 Constitution (pp. 86, 146, 204, Rollo).

The prosecution's version of the August 11, 1984 incident, based on the testimony of prosecution witnesses Dr. Edgardo Carmelo, Dra. Leticia Sitchon Santiago, Reynaldo Aliman, Corazon Aliman, Josephine Belisario, Juliana Carcillar, Rogelia Carcillar, and Perpetua Carcillar, is summarized in the Solicitor General's consolidated Brief, as follows:

At about 7:30 in the evening of August 11, 1984, while Reynaldo Aliman, his half sister Josephine Belisario, and their mother Corazon Aliman were having a conversation inside their house at Barangay Lumanay, municipality of Lambunao, province of Iloilo, appellant Alfonso Patalin, Jr.,

who was outside the fenced perimeter of said house, called out Reynaldo Aliman by his nickname and asked the latter to let him and the other persons with him in (pp. 5-6, TSN, Dec. 16, 1986).

Reynaldo Aliman opened the window and, because of the moonlight, saw appellant Alfonso Patalin, Jr. with (2) other persons. Appellant Alfonso Patalin, Jr. asked again Reynaldo Aliman to let them in (pp. 7-8, *ibid.*). Reynaldo Aliman opened the gate and Alfonso Patalin together with his companions, one of whom is appellant Alex Mijaque, entered the premises (pp. 8, 10-11, *ibid.*). Immediately upon entering, appellant Alfonso Patalin, Jr. pointed the beam of his flashlight at Reynaldo Aliman. At this juncture, appellant Alex Mijaque hacked Reynaldo Aliman twice with a bolo hitting the latter at the neck, right arm, and the chest (pp. 14-16, *ibid.*). Thereupon, Reynaldo Aliman immediately ran away (p. 17, *ibid.*).

Corazon Aliman and Josephine Belisario, who went to the balcony of their house, witnessed the hacking incident and the former shouted for help (p. 6, TSN, July 21, 1987; pp. 8-9, TSN, June 30, 1988). Two of the assailants, one of whom is appellant Alex Mijaque, pushed Corazon Aliman and Josephine Belisario inside their house, covered their mouth and told them not to make any noise. Later, appellant Alex Mijaque dragged Josephine Belisario to the house of the latter's aunt (sister of Corazon Aliman) which is beside their house. The other man stayed put and while holding a double-bladed knife, threatened to kill Corazon Aliman if the latter will not give him money. After Corazon Aliman gave him three hundred pesos (P300.00) cash, he ransacked the house and took one (1) wrist watch, one (1) vise grip, one (1) screw driver, one (1) pair of Levi's trousers, one (1) travelling bag, and one (1) wallet containing ten pesos (P10.00); the total value thereof is seven hundred pesos (P700.00) inclusive of the three hundred pesos (P300.00) cash. Thereafter, the man also dragged Corazon Aliman to her sister's house (pp. 6-8, TSN, July 21, 1987; pp. 11-12, TSN, June 30, 1988).

Josephine Belisario, who was dragged by Alex Mijaque to her aunt's house which is just twenty (20) meters away, saw six (6) persons, one of whom is appellant Alfonso Patalin, Jr., outside the house of her aunt. Josephine Belisario was forced to call out her aunt's name and ask that the door be opened for her. While the door was being opened, it was kicked by one of the six (6) persons. Alfonso Patalin immediately went in, boxed the aunt of Josephine Belisario on the body and announced that they are staging a hold-up. The other companions of appellant Alfonso Patalin, Jr., including appellant Alex Mijaque, who were armed with knives, a bolo, and a gun also went in and restrained Josephine Belisario's cousins, namely Rogelia, Juliana, Perpetua, Roy, and Victoriano, who are all surnamed Carcillar (pp. 11-15, TSN, June 30, 1988; p. 11, TSN, June 29, 1989). Josephine Belisario together with her aunt and cousins were all forced to lie face down on the floor of the sala (p. 15, TSN, June 30, 1988; p. 7, TSN, Feb. 15, 1990). Appellant Alfonso Patalin got hold of Mrs. Carcillar (Josephine Belisario's aunt and the mother of her cousins), kicked and boxed the latter and exclaimed: "Money, money". "It is money we want." Appellant Alfonso Patalin forced

Mrs. Carcillar into a room where the latter gave him money (p. 16, TSN, June 30, 1988; pp. 7-8, February 15, 1990). Then, appellants and their companions seized the following personalities of the Carcillars: (1) one Seiko 5 wristwatch worth three thousand pesos (P3,000.00), (2) two (2) pairs of lady's rings worth two thousand (P2,000.00), (3) one (1) pair of earrings, and (4) two (2) travelling bags (p. 9, TSN, February 15, 1990).

Rogelia Carcillar was brought outside their house by appellant Alex Mijaque who was armed with a butcher's knife and threatened to kill her if she will not lie down. Because of fear, she did as she was told (pp. 10, 16-17, TSN, February 15, 1990). Appellant Alex Mijaque forcibly removed her underwear and placed himself on top of Rogelia. She tried to resist but appellant Alex Mijaque pressed the tip of his knife at the former's neck and succeeded in having sexual intercourse with her (pp. 11-12, *ibid.*). Thereafter, appellant Alex Mijaque brought her inside the house and ordered her to lie face down on the floor again (pp. 13-14, *ibid.*). Then, one of the companions of appellant Alex Mijaque who was armed with a gun took her outside and brought her to a place not far from where she was raped (p. 14, *ibid.*). This man, at the point of a gun, threatened to kill her if she will not obey his orders. Rogelia Carcillar, who feared for her life, was left with no choice but to obey the man's orders. There, she was raped for the second time by this gun-wielding man (pp. 15-16, *ibid.*). While Rogelia Carcillar was being raped, appellant Alfonso Patalin was also outside the house standing on guard (p. 18, *ibid.*).

Juliana Carcillar was likewise brought outside the house by appellant Alex Mijaque who, with his knife, tried to rape her but he initially failed because of her resistance. This angered appellant Alex Mijaque and he tried to kill Juliana Carcillar by stabbing the latter but was prevailed upon not to do so by one of his companions (pp. 12-15, TSN, June 29, 1989).

Appellant Alex Mijaque, after delivering fist blows on the body of Juliana Carcillar, turned her over to one of his companions who was in the garden outside the house and armed with a gun. This man threatened her with the gun and mauled her. She was overpowered and he undressed her. He inserted his finger on her sex organ and eventually succeeded in having sexual intercourse with her (pp. 15-17, *ibid.*). Then, this companion of appellant Alex Mijaque brought Juliana Carcillar back inside the house and ordered to look for money. When she told him that they have no more money, he kept on harming her. In the course thereof, he found and took a Seiko wristwatch owned by Perpetua Carcillar. Then, he brought her outside the house again where he had a brief conversation with appellants Nestor Ras and Alfonso Patalin. She was then brought back inside the house and ordered to lie face down on the floor again. While at this position, appellant Alex Mijaque approached her and brought her outside the house. She refused to obey appellant Alex Mijaque's order to lie down on the ground so he pushed her downwards. Her strength gave out and he succeeded in raping her twice. She was then brought back inside the house (pp. 18-21, TSN, June 29, 1989).

Josephine Belisario, while laying face down on the floor of the sala, was dragged by appellant Alex Mijaque inside one of the rooms. He