

THIRD DIVISION

[G.R. No. 110037, May 21, 1998]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. EDUARDO PULUSAN Y ANICETA, ROLANDO RODRIGUEZ Y MACALINO, ROLANDO TAYAG AND JOHN DOE ALIAS RAMON/EFREN, ACCUSED. EDUARDO PULUSAN Y ANICETA AND ROLANDO RODRIGUEZ Y MACALINO, ACCUSED-APPELLANTS.

DECISION

KAPUNAN, J.:

Four men held a robbery of a passenger jeepney along Bulacan-Pampanga highway, divesting all passenger of their valuables. Four of the jeepney's passengers were killed by the robbers and the only female passenger raped repeatedly. Three victims, however, lived to tell the story - the jeepney driver, a fifty-year old and the ravaged girl .

The Solicitor General summarized the prosecution evidence as follows:

On January 20, 1986 at about 9:00 o'clock in the evening, Constancio Gomez was then plying his route from Balagtas, Bulacan along the MacArthur Highway going towards Malolos, Bulacan on board a passenger jeepney with six (6) passenger (pp. 5-6, TSN, June 10, 1986). They included Marilyn Martinez a seventeen (17) year old student and Cresenciano Pagtalunan (p. 2, TSN, March 10, 1987; pp. 2-3, TSN, June 10, 1986). The four (4) other male passenger were later identified to be Rodolfo Cruz, Magno Surio, Constancio Dionisio and Armando Cundangan (pp. 2-3, TSN, Dec. 16, 1986; pp. 5-14, TSN, Aug. 5, 1987; pp. 3-5, TSN, April 8, 1987; Exhibits "Z", "AA", "BB", "CC").

Upon reaching Bry. Tikay, Malolos, Bulacan, a group of four (4) male passengers boarded the jeepney (pp. 5-6, TSN, June 10, 1986). Two of them sat at the rearmost portion of the jeepney fronting each other; the third sat behind the driver's seat while the fourth man sat in the middle of the other passengers (pp. 6-7, TSN, June 10, 1986; pp. 3-4, TSN, July 22, 1986; pp. 3-5, TSN, March 10, 1987). Suddenly, the man who was later identified to be appellant Eduardo Pulusan, who sat behind the driver, poked a knife at Constancio Gomez and announced: "Hold-up ito, huwag kayong kikilos (pp. 5-6, TSN, June 10, 1986; pp. 5-6, 9, TSN, March 10, 1987; pp 4-6, TSN, June 10, 1986; pp. 5-6, 9, TSN, March 10, 1987; pp. 4-6, TSN, March 18, 1987). Thereafter, appellant Pulusan's three (3) companions followed suit, poked their knife and "*sumpak*" (homemade shotgun) at the passengers and divested them of their valuables (p. 6, TSN, June 10, 1986; pp. 3-5, TSN, July 22, 1986; pp. 5-9, March 10, 1997). Gomez was divested of his P100 cash money, a lighter valued at P50.00 and a fancy ring of unknown value (pp.7-8, TSN,

June 10, 1986). Cresenciano Pagtalunan, one of the passengers was similarly divested of P110.00 in cash and a diver's watch worth P1,000.00 (TSN, pp.3-4, July 22, 1986). Marilyn Martinez, another passenger was divested of a wristwatch worth P350.00 together with her books, notebooks and handbag (pp. 5-7, TSN, March 10, 1987). Rodolfo Cruz was likewise divested of a watch valued at P700.00, a wedding ring worth P500.00 and P750.00 in cash (pp.3-8, TSN, Jan. 27, 1987). Magno Surio's watch worth P400.00, camera with flash bulb and batteries inside and cash of more than P2,000.00 were also taken during the incident (pp. 3-7, 9-10, TSN, Feb. 17, 1987; Exhs. "A", "B", "C" to "C-3"). Thereafter, appellant Pulusan took over the wheels from driver Gomez and drove towards Pampanga. He later stopped at Quezon Road, Bgy. San Pablo, San Simon, Pampanga (pp. 7 - 8, TSN, June 10, 1987). He parked the jeepney in a "*talahiban*" where there were no people around except for the occupants of the passenger jeepney (pp. 7 - 8, TSN, June 10, 1986; pp. 7 - 8, TSN, March 10, 1987). Afterwards, appellant Rolando Rodriguez (Rodriguez) dragged Marilyn Martinez to the "*talahiban*" a few meters away from the parked jeepney where his three (3) companions, including appellant Pulusan, were left guarding Gomez and his other passengers (pp. 7-8, TSN, June 10, 1986; pp. 10-11, TSN March 10, 1987; pp. 1-13, TSN, March 18, 1987). Once at the "*talahiban*," appellant Rodriguez, then armed with a kitchen knife, through force and intimidation, succeeded in having carnal knowledge of Marilyn Martinez who was then still virgin (Exhibit "W"; pp. 10-13, TSN, March 10, 1987). Subsequently, appellant Pulusan followed appellant Rodriguez and Marilyn Martinez at the "*talahiban*" and likewise sexually abused her (pp. 14-15, TSN, March 10, 1987; Exh. "W"). Later, appellants two other companions similarly took turns in having carnal knowledge of Marilyn Martinez at the "*talahiban*" (pp. 15-16, TSN, March 10, 1987). After the fourth man had succeeded in having carnal knowledge of her , he held Marilyn Martinez's wrist and they both proceeded towards the jeepney (pp. 16-17, TSN, March 10, 1987).

Meanwhile, at the place where the jeepney was parked Gomez and one of his passengers who were then inside the vehicle were called outside by one of appellant's companions and asked Gomez " pare, gusto mo bang mamatay?" (p. 10, TSN, June 10, 1986). Gomez pleaded with them that he be spared because his wife recently gave birth and he was the only breadwinner for his family (*ibid*). Thereafter, he was boxed at the right jaw and told to board the jeepney while said man, together with appellants Pulusan and Rodriguez, clubbed and stabbed the passenger who was called with him (pp. 10-11, TSN, June 10, 1986). Subsequently, the four called three other passengers inside the jeepney one by one. When the three (3) passengers managed to run towards the "*talahiban*" but his captors pursued and eventually killed him (pp. 10-11, TSN, June 10, 1986). Subsequently, Cresenciano Pagtaluan was hit with pipe and clubbed by appellant and their companions but one of them uttered: Pare, huwag na yan, matanda na yan, hindi na papalag" (pp. 12-13, TSN, *ibid*' p. 7, TSN, July 22, 1986). Thereafter, Gomez was ordered to start the jeepney while a shotgun was aimed at his temple and threatened not to report the incident (*ibid*.) Eventually, their captors boarded Marilyn Martinez in the jeepney and threatened her not to report the incident and

sent them home. Appellants and his companions then dispersed to different directions (pp. 12-13, TSN, June 10, 1986).

Accordingly, Gomez and his two surviving passengers Marilyn Martinez and Cresenciano Pagtalunan, left their four (4) co-passengers who had been killed by their captors and proceeded to the Municipal Building of Apalit, Pampanga to report the incident to the Apalit police (p. 14, TSN, June 20, 1986; pp. 8-9, TSN, July 22, 1986; p. 19, TSN, March 10, 1987). Accompanied by the Apalit police (p. 14, TSN, June 20, 1986; pp. 8-9, TSN, July 22, 1986; p. 19, TSN, March 10, 1987). Gomez and Cresenciano Pagtalunan, were immediately interviewed by Pat. Maniago, Investigator of the San Simon (pp. 2-3, TSN, Dec. 16, 1986). Later, Pagtalunan stayed at the municipal building of San Simon where he remained for more than a day (p. 10, TSN where he remained for more than a day (p. 10, TSN, July 22, 1986). Thereafter, the joint team of the San Simon and Apalit police, including Pat. Maniago, Pfc. Nicolas Yambao and Umali was accompanied by Gomez to the crime scene at Quezon Road, Bgy. San Pablo, San Simon where the bodies of his four (4) male passengers were found and which were later brought to the Funeraria Punzalan for autopsy (p. 14, June 10, 1996; pp. 3-5, TSN, Dec. 2, 1986). Pat. Emerito Maniago prepared a sketch of the crime scene (Exh. "S", p. 4, TSsN, Dec 2, 1986). Eventually, Pat. Maniago, Pfc, Nicolas Yambao and Lino Umali returned to the station and interviews Gomez and Pagtalunan about the description of the suspects and conducted follow-up investigation of the case (pp. 3-4, TSN, Dec. 2, 1986; Exh. "P", "P-1"; pp. 3-6, TSN, Dec. 16, 1986; pp. 2-9, TSN, Jan. 6, 1987). They also proceeded to Malolos, Bulacan to coordinate with the Malolos INP for the identification of the victims' cadavers (pp. 3-4, TSN, Dec. 2, 1986). Thereafter, Pat. Maniago prepared an "Initial Investigation Report" addressed to Corporal Santiago Rodriguez, Station Commander of the San Simon Police Station at San Simon, Pampanga concerning the "Robbery In Band, Rape, Multiple Homicide and Illegal Possession of Firearms/Deadly Weapons" committed on or about 9:30 to 10:30 P.M. of January 20, 1986 at Quezon Road, San Pablo Propio, San Simon, Pampanga (Exh. "P", "P-1"; pp. 2-5, TSN, Dec 16, 1986; pp. 2-16, TSN, Jan. 6, 1987; pp. 2-3, TSN, Nov. 18, 1986).

On January 21, 1986, Cpl. Santiago Rodriguez was informed of the aforesaid incident (pp. 2-3, TSN, Nov. 18, 1986). He then instructed his men to continue investigation on the case considering that preliminary investigation threon had been made by Pat. Maniago (pp. 3-4, TSN, ibid.; pp. 3-6, TSN, Nov. 25, 1986).

On the same day, Marilyn Martinez, one of the surviving victims, was brought by her relatives to the Central Luzon General Hospital in San Fernando, Pampanga where she underwent physical examination by Dr. Evelyn Macabulos, resident of the Hospital's Obstetrics and Gynecology Department (pp. 19-20, TSN, March 10, 1987; pp. 6-15, TSN, May 27, 1987; Exh. "W", "W1"). Dr. Macabulos found that the patient was conscious, coherent, slightly incooperative, distraught, untidy with soiled clothes and underwear" and that her blood pressure was 130/80 while her pulse rate was 105 per minute (pp 7-9, TSN, May 27, 1987). She noted that "her eyes were swollen but without contusions; her heart was

slightly tachycardic, regular rate rhythm with no murmur (pp. 9-10, TSN, ibid) She also observed that she had clear breath sounds; her breast are conical, well-developed, symmetrical with light brown nipple and areola, no contusions noted" (ibid.). She also noted that he trunk has linear hematoma at the back which looked like finger marks while in her extremities, there were 2 x 1.5 cm. Round hematoma at posterior upper part of the left thigh (pp. 9-10, TSN, ibid). Dr. Macabulos further observed that in her external genitalia there was "scanty pubic hair, well coaptated but moderately swollen labia minora, labia mahora also confested (sic)". She noted that the hymen had fresh lacerations at 12 o'clock, 6 o'clock, 5 and 7 o'clock; scanty bleeding from the laceration; there was a .3 x .3 cm. Hematoma (sic) at 12 o'clock; the patient cried and was hysterical in the examination of her genitalia and complained of pain when application was inserted for smear; the patient's panty was stained with blood and when smear for spermatozoa was done, none was found (pp. 10-11, TSN, May 27, 1987; Exh. "w"). Later that day, Marilyn was confined at the Rosary Hospital in Bulacan for 2 1/2 days so that she can recover her strength (p. 11, TSN, March 25, 1987).

Meanwhile, the widows of the passengers who were killed during the January 20, 1986 incident at Bgy. San Pablo, San Simon, Pampanga, including Susana Bautista Vda. De Surio, Lucila Cruz and Corazon Dionisio, were informed that their respective husbands were among the four (4) passengers of jeepney who were killed in San Simon, Pampanga and were invited to go to the funeral parlor in Pampanga to make the necessary identification of the cadavers (pp. 305, TSN, April 8, 1987; pp. 3-4, TSN, January 27, 1987; pp. 3-5, TSN, Feb. 17, 1987). Lucila Cruz confirmed her husband's death when she went to San Simon, Pampanga on January 23, 1986 at 2:00 o'clock p.m. (pp. 3-4, TSN, January 23, 1987; Exh. "Z", pp. 8-9, TSN, Aug. 5, 1987). The death of her husband Constancio Dionisio was confirmed by his widow Corazon when she went to the funeral parlor in San Simon on January 25, 1986 (pp. 3-5, TSN, April 8, 1987). The death of Magno Surio was also confirmed by his widow Susana Bautista Surio when she went to the funeral parlor in San Simon accompanied by a policeman from malolos (pp.3-5, TSN, Feb. 17, 1987; Exh. "AA"; pp. 10-11, TSN, Aug. 5, 1987).

Dr. Maria Teresa F. Santos, Rural Health Physician of San Simon, Pampanga, who conducted autopsy of the four (4) cadavers recovered at Bgy. San Pablo, San Simon, Pampanga, issued Certificates of Death of Rodolfo C. Cruz, Magno Surio, Constancio Dionisio and Armando Cundangan (pp. 3-4, TSN, Aug. 5, 1987; Exhs. "Z", "AA", "BB" and "CC"). The cause of death of Rodolfo C. Cruz was "Cardio-respiratory arrest, shock hemorrhage, multiple stab wounds" (Exh. "ZZ, pp. 8-9, TSN, Aug. 5, 1987). The cause of death of Magno dela Cruz y Surio is the same as that of Rodolfo C. Cruz (Exh. "AA", pp. 10-11 TSN, Aug. 5, 1987). The stated cause of death of Constancio Dionisio and Armando Cundangan was also the same as those indicated in the certificates of death of the other victims (Exhs. "BB", "CC"; pp. 12-14, TSN, Aug. 5, 1987).

Meanwhile, in the early morning of January 23, 1986, Cpl. Rodriguez received a tip from a civilian informer that the description of one of the four (4) suspects given by

Marilyn Martinez tallied with that of appellant Eduardo Pulusan who previously had a record in their file (pp. 6-8, TSN, Nov. 25, 1986; pp. 4-6, TSN, Sept. 7, 1987).

In the afternoon of January 23, 1986, Cpl. Rodriguez, Pat. Maniago and several policemen of San Simon, Pampanga, together with the Pampanga P.C. Command, including Sgt. Mario Dulin, proceeded to the residence of appellant Pulusan at Bgy. San Pablo, San Simon., Pampanga (pp. 10-11, TSN, Nov. 25, 1986). When their group reached San Pablo, San Simon, Pampanga, they found Honwario Pulusan, appellant Eduardo Pulusan's brother there (pp. 10-11, Nov. 25, 1986; p. 6, TSN, Sept. 9, 1987). After interviewing him, the team learned from Honwario that appellant Pulusan was with Rolando Rodriguez, Rolando Tayag and one Efren alias Ramon at Bgy. Moras dela Paz, Sto Tomas, Pampanga, where Rolando Rodriguez resided (pp.2-5, TSN, Nov. 18, 1986; pp. 10-11, TSN, Jan. 6, 1987; pp. 5-7, TSN, Dec. 2, 1986). Immediately thereafter, the joint San Simon police and Pampanga PC Team coordinated with the Station Commander of Sto. Tomas and proceeded to Moras dela Paz together with Honwario Pulusan (pp. 3-5, TSN, Nov. 18, 1986). Upon reaching Bgy. Moras dela Paz, the team parked their vehicle a few meters away from the residence of appellant Rolando Rodriguez (pp. 5-6, TSN, Oct. 7, 1997). As the members of the joint PC and police team approached the residence of appellant Rodriguez about 20 or 30 meters therefrom, they noticed four (4) persons, including appellants Rodriguez and Pulusan, jumping and scampering away from the house (pp. 7-8, TSN, Dec. 2, 1986; pp. 7-8, TSN, Nov. 18, 1986). Honwario Pulusan pointed to the police team appellants Rodriguez and Pulusan and also and "Kuya, sumuko na kayo" (p. 8, TSN, Dec. 2, 1986). The joint police and PC team pursued them and eventually apprehended appellants Rodriguez and Pulusan (pp. 7-8, TSN, September 9, 1987; pp. 4-6, TSN, Nov. 11, 1986).

Thereafter, Pat. Maniago, Sgt. Dulin and the Barangay Captain, returned to the house of appellant Rodriguez, conducted a search thereon in the presence of one Gloria Bautista, siste-in-law of Rolando and eventually confiscated several items, to wit: "one (1) camera, nikon type with cover (Exh. "A"); one (1) pair of men's shoes, colored brown (Exh. "E"); one pair Grosby men's shoes (white) (Exh. "G"); one (1) pair ladies shoes colored black (Melvin Trade Mark (Exh. "H"); one (1) KNIFE 12 inches long (Exh. "J"); one (1) knife 10 inches long (Exh. "K"); one (1) sunglass (Unisex) (Exh. "I"); one (1) ladies wrist watch (Urika) (Exh. "M"); four (4) pcs. of batteries (Exh. "C" to "C-3"); two (2) pieces of steel pipes which turned out to be an improvised 12 gauge shotgun "paltik-sumpak" (Exh. "L", "L-1"); one (1) pants Haruta (Exh. "F"); one (1) jacket colored green (Exh "D"); one (1) camera flasher (Exh. "B"); two (2) pieces (live) 12 gauge shotgun ammos (Exh. "N"); and one (1) piece empty shell for 12 gauge shotgun" (Exh. "N") (pp. 8-10, TSN, Dec. 2, 1986; pp. 8-9, TSN, Sept 9, 1987; pp. 3-9, TSN, Dec. 9, 1986; pp. 6-10, TSN, Nov. 18, 1986). Afterwards, Sgt. Dulin prepared an inventory of the recovered items (Exh. "R", "R-1", "R-2"; pp. 8-11, Sept. 9, 1987). Subsequently, appellants Pulusan and Rodriguez, together with recovered items, were brought to the Station of the Pampanga P.C. Command at St. Nino, San Fernando, Pampanga, for further investigation (p.15, TSN, Sept. 9, 1987). A "Progress Report" relative to the arrest of appellants Pulusan