

## THIRD DIVISION

[ G.R. No. 108234, August 11, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FIDEL RAGAY Y DE ROSAS, DANILO ODANI Y NATALON, DOMINGO TUMAGOS Y DINGLE AND ZOSIMO GONZAGA Y AGENSI, ACCUSED-APPELLANTS.**

### D E C I S I O N

**DAVIDE, JR., J.:**

Accused-appellants Fidel Ragay, Danilo Odani, Domingo Tumagos and Zosimo Gonzaga were charged before Branch 148 of the Regional Trial Court of Makati City with Robbery with Rape in an information<sup>[1]</sup> whose accusatory portion reads:

That on or about the 21st day of July, 1990 in the municipality of Muntinlupa, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, WITH intent of gain and by means of violence and intimidation, that is by pointing a jungle bolo at Dorothy Bernardo, took and carry away the following personal things to wit: one (1) Toshiba B&W set worth P2,500.00; two (2) Sharp mini components P7,000.00; one (1) Fisher mini component worth P2,000.00; one (1) Display wall clock P2,500.00; one (1) GE flat iron P500.00; two (2) pieces of Seiko wrist [watch] P1,500.00; one (1) pair wedding ring P1,500.00; jar clay bank P1,000.00; assorted jewelries P3,000.00 and cash money of P1,000.00 with a total amount of P22,500.00 and by means of force and intimidation have carnal knowledge of the complainant Dorothy Bernardo, to the damage and prejudice of Dorothy Bernardo in the aforementioned amount of P22,500.00 Philippine Currency.

Upon arraignment on 16 October 1990, all the accused pleaded not guilty. Trial ensued, as the accused waived pre-trial.<sup>[2]</sup>

Private complainants Rafael and Dorothy Bernardo narrated how the offense was committed.

At dawn on 21 July 1990, Rafael was asleep in the master's bedroom of his house, located in Okra Street, Victoria Homes, Tunasan, Muntinlupa. With him were his sisters Dorothy and Rhodora; their mother, Dolores; Dorothy's son, Richard; Rafael's wife, Ruth; and Rafael's daughter, Em-Em. The bedroom light and the kitchen light were both left on. At around 3:00 o'clock that morning, four masked men broke into the house and went to the master's bedroom. Rafael was awakened when one of them went on top of him, pointed a jungle bolo at him, and told him not to shout; while another tied his hands and feet. Rafael also saw the intruders tied up his wife.

The intruders, demanded money from Rafael but when he said he had none, they "ransacked" the house, taking two mini-components; a Toshiba black-and-white television set; two wedding rings; a Seiko watch; P1,000 cash; P3,000 worth of jewelry; a flat iron; a wall clock; and an undetermined sum of money from a piggy bank.<sup>[3]</sup>

Meanwhile, one of the intruders, whom Rafael and Dorothy identified in court as Zosimo Gonzaga, pointed a jungle bolo at Dorothy's neck, tore her dress, mashed her breast, and ordered her to stand up. Dorothy refused. The man forthwith kicked her buttocks, ordered Dorothy's mother to get up from the bed, and forced Dorothy to lie down on the vacated bed. The man then removed Dorothy's skirt and pulled his pants down. He thereupon inserted his private part into that of Dorothy. Later, he pulled out his sexual organ and again forced himself on Dorothy. Afterwards, the man made Dorothy stand up, pushed her towards Rafael's feet, and bound her hands and feet. In court, she identified the intruders to be accused Zosimo Gonzaga, Fidel Ragay, Danilo Odani, and Domingo Tumagos.<sup>[4]</sup>

The intruders went out of the room, leaving a threat that they would kill the Bernardos if the latter would report to the police authorities. They then stayed in the kitchen of the Bernardos' residence until around 4:30 in the morning.<sup>[5]</sup> Rafael, who was lying on one of the beds and had a clear view of the kitchen which was about two meters away, saw the intruders removing their masks and drinking coffee.<sup>[6]</sup> Rafael identified them to be the accused Fidel Ragay, Zosimo Gonzaga, Danilo Odani and Domingo Tumagos. He knew them because they were the ones who constructed his fence.<sup>[7]</sup>

The Bernardos stayed in the bedroom until 5:30 that morning. After Dorothy untied Rafael they went to Rafael's brother-in-law to inform the latter of the incident. On that same day Rafael's brother-in-law reported the crime to their barangay tanod and security officers of the subdivision. Between 7:00 to 7:30 a.m., accused Gonzaga, Odani and Ragay were apprehended, and were later brought to the police station in Muntinlupa.<sup>[8]</sup> Accused Tumagos was arrested on 22 July 1990.<sup>[9]</sup>

Rafael and Dorothy also reported the incident to the police. Pfc. Alfredo Aninipot took down their sworn statements and prepared the "necessary referral" of the case. He also conducted an ocular inspection of the crime scene.<sup>[10]</sup>

On 23 July, 1990, Dorothy submitted herself to a medical examination by Dr. Louella Nario. The latter noted extragenital physical injuries on Dorothy and found her vaginal orifice to be "wide as to allow complete penetration of an average-sized, adult Filipino male organ in full erection without producing any genital injury."<sup>[11]</sup>

The accused, on the other hand, put up alibi as their defense.

Danilo Odani testified that on 21 July 1990 he was at home with his wife. He slept at around 9:00 the previous night and woke up the next day at around 6:30 a.m. He went to work in Henry Matute's house in Victoria Homes where he was employed as a construction worker along with co-accused Tumagos and Gonzaga. He was apprehended at about 9:00 a.m. by persons named Aga, Cornelio, Mon, and Carandang. Odani admitted on cross-examination that he, Gonzaga, and Tumagos

built the complainants' fence; and that the house of the Bernardos was only half a kilometer away from the place where he was staying.<sup>[12]</sup>

Zosimo Gonzaga testified that on 21 July 1990 he was at home with his wife and children and that he went to sleep at about 9:00 the previous night. He woke up at 5:30 a.m., and after drinking coffee, he and a certain Rudy went to a piggery. They left that place at about 8:30 a.m. and headed for Victoria Homes. Along the way, they met a certain Ariel with four other companions who then "arrested" him. Gonzaga denied knowing Dorothy and claimed that it was Dorothy's brother-in-law Ariel who contracted him, Odani, and Tumagos to put a fence on the Bernardo's house. He added that Ariel failed to pay them for their work and that their effort to secure payment from Ariel proved futile. Their insistence to collect their wages angered the private complainants, prompting the latter to file this case. Gonzaga admitted that his residence is only half a kilometer away from the house of the Bernardos.<sup>[13]</sup>

Domingo Tumagos declared that in the early morning of 21 July 1990 he was at home with his family. He woke up at about 5:30 a.m. and left for work at 7:00 a.m. He was working at Henry Matute's house when a certain Aga came with four men and asked him whether they could bring Danilo Odani with them. He acceded to their request. After about half an hour, Odani came back and told Tumagos that Dorothy did not pinpoint him as a suspect in an alleged offense. After a while, the same men rearrested Odani. Tumagos found out later that Odani was brought to the municipal hall. The next day, the same men who apprehended Odani came to the construction site and arrested Tumagos.<sup>[14]</sup>

Fidel Ragay testified that in the evening of 20 July 1990 he was sleeping in the house of one Elizabeth Manzano. He acknowledge that from the said house one could take a 15 -minute walk to reach the Bernado's residence. He alleged that he was the cartetaker of the Manzano's house. At past 6:00 a.m. the following day, he went to his own house. A certain Mang Ilyo, with Danilo Odani, came to see him and brought him and Odani to the kakawatihan (place where kakawate trees grow). There, Ragay saw Zosimo Gonzaga whose hands were then tied at his back. Thereafter, the three accused were brought to the Field Office of Victoria Homes where complainant Dorothy was waiting. Although Dorothy did not know him and did not pinpoint him as one of the suspects, he was brought to the municipal hall with the other accused and was subsequently put in jail.<sup>[15]</sup>

The other defense witnesses, namely, Alicia Isip, Fidel Ragay's aunt; Jose Bagai, Ragay's co-worker; Feliciana Navarra, Zosimo Gonzaga's neighbor; and Henry Matute, the owner of the house which the accused were working on, testified on the "arrest" of the accused but not on their whereabouts between 3:30 and 5:00 a.m. of 21 July 1990.

In deciding the case, the trial court recognized three issues, viz:

1. Whether the crime of robbery with rape was committed
2. Whether the four (4) accused were sufficiently identified as those who committed the crime of robbery with rape

3. Whether the prosecution had established the guilt of all the accused beyond reasonable doubt

As to the first, the trial court held that the evidence for the prosecution clearly established all the elements of robbery with rape under paragraph 2 of Article 294 of the Revised Penal Code.

As to the second issue, the trial court also ruled in the affirmative; thus:

It must be pointed out at the very outset that Dorothy Bernardo was raped. Likewise, it must be pointed out that the four accused were known to the family of the Bernardos because the four (4) accused having admitted at one time or another as those who worked for a time or another in constructing the fence surrounding the house of Rafael Bernardo where Dorothy Bernardo was living on July 21, 1990 at Okra St., Victoria Homes, Tunasan, Muntinlupa, Metro Manila.

x x x

But it is very clear that Dorothy Bernardo and others recently arrived at the house of her brother Rafael Bernardo and they slept in one room. Dorothy Bernardo positively identified Zosimo Gonzaga as the one who raped her, mashed her breast, tore her dress, pointed a jungle bolo at her neck. Rafael Bernardo identified the four (4) accused although he admitted that during the robbery and rape, the four were masked. He explained however that he recognized them not only because he saw them taking coffee at the kitchen but because they formerly worked in construction of their fence.

x x x

It must be remembered that it is not only the face of the man that will give him away. He has other characteristics which will be very evident to other people and which would give him away even if his face is covered.

While Dorothy Bernardo was in the witness stand, she did not hesitate in identifying Zosimo Gonzaga as the one who raped her during the robbery and so with the four accused. Also Rafael Bernardo did not also hesitate in identifying all the four (4) accused while he was in the witness stand. To the mind of the court, sufficient identification was made on the four (4) accused.

On the third issue, the trial court held that the overwhelming evidence against the accused outweighed their alibi and denial.

Before passing judgment, the trial court recounted that the accused were identified by Rafael and Dorothy Bernardo; they had the opportunity to commit the crime as they all lived near the crime scene; and that they had a motive since, as admitted by accused Gonzaga, they were not paid after they constructed the Bernardos' fence.

Accordingly, the trial court convicted all the accused and sentenced them to suffer

the penalty of reclusion perpetua. It also ordered them to jointly and severally pay Dorothy Bernardo the sum of P30,000 as indemnity in causing her dishonor; P15,000 as moral damages; and P5,000 as exemplary damages and pay Dorothy and Rafael Bernardo the sum of P22,500 representing the value of the property taken by the accused, which were not recovered.<sup>[16]</sup>

The accused seasonably appealed to us from the decision. As they were represented by different counsel, they filed separate Appellant's Briefs.

Accused-appellant Fidel Ragay argues that the identification made of him by prosecution witnesses Dorothy and Rafael Bernardo as one of the culprits "was not positive and certain as to meet the inflexible requirement of proof beyond reasonable doubt of his criminal participation." He submits as incredible the testimony of Rafael Bernardo that he was able to recognize the intruders because they removed their masks when they took coffee at the kitchen and also because they were the ones who constructed the fence. For one thing, having been hog-tied inside the master's bedroom, Rafael could not have a good look at the persons in the kitchen; and for another, the alleged taking of coffee was so unnatural, since the natural tendency of one who commits a crime is to immediately flee.

Ragay likewise submits that the prosecution failed to prove the essential elements of the complex crime of robbery with rape. Dorothy's tale of rape is unbelievable. She did not shout for help when she was being abused; the doctor who examined her could not tell with certainty that she was raped; and finally, "her actuations of flashing a smile while testifying in court reduced into rubbles her pretension that she was raped."<sup>[17]</sup>

Accused Zosimo Gonzaga argues that the identity of the accused has not been positively and sufficiently identified. The evidence for the prosecution showed that the faces of the four persons who entered the house were covered with masks. He also asserts that it was impossible for him to have committed the crime, as he was asleep in his house at the time. Besides he had no motive to commit the crime.

Accused Danilo Odani also invites our attention that he was able to identify the four intruders because they removed their masks while they were taking coffee in the kitchen. If this were so, and given the fact that Rafael knew the accused even before the incident, then he should have identified them to his brother-in-law as the persons who constructed the fence, instead of giving a mere description of the intruders.

Accused Domingo Tumagos submits to be incredible the prosecution's evidence that Dorothy was able to recognize the person who raped her because she managed to "grab" the rapist's mask. He asserts that the "usual and natural reaction of a man once his identity is known and discovered is to correct or rectify the situation, that is to immediately replace the masks and to put pressure on the one who discovered him by threatening her not to reveal his identity or apply physical force on her or to do both." The man did not. He also finds to be "contrary to normal course of events" the alleged acts of the four persons in staying in the kitchen and drinking coffee after committing the crime instead of immediately leaving the scene of the crime. Tumagos further argues that if Dorothy and Rafael were in fact able to identify the four intruders to be the persons who constructed the fence, then they should have