

EN BANC

[G.R. No. 115938, October 10, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO GALERA Y ROBLES, ACCUSED-APPELLANT.
D E C I S I O N**

VITUG, J.:

Article III, Section 19, of the 1987 Constitution, ratified by the people on 02 February 1987, has authorized Congress to impose the death penalty. Conformably therewith, Republic Act ("R.A.") No. 7659 has been enacted to revive the capital punishment in our statute books. A death penalty handed down by a trial court sets into motion a mechanism for an automatic review^[1] by this Court. In the discharge of this weighty responsibility, the Court exercises the greatest circumspection for there can be no stake higher and no penalty more severe, even in an equivalent atonement of a grave crime, than the termination of a human life.

Fernando Galera y Robles was prosecuted for the special complex crime of robbery with rape in Criminal Case No. Q-94-52916 of the Regional Trial Court, Branch 104, of Quezon City, upon an indictment^[2] that alleged:

"That on or about the 6th day of January, 1994, in Quezon City, Philippines, the said accused, by means of violence and intimidation willfully, unlawfully and feloniously rob MRS. JULIET A. VERGONIA by entering the house of Mrs. Juliet A. Vergonia located at No. 129 Jasmin St., Ilang-Ilang, Payatas, Quezon City, and thereafter proceeded to her room and once inside, pulled a knife and poked at Mrs. Juliet Vergonia, and then and there took and carried away the following, to wit:

Cash money	P500.00
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Watch (Giordano)	500.00
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all with a total value of P1,000.00, Philippine Currency, belonging to Mrs. Juliet Vergonia and that on the occasion of the said robbery, the said accused, by means of force and intimidation, while at knife point have sexual intercourse with said Mrs. Juliet Vergonia against her will and consent, to the damage and prejudice of the said offended party.

"CONTRARY TO LAW."^[3]

The evidence for the prosecution -

Juliet Vergonia is a 29-year old housewife.^[4] Her husband works in Saudi Arabia.^[5] The spouses have three children, ages 6, 4 and 3 years.

At around two o'clock in the morning of 06 January 1994, while spending the night in the same room with her children in their house at Ilang-Ilang Street, Payatas, Quezon City,^[6] Juliet was suddenly roused from sleep when she felt a hand over her private part.^[7] She uttered a cry but the man, who must have surreptitiously entered their dwelling in the kitchen area through an opening between the roof and the top of the hollow blocks supporting the roof, instantly poked at her a one-foot long "balisong."^[8] She was able to see and recognize the face of the intruder, the accused Fernando Galera, because of an illumination from a 100-watt bulb^[9] located in the middle of the sala coming through the slightly open bedroom door.^[10] Galera proceeded to undress her, while she was in a lying position, first by removing her pants and then her panty. He raised her blouse. Galera then sat at the headboard of the bed while Juliet was made to rest her back at the headboard.^[11] Galera who already had his undershirt removed, took off his pants and brief. He then placed himself on top of Juliet. The latter tried to struggle free but could not partly because he was too strong for her and partly due to fear since Galera's knife was menacingly pointed at her.^[12] Juliet's 4-year old daughter woke up.^[13] Unmindful of the child's presence and watchful eyes, Galera kissed Juliet's lips, breasts and other parts of her body; finally, he forced himself into her. She continued to offer resistance but she was no match to his boldness and persistence. She also feared for the safety of her children.^[14] The carnal knowledge only lasted "for a while."^[15]

His lust satisfied, Galera dressed up while Juliet leaned over at a corner of the room. Before departing, Galera raised the bed's cushions and pillows and there found and took cash amounting to about P1,000.00 and a Giordano wrist watch valued at approximately the same amount.^[16] Galera warned: "Huwag kayong gagalaw diyan, papatayin ko kayo" ("Do not move from there or I will kill you"). He left the room, closed the door and departed.^[17]

Juliet, stayed momentarily, then went out of the house and screamed, "Anong klase kayong kapitbahay, pinasok na ako't lahat wala pa kayong malay." Evelyn Vergonia, victim's sister-in-law, promptly responded to her plea for help. Juliet and Evelyn attempted to pursue Galera but he was nowhere in sight.^[18]

On 07 January 1994, the day after the incident, Juliet, accompanied by Evelyn, went to the National Bureau of Investigation ("NBI") in Manila^[19] where she had herself physically examined. She signed her Sinumpaang Salaysay, dated 07 January 1994, and affixed her thumbmark thereon.^[20]

About three or four days after the incident, Juliet saw Galera, a fish peddler frequenting the area, pass by in front of the family compound.^[21] Accompanied by Evelyn, she rushed to Police Station 6 to seek police assistance in apprehending Galera. The group caught up with Galera somewhere in Payatas, Quezon City. He was brought to Police Station 6.^[22]

On cross-examination, Juliet stated that in that morning of 06 January 1994, Galera stayed "a while" in the house, and that before entering the room where she and her children were sleeping, he had, by then, ransacked the other room of the house. She knew that Galera was in the other room because she was awake at the time.^[23] On further questioning, she reverted to her statements on direct, i.e., that the accused was already inside her room when she was awakened.^[24] The apparent inconsistency prompted the trial court to ask the complainant to once again state the real sequence of her story. She said that the accused was "able to enter the other room before he entered (her) room and (she) did not even know that (Galera) was able to ransack the other room" until the following day.^[25]

On the subject of Galera's apprehension by the authorities, Juliet said that three days after the incident, she saw Galera pass by their compound peddling fish but she did not do anything to effect his arrest because she feared that her brothers-in-law, who were then in the premises, would take the law into their own hands.^[26] After a few more questions, however, she said that she had informed her brothers-in-law when she saw Galera, whose face she could remember as being "payat ang panga,"^[27] that he was the culprit. Apparently, it was not the only time she had chanced upon Galera after the incident on 06 January 1994. Her testimony:

"COURT:

"Q. But before that, you do not know him?

"A. Yes, sir.

"Q. You did not see him yet?

"A. Yes, sir.

I saw him after the incident, your honor.

"Q. The first time was on the night in question?

"A. Yes, sir.

"Q. Second time was when?

"A. Second time when I saw him selling fish.

"Q. The third time?

"A. Still selling fish.

"Q. The fourth time?

"A. That was the time where he was brought to the NBI when he was apprehended.

"Q. You said you saw him after, how many days was that after that incident?

"A. Three days.

"Q. You saw him again for the third time, when was that?

"Q. The first time that you saw him, did you recognize him as the person?

"A. Yes, your honor.

"Q. Why did you not request for his apprehension?

"A. The reason why I did not do it because my brother in laws (sic) are there, I don't want them to put the law into their hands or something might happen, that is why I went to the police.

"Q. The third time, where did you see him? Also selling fish?

"A. Yes, your honor.

"Q. When was that?

"A. I[n] that week, I saw him almost everyday.

"Q. On the second day that you saw him selling fish, did you have him arrested?

"A. Not yet, your honor.

"Q. On the third time that he was selling fish, did you have him arrested?

"A. Yes, your honor.

"Q. Why did you not have him arrested on the second day you saw him selling fish?

"A. Because my brother in laws (sic) were there at that time I don't want to put the law in to their hands.

"Q. Did you tell your brother in law that this guy whom you saw selling fish was the one who raped you?

"A. I told them about it and told them that he was the one who entered our house and I told them that I should first go to the precinct and then to the NBI.

"Q. When he was arrested and brought to the police station, did he say anything?

"A. He said something, your honor.

"Q. What did he say?

"A. 'Siguro nasarapan yun kaya hindi niya ako nakilala.'

"Q. What do you mean by that?

"A. That's what he said, but I told him, 'kilalang kila[la] kita.' Sabi niya nagkandaduling ka pa sa sarap, kaya hindi mo ako nakilala.

"ATTY. ESCUETA:

"Q. Let me see to refresh your memory. At the time you claimed you were sexually abused allegedly by herein accused, what is so particular in his appearance that you recognize him as the one who raped?

"A. Because that is the face I saw on that night.

"Q. Are there any 'palatandaan' that you recognize this guy?

"A. 'Payat ang panga.'

"COURT:

What is the defense of the accused in this case.

"ATTY. ESCUETA:

There is no rape because as the medico legal findings there is no evidence, sign of extragenital physical injuries at the time of the examination.

"COURT:

Alright go ahead.

"ATTY. ESCUETA:

I think that will be all, your honor.

"xxx

xxx

xxx.

"A. I just saw him selling fish.

"Q. Where exactly did you see the accused selling fish?

"A. He was selling fish because there was a person who ordered fish to him.

"Q. Who is that person who ordered fish to him?

"A. Mario Vergonia, sir.

"Q. How far is the house of Mario Vergonia to your house?

"A. Just near about five meters only.

"Q. Five meters from where you are sitting here?

"A. Yes, sir.

"Q. Where is that the second time when you said he was selling, to your neighborhood, when is that. The incident occurred January 6, 1994, when is the second time around when you said he was selling fish?

"A. Three or four days after.

"Q. And you said that after that, you again saw him selling fish, where was that the third time that he was selling fish?

"A. Also at the same place.

"Q. When was that the second time you saw him?

"A. Maybe 9 or 10, sir.

"Q. The second time that you see him selling fish, you did not report that immediately to the police station?