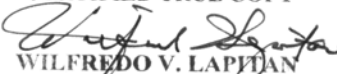




Republic of the Philippines
Supreme Court
 Baguio City

CERTIFIED TRUE COPY

WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

MAY 22 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES
 Plaintiff-Appellee,

G.R. No. 218703

Present:

- versus -

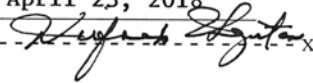
VELASCO, JR., J.,
Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

ANTONIO LLAMERA Y ATIENZA
 Accused-Appellant.

Promulgated:

April 23, 2018

x

 x

DECISION

MARTIRES, J.:

This is an appeal from the 17 July 2014 Decision¹ of the Court of Appeals in CA-G.R. CR. H.C.-No. 04549 which affirmed with modification the 30 April 2010 Decision² of the Regional Trial Court, Branch 58, San Jose, Camarines Sur (*RTC*), in Criminal Case No. T-2176 finding Antonio Llamera y Atienza (*Llamera*) guilty of Robbery with Rape.³



¹ *Rollo*, pp. 2-15; penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison, concurring.

² *CA rollo*, pp. 25-44; penned by Presiding Judge Ma. Angela Acompanado Arroyo.

³ Co-accused Edwin Sical, Rodel Sical, Victorino Sical and Alvin Adayo were found guilty of robbery but they no longer appealed the decision.

THE FACTS

In an Information, dated 28 November 2000, accused-appellant and his co-accused Edwin Sical, Rodel Sical, Victorino Sical, and Alvin Adayo were charged with robbery with rape. The Information reads:

That on or about 6:30 o'clock in the morning of March 28, 2000 at [XXX],⁴ Camarines Sur and within the jurisdiction of the Honorable Court, the [abovenamed] accused, with intent to gain, while armed with an armalite rifle, a shot gun, a calibre .45 pistol and a calibre .38 pistol, after conspiring, confederating and mutually helping one another, through violence and intimidation of persons, did then and there, wilfully, unlawfully and feloniously enter the house of [BBB]⁵ and take, rob and carry away the following properties belonging to [BBB]:

- a) Cash in the amount of Php5,000.00;
- b) Jewelry [valued] at Php300,000.00;
- c) A licensed shotgun brand Squib with serial no. 103980 valued at Php21,000.00

Which properties have a total amount of Php326,000.00

That in the course of robbery, the accused who are more than three armed malefactors thus, constituting a band (Cuadrilla) hit, harm and struck [BBB] with a gun on his head causing him to suffer physical injuries and that one of the accused with lewd and carnal design, touched the breast, stripped the pants and underwear of [AAA] and inserted his left hand into her private part (genital) thereby consummating rape, all to the damage and prejudice of the offended parties in such amount as maybe proven in court.⁶

Upon arraignment, the accused pleaded not guilty to the charge.

Version of the Prosecution

On 28 March 2000, at around 6:30 A.M. in the morning, BBB and his nephew CCC were in their living room when suddenly, three (3) armed men, later identified as accused Edwin Sical (*Edwin*), Alvin Adayo (*Alvin*), and accused-appellant barged into the house. Edwin was armed with an armalite, Alvin with a .45 caliber gun, while accused-appellant was armed with a .38 caliber pistol. Edwin threatened BBB with his armalite.⁷ Then, upon seeing AAA, BBB's niece, Edwin instructed her to go down the stairs and lie on the living room floor with her uncle.⁸ Thereafter, Edwin ordered BBB to

⁴ The barangay and town where the crime was committed are blotted to protect the identity of the rape victim pursuant to Administrative Circular No. 83-2015 issued on 27 July 2015.

⁵ The name of the private complainant is withheld to protect the identity of the rape victim who is a relative of the former.

⁶ *CA rollo*, pp. 26-27.

⁷ TSN, 3 October 2002, pp. 8-10; Records, Vol. I, pp. 257-262.

⁸ TSN, 14 January 2003, pp. 12-13; Records, Vol. I, p. 341.

produce money and guns. When the latter refused, he was hit twice on the head with the armalite.⁹ Edwin and Alvin then searched BBB's office and ransacked the rooms of the house where they found money, pieces of jewelry, and a shotgun. While the two accused were busy ransacking the house, AAA and CCC were able to run to the kitchen and found thereat, accused-appellant guarding DDD, BBB's wife, and the laborers of the family. Accused-appellant even made fun of EEE, one of BBB's workers. EEE, at gunpoint, was made to stand, sit, and lie down repeatedly. When accused-appellant got tired of mocking EEE, he struck his head with a gun.¹⁰ Then, accused-appellant dragged AAA to the office of her uncle. Inside, he inserted his hands into her blouse and touched her breast. He tried to unbutton her pants and when he failed, he ordered AAA to unbutton her pants herself. Then, he inserted his left hand into AAA's pants and used his middle finger to penetrate AAA's vagina. Accused-appellant looked outside the door to check if somebody could see him and then he locked the door again. He told AAA to remove her pants and underwear, to sit on the table, and to spread her legs. Suddenly, Edwin knocked on the door. He was infuriated at accused-appellant when he discovered that AAA was inside the room with him. Edwin allowed AAA to leave the room and join the others in the kitchen.¹¹ The accused escaped using BBB's car. When the malefactors left the house, BBB was immediately taken to the hospital where he was treated for the injuries he sustained.¹²

Version of the Defense

Accused-appellant and his co-accused all raised the defense of denial and alibi. Edwin averred that on 28 March 2000, he was in a relative's house in Tiwi, Albay.¹³

Alvin claimed that he was attending to his store at Moriones, Ocampo, Camarines Sur. He came to know his co-accused only in August 2001 when he was arrested.¹⁴

On his part, accused-appellant maintained that on 28 March 2000, he was at Benitez Street, Cubao, Quezon City, working in a vulcanizing shop owned by his sister.¹⁵



⁹ TSN, 3 October 2002, pp. 10-11; Records, Vol. I, pp. 262-263.

¹⁰ TSN, 3 October 2002, pp. 10-12; Records, Vol. I, pp. 263-265.

¹¹ TSN, 3 March 2003, pp. 10-11; Records, Vol. II, pp. 397-401.

¹² TSN, 3 October 2002, p. 15; Records, Vol. I, pp. 265-267.

¹³ TSN, 28 March 2006, p. 4; Records, Vol. III, pp. 1027-1028.

¹⁴ TSN, 24 May 2007, pp. 3-4; Records, Vol. III, pp. 1107-1108.

¹⁵ TSN, 13 May 2008, pp. 2-3; Records, Vol. III, pp. 1163-1164.

The Regional Trial Court's Ruling

In its decision, the RTC found accused-appellant guilty of robbery with rape while his co-accused were convicted of robbery. It reasoned that the accused's denials were uncorroborated by any credible witness; whereas, the testimonies of the prosecution witnesses were clear, convincing, and corroborated each other on material points. The trial court, however, ruled that only accused-appellant could be held liable for robbery with rape because he alone perpetrated the crime of rape. It was also shown that Edwin prevented accused-appellant from further sexually molesting AAA. The *fallo* reads:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered:

In Crim. Case No. T-2176

1. Finding accused ANTONIO LLAMERA Guilty Beyond Reasonable Doubt of the felony of Robbery with Rape. The same having been committed by a band and there being no mitigating circumstance, he is hereby sentenced to suffer the penalty of Reclusion Perpetua without eligibility for parole.
2. Finding accused EDWIN SICAL, RODEL SICAL alias "Roman," VICTORINO SICAL alias "Manuel" and ALVIN ADAYO alias "Meno" guilty beyond reasonable doubt of Robbery penalized under paragraph 5, Article 294 in relation to Article 295 and 296 of the Revised Penal Code. There being no mitigating circumstance and with the aggravating circumstance of commission by a band, they are hereby sentenced to suffer the indeterminate penalty of 8 years of prision mayor in its minimum period as minimum to 9 years and 4 months of prision mayor in its medium period as maximum.

The said accused shall be credited in their service of their sentence with the full time during which they have undergone preventive imprisonment provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited with only four-fifths thereof.

All the said accused are likewise sentenced to pay jointly and severally:

- a. Actual damages in the amount of Php 326,000.00 and moral damages in the amount of Php 100,000.00 to the spouses BBB and DDD.
- b. Civil indemnity in the amount of Php 50,000.00 to AAA.



In Crim. Case No. T-2779:

ACQUITTING accused EDWIN SICAL, RODEL SICAL, VICTORINO SICAL, ALVIN ADAYO and ANTONIO LLAMERA of the charge of Carnapping penalized under R.A. 6539 for want of all the elements constituting the said felony.¹⁶

Aggrieved, accused-appellant appealed before the CA.

The Court of Appeals Ruling

In its decision, the CA affirmed the conviction of accused-appellant for robbery with rape but modified the award of damages. It rejected accused-appellant's claim that the police's act of showing his picture to the witnesses for identification was not free from impermissible suggestion. The appellate court opined that there was no evidence to prove that the police suggested or pointed to the witnesses a particular photograph from the set shown to them. It held that accused-appellant's identity was duly established because the witnesses, especially AAA, had the opportunity to be physically close to him. The CA disposed the case in this wise:

WHEREFORE, the instant appeal is DENIED and the assailed Decision dated April 30, 2010 of the Regional Trial Court, Branch 58 of San Jose, Camarines Sur in Criminal Case No. T-2176 is AFFIRMED with MODIFICATION on the award of damages to "AAA" in that accused-appellant Antonio Llamera y Atienza is ordered to likewise pay her moral damages in the amount of Php 50,000.00. Legal interest at the rate of six percent (6%) per annum is imposed on all the award for damages from the date of finality of this decision until full payment thereof.¹⁷

Hence, this appeal.

ISSUE

WHETHER THE GUILT OF ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT

Accused-appellant asserts that the private complainants were shown photographs which contained the name and the crimes for which each person was arrested; that the identification was influenced by the notations found on the photographs; that the private complainants saw the accused for the first time during the robbery which lasted for only thirty minutes, thus, they had



¹⁶ CA rollo, pp. 43-44.

¹⁷ Rollo, pp. 14-15.

no ample time to remember the robbers' faces; and that as regards the rape, he merely inserted his hands into AAA's pants and not into her vagina.¹⁸

THE COURT'S RULING

To assail his conviction, accused-appellant harps on the alleged invalidity of the out-of-court identification made by the private complainants. In a long line of cases, the Court has laid down the two guiding principles in order to sustain the validity of an out-of-court identification: **first**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect. In addition, photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.¹⁹ Here, aside from the contention that the notations about the crimes committed by the persons in the photographs constituted impermissible suggestion, accused-appellant failed to aver much less prove any act on the police officers' part which indicated that he was singled out during the out-of-court identification. On the contrary, CCC testified that several photographs were shown to him and, among those, he readily recognized accused-appellant and his co-accused as the persons who robbed their house:

[Prosecutor Habana]: Now what happened during said second investigation at the police station?

[CCC]: They asked me questions and showed me pictures, Sir.

Q: Now, how many pictures if you can recall were shown to you by the authorities?

A: So many, sir.

Q: Out of this so many pictures that the authorities shown to you were you able to identify some of them?

A: Yes, Sir.

Q: Who among those pictures did you recognize?

A: Alvin Adayo, Edwin Sical, Antonio Llamera, sir.²⁰

Further, a defective out-of-court identification may be cured by subsequent in-court identification. In *People v. Rivera*,²¹ it was ruled that "even assuming arguendo that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the 'inadmissibility of a police lineup identification x x x should not necessarily

¹⁸ CA rollo, pp. 92-98.

¹⁹ *People v. Rodrigo*, 586 Phil. 515, 531 (2008).

²⁰ TSN, 3 October 2002, pp. 16-18; Records, Vol. 1, pp. 269-270.

²¹ 458 Phil. 856, 877 (2003).

foreclose the admissibility of an independent in-court identification.” In this case, CCC was unequivocal when he was asked during trial to identify their assailants, viz:

[Prosecutor Habana]: Did you know who these three men who forcibly entered the residence of your uncle?

[CCC]: I do not know them, Sir, but I can identify their faces.

Q: Did you see the faces of these men [who] entered the house of your uncle?

A: Yes, Sir.

Q: If these three men are now inside the courtroom will you be able to point at them?

A: Yes, Sir. [CCC then pointed to the accused.]²²

Thus, accused-appellant’s contention is insufficient to disturb the findings of both the RTC and the CA as regards the testimonies of private complainants who positively identified accused-appellant and his co-accused as the perpetrators of the crime. The identifications in this case were made by credible witnesses who clearly saw accused-appellant during the incident and whose stories were inherently believable and not contrived. It must also be stressed that AAA, with whom accused-appellant was alone for several minutes, positively identified the latter in court as her assailant.

Finally, to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.²³ In this case, the prosecution established that accused-appellant and his co-accused barged into the house of the victims armed with handguns. They demanded BBB to give them money and guns and when the latter refused, Edwin hit him in the head with a gun. Intent to gain, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things.²⁴ Having established that the personal properties of the victims were unlawfully taken by the accused, intent to gain was sufficiently proven. Thus, the first three elements of the crime were clearly established.

As regards the last element, accused-appellant did not even deny that he assaulted AAA. He merely asserted that he just touched AAA’s genitalia and did not insert his finger. Indeed, AAA testified as follows:



²² TSN, 3 October 2002, p. 6; Records, Vol. I, p. 258.

²³ *People v. Evangelio*, 672 Phil. 229, 242 (2011).

²⁴ *Beltran, Jr. v. Court of Appeals*, 662 Phil. 296, 313-314 (2011).

[Private Prosecutor Carandang]: After that what did accused Antonio Llamera do?

[AAA]: He poked a gun at me and then he inserted his hands into my left breast .

Q: After he was able to insert his hands into your shirt what happened next?

A: He was poking the gun at me, he inserted his hands into my pants, Sir.²⁵

The foregoing statements, however, were clarified by the trial court which undoubtedly established that accused-appellant had assaulted AAA by inserting his finger into her genitalia.²⁶ Hence, accused-appellant's contention is nothing but a desperate attempt to deny that he sexually assaulted AAA during the robbery.

Award of damages

The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. No. 7659. Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery is accompanied by rape. The provision reads as follows:

Art. 294. *Robbery with violence against or intimidation of persons; Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; x x x

In view, however, of the passage of R.A. No. 9346, prohibiting the imposition of the death penalty, the trial court and the appellate court correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole.

The Court, however, deems it proper to modify the award of damages pursuant to the ruling in *People v. Jugueta*.²⁷ Accused-appellant is thus ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.



²⁵ TSN, 3 March 2003, p. 13; Records, Vol. II, p.398.

²⁶ TSN, 13 May 2003, pp. 3-7; Records, Vol. II, p. 477.

²⁷ 783 Phil. 806, 850 (2016).

WHEREFORE, the appeal is **DISMISSED**. The 17 July 2014 Decision of the Court of Appeals in CA-G.R. CR. HC-No. 04549 is **AFFIRMED** with **MODIFICATION**. Accused-appellant **Antonio Llamera y Atienza** is found **GUILTY** beyond reasonable doubt of **Robbery with Rape** and is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. He is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

SO ORDERED.

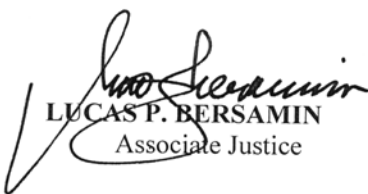


SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



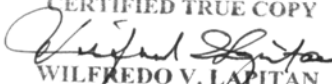
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAY 22 2018