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It results that the trial court did not err in finding the accused-appellant guilty of the crime of Murder in the killing of Vicente Berberabe and Homicide in the death of Pacita Bulaklak. As found by the Intermediate Appellate Court, the proper penalty to be imposed upon the appellant in the Murder case should be *reclusion perpetua* and with respect to the crime of Homicide, the maximum period is short by one (1) day and should be increased accordingly. The indemnity to be paid to the heirs of Vicente Berberabe and Pacita Bulaklak should also be increased to P30,000.00 for each victim.

WHEREFORE, with the modification above indicated, the judgment appealed from should be, as it is hereby, AFFIRMED. With costs against the accused-appellant.

IT IS SO ORDERED.

Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.

EN BANC

[G.R. No. L-41265. February 27, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELICIANO PATOLA and EUNILLO SANGAYON,** *accused whose death sentence is under review.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.—** Patola's defense was that at the time the robbery with rape was committed he was in Barrio Tuganay, Carmen, Davao del Norte. Sangayon's alibi was that he was in Panabo, Davao. The trial court reasoned out that the distances of Panabo and Carmen to Maco, the scene of the crime, did not preclude the accused from committing

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the offense. It concluded that in any event the positive identification made by the rape victims and the store-owner, Zosima Coñado, should prevail over the alibis of the accused.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, UPHELD ON APPEAL.**— As this is a case involving credibility of the witnesses, the findings of the trial court are entitled to great weight. Even if Dalogdog's testimony is disregarded because he was not present during the robbery, the testimonies of the offended parties are adequate to prove the special complex crime charged.

3. **CRIMINAL LAW; ROBBERY WITH QUALIFIED RAPE; PUNISHABLE UNDER ARTICLE 294 (2) OF THE REVISED PENAL CODE.**— There used to be a controversy as to whether robbery with qualified rape should be penalized under article 294[2] or under article 335 which imposes a penalty of *reclusion perpetua* to death. That controversy was set at rest in *People vs. Cabural*, L-34105, February 4, 1983, 120 SCRA 528 and *People vs. Porcare*, L-37235, February 5, 1983, 120 SCRA 546, where it was held that robbery with qualified rape should be punished under *Article 294[2]* (See *People vs. Mendez*, L-35491, May 27, 1983, 122 SCRA 415). It should be stressed that in this case the accused were not charged with qualified rape alone, a crime against chastity, but with robbery with rape, a crime against property.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Juan Luces Luna (counsel de oficio) for accused.

DECISION

AQUINO, *C.J.:*

This is a review of the death penalty imposed upon Feliciano Patola and Eunillo Sangayon by the Court of First Instance of Davao, Tagum Branch 8. They were convicted of robbery with rape with the use of deadly weapons and ordered to pay Roman Coñado P4,500 as value of the stolen goods.

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Patola was ordered to pay Mila Amoguis, his rape victim, P10,000 as moral damages while Sangayon was ordered to pay the same amount to his rape victim, Elena Odal. Patola appealed from the said decision.

Accused Sangayon executed an extrajudicial confession (Exh. B). The prosecution's evidence shows that at about eight o'clock in the evening of September 7, 1973 in the store of Roman Coñado located at Barrio Switch, Maco, Davao del Norte, Mila Amoguis and Elena Odal, salesgirls, were piling up the goods as it was closing time. Feliciano Patola, Eunillo Sangayon, 22, and two unidentified persons were still in the store drinking beer.

Unexpectedly, Sangayon closed the door of the store. Patola, with a gun in his hand, approached Mila and told her not to shout if she did not want to die. Patola and Sangayon herded Mila, Elena, the Coñado couple and their son William to an adjoining room and told them to lie down on the floor face down. They were hogtied with nylon ropes. Their mouths were stuffed with pieces of cloth torn from the curtains.

Patola, Sangayon and their two companions ransacked the store and took away P1,700 in cash, appliances, a wrist watch and other things with a total value of P4,500. (The fact of the robbery is shown in the five photographs of the rooms in Coñado's house taken the next day, Exhibits F to I.)

Then, Sangayon untied the feet of Elena and brought her to a room and abused her. After Sangayon was through, his companion entered the room and in turn abused Elena. The second robber brought Elena to the sala, hogtied her again and covered her with a blanket. Mila was untied by Patola and brought to another room where he ravished her.

The next day the rural physician examined Mila. There were contusions in her labia majora and labia minora. Her fourchette was bleeding. Her hymen was ruptured. There were fresh lacerations at the three o'clock and seven o'clock positions, Sperm cells were found in her vagina. The physician concluded that she had been deflowered. Her virginity was recently lost (Exh. D).

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The same physician found that the labia minora of Elena had a contusion. Her fourchette was lacerated. Her hymen was ruptured at the three o'clock and nine o'clock positions. There were sperm cells in the vagina. As in Mila's case, the physician concluded that she had been deflowered and her virginity was recently lost (Exh. E).

Patola and Sangayon were arrested six days after the commission of the robbery. They were identified by Mila, Elena and Zosima Coñado. The revolvers used in the robbery with rape were seized from them (Exh. L and M with bullets, Exh. N and O).

Patola, Sangayon, Jesus Montecino and Alfredo Dalogdog were charged with robbery with rape. They waived the preliminary investigation. They pleaded not guilty at their arraignment. Upon motion of the fiscal, the case against Dalogdog was dismissed. Montecino was acquitted by the trial court.

Patola's defense was that at the time the robbery with rape was committed he was in Barrio Tuganay, Carmen, Davao del Norte. Sangayon's alibi was that he was in Panabo, Davao. The trial court reasoned out that the distances of Panabo and Carmen to Maco, the scene of the crime, did not preclude the accused from committing the offense. It concluded that in any event the positive identification made by the rape victims and the store-owner, Zosima Coñado, should prevail over the alibis of the accused.

Even if Sangayon's confession is not given any weight under Section 20, Article IV of the Constitution, the oral evidence against him is sufficient to prove his guilt beyond reasonable doubt.

Mila remembered that Patola was wearing a pink shirt with long sleeves (10 tsn July 3, 1974). Elena declared that she struggled when Sangayon was trying to have sexual congress with her. She saw his face (18-19 tsn August 29, 1974). Zosima Coñado recognized Patola and Sangayon by their faces (32 tsn August 29, 1974). The store was lighted by a fluorescent lamp (9 tsn July 3, 1974).

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Counsel *de oficio* contends in this appeal that the trial court erred in disregarding the alibi of the accused, in convicting them of rape in the absence of proof beyond reasonable doubt that the accused had carnal intercourse with Mila and Elena against their will and in relying on Sangayon's confession and on Dalogdog's testimony.

These contentions are devoid of merit. As this is a case involving credibility of the witnesses, the findings of the trial court are entitled to great weight. Even if Dalogdog's testimony is disregarded because he was not present during the robbery, the testimonies of the offended parties are adequate to prove the special complex crime charged.

The trial court found that nocturnity, dwelling and abuse of superiority were aggravating. It imposed the death penalty because it applied article 335 of the Revised Penal Cade on rape rather than its article 294[2] on robbery with rape.

The accused were charged with a crime against property, not a crime against chastity. There was no complaint of the offended parties in this case. Robbery with rape is punishable with *reclusion temporal* medium to *reclusion perpetua* before article 294[2] was amended by Presidential Decree No. 767 which took effect on August 15, 1975 and which raised the penalty from *reclusion perpetua* to death when the rape is qualified.

There used to be a controversy as to whether robbery with qualified rape should be penalized under article 294[2] or under article 335 which imposes a penalty of *reclusion perpetua* to death.

That controversy was set at rest in *People vs. Cabural*, L-34105, February 4, 1983, 120 SCRA 528 and *People vs. Porcare*, L-37235, February 5, 1983, 120 SCRA 546, where it was held that robbery with qualified rape should be punished under *Article 294[2]* (See *People vs. Mendez*, L-35491, May 27, 1983, 122 SCRA 415). It should be stressed that in this case the accused were not charged with qualified rape alone, a crime against chastity, but with robbery with rape, a crime against property.

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The trial court applied in this case article 335. It regarded article 294[2] as having been " amended" by article 335. *That is why it imposed the death penalty.* If article 294[2], before it was amended, is to be applied, the penalty is only *reclusion perpetua*. At any rate, for lack of the necessary ten votes, the death penalty cannot be imposed.

WHEREFORE, the judgment of the trial court is affirmed with the modification that the penalty imposed on the accused is *reclusion perpetua*. The indemnity for the qualified rape should be raised to P20,000 in both cases. Costs *de oficio*.

SO ORDERED.

Concepcion Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, De la Fuente, Cuevas, Alampay, and *Patajo, JJ.*, concur.
Teehankee and Gutierrez, Jr., JJ., took no part.

FIRST DIVISION

[G.R. No. L-27134. February 28, 1986]

COMPANIA MARITIMA, *plaintiff-appellant, vs.* **JOSE C. LIMSON,** *defendant-appellant.*

SYLLABUS

COMMERCIAL LAW; TRANSPORTATION; BILL OF LADING; MAY BE PROVED BY OTHER EVIDENCE.— We find merit in the contention of plaintiff that the respondent Court correctly held defendant liable for said amount because the same actually represented freight charges based on the carbon originals of the ship's copy of the bills of lading where Limson appeared as consignee in the amount of P84,529.42 and those based on the ship's cargo manifests, where defendant appeared as consignee in the amount of P81,874.10. Respondent Court admitted in evidence said copies of the bills of lading which