

G.R. No. L-8438

[G.R. No. L-8438. August 30, 1957]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIANDAL MACARAM (MORO), GENEROSA LUMBAB AND BATASAN (TAGACAULO), DEFENDANTS-APPELLANTS.

D E C I S I O N

LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Davao finding the accused-appellants guilty of the crime of robbery with rape and sentencing them to the penalty of *reclusion perpetua*, to pay indemnity to the offended party in the amount of P310.00, and to pay the costs.

The evidence for the prosecution shows that on May 17, 1954 at about one o'clock after midnight, three persons knocked at the door of the house of the spouses Alejandro Mamac and Claudia Robo In barrio Cogon, Malita, Davao, asking for drink of water. Alejandro stood up from bed, took a lighted kerosene lamp with one hand and with the other opened the door. But as the door opened, one of the persons whom he recognized as the accused-appellant Jiandal, pointed a knife at his stomach and demanded money. Alejandro denied that he had money, claiming that they were poor. So Jiandal called for his other companions, who were at the foot of the stairs, and with their help tied Alejandro to the post of the house. After this Jiandal approached Claudia, pointing the knife at her back and demanding money. As Claudia was afraid, she indicated a trunk which Jiandal opened and from which he obtained P60.00 in cash, a Bulova watch worth P60.00, a lady's watch worth P125.00, a pair of earrings worth P15.00, necklace worth P15.00 and a ring worth P25.00. After getting the money and the jewelries, Jiandal again called for his companions. So Batasan and Generoso came up the house. Once they were there Jiandal pushed her on the floor face up and ordered his companions to hold her by the legs and arms and then had carnal knowledge of her. After he was through, the act was repeated by Batasan, the other two holding her by the legs and hands. After that Generoso also committed the act, with the help

of the other two. When all of these were finished, the accused-appellants went away. But Jiandal had left the knife that he had used in threatening the inmates of the house on the mat inside the room where the spouses were sleeping. The purse containing the money was also left on the ground, beside the house.

That same day in the morning, Alejandro went to a constabulary barracks and reported the matter to one Sgt. Castro. In the afternoon Castro went to the house of Alejandro and saw the knife on the mat. After conducting an investigation and inquiring about the identity of the accused from the spouses, Castro and two companions, the barrio lieutenant and another, proceeded to the place where the accused-appellants lived; which was about two kilometers from the house of Alejandro. There they were able to find all the three accused, Jiandal, Batasan and Generoso. According to Castro, the three accused admitted that they had committed the robbery and that they had raped the wife of Alejandro Mamac, but they denied having taken away the jewelries of the latter. So Castro brought them to the constabulary barracks. There they were subjected to questioning by the Constabulary and by the assistant city fiscal, and they signed a statement. The confession of Batasan is Exhibit "1" and that of Generoso, Exhibit "2". These were made on May 20, 1954. The following day they again signed confessions before the assistant fiscal, Exhibits "A" and "B".

At the trial defendants-appellant denied having committed the crime. Jiandal alleged that he was at home of the alleged commission of the crime. He denied being the owner of the knife, which was found at the house of the offended party. Batasan and Generoso also denied having taken part in the crime and claimed that they were forced by the Constabulary to sign their affidavits or confession. The accused also introduced a physician who testified that the three accused had gone to her claiming that they were suffering from pains in the body for the reason that they had been beaten by the Constabulary. She, however, admitted that she could not determine from the examination whether they were actually feeling pains in the stomach by reason of the alleged beating. The accused also introduced a witness to prove that when Sgt. Castro went to their houses to arrest them, the offended party Alejandro Mamac showed doubts as to the identity of Batasan as one of the persons who took part in the robbery. Sgt. Castro, however, had previously testified that Alejandro Mamac was not with him at the time of the arrest of accused-appellants and that his companion was one Iking and Gerardo and not Alejandro Mamac.

The trial court found that the identities of the three accused as the persons who had committed the robbery were sufficiently established by the testimonies of the offended parties, Alejandro Mamac and his wife Claudia. We find this to be correct. The kerosene

lamp furnished sufficient light to permit the identification of the appellants. The moon was also shining at the time and because of the absence of the upper part of the wall of the house there was additional light to permit identification of the three. The offended parties had also seen the accused-appellants often in the market place and on one occasion one of them had called for a drink at their house.

Under the above circumstances, there can be no doubt that the victims were able to identify the culprits. The trial court noticed certain discrepancies between the testimony of Alejandro and that of his wife, but it held that these were on unessential details which, did not in any way affect their credibility. The court therefore, found that the crime had been proved and that the accused-appellants were the ones who committed the same and sentenced them as above indicated.

Counsel for appellants alleges that the evidence submitted at the trial is insufficient to prove beyond reasonable doubt that the accused-appellants were guilty of the commission of the crime because of the discrepancies indicated. One discrepancy between the testimony of Alejandro and that of his wife is as to whether or not the kerosene lamp had fallen on the floor and had been put off. Alejandro testified that it had, whereas Claudia testified that the light had not been put off. Another discrepancy is between the statement of Mamac that Jiandal opened the trunk and that of his wife that it was she herself who did so. Lastly, Alejandro said that Generoso took with him two bolos, whereas Claudia said that neither Generoso nor Batasan took anything with them when they left. The trial court who heard the witnesses testify did not place any importance on them. It is very possible and probable that Claudia did not see when the kerosene lamp fell on the floor and was again lighted by her husband. It is also possible and probable that as Alejandro was tied to a post, he did not see who actually opened the trunk, believing that it was Jiandal, when as a matter of fact it was his wife who did so. As to the supposed taking of the bolos it is also possible and probable that while Alejandro actually noticed the taking away of the bolos the wife did not notice it, because she was at the time in a very depressed condition by reason of the commission of rape on her person. We, therefore, agree with the trial court that the discrepancies do not in any way reflect that the witnesses, the offended parties, were animated by a desire to falsify the facts. Rather than producing that effect, they impress Us that they were telling the truth and were not schooled to testify on the facts prior to the hearing.

The improbability of the commission of the crime of rape is also pointed out because of the supposed absence of any cries on the part of the abused victim. It is to be noted that the robbery took place just past midnight. The offended parties were threatened with a knife.

The husband was tied to a post and it does not appear that there was any house nearby from which any help could be obtained by cries. Besides, the offended victim of the rape must have been trembling with fear when an opened knife was pointed at her back, and from that time on she was entirely helpless and could not think of anything to defend her honor. There were three robbers who had come in and as her husband was tied to a post she was entirely hopeless. It is, therefore, natural that she could do nothing but tremble in fear and could not think of crying at all.

Counsel for appellants also argues that the confessions signed by two of the appellants should not be taken into account for the reason that they had been secured by force and intimidation. In the first place, We do not believe the claim that the confessions were obtained by force and intimidation. The appellants immediately confessed to having committed the crime when Sgt. Castro made the arrest. This was on May 17. When they were brought to the Constabulary they immediately made their confessions, evidently in line with their previous conduct of admitting their guilt, although denying having committed the robbery. A change in their attitude may have come later. But even, without considering those confessions, the testimonies of the offended parties, immediately identifying the appellants as the ones who had committed the robbery and the outrage, the fact that the identities of the accused-appellants was never doubted for any moment by them, the fact that the accused-appellants were known to the offended parties, and that the latter had no reason to falsify their testimonies—all these circumstances convince Us that the accused-appellants were in fact the persons who had committed the crime. We have carefully examined all the evidence and We do not see anything which may reasonably create any doubt as to the veracity of the testimony of the offended parties that it was the accused-appellants who had committed the robbery in question and the abuse on the person of the offended party.

The sentence imposed by the trial court does not, however, seem to be justified. The court failed to consider the aggravating circumstances of dwelling, abuse of superior strength and ignominy. On the other hand, it failed to consider the litigating circumstance of minority in favor of the accused-appellant Batasan. The sentence appealed from also contains no indemnity for the victim of the crime of rape. The Solicitor General recommends that P4,000 should be fixed as the amount thereof. However, the penalty imposed upon the other two appellants Jiandal Macaram and Generoso Lumbab, which is that of *reclusion perpetua* should be affirmed.

In view of the foregoing, the sentence appealed from is hereby modified in the sense that

the appellants Jiandal Macaram and Generoso Lumbab shall each be sentenced to a penalty of *reclusion perpetua* and accused-appellant Batasan Tagacaolo sentenced to a minimum of 4 years and 2 months of *prision correccional*, and a maximum of 12 years and 1 day of *reclusion temporal* and that all the three appellants jointly and severally indemnify the offended spouses in the sum of P350.00, and the offended Claudia Robo in the amount of 4,000, with costs in both instances against the accused-appellants.

Bengzon, Padilla, Reyes, Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

Montemayor, J., no part.

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