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[ G.R. No. L-12287. May 29, 1958 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FORTUNATO ORTIZ AND CIPRIANO LOPEZ, ACCUSED. CIPRIANO LOPEZ, ACCUSED AND APPELLANT.**

## **D E C I S I O N**

### **MONTEMAYOR, J.:**

Cipriano Lopez and Fortunato Ortiz, alias Adong, together with others were accused of robbery with rape in the Court of First Instance of Isabel. The case was dismissed against two of them for alleged insufficiency of evidence and against several others for the reason that they were still at large. So, the trial was held only against Lopez and Ortiz, both of whom were later found guilty and sentenced by the trial court to an indeterminate sentence of not less than 10 years, 2 months and 21 days of *prision mayor* nor more than 18 years, 8 months and 1 day of *reclusion temporal*, with the accessories of the law, to indemnify jointly and severally Matea Santiago and Gregoria Salvador, each in the sum of P500, for the raps committed on them, and the spouses Victoriano Manuel and Matea Santiago and the couple Ricardo Doctolero and Gregoria Salvador in the sum of P203.60 and P191.21, respectively, for the value of the things taken from their houses and the palay and rice taken from their granaries, and to pay the costs. The two accused appealed the decision to the Court of Appeals. Pending appeal therein, Ortiz moved for the withdrawal of his appeal and his motion was granted by resolution of June 26, 1953, thereby leaving Lopez as the lone appellant.

After studying the case, the Court of Appeals, in a resolution dated February 10, 1957, made a detailed narration of the facts of the case, found that the crime of robbery with rape had really been committed by Lopez and Ortiz with the attendance of the aggravating circumstances of nighttime, dwelling, and with the

aid of armed men, and as against Lopez, with the additional aggravating circumstance of recidivism, without any mitigating circumstances to offset the same, concluding that the imposable penalty was the penalty provided for in Article 294, paragraph 2 of the Revised Penal Code, in its maximum degree, namely, *reclusion perpetua*, and consequently, certifying the appeal to us.

After a careful review of the case, we find the following<sup>1</sup> facts to have been fully established: In the month of April, 1950, there was a group of houses in the barrio of Batal, Santiago, Isabela, one occupied by Victorio Manuel and his wife Matea Santiago; in another lived the couple Ricardo Doctolero and Gregoria Salvador, and a farm hand named Modesto Vicente. On the night of April 8, 1950, while Victorio and his wife Matea and their minor children were asleep, two armed men broke into their home and by force and intimidation, took Victorio down the house and at some distance therefrom, tied him to a post, where other malefactors guarded him. Then one of the intruders returned to the house, demanded money from Matea who answered that they had none. After asking her if she has just given birth, and upon answering in the affirmative, he brazenly expressed his desire to have sexual intercourse with her. She pleaded with him, asking him to spare her, specially because of her condition, but in answer to her pleas, he snatched the infant she held in her arms, and violently pushed her. She fell down on her back and thereafter, he placed himself on top of her and satisfied his lust. Thereafter, he went downstairs and another malefactor came up, opened the couple's trunk and took therefrom a woolen blanket and two pairs of pants, which he proceeded to deliver to another companion who stood on the stairway and whom he addressed as "Sergeant". After doing this, he returned to the room and placed himself on top of Matea for the purpose of coitus, but before he could consummate the act, the one addressed as "Sergeant" entered the room and ordered him out of the house. Then he, the "Sergeant", after telling Matea that he wanted to have sexual intercourse with her, lifted her skirt twice, but in both instances, she put her dress down, pleading with him, but the man persisted, lifted her skirt a third time and trained his flashlight on her genital organs, after which, through intimidation, he succeeded in having: sexual intercourse with her. However, in focussing the flashlight on her, Matea could, by its light, recognize him as Adong, the nickname of Fortunato Ortiz, whom she and her husband well knew. Thereafter, Adong went downstairs and another malefactor came up the house, ransacked the trunk and took therefrom a

blanket, khaki cloth, a flashlight, and a necklace, and then intimated his desire to have carnal knowledge of Matea, but because of her pleas, he desisted and went away with the loot. Thereafter, and when Matea felt that the robbers had left the premises, she went to the kitchen to urinate, and from there, she saw one of them carrying their palay from their granary, about ten meters away. From the place where Victorio was tied, he could estimate the number of the robbers to be about ten.

The same malefactors next entered the neighboring house of the spouses Ricardo Doctolero and Gregoria Salvador, where at gun point, they ordered Ricardo Doctolero and the farm hand Modesto Vicente down the house, where they were also tied. One of the robbers remained in the house and demanded from Gregoria money and jewelry. She answered that they had none, except a pair of earrings and a ring, but begged that he should not take them away. He did not insist but instead told her that he wanted to have coitus with her. She refused, at the same time pleading that she was in an advanced state of pregnancy for she was already eight months on the family way. Deaf to her plea, he warned her that if she did not accede to his wishes, he would punch her on the belly; and realizing the consequences of such a blow, not only to herself but to her expected baby, she reluctantly allowed him to ravish her. Two other robbers came up the house and compelled Gregoria to submit to sexual intercourse, one after the other. Then came up still another malefactor, also bent on having coitus with her. Gregoria said that she was too tired and exhausted to resist ravishment by him but she recognized this fourth rapist as the same Fortunato Ortiz alias Adong, who figured in a similar bestial act in the neighboring house of Matea not long before. From the house of Gregoria, the robbers were able to get a pair of sharkskin pants and other pair of khaki pants, two cavans of rice and two packages of safety matches, and from the granary, four cavans of palay.

The following morning, despite the warning and threats of the malefactors, the victims of the robbery and rape made a report, mentioning the name of Ortiz, first to the barrio lieutenant, and later to the police authorities of Santiago. Chief of Police Regino Dancel commendably made a thorough investigation and came to learn that Fortunato Ortiz alias Adong was then being detained by the members of the Philippine Army with Headquarters in Echague, in connection with a robbery committed in another town. He went to Echague and there found under

detention not only Ortiz but Cipriano Lopez, equally charged with the robbery above-mentioned. He questioned the two men long and patiently and was rewarded with their confession of participation in the robbery and rape committed in the homes of Fortunato and Matea and Ricardo and Gregoria in the barrio of Batal, Santiago. The confessions were reduced to writing and ratified and signed by Ortiz and Lopez before the Justice of the Peace. After the two defendants had been formally charged with robbery with rape, in the course of the preliminary investigation conducted by the Justice of the Peace, the two defendants made statements in answer to questions propounded by said Justice of the Peace which were also reduced to writing. These statements form part of the evidence.

There is absolutely no question about the participation of Ortiz and Lopez in the commission of the crime of robbery with rape. Lopez in his written statement even admitted that he was able to rape one of the women, although he did not say whether it was Matea or Gregoria. The commission of the crime was attended by the aggravating circumstances of dwelling, nighttime, and the aid of armed men because the robbers were armed with several firearms, including a Japanese bayonet. There was no mitigating circumstance to offset the same, so that the penalty should have been imposed by the trial court in its maximum degree, namely, *reclusion perpetua*. Unfortunately, Ortiz who was more smart and shrewd than his co-appellant Lopez, and realizing this error committed in his favor by the lower court, lost no time in withdrawing his appeal in the Court of Appeals.

A reappraisal of the values of the things taken from the houses and granaries of Victorio Manuel and Matea Santiago and of Ricardo Doctolero and Gregoria Salvador shows that the former lost P198.60 and the latter, P153.00. We agree with the Solicitor General that the indemnity to be given to the two unfortunate women, Matea and Gregoria, should be increased. We fix the amount at P2,000.00 each. And as to the penalty, it should be increased to *reclusion perpetua*. It is of course to be understood that this modification of the appealed judgment applies only to Cipriano Lopez,

Again we repeat that with the erroneous application of the penalty by the trial court on Fortunato Ortiz, which error, by the withdrawal of his appeal in the Court of Appeals, we are now in no position to correct, there was evidently

a miscarriage of justice, since as between the two accused, Ortiz is, clearly the more guilty. But the consequences of the error and the miscarriage of justice may be minimized if the Department of Justice and the prison authorities refuse to release him upon his service of the minimum prison sentence of ten years, but require him to serve the maximum, subject of course, to regulations about allowance for good conduct.

With the modifications above stated, the appealed decision is hereby affirmed, with costs.

*Paras, C.J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.*