

[G. R. No. L-11485. July 11, 1958]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GREGORIO BACSA, DEFENDANT AND APPELLANT.

D E C I S I O N

BENGZON, J.:

On September 6, 1950, the lifeless body of Teodora Sese, 60, was found in a creek at Barrio Dolores, Tarlac, Tarlac. From all appearances, she had been the victim of violence.

An information filed in May 1951 after the corresponding investigation, charged Marcelino Bacsa, Evaristo de los Santos, Pedro Gaspar, Ernesto Gaspar and Martin Granil with the crimes of robbery with homicide of the aged woman, plus multiple rape committed on Celestina Torres, probably her relative. In February 1952, after Gregorio Bacsa had been arrested, another information was filed describing the same offenses allegedly committed by him in conspiracy with the five defendants already mentioned.

A joint trial ensued. Discharged to be state witnesses over the objection of the defendants, Martin Granil and Marcelino Bacsa testified for the prosecution. After weighing the evidence submitted on both sides, the district judge found Gregorio Bacsa guilty of the crimes described in the information and sentenced him to life imprisonment and to pay P3,000.00 to the heirs of the deceased plus costs. However, for reasonable doubt, he acquitted the other three accused. Gregorio Bacsa appealed in due time.

With a few modifications, the statement of the appellant's brief summarizing the evidence for the prosecution may be adopted: "In the afternoon of September 3, 1950, while Martin Granil was in his house at Barrio Barasbaras, Tarlac, Tarlac, Marcelino Bacsa arrived alone. He went to invite him to help him harrow a piece of land the following morning. Later, Evaristo de los Santos, Ernesto Gaspar, Pedro Gaspar and Gregorio Bacsa arrived in his house. They stayed there about two minutes and when they are about to leave, they invited Martin Granil and Marcelino Bacsa to go with them to Bacuit, Tarlac, Tarlac, at the house of

Gregorio Bacsa. It was after a certain degree of insistence on their part that Martin Granil and Marcelino Bacsa finally consented to go with them. Upon reaching the barrio of Bacuit, they did not go directly to the house of appellant, but they stopped at the store belonging to the deceased Teodora Sese. They left Barasbaras for Bacuit at past four o'clock in the afternoon. The distance between the house of Martin Granil and the store of Teodora Sese is more than one kilometer. * * * Gregorio Bacsa told Teodora Sese to sell them wine but Teodora Sese told him that she cannot give them any wine unless he would pay for his debt first. * * * Appellant reiterated that she sell wine to them. Teodora Sese adamantly refused to give them wine, whereupon appellant brought out his pistol and pointed same to the old woman and said, "You keep quiet. If you make any fuss, I will kill you." When Martin Granil and Marcelino Bacsa saw what appellant was doing, they started to leave, but Evaristo de los Santos, Pedro Gaspar, Ernesto Gaspar, and appellant went after them and said, "You return, otherwise, we will kill you." * * * Then "they took her down the house and brought her to a place behind it." * * * Evaristo de los Santos and Gregorio Bacsa returned to the house, and when they returned * * * they were bringing with them a girl named Celestina Torres." These two "took the girl to a place north of the house; they were followed by their companions together by the old woman. When they reached a place about 50 meters away, * * * Marcelino Bacsa, Martin Granil, Ernesto Gaspar, Pedro Gaspar and Teodora Sese stopped and waited. Evaristo de los Santos, Gregorio Bacsa with Celestina Torres went ahead. After a while, Gregorio Bacsa went to the place of their companions. Whereupon Ernesto Gaspar and Pedro Gaspar also went to the place where Celestina Torres was with Evaristo de los Santos. Later Ernesto Gaspar and Pedro Gaspar returned to the place where Teodora Sese was with Martin Granil and Marcelino Bacsa; upon their return, Gregorio Bacsa returned to the place where Celestina Torres was, and then he and Evaristo de los Santos brought Celestina Torres back to the house. Then they "joined Martin Granil and others, * * * Evaristo de los Santos and Gregorio Bacsa took hold of Teodora Sese by the arm and proceeded towards the North, while the others followed. The two (Evaristo de los Santos and Gregorio Bacsa) brought Teodora Sese to a corral which had been used for carabaos and upon reaching the bed of a dry creek, they stopped." * * * Whereupon "Evaristo de los Santos beat Teodora Sese with a piece of wood at the head, causing her to fall down with her face down; Gregorio Bacsa picked up a big stone and threw it at the head of Teodora Sese. After that, Evaristo de los Santos and Gregorio Bacsa went to where their companions were seated at the edge of the creek, and said "Let us go." Then they left, leaving behind Teodora Sese. On their way, they opened the three boxes which (the party had taken from the house) were found to contain wine. They drank wine. Then Martin Granil and Marcelino Bacsa were told to go home, while Gregorio Bacsa, Evaristo de los Santos,

Ernesto Gaspar and Pedro Gaspar went together. According to Celestina Torres, she had sexual intercourse with Gregorio and his companions.”

This 15-year old girl swore it was Gregorio Bacsa who, in a secluded spot near a bamboo grove, brutally assaulted her with the help of Evaristo de los Santos. She lost consciousness when his other companions took turns in raping her. Her testimony tallied with that of Marcelino Bacsa, who said Evaristo de los Santos, Padro Gaspar and Ernesto Gaspar also ravished the unconscious girl, following the example of Gregorio Bacsa.

The prosecution’s case, be it noted, rested principally on the sworn assertions of Martin Granil, 25, and Marcelino Bacsa, 29, who were two of the original defendants, but who were discharged at the request of the fiscal. They witnessed the events related by them; and although their testimony as *participes criminis* should be scrutinized as coming from a polluted source, we perceive no reason to doubt their narration, considering that the first is the brother-in-law and the second, the brother of this accused-appellant, Gregorio Bacsa. The family misunderstandings supposedly existing between them are not sufficiently serious to induce such witnesses to swear falsely against their near-relative, on a matter which might entail capital punishment.

The appellant, however, imputes irregularity to the trial judge in permitting the release of two defendants; because Rule 115, sec. 9, according to him, contemplates the discharge of *only one*. We do not think the said Rule implies a prohibition against the discharge of more than one co-defendant. It all depends upon the needs of the fiscal and the discretion of the trial judge. Anyway, any error of the trial judge in this matter cannot have the effect of invalidating the testimony of the discharged co-defendants.^[1]

He urges, furthermore, that Martin Granil should not have been utilized because he had reportedly confessed before a barrio lieutenant to a previous attempt against the virtue of a married woman. Yet the rule disqualifying co-defendants from the benefit of exclusion speaks of “conviction” of an offense—which is not the case.

As to Marcelino Bacsa, the appellant points out to his having been confined at the Philippine Training School at Welfareville for the offense of robbery. But it does not appear that at the time of releasing Marcelino the trial judge knew this confinement.^[2] At any rate once the discharge is ordered, any future development showing that one or all of the five conditions have not actually been fulfilled may not affect the legal consequences of such discharge^[3]—which even though, erroneous, does not by itself affect the testimony of the liberated co-

defendant nor his competency to testify.^[4]

We regard the testimony of these two co-accused and of the offended girl, sufficiently convincing in view of the proof of the *corpus delicti* and the corroboration offered by Vicente Figueroa, 49, who saw Gregorio Bacsa and other persons at the store of Teodora Sese that afternoon, and by the two physicians who examined the corpse, and the genitals of Celestina Torres. Strongly confirming such direct evidence by eye-witnesses, is the circumstance that the accused, a few months after the crime,—probably when the investigation yielded some evidence against him—left his place of residence, sold his horse and calesa, even his house, and went to live in different towns, evidently concealing his whereabouts, because he was not apprehended until February 1952, notwithstanding a warrant for his arrest had been issued on March 13, 1951. He gave no reason for his departure and prolonged absence. Needless to say, flight when unexplained is proof of guilt.^[5]

Contrasted with such direct and circumstantial incriminating evidence, defendant's alibi proved weak indeed. That afternoon, he swore, he went home at about six o'clock, fed his horse, rested, and then went to sleep. Early the next morning he woke up to drive his calesa according to his daily routine. Nevertheless, he neglected to present his 14-year-old son, who lived with him to corroborate his account; the implications are necessarily unfavorable.

This prisoner must therefore be declared guilty of robbery with homicide and rape. In line with previous decisions, the rape should be deemed to aggravate the robbery.^[6] This together with the aggravation of dwelling and sex and age of the deceased should call for capital punishment. However, lacking sufficient votes, we have to affirm the life term (plus indemnity) imposed by the court below. Appellant should, in addition, indemnify Celestina Torres in the sum of P1,000.00.^[7] Thus modified, the appealed decision is affirmed with costs against him. So ordered.

Paras, C. J., Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

^[1] People vs. Badilla, 48 Phil. 718; People vs. Marcellana, 44 Phil. 591.

^[2]

Supposing that confinement in the Reformatory, without more, is "conviction." Art. 80 Revised Penal Code provides: "The Court * * *

instead of pronouncing *judgment of conviction*, shall suspend all proceedings and shall commit such minor etc. . . .”

^[3] People vs. Mendiola, 82 Phil., 740, 46 Off. Gaz. 3629.

^[4] U. S. vs. Abanzado, 37 Phil. 658; U. S. vs. Alabot, 38 Phil. 698.

^[5] U. S. vs. Sarikala, 37 Phil. 486; U. S. vs. Virrey, 37 Phil. 618

CONCURRING AND DISSENTING

FELIX, J.:

I concur in the decision in so far as it declares appellant Gregorio Bacsa guilty of the special offense of robbery with homicide aggravated by the circumstance of dwelling and to his sentence to the capital punishment though this penalty cannot be imposed to “appellant who is sentenced to *reclusion perpetua* for lack of sufficient number of votes for the imposition of the death penalty.

The crime of rape, however, is not an aggravating circumstance of the special offense of robbery with homicide, when the former attends the commission of the latter offense, and as the information filed in the case charging the crime of robbery with homicide and rapes, was not assailed in any way by appellant, I am of the opinion that he must also be sentenced accordingly, i.e., to as many penalties of *reclusion temporal* in its maximum period as there are rapes committed on Celestina Torres by Gregorio Bacsa and his co-offenders, *in addition* to the indemnity of P1,000.00 to Celestina Torres already imposed in the decision. Judgment affirmed with modification.

^[6] People vs. Ganal, 85 Phil., 743, 47 Off. Gaz. 4614; People vs. Carillo, 85 Phil., 611; 47 Off. Gaz. 4158; See also People vs. Medina, 71 Phil. 383.

^[7] U. S. Reyes, 10 Phil. 83; U.S. vs. Torres, 13 Phil. 755.

