

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LORENZO MINTU, DEFENDANT AND APPELLANT.

*G.R. No. L-1700. May 24, 1949*

Ponente: PERFECTO, J.

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### PERFECTO, J.:

The trial court found appellant Lorenzo Mintu guilty of the crime of robbery with rape and sentenced him to twenty years of reclusion temporal and to pay jointly and severally with his co-accused Fernando Masikap the offended party in the sum of P270, value of the articles taken.

There is no question that on September 2, 1946, at about 10 o'clock in the evening, four persons, one armed with a pistol and the others with rifles, entered the house of Andres Zabala in Mulawin, Tanza, Cavite, and took and carried away with them several pieces of clothes, jewelry and other personal effects valued in all at P270. While the robbery was being perpetrated, one of the robbers, Fernando Masikap, raped Maria Zabala, 22, married with German Gimenez, daughter of the owner of the house, Andres Zabala, although the rape was committed without the assistance of the other malefactors.

The main question raised by appellant Lorenzo Mintu is whether or not he has been sufficiently identified as one of the malefactors. After a careful weighing of the testimonies on record, we are satisfied that Andres and Maria Zabala, witnesses for the prosecution, have sufficiently identified appellant as one of the robbers. Mintu was known to Maria Zabala before the crime was committed because she used to see him pass by a small store she had when she was still single. At the time the robbery was being committed, there was light in the house, and the robbers did not cover their faces or took any other precaution to avoid their being identified by the dwellers.

It is true that when Andres Zabala went the next morning to the authorities to denounce the robbery he was unable to mention the name of Mintu, but this failure is explained by the fact that he did not know then the name of the accused. It is also true that Mayor Eustaquio V. Arayata testified that on September 3, 1946, when Andres Zabala reported to him the robbery and he asked him as to the identity of the robbers, Zabala said that he did not know them, but his answer can easily be interpreted as meaning that Andres Zabala did not know the names of the robbers with the exception of one Pando, with whom he used to know accused Fernando Masikap.

Furthermore, when appellant was already arrested he was pointed out by Andres and Maria Zabala as among the robbers, and Mintu chose to keep silent when he could then express his protest if he was not one of the robbers.

Through his own testimony and that of Marcelino Buctong, Mintu tried to show that, in the night when the robbery was being committed, he was at his home attending to his wife who was then suffering stomach-ache. To cure her he solicited the services of Marcelino Buctong. We found no merit in the alibi. According to Marcelino Buctong he has been called many times to treat Mintu's wife, but the only date that he could specify in going to Mintu's house for the purpose is that the night of September 2, 1946, and no valid reason was given by him for not remembering anyone of the other dates. On the other side, there is absolutely no showing on record why Andres and Maria Zabala should have accused appellant falsely as one of the robbers.

The appealed decision is in accordance with law, paragraph 2 of article 294 of the Revised Penal Code, and is affirmed with costs against appellant.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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