

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
REYNALDO RAMOS Y LINAO, DEFENDANT AND APPELLANT.***G.R. No. L-1029. August 23, 1949*

Ponente: MONTEMAYOR, J.

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In the Court of First Instance of Manila Reynaldo Ramos y Linao was charged with the crime of "robbery in an inhabited house by means of force against and intimidation of persons with double rape," found guilty thereof and sentenced to an indeterminate penalty of 8 years and 1 day of prison mayor to 17 years, 4 months and 1 day of reclusion temporal; to indemnify the offended parties in the sum of P2,380, without subsidiary imprisonment in case of insolvency, and to pay the costs. He appealed to the Court of Appeals which later endorsed the case to the Supreme Court pursuant to the provisions of section 145-K of the Revised Administrative Code as amended by section 2 of Republic Act No. 52, it being of the opinion that the penalty which should be imposed in the case should be reclusion perpetua as recommended by the Solicitor General and not of reclusion temporal as imposed by the lower court.

The evidence in the record in our opinion conclusively establishes the following facts: On April 5, 1946, about midnight, four men each armed with a revolver broke into the house at 1432 Balintawak, Palomar, Manila, occupied by Atty. Filomeno Lerias, his wife and children and two cousins-in-law Lolita Abainza and her sister Marcela Abainza by forcing open the backdoor. At the time an electric light was burning in the middle of the room where the occupants of the house were sleeping. The first thing the occupants knew upon being awakened from their sleep, the four robbers were pointing their revolvers at them and threatening them with death if they made any resistance or outcry. They were herded in one corner of the room guarded by one of the robbers while his companions ransacked the house, their efforts resulting in a total loot amounting to P2,380, including cash of P1,100 and jewelry, silverware, watches, dresses and linen, valued at P1,280, all belonging to Atty. Filomeno Lerias and members of his household. After gathering the plunder the robbers put out the electric light and two of them pulled and dragged Lolita to one corner of the room and raped her. The two other robbers repeating the process, dragged Marcela to another corner and also ravished her, the sexual intercourses being accomplished against the will of both women and through force and intimidation. Only one of the robbers, the present defendant herein was identified, his identification having been made later by Atty. Lerias at the police station after the appellant's arrest. Although many suspects were shown to him, Lerias picked out only Reynaldo Ramos as one of the robbers and as one of the malefactors who took his turn in raping Marcela Abainza.

The appellant put up the defense of alibi but in a quite weak and ineffective manner, and to show that the prosecution did not consider his short testimony of any value, it did not even cross-examine him. When asked by his counsel where he was on April 5 1946, that is, the day of the robbery, he said that he did not remember. Later, he added that he did not know anything about the robbery and rape of which he was accused. He also claims in his testimony that he could not have committed the crime of rape imputed to him because he was incapable of sexual intercourse as his private organ was not complete. His counsel now who seems to be the same lawyer who

represented him at the trial claims in his brief that he repeatedly asked the lower court to have the defendant physically examined, especially his private parts to support his claim that he was physically incapable of sexual intercourse but that the trial judge persistently refused to accede to his request. The record however, fails to show this supposed motion or request of counsel for the defendant or the alleged refusal of the court to permit the physical examination of the accused. Besides, Marcela assured the Court that the two men who dragged her to one corner or room succeeded in having sexual intercourse with her, the first man taking about thirty minutes to satisfy his lust and the second man employing about fifteen minutes to consummate the sexual act. True, Marcela was unable to recognize her ravishers, but Lerias positively identified the appellant as one of them.

As to the alleged contradictions supposedly incurred in by the witnesses for the prosecution, claimed by counsel for the appellant, we agree with the Solicitor General that they are unsubstantial and do not affect the credibility of such witnesses nor the weight to be attached to their testimonies, and they can easily be explained. For instance, while Lerias told the court that the robbery was committed about 1 o'clock in the morning, Lolita and Marcela said that it was about 10 o'clock in the evening. Unless these witnesses looked at their watches if they had any, to tell the time, which in their panic and excitement they could not probably have done, they could honestly disagree as to the exact hour the robbers broke into their house. While Lerias said that he distinctly saw Marcela being ravished by at least one of the robbers, Marcela told the court that only her two ravishers witnessed the brutal act and that Lerias was not present. Considering the fact that the rape of the two women was accomplished after the electric light was put out by the robbers and that the house must have been in total darkness except the occasional flashes of the flashlights of the robbers, Marcela may have been mistaken in saying that Lerias was not anywhere near her when she was ravished in order to witness the ravishment. As to the credibility of the witnesses, we find nothing in the record to justify our disturbing the credit given by the lower court to the witnesses for the prosecution and its failure to believe the testimony of the appellant. On the contrary, the fact that only Lerias claims to have been able to identify the appellant herein and that Marcela and Lolita who could easily have told the court without fear of possible contradiction that they also recognized the appellant in order to insure his conviction, frankly told the court that they did not recognize any of the four malefactors, strengthens our conviction that the prosecution witnesses were truthful and sincere.

We agree with the trial court in its finding the appellant guilty of the crime charged, against him. We however, disagree as to the penalty imposed. As correctly recommended by the Solicitor General, considering the presence of the aggravating circumstances of nighttime, dwelling, and in band, the penalty in article 294, paragraph 2 of the Revised Penal Code should be imposed in its maximum degree, namely, reclusion perpetua. With the modification that the prison sentence imposed by the trial court should be raised to reclusion perpetua, the decision appealed from is hereby affirmed, with costs against the appellant.

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

[1] See 79 Phil., 612.

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