

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PABLO REPILLION Y DE LA CRUZ, ALIAS PABLING AND PEDRO DE LEON, ALIAS PEDRING, DEFENDANTS, PABLO REPILLION Y DE LA CRUZ...***G.R. No. L-1025. October 30, 1947*

Ponente: HILADO, J.

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Early in the morning of June 18, 1946, between three and four o'clock, five armed men, among them appellant Pablo Repillion y De la Cruz, alias Pabling, and Pedro de Leon, alias Pedring, broke into the house numbered 312 Isabel, Interior 165 Sampaloc, Manila. The evidence discloses that the intruders, once inside the house, rounded up the eleven inmates thereof and herded them on the second floor where they were ordered to lie down flat on the floor, the malefactors pointing their guns at them. While the inmates were in this position the robbers—such they turned out to be—busied themselves ransacking the place and succeeded in finding and appropriating to themselves one Gruen lady's wrist watch valued at P150, a pair of shoes worth P12 belonging to Donata Leonardo, and a pair of eyeglasses with gold rims valued at P40, belonging to the husband of Teresa Leonardo. This young woman of twenty years and wife of one of the inmates was among the eleven above mentioned.

Accompanying that robbery, the crime of rape was also committed: appellant Pablo Repillion, Pedro de Leon, and another companion of theirs whose identity has not been established, took Teresa to the ground floor of the building and one after the other, through force and intimidation, raped her. Teresa was gagged and her hands were held by two of the robbers while the third was committing the act, and this they did by turns, appellant being the first to ravish Teresa. In the meantime the other two robbers remained upstairs guarding the other inmates of the house. After the three had thus abused said victim, they took her upstairs, but sometime thereafter she was taken downstairs again and once more subjected to the same abuse by the same three men. To stop Teresa's attempt to shout for help in order to protect her honor, they threatened her with the warning: "Don't shout, because if you do we will kill you." The torn condition of the dress, Exhibit A, which Teresa was wearing at the time corroborates the truth of the resistance that she offered although in vain.

Dr. Abelardo Lucero, medical examiner of the Manila Police Department, testified that at about 10.30 o'clock in the morning of June 18, 1946, he examined Teresa Leonardo and found that she had had sexual intercourse within the last twenty-four hours previous to the examination; that the vaginal mucos (mucosa) was congested and that there was an old laceration. The court below gave full credit to Teresa's assurance that although she slept with her husband on the night of the robbery, they did not have sexual intercourse that night.

Appellant's brief raises two questions, namely, (1) whether his identity as one of the malefactors and ravishers has been sufficiently established and (2) whether his defense of alibi deserves to be upheld.

As to the question of identity, the trial judge had the following to say:

"There is no question about the identity of the accused Pablo Repillion as one of the robbers who raped Teresa Leonardo in the early morning of June 18, 1946. While it is true that Pablo Repillon was masked at the time, the covering of his face fell off while he was on top of Teresa doing the sexual act. It was then when she clearly saw the defendant's face which was lighted by the electric bulb light coming from a neighboring house. Besides, Teresa used to see Pablo Repillion visit his coaccused Pedro de Leon, who is her neighbor."

Besides, the witness Donata Leonardo, a sister of Teresa who was also living with her at the time of the occurrence, recognized appellant Repillion and his coaccused De Leon as among the five robbers who entered their house. She was particularly positive in her testimony that appellant was one of them, as it was a clear night and their house which was under construction had no windows as yet and the partitions were temporarily made of paper. Detective Guina of the Manila Police Department who handled the investigation of the case and who arrested appellant a few hours after the commission of the crime upon indication of Teresa and Donata Leonardo, declared that the police station these two, without the least hesitation, pointed to the appellant as one of the criminals. Teresa, upon seeing appellant at the police station, said: "He was the man who raped me and robbed our house."

No evidence has been presented to explain why Teresa and Donata Leonardo should falsely point out appellant as one of the perpetrators of such serious and heinous crimes. These two sisters frankly admitted that they were not able to recognize the other three companions of appellant Repillion and his coaccused De Leon. No reason is suggested why they should not have been as frank in making a similar admission if they had not been able to recognize appellant and De Leon.

His Honor, the trial judge, dismissed the defense of alibi—and we think correctly—in these words in his decision:

"\* \* \* the defense of alibi set up by the accused is of no consequence, for, besides the positive identification of the defendant by Teresa Leonardo, the accused has incurred material contradiction in his testimony. In the early stage of his testimony, he said he was in the house of Basilio Lopez playing mahjong from 9:30 o'clock the night previous to 7:30 in the morning of June 18, 1946. Later, however, on cross-examination, he said he left his house at nine o'clock in the evening of June 18 and played mahjong until the morning of the following day and that it was at noon of that date when he was placed under arrest by the city secret service men."

It may be remarked in addition that appellant did not present to testify in his favor the three men, Basilio Lopez, Lt. Delfin Duque, and another person, with whom he stated that he was playing mahjong at the time of the occurrence in question, or at least any of them, nor did he even explain why he did not do so, instead of relying on his sole, uncorroborated testimony upon such an important defense.

Alibi must be proved by positive, clear and satisfactory evidence (U. S. vs. Olais, 36 Phil., 828; People vs. Limbo, 49 Phil., 94; People vs. Pili, 51 Phil., 965).

The trial judge, finding appellant guilty beyond reasonable doubt of the crimes charged in the information, and defined and penalized in article 294, paragraph 2, of the Revised Penal Code, and considering that there were present in the commission of the crime the aggravating circumstances of nighttime and in band, without any mitigating circumstance to offset them, sentenced him to suffer the penalty of reclusion perpetua, to indemnify the offended party for the rape committed in the amount of P500, without subsidiary imprisonment in case of insolvency due to the nature of the principal penalty, to return the stolen property or to pay its value of P202, and to pay one half of the costs. The penalty thus imposed being in accordance with the facts and the law, the judgment appealed from is affirmed in toto, with costs in this instance in addition. So ordered.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

**PERFECTO, J.:**

We concur with the qualification that the indemnity ought to be raised to P6,000.

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