

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUANITO NAPILI, DEFENDANT AND APPELLANT.*G.R. No. L-2406. February 22, 1950*

Ponente: TORRES, J.

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This case is before Us by appeal from the judgment rendered by the Court of First Instance of Sorsogon which found Juanito Napili guilty of robbery with rape and Crisostomo Napili of rape. Upon an information which charged them with robbery in band with rape, said court sentenced Juanito Napili to an indeterminate penalty ranging from a minimum of 8 years and 1 day of prision mayor to a maximum of 14 years, 8 months and 1 day of reclusion temporal, with the accessories of the law, to indemnify Salud Levantino in the sum of P500.00, to acknowledge and maintain the offspring, should there be any, and to pay his share of the costs; and likewise sentenced Crisostomo Napili to an indeterminate penalty of from 4 months of arresto mayor to 3 years, 8 months and 1 day of prision correccional, with the accessories of the law. Both defendants were likewise sentenced to indemnify, jointly and severally, the offended parties Pedro Levantino and the members of his family in the sum of P653.85 and in case of insolvency on the part of Crisostomo Napili to undergo the corresponding subsidiary imprisonment, and also to pay his share of the costs.

The information accused Raymundo Trifolca, Silvino Peñarubia, Juanito Napili, Crisostomo Napili, Gabino Napili, Basilio Napili and Dioscoro Llanillo of the crime charged, in that on the 24th day of May, 1946 in the municipality of Magallanes, province of Sorsogon, said accused armed with rifles, revolvers and bolos, entered the house of Pedro Levantino and with intent to gain through violence and intimidation, by binding the hands of Pedro Levantino and the other occupants of the house, namely, Salud Levantino, Emilia Levantino, Flora Levantino, Roger Levantino, Jaime Grutas, boxing and kicking them, took and carried away personal property consisting of wearing apparel, pieces of jewelry, a flashlight and a bolo and cash, all totalling P653.85, belonging to Pedro Levantino and his family, and that by using force and threat to kill, some of the accused had sexual intercourse with Salud Levantino, Flora Levantino and Lory Levantino against their will.

At the hearing and on motion of the prosecution, the court dismissed the case against Raymundo Trifolca, because the latter escaped from his guards when he was being conducted from the insular penitentiary in Muntinglupa, Rizal, to Sorsogon for trial, and has not been recaptured. Two other accused, Silvino Penarubia and Dioscoro Llanillo, have never been arrested and are still at large, and finally, after the submission of the evidence for the prosecution, the fiscal moved that the charge against Gabino Napili and Basilio Napili be dismissed on account of the insufficiency of the evidence. The court granted said petition. There were, therefore, only two accused, Juanito Napili and Crisostomo Napili, who have been found guilty of the charge and sentenced as already stated. Of these two, only Juanito Napili has appealed.

From our survey of the evidence We find that after dusk, or around seven o'clock in the evening of May 24, 1946, several armed persons called at the house of Pedro Levantino in the barrio of Pawik, municipality of Magallanes, Sorsogon and from a distance one of them shouted that they wanted to buy cigarettes. Pedro Levantino, without

suspecting that those persons were up to some mischief, opened the kitchen of his house and met his callers to deliver the cigarettes. One member of the group, on the pretext that he -wanted some water to drink, went up the house followed by his companions. Once inside, the intruders ordered Levantino to raise his hands and then brought him to the parlor, blindfolded him and bound his hands behind his back. The accused proceeded immediately to ransack the place by opening trunks and other furniture from which they got the personal properties described and enumerated in the information, the value of which has been estimated, without objection from the defense, at P653.85.

While members of the gang were ransacking the house, Salud Levantino, Flora Levantino, Roger Levantino and Emilia Levantino, children of Pedro Levantino, and one Jaime Grutas who was a helper of Pedro Levantino in his copra business, arrived from a neighboring barrio where they attended a Santa Cruz de Mayo celebration. Entirely unaware of what was going on in their home, they entered the house to be met by the robbers who ordered them to raise their hands. The hands of Salud, Flora and Emilia were immediately bound and, together with another sister, Lory Levantino, who did not attend the celebration of the Santa Cruz de Mayo, they were herded into a room and with a rope were bound to a bed. In the meantime, Pedro Levantino was brought down from the house and taken to a shack in the yard where he was kept under guard. Jaime Grutas was also directed to come down, to the ground floor and there kept isolated from the rest. The girls, Salud, Flora and Lory, were then ordered to the ground floor and by means of force and intimidation individually ravished, with this appellant, Juanito Napili, taking charge and raping Salud Levantino. Flora Levantino, as the result of the brutal outrage committed on her by one of the robbers, became pregnant and subsequently gave birth to a child.

After satisfying their lewd desires, the accused, including this appellant, left the scene of their crime carrying away with them their loot in a sack. While the robbery and ravaging of the girls were being perpetrated, the victims were able to recognize only Juanito Napili, this appellant, and Crisostomo Napili. Juanito Napili was identified not only by Salud Levantino but also by Lory Levantino; and Crisostomo, by virtue of the fact that he was previously known to the Levantino family and was identified as one of the robbers by Jaime Grutas, Salud Levantino and Pedro Levantino.

The defense did not deny that in the evening of May 24, 1946 the house of Pedro Levantino in the barrio of Pawik, Magallanes, Sorsogon, was visited by a gang of men who took away by force and intimidation cash and personal belongings of Levantino and his family. It also admitted that some members of the gang raped Salud, Lory and Flora Levantino. Counsel for appellant in this instance questions, however, the finding of the lower court regarding the identification of Juanito Napili as one of the robbers who raped Salud Levantino, by contending that it has not been sufficiently established by the prosecution. Counsel likewise insists that the lower court should have favorably considered the alibi alleged by his client.

On the witness stand, Salud Levantino, one of the victims of the outrage, without hesitation identified Juanito Napili as the robber who raped her that night. She said that appellant brought her down to the ground floor and by threatening her with a dagger was able to have carnal knowledge of her. She stated that she did not forget his features and his face on the night in question. That he is thin, with curly hair and of small structure. Upon the arrest of Crisostomo, Basilio and Juanito Napili, the chief of police of Magallanes, requeued her to point out among the three persons lined up before her, the one who had raped her, and she pointed out the appellant. According to the offended party there was moonlight on the evening in question which helped her to identify the appellant. Moreover, according to the evidence, although the leader of the gang had ordered Pedro Levantino to put out the light in the house, one of the malefactors was using quite frequently a flashlight, the glare of which helped Salud Levantino in the identification of this appellant.

The other victim, Lory Levantino, corroborating her sister, testified that Salud Levantino was brought down to the

ground floor by appellant and there she was ravished by Juanito Napili. Salud and Lory frankly stated that they were not able to identify the other accused, but they were positive as to their identification of this appellant.

So much for this point. As regards the alleged alibi of appellant, the latter would make the court believe that, at the time of the commission of the crime, he was in the municipality of Castilla, of the province of Sorsogon, saving logs in the homestead of Melecio Llanillo and. that, therefore, it was physically impossible for him to have been in the scene of the crime, in the municipality of Magallanes, at the time of its commission.

As properly remarked by the lower court, the municipality of Castilla is separated from that of Magallanes by the Sorsogon Bay, which is a rather small body of water which can be crossed in a few hours ride by boat from Castilla to Magallanes and vice-versa. Granting that Juanito Napili was employed in the homestead of Melecio Llanillo in the municipality of Castilla, the trial judge said that it was not physically impossible for him to have crossed the bay of Sorsogon, joined his confederates in the commission of the complex crime charged and of which he was convicted, and afterwards returned to Castilla by crossing the bay of Sorsogon. Paulino Dondonilla, who was put on the witness stand by the defense to prove the alleged alibi of Juanito Napili, testified that he was present when this appellant was arrested by the military police, and yet he kept silent and withheld from the officers of the law the supposed presence in Castilla of Juanito Napili precisely at the time when the house of Pedro Levantino was being robbed by a gang of malefactors of which Napili was identified as one of its active members. We are, therefore, satisfied that the evidence presented by appellant to prove his alibi is incredible (People vs. Badilla, 48 Phil., 718) and his identification "by the offended parties being so clear and positive his alibi is rejected. (People vs. Palamos, 49 Phil., 601; People vs. Medina, 49 Phil., 313.)

Finally, counsel for appellant contends that the latter was wrongly convicted of the complex crime of robbery with rape because there is no specific allegation contained in the information, regarding the commission of the crime of rape, but the wording of the last paragraph of the information is so manifestly clear that We are convinced that the lower court did not err in convicting this appellant of said complex crime. The information says in parts:

"* * * and then two of the said accused did then and there willfully, unlawfully and feloniously by use of force and threat to kill, have sexual intercourse with said Salud Levantino, Flor Levantino and Lory Levantino against their will."

We shall now turn our attention to the circumstances which accompanied the commission of the offense. Those are (1) the aggravating circumstance of nighttime (Art. 14, par. 6, Rev. Penal Code), for the record shows that it was already dark when the robbers intruded in the house of Pedro Levantino, so much so that one of the members of the gang was using a flashlight frequently during the ransacking of the house (People vs. Aquino, 39 Off.Gaz., No. 74, page 1799); (2) the aggravating circumstance of craft as provided in paragraph 14 of Article 14 of the Revised Penal Code, as it has been shown that in order to enter the house of Pedro Levantino, one of the malefactors shouted from the outside that they wanted to buy cigarettes, which induced Pedro Levantino to open the kitchen for them, and that one of them said that they wanted to drink some water which also paved the way for their intrusion in the house of the offended parties (U. S. vs. Gampoña, 30 Phil., 817; People vs. Daos, 60 Phil., 143); and (3) the commission of the offense in the dwelling of the offended parties (People vs. Collado, 60 Phil., 610).

Pursuant to paragraph 2 of Article 294 of the Revised Penal Code which punishes robbery with violence against or intimidation of persons, "the penalty of reclusion temporal in its medium period to reclusion perpetua" shall be inflicted upon the culprit, "when the robbery shall have been accompanied by rape, * * *." Said penalty is reclusion temporal in its medium period to reclusion perpetua and consists of three periods the maximum of which is reclusion perpetua. and in view of the presence of three aggravating circumstances in the commission by this appellant of the offense of which he is hereby found guilty, without any mitigating circumstance to offset the

same, the penalty which is hereby imposed upon him is that of reclusion perpetua with the corresponding accessories.

With the above stated modification, and it being understood that appellant shall return to the offended parties the property stolen and in case of failure to do so shall reimburse the value thereof, the judgment appealed from is otherwise affirmed, with costs.

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

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