

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EMILIO GAZMIN, ET AL., DEFENDANTS. GREGOKIO TUMABAT,
RUPERTO TUMABAT AND AVELINO MALANO, DEFENDANTS AND
APPELLANTS.**

G. R. No. L-3591. September 29, 1951

Ponente: PADILLA, J.

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PADILLA, J.:

Two families composed of Eugenio Buhangin, his wife Eosa Gagutan, their two daughters Melchora and Gliceria; and of Antonio Gagutan, his wife Adela Guzman, Eusebio Gagutan, and two infants, children of Rosa and Adela, lived in a house located in the barrio of Mabant&d, municipality of Cauayan, province of Isabela. As usual in rural communities, on the evening of 2 December 1948, they retired early, but at about 10 or 11 o'clock in the evening of that day they were awakened by a gun report and shortly, thereafter. Gregorio Tumabat armed with a rifle, followed by Emilio Gazmin; armed with a shotgun, opened the door and entered the house, and Ruperto Tumabat armed with a pistol and Avelino Malano carrying a long bolo entered it through the window. Emilio Gazmin told Eugenio Buhangin to Me down face downwards and asked him where he kept his money. Antonio Gagutan had slipped from the house through the window after hearing the gun report and before the malefactors entered the house and hid himself in the banana stalks growing not far from it. When the malefactors entered the house, it was lighted by a petroleum lamp. Emilio Gazmin proceeded and succeeded in force opening a trunk and found a bamboo tube where the money of Eugenio Buhangin and Rosa Gagutan was kept, consisting of three (8) twenty-peso bills and four (4) ten-peso bills, or a total of one hundred pesos (P100), which Emilio Gazmin took and pocketed after breaking the bamboo tube. While the latter was engaged in looking or searching for the money in the trunk, Gregorio Tumabat guarded Eugenio: Buhangin. Thereafter, Emilio dragged Rosa Gagu' tan, who was carrying her baby, to the porch and Gregorio pulled and brought Adela Guzman under the porch causing her to. drop her seven-month old baby from her arm. By putting from behind his right arm under the armpit of Rosa and holding her neck tightly, Emilio caused her to stoop and pushed her to the siding and in that position he unbuttoned his trousers and put his penis into her genitals from behind, but as she resisted and wiggled he failed to ejaculate. By the use of force upon Adela, Gregorio succeeded against her will in having sexual intercourse with her. While Adela was resisting Gregorio lie found three. (3) ten-peso bills wrapped up in a handkerchief inside her chemise which he took. While the two accused were ravishing the two women, their two companions Ruperto Tumabat and Avelino Malano kept watch on Eugenio and the other inmates of the house Ruperto and Avelino carried away Eugenio Buhangin's fishing net valued at sixty pesos (P60). The four malefactors left the house and on the way they stopped at a nearby house belonging to Jose Calimag, shot a pig valued at eighty pesos (P80) belonging to Eugenio Buhangin entrusted to the care of Jose Calimag and carried the pig away. Adela and Rosa returned to the living room weeping and told Eugenio what Gregorio and Emilio had done to them.

Upon this evidence the trial court found Gregorio Tuitnabat, Ruperto Tumabat and Avelino Malano guilty of the crime of robbery in band with rape, as charged in the information, and sentenced each to suffer the penalty of

reclusion perpetua, the accessories of the law, to indemnify, jointly and severally, Eugenio Buhangin in the sum of two hundred forty pesos (P240) and Adela Guzman in the sum of thirty pesos (P30), to further indemnify Rosa Gagutan and Adela Guzman in the sum of five hundred pesos (P500) each, and to pay the proportionate costs. Upon a plea of guilty Emilio Gazmin was sentenced accordingly. From this judgment the three defendants have appealed.

Appellants' defense is alibi. Gregorio Tumabat's is to the effect that on 2 December 1948, Felix Salvador and Ariston Acob went to his house to buy corn and as they could not return home because it was already late in the evening, they took their supper and slept in his house on the night of that day. Gregorio never went out during that night. Ruperto Tumabat's is to the effect that at dusk he, together with Marcelo Gandesa, went to Calagui River in the barrio of Carabatan Chica and there fished the whole night from 2 to 3 December 1948. Avelino Malano's is to the effect that on 2 December 1948 he was called by Pilar Baccay to warm water with which to give sponge bath to her granddaughter who was suffering from fever and convulsions. This defense cannot prevail over the positive testimony of Eugenio Buhangin, Rosa Gagutan and Adela Guzman, who saw and recognized the four malefactors known to them because they were barrio mates and there was a lighted petroleum lamp in the house. Gregorio Tumabat, Ruperto Tumabat and Avelino Malano testified that the witnesses for the prosecution, who pointed to them as the perpetrators of the crime of robbery in band with rape, had no motive to impute to them such a serious crime. The appellants having denied that Emilio Gazmin was with them on the night of the commission of the crime, the prosecution put him on the witness stand and testified on rebuttal that on the night of 2 December 1948 the appellants and he were together and all of them went to the house of Eugenio Buhangin.

We are convinced that the indivisible complex crime charged in the information was really committed by the appellants.[1] The penalty imposed by the trial court in its maximum period because the crime was committed by a band, being in accordance with law, is affirmed, with costs against the appellants.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

[1] U. S. vs. Tiongco, 37 Phil., articles 294, par. 2, and 246, as amended by Republic Act No. 12, of the Revised Penal Code.

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