

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALBERTO RIVERA AND PEDRO JIMENEZ, DEFENDANTS AND
APPELLANTS.**

G. R. No. L-4641. May 25, 1953

Ponente: REYES, J.

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REYES, J.:

The spouses Leorido Aggub and Maria Bacalanao had their permanent home in barrio Cansan, municipality of Cabagan, Isabela province. But in October, 1949, they took temporary abode in a make-shift hut with canvas sidings on their farm in sitio Fugu of said barrio because they were then harvesting their peanut crop in that place. With them were their sons aged 19, 13, and 11.

At about midnight of the 14th of that month, while the spouses and their sons were asleep, there came to their hut four armed men. One of them (Pedro Jimenez) had a revolver or pistol, another (Jimenez's brother-in-law, Alberto Rivera) a rifle, and the other two a bayonet each. The last two were also masked. With these two remaining outside to watch, Jimenez and Rivera entered the hut by lifting its canvas siding, and after spotting Leorido Aggub and his eldest son, Macario, with the aid of a flashlight, they seized them and brought them outside, and then with the aid of their companions they bound and maltreated them and tied them to the tall grasses or bamboos a short distance from the hut.

Having thus disposed of those most likely to offer effective resistance, the malefactors returned to the hut. Ahead of the other was Rivera, who immediately went to where Maria Bacalanao was and asked her first about her brother in the Armed Forces (actually he was her cousin) and then about the money which he said she had received from the War Damage Commission. As Maria made no reply, pretending not to understand, Rivera dragged her out of the hut and searched her, and by force took from her pocket a purse containing P1.000 in ten 100-peso bills. Thereafter he threw her to the ground and, overcoming all the resistance she could offer, had carnal knowledge of her against her will.

Barely had Maria disengaged herself from Rivera when she was raped in succession, first, by Jimenez, and then by one of the masked men, with the latter performing the sexual act after the manner of the beasts of the field by placing himself on top of his victim, who was on her knees and had her head pinned to the ground.

Taking his turn, the forth member of the gang also tried to have carnal knowledge of Maria, but he failed to have an erection on account of old age and had to be content with pinching her genitals.

Their lust satisfied, the malefactors gathered what they could of the couple's belongings (eggs, chickens, woolen blankets, a bolo and aluminum kettle) and then left. Total value of their loot was P1,203.22.

With father and son set loose, but apprehensive that the malefactors might decide to come back and kill them, Leorido's family sought safety in their home in the barrio that same night.

Maria informed her husband of the outrage to which she had been subjected, and on the following morning she

went to the PC headquarters in the capital of the province to report the matter to her soldier cousin, Aniceto Bacalanao, but not finding him there, she narrated her story to the commanding officer, informing him in the presence of Sgt. Cureg that she was able to recognize two of the malefactors. Thereafter she was taken to the provincial hospital where her genital organs were examined because of her allegation that she had been raped.

Leorido and his son Macario, on their part, went to Cabagan and reported the matter to the chief of police there, Leorido informing this officer that he was able to identify two of the malefactors as Alberto Rivera and Pedro Jimenez.

Following up his investigation with Sgt. Cureg, the chief of police, accompanied by Macario, went to the house of Alberto Rivera in Santa, Tumauni, Isabela, and there found the aluminum kettle which the malefactors had taken from Leorido's hut.

With their two companions still at large, Pedro Jimenez and Alberto Rivera were prosecuted for the crime of robbery in band with rape. And having been found guilty as charged and sentenced to reclusion perpetua, indemnity and costs, they have appealed to this Court.

There can be no doubt as to the perpetration of the crime charged, for it is clearly established by the combined testimony of the aggrieved spouses and their son Macario. And beyond question too is appellant's participation therein for they were positively identified by the offended parties.

It is true the hut was not lighted that night of the crime. But it appears that the malefactors used a flashlight, and outside the hut there was light from the moon, clear enough to have enabled the offended parties to recognize the appellants, who were well known to them and, unlike their companions, did not have their faces covered.

Both appellants set up an alibi.

Pedro Jimenez declared that he did not remember having gone anywhere during the whole day and night of October 14, 1949, because he was then sick, having had an attack of malaria from October 12 to October 15. Though this declaration is corroborated by Maria Salome, who said that on October 14 she went to the house of this appellant to buy corn and found him sick with high fever, it appears from this appellant's own testimony that he was able to go along with the policeman who picked him up for investigation on October 15. This shows that, even supposing that he really had an attack of malaria, the attack was not serious enough to have prevented him from going out on the night of the crime, October 14.

Alberto Rivera, on his part, testified that he passed the whole night of October 14 in the house of his employer Juan Izquierdo in Tumauni, Isabela, whither he had gone in the morning of that day to see him about his tenants. Though Juan Izquierdo attempted to corroborate him, Izquierdo's testimony is hardly of any value, for he said that he left his house for Tuguegarao in the afternoon of October 14 and when he returned the following morning Rivera was no longer there. Moreover, this appellant was seen by Juana Tagayun peeping into the temporary hut of the Aggubs in the morning of the day the crime was committed, and it was also from his house that the aluminum kettle, one of the stolen articles, was recovered.

Appellant's, weak alibi cannot be allowed to prevail over the testimony of the offended parties, who positively identified them as two of the malefactors. Besides knowing them well, the offended parties had full opportunity to observe them at close range in the light of the moon that night, and this was specially true in the case of Maria Bacalanao, the hapless victim of their lust.

Counsel de officio argues that Maria Bacalanao did not offer much resistance when she was ravished by the appellants, hinting that she was a willing victim to their atrocities. But it is obvious from Maria's testimony that

she did not succumb without a struggle. Asked how she was abused by Rivera, she said: "Once on the ground with my face upwards, he placed my two hands against my breast and when I attempted to get free he even pressed stronger and because I am only a woman, I could not offer resistance." And as to Jimenez, she declared that she protested when this appellant pinned her to the ground but he threatened to shoot her if she did not keep quiet; and that as she was afraid and already weak she was not able to shake him off. If she did not cry for help, it must be because she realized that no help could be expected, since the hut was in an isolated place and the only ones who could have come to her succor—her husband and her eldest son—had already been seized and overpowered.

From Maria's description of her encounter with Jimenez, counsel also doubts that coition between the two could have taken place, for she testified: "Pedro Jimenez, taking hold of my two hands, placed himself on top of me with my two legs on his shoulders." But with nothing to show that sexual commerce is not feasible in that position, we cannot reject Maria's sworn testimony as pure invention. And in any event, even supposing that Jimenez was not able to perform any carnal act himself, he would not be any the less liable for those perpetrated by the other members of the band, there being no proof that he tried to prevent the same. (U. S. vs. Tiongco, 37 Phil., 951).

After going over the evidence, we find no reason for disturbing the finding below that appellants are guilty of the crime charged, which is punishable with reclusion temporal in its medium period to reclusion perpetua. As the crime was committed by an armed band, this penalty should be imposed in its maximum period or life imprisonment (Art. 295, first paragraph, Revised Penal Code), even disregarding the aggravating circumstance of night-time appreciated by the trial court and not offset by any mitigating circumstance.

Wherefore, with the modification recommended by the Solicitor General that the indemnity awarded to the offended woman Maria Bacalanao be raised to P5,000 and that the sum of P2.50, the value of the kettle recovered, be deducted from the indemnity to be paid by appellants for the stolen articles, the judgment appealed from is affirmed with costs against the appellants.

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

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