

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS.
MARCIANO BERNARDINO ALIAS MARCING ET AL., DEFENDANTS,
IGNACIO PARASDAS, DEFENDANT-APPELLANT.**

G.R. No. L-5038. November 25, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In the Court of First Instance of Pangasinan IGNACIO PARADAS was completed of robbery with multiple rape and sentenced from 10 years and 1 day of prision mayor to 17 years, 4 Months and 1 day of reclusion temporal, to acknowledge the offspring if any, unless the law should prevent him from so doing and to support the same, to indemnify Marcos Latorre, his sons Teofilo and Juan and daughters Encarnacion and Dolores alias Maring in the sum of P117.70, which is the value of the articles stolen, without subsidiary imprisonment in case of insolvency, to the accessories of the law and to pay 1/2 of the costs. He appealed to the Court of Appeals, and after a study of the case, including the briefs for the appellant and for the government, the Fifth Division of the said appellate court came to the conclusion that appellant is guilty of the crime charged, but believing that in view of the existence of three (3) aggravating circumstances, the penalty should be imposed, in its maximum degree, namely, reclusion perpetua, certified the case to us for decision. Last May, appellant filed a motion of withdrawal of this appeal, but said motion was denied.

The record of this case fully establishes the following facts. On May 6, 1948, Marcos Latorre was living with his daughters Marta, Feliza and Dolores Maria alias Maring, his granddaughter Encarnacion, and his sons Teofilo, Juan, Bartolome, Zosimo and Arcadio, in the barrio of Lareglareg Malasiqui, Pangasinan. At midnight, the inmates of the house were awakened by the barking of the dogs and they heard the voices of two men asking for a drink of water. Teofilo lighted a kerosene lamp and the two night visitors entered the house. After Teofilo had handed them the second glass of water, they took him forcibly down the house and then four other men, among them Ignacio Parasdas and Marciano Bernardino alias MarcIng, came up the house. They were armed with three revolvers, Parasdas bent down and blew out the kerosene lamp and as Marta trained light on him, he grabbed it from her and he and his companions were provided with two other flashlights, flashed them on the inmates of the house and on different parts looking for loot, Parasdas ordered Dolores to stand up and when she refused, he raised her by the armpits embraced and kissed her and fondled her breast in resisting, Dolores fell down and appellant with the help of Bernardino dragged her outside the room to the stairs from where with the help of two other men who were down below, she was carried to a place about twenty meters east of the house. There with the help of Bernardino and the two other men, and despite her violent protest and resistance Parasdas succeeded, in having sexual intercourse with her. Thereafter, Bernardino and the two other men took their turns in satisfying their carnal desires. By that time Dolores was so weakened that she could not offer any effective resistance. She kept shouting for help particularly addressing her call to her father but no one came to her aid. In the meantime, the other male inmates of the house had been forcibly taken down from the house and tied up, leaving, only the women folk Inside the dwelling. After ransacking the house the marauders were able to take away with them

P75.00 in cash, four pair of earrings valued at P3.50, one Undershirt worth P1.20, a pair of pants costing P3.50 and one shirt valued at P3.00 or a total costing of P117.20.(should be P117.20).

The outrage was denounced to the authorities and the victims especially Marta and Dolores testified before them. Because Bernardino after raping Dolores had threatened to kill her and the members of her family if she implicated him in the case, his name was not mentioned either by her or Marta. However, after Parasdas made his second statement contained in his affidavit (exhibit D) wherein he referred to Bernardino as one of his companions in committing the robbery and the rape and after Bernardino was arrested the two women gathering courage, told the Justice of the Peace, at the second preliminary investigation that Bernardino was one of the persons whom they positively identified that night the robbery and rape were committed. In view of this new development the original information was amended so as to include Bernardino and he and appellant were prosecuted in the Court of First Instance. The lower court, however, was apparently impressed by the fact that the name of Bernardino was never mentioned at the beginning of the investigation by the police and the justice of Malasiqui, and entertaining reasonable doubt. The Solicitor General believes that in this respect the trial court erred, and we are inclined to agree with him, but in view of Bernardinos acquittal, there is now nothing could be done.

In our opinion, there is no doubt whatsoever about the participation of Parasdas in the robbery and was clearly identified by Mart a and Maring who had known him for at least two years before the night in question for the reason that ha used to cultivate a piece of Land near their home and once in a while he spent the night with the family. We find no need for discussing his defense of alibi. It was not believed by the trial court; neither does it impress us, not only because he was clearly identified by at least two of the victims of the robbery and rape, but also because of his affidavit (Exh. D). Of course, he now claims that he had been ill-treated by the municipal police and the statements in said Exhibit "D". Besides the refutation made by the policemen whom he pointed to as having tortured him, the circumstances under which said affidavit was made precluded any possibility of the use of force or Intimidation. In the first affidavit (Exhibit "X") taken on May 18, 1948, appellant professed complete non-participation, even ignorance of the robbery and multiple rape committed on May 6, 1948. If the police were determined to extract a confession from him, they would not have allowed him to make that statement completely exonerating him from the charge. Two days thereafter, however, according to the Justice of the Peace of Malasiqui, appellant went to him and said that he was making another statement because he was going to tell the truth and reveal the identity of his companions. So Parasdas was taken to the office of the justice of the peace and there, alone with said official, and the clerk, Parasdas made the statements contained in Exhibit "D". Still he tried to relieve himself from criminal responsibility. He merely admitted that he was present at the robbery and at the commission of the rape because he was under threats of bodily injury even death by Bernardino and his companions. He assured the Justice of the Peace who took down his statement (Exhibit D) that it was made voluntarily and that he had not been intimidated or maltreated by the police. All this, to us support the conclusion that Exhibit D was voluntarily made and so is competent evidence. Incidentally, this Exhibit "D" admitting his presence at the house of Marcos Latorre destroys his defense of alibi.

On the day of the trial when Dolores (Maring) testified, about ten months after she was raped, there was no proof or even a hint that as a result of said outrage committed against her, she was ever pregnant, or had given birth to any offspring. There is, therefore, no need for any consideration or discussion about the support or recognition of offspring even if the circumstances attending the rape, otherwise so warranted.

We agree with the Solicitor General and the Court of Appeals that the penalty should be imposed in its maximum degree because of the attendance of several aggravating circumstances not compensated with any mitigating circumstance. The crime was committed at night in the dwelling of the offended parties and with the aid of at least

three armed men, and possibly with the use of craft. And what made appellant's acts more condemnable was that he was a friend of the family that he outraged and had previously enjoyed its hospitality. As already stated, he used to cultivate a farm near the Latorre home and sometimes was allowed to spend the night there, presumably, because his house was not conveniently near. Callous to all feeling of decency, friendship and gratitude he robbed the family and outraged one of the young daughters, not only himself but three Members of his gang.

Modifying the decision appealed from, the appellant is hereby sentenced to reclusion perpetua with the accessories of the law, to indemnify Dolores (Maring) in the sum of P3,000.00 by reason of the rape, to Indemnify Marcos Latorre and the members of his family In the amount of P117.20, and to pay one-half of the costs.

Paras, C. J., Pablo, Bengzon, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concur.

Feria, Tuason, and Reyes, JJ., did not take part.

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