

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRISANTO DAYEGO, DEFENDANT-APPELLANT.***G.R. Nos. L-2747-48. May 10, 1950*

Ponente: OZAETA, J.

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Separate informations for robbery with rape were filed against the above-named appellants in the Caloocan Branch of the Court of First Instance of Rizal, they having been apprehended on different dates. After a joint trial His Honor Judge Dionisio De Leon found them guilty and sentenced them to an indeterminate penalty of from 12 years and 1 day to 20 years of reclusion temporal, from which sentence they appealed to the Court of Appeals. The latter court after a thorough review of the evidence also found them guilty and, inasmuch as in its opinion the proper penalty imposable on them is reclusion perpetua, certified these cases to this court pursuant to section 34 of Republic Act No. 296.

At about 11:00 o'clock in the evening of June 15, 1946, the spouses Ganuto Acuña and Dominga de los Santos, who with their children were living in the barrio of Banlat, Caloocan, Rizal, were raided and robbed by an armed band of several individuals. The robbers fired a shot upon arriving at the premises. Four of them went up the house, ordered the inmates, who were awakened by the shot and by their noises, to lay on the floor face downward, covered them with blankets, put out the light and then ransacked their wardrobe, after which they raped Mamerta Acuña, a 25-year-old married daughter of said spouses. They took away clothes and money belonging to Dominga worth P62, and a handbag containing P20, two blankets valued at P12 and a pair of pants valued at P25, all belonging to Mamerta Acuña. Besides these articles and money, the robbers carried away from the premises a carabao and a cow valued at P500 and P300, respectively. These animals, however, were recovered on the following morning from the slaughterhouse at Calle Ascarraga, Manila, under circumstances hereinafter to be mentioned.

On the same night immediately after the robbers left, Canuto Acuña went to his son-in-law Jose de la Cruz, who accompanied him to Novaliches where they reported the robbery to the police. An investigation was immediately started. The appellant Grisanto Dayego was arrested at 6:15 on the following morning from his house in the barrio of Bahay Torro, Caloocan, and taken to the police station where he was identified by Mamerta Acuña as one of the robbers.

The appellant Geronimo Francisco, a resident of Sangandaan, Caloocan, had disappeared from his residence since June 16, 1946, and was arrested on August 12, 1946, in Polo, Bulacan.

The proofs against the appellant Crisanto Dayego consist of (1) his identification by Mamerta Acuña the day following the robbery as one of the robbers; (2) her testimony during the trial that she recognized said appellant on the night in question because, although his face was then covered by a handkerchief up to below the nose, she could recognize him by face as well as by voice, she having known him for a long time; and (3) the testimony of Benedicto Coronel in whose possession the carabao and the cow were found on the morning of June 16, 1946, at

the slaughterhouse in Calle Azcarraga. He testified that early that morning a truck came carrying the two animals. There were three persons with the animals, one of whom was the appellant Crisanto Dayego who offered to sell the animals to him. Coronel agreed to buy them and the price was fixed at P520, but when Coronel asked for the documents of the animals Dayego and his companions could not produce any; so they left to fetch the certificates while Coronel agreed to watch the animals until their return. In the meantime Jose de la Cruz and Meliton Herrera, son-in-law and nephew, respectively, of Canuto Acuña, arrived with the certificates of the animals, and with the help of the police recovered them from Coronel, who was detained by the police for investigation.

The proofs against the appellant Geronimo Francisco consist of (1) the testimony of Dominga de los Santos that she recognized him as one of the four robbers who went up her house on the night in question; (2) the testimony of Marcelo Dayego that he saw said appellant together with other individuals at Sangandaan leading a carabao and a cow at 5:00 o'clock in the morning of June 16, 1946, and (3) the confession (Exhibit C) made and signed by the said appellant before the Caloocan police after his arrest by the police authorities of Polo, Bulacan.

Both appellants put up alibis.

Appellant Crisanto Dayego claims, and he testified to the effect, that on the night in question he was at his house from seven o'clock to three o'clock in the morning playing sakla with some seven companions, among whom were Anacleto Bustamante and Anastacio de los Santos, both witnesses to his defense of alibi, and that he did not leave the house throughout the course of the game.

Appellant Geronimo Francisco also denied participation in or knowledge of the commission of the offense, stating that he was at home, asleep, during the whole night of June 15th, without getting up until the following day, when he reported for work. He testified that the police of Polo, Bulacan, beat and maltreated him, and that thereafter he was brought to Caloocan, Rizal, where his confession was taken down, and which, he explained, he signed without knowledge of its contents and import, and for fear of being returned to Polo and there again maltreated. He further declared that Marcelo Dayego testified against him because he was displeased when appellant failed to give him a pig which Dayego had demanded.

Both appellants insist on the sufficiency of their respective alibis and on the alleged insufficiency of the proofs for the prosecution to establish their guilt beyond reasonable doubt. Counsel for the appellant Crisanto Dayego particularly attacks the testimony of Benedicto Coronel to the effect that between 5:00 and 6:00 o'clock in the morning of June 16, 1946, Crisanto Dayego and two unidentified individuals brought the animals for sale to the slaughterhouse at Calle Azcarraga, contending that that was an impossibility because at 6:15 on that same morning Crisanto Dayego was arrested by the police in his house in the barrio of Bahay Torro, Caloocan, Rizal. We think Benedicto Coronel either told a lie or was mistaken as to the time. But, even disregarding the testimony of Coronel, we are satisfied from the fact that Crisanto Dayego was immediately arrested at the indication of Mamerta Acuña, one of the victims of the robbery, and from her testimony in court that she recognized him as one of the robbers, that he really participated in the robbery. She had no motive to testify falsely against the said accused, who was known to her and who claimed that he is a nephew of Canuto Acuña, the father of Mamerta. The fact that Mamerta Acuña, when asked by the police whether Benedicto Coronel was one of the robbers, replied in the negative, as shown by the records, shows that she had no intention to implicate a suspect whom she could not identify.

With regard to the appellant Geronimo Francisco, the proofs against him are likewise indubitable. His identification by Dominga de los Santos as one of the robbers who went up her house on the night in question, his disappearance the following day from his residence at Sangandaan, and his signed confession before the police at Caloocan, are sufficient to establish his guilt beyond reasonable doubt, even if we disregard the testimony of

Marcelo Dayego to the effect that he saw the said accused with the stolen animals in the early dawn of June 16, 1946, at Sangangdaan. The pretension of this appellant that he made and signed said confession before the Caloocan police because he had been maltreated by the police of Polo, who did not extract a confession from him, is absurd.

The crime committed by appellants is robbery accompanied by rape as defined in paragraph 2 of Article 294 of the Revised Penal Code and penalized with reclusion temporal in its medium period to reclusion perpetua. There being present three aggravating circumstances, in that the crime was committed at nighttime, in the dwelling of the offended parties, and by a band, with no mitigating circumstance, the penalty should be imposed in its maximum degree.

The sentence appealed from is modified, and the appellants are hereby sentenced to suffer reclusion perpetua, to indemnify jointly and severally Mamerta Acuña in the sum of P5,000 for the rape, and to restore to the offended parties the articles stolen and not recovered, or to pay to them jointly and severally their value in the sum of P119, plus the costs.

IT IS SO ORDERED.

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

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