

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VERSUS CATALINO VELO, ET AL., DEFENDANTS. GERARDO SANTOS, ELISEO ALAY-AY, ALFREDO ESTABILLO AND DOMINADOR ANATEN, APPELLANTS.

G.R. No. L-868. March 13, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellants stand accused of the crime of robbery with rape committed on February 3, 1946, in the municipality of Bagabag, Nueva Vizcaya. The Court of First Instance of said province found them guilty. They appealed.

Thirteen witnesses testified for the prosecution and five for the defense.

Dr. Jose C. Molano testified that on February 5, 1946, he conducted a physical examination on the person of Noemil Guieb in his clinic at Bayombong, Nueva Vizcaya. He issued Exhibit A upon the result of his examination. He found the presence of foul fishy vaginal discharge, some sort of decomposed protein which is not normal. He found a slight inflammation around the vaginal orifice with the presence of multiple ulcerations, 2 mm. in diameter, around said orifice and the internal side of the labia minora. The ulcerations are like scratches resulting from loss of substance due to extreme rubbing. The hymen presents lacerations at 6 and 3 o'clock which bled on insertion of examining fingers. The lacerations show injury to the tissues a few days before the examination. The witness examined the patient externally in order to find any pertinent findings in the body. It took him about thirty minutes. He had to examine the patient carefully being a medico-legal case. The decomposed protein he found inside the vagina is a foreign substance. Normally the vaginal mucosa excretes mucoïd fishy discharge but not foul. The witness cannot determine the cause of the foul-fishy substance. Even microscopic examination will not determine the cause. The witness said: "If you are examining a semen for that length of time the patient was examined, you cannot get a positive result." The witness implied from the result of his examination that something was possibly inserted into the vaginal cavity. The body inserted was bigger than the size of the orifice. He found no sign of force in any other part of the body of the patient except in her sex organ. Usually, seminal secretion remains in not less than two days in the vaginal cavity. When there are plenty of corrugations at the vaginal mucosa, usually the semen remains for quite a long time. When a number of children are born to a woman, the laxity of the vaginal wall gives more flaw to the semen and in that way the semen does not remain long in the vaginal cavity. The lacerations found in the vaginal orifice are due to external violence or factors introduced in the vaginal cavity and the foul-fishy discharge was probably of seminal nature. Vaginal lacerations can be present or can be formed in a young adolescent without sexual intercourse when she exerts much efforts such as running, riding on bicycle or on horseback or for other factors. The witness asked the patient why there were lacerations in her vagina and she told him that several persons abused her two days before she was examined.

Gregorio V. Tengco, who acted as justice of the peace of Solano and Bagabag, testified that accused Eliseo

Alay-ay signed in his presence the affidavit Exhibit B, accused Dominador Anaten the affidavit Exhibit C, Alfredo Estabillo the affidavit Exhibit D, accused Genaro del Rosario and Dominador Anaten the affidavit Exhibit E. The witness saw the two blankets mentioned in Exhibit E as presented before the chief of police and as the ones taken by the accused from the house of Noemi Guieb on February 3, in barrio Murong, municipality of Bagabag, and accused Dominador Anaten identified the same before the witness as blankets taken from Noemi Guieb. Both blankets are marked as Exhibits E-1 and E-2 and were identified by the witness. The mosquito net Exhibit E-3 is the same as that presented to the witness by Lt. Melegrito. Exhibit B was prepared by policeman Bayatan. It was signed in the office of the municipal treasurer on the table of the chief of police which is near the jail. The witness read the contents of the documents to Alay-ay and asked him if they are true and he answered in the affirmative.

Santos Lejao, 40, married, sergeant, Military Police, stationed at Bayombong, Nueva Vizcaya, testified that Miss Guieb reported to the headquarters that she was raped in barrio Bagabag, Bayombong. It so happened that Genaro del Rosario was then in the office of the finance officer asking for his differential pay, and was pointed by Miss Guieb as one of those who raped her. "And then we immediately called for Mr. Del Rosario. We immediately asked him what happened last night. He was trying to deny but we tried to convince him to tell the truth so that he will not be placed in an embarrassing situation and he told the truth and revealed all his companions. He told the names of Estabillo and Anaten. The following day we proceeded to Murong, Bagabag, to look for the other companions of Del Rosario. He happened to approach them and called them to the office of the municipal mayor of Bagabag and took their statements and affidavits." In his statement, Genaro del Rosario mentioned that he has a Thompson in the possession of Anaten. "We proceeded to the house of Anaten. Anaten indicated the place where the Thompson was kept and he said that there is a Thompson with magazine and six rounds of ammunitions of .45 caliber." Exhibit G is the Thompson sub-machine gun with six rounds of ammunition. Miss Guieb appeared in the military headquarters on February 5. Miss Guieb was in the office about twenty minutes before Genaro del Rosario arrived. The confession of Del Rosario was taken by Lt. Melegrito. The sub-machine gun Thompson was taken by Anaten from under the bushes where he kept it. The sub-machine gun Thompson was shown to Del Rosario who was asked if the same was what he ordered Anaten to keep and he answered yes. Del Rosario is an ex-guerrilla. When Del Rosario appeared in the headquarters, Miss Guieb was already through with narrating the robbery and rape. When the witness called for Del Rosario, the latter was nervous. He blushed. Miss Guieb went to the headquarters at noon to complain about the incident.

Manuel Caramillo, 36, married, farmer, residing at Paniqui, Bagabag, Nueva Vizcaya, testified that at about 4 o'clock in the afternoon of Monday, his compadre Dominador Anaten came to request him to keep in his custody one mosquito net, one woolen blanket, and one native blanket. Anaten told him that the objects belong to one Panoy. The person called Panoy is accused Genaro del Rosario. The witness kept the mosquito net and the two blankets for about one night. Anaten told him that he was coming the following day for them. But he never came back and the following morning MPs and a policeman from Bagabag came to get those objects. The objects are the ones identified by him as Exhibits E, E-1, and E-2. The authorities who came to take the articles from the house of the witness were accompanied by Dominador Anaten. When the witness met Atty. Madarang once in the municipal building in Bagabag, he told him to put down his cousin Eliseo Alay-ay as one of the accused, "because he is a bad fellow." The reason was because when the witness was in Camp O'Donnell, Alay-ay abused his wife in barrio Murong. The witness filed his complaint before the president of the neighborhood association in Murong.

Benito Maka testified that he is a sergeant of the 27th Company, Criminal Investigation, MP, stationed at Bayombong. Between February 4 and 5, he happened to participate in the investigation of a case of robbery and rape. One Sunday in February, the case was reported to his office in Bayombong. The report was made by Sgt. Lejao. The next day the witness and Sgt. Lejao went to the house of Miss Guieb at Bagabag to verify if she was

really raped. The witness approached Panoy, Genaro del Rosario, pretending to befriend him and trying his best to ask from him something about his previous actuations. Then the witness asked him about the robbery and rape that happened at Murong, Panoy told him that he was one of them. When Panoy confessed, the witness asked him about the Thompson he used that night and Panoy told him that he gave it to Anaten, a companion of his. The witness reported to Lt. Melegrito who instructed him to look for Anaten. The witness located Anaten in Solano and requested him to go to his house in Lantap and Anaten went voluntarily. Anaten was asked about the place where the gun was hidden and the gun was found near the house covered with cogon grass. Exhibit G is the same Thompson gun found in the possession of Anaten. Anaten himself was the one who took it from the place where it was hidden. Upon taking it, he presented it to the witness saying that it belonged to Panoy. The witness presented it to Panoy for identification and Panoy admitted that it was the Thompson he used that night. The witness was in the company of Sgt. Lejao when the latter went to the house of Camarillo to take Exhibits E-1, E-2, and E-3.

Cesario Dumlao, 36, married, farmer, testified that on February 5, 1946, he was mayor of Bagabag. A case of robbery with rape committed in the barrio of Murong was reported to him. The witness is the one before whom accused Genaro del Rosario signed affidavit Exhibit I, the contents of which was read and translated to the accused by the witness in Ilocano. The accused understands said language.

Noemi Guieb, 21, single, resident of Murong, Bagabag, testified that she is a bible woman since 1940. A bible woman "is one who stays in a chapel or church where she teaches the gospel." She stayed one year in Santo Domingo, Bagabag, and the following year she continued the first year high school. When the war broke out she stayed at home in Murong, Bagabag. She helped in the church at Murong. In the latter part of January, 1946, she was attending the district conference at the chapel in Murong. All the workers of the church had to attend the conference. The witness was representing the congregation of Salilungan, Isabela. She was a bible woman in Salilungan in November, 1945. She started to attend the conference on January 28, 1946. On February 2, 1946, between 8 and 12 o'clock at night, she was at the chapel hearing sermons. At about 12 o'clock she went home. The distance between the chapel and her home is around one kilometer. She was accompanied by her mother and two children. The sky was clear with stars shining. Upon arriving home, they changed their clothes and went to sleep. "It was going to be around 3 o'clock at dawn of Sunday when I noticed the movement in the bamboo flooring of our house and finally somebody pulled my blanket, then I woke up. I immediately stood up, Sir, and they asked us money and as we are very poor we did not give anything to them." Those asking money were Genaro del Rosario and Gerardo Santos. They were carrying a Thompson and a rifle. Genaro del Rosario was carrying the Thompson and Gerardo Santos, the rifle. "When they were not able to get any money from us, my mother and I begun struggling with them. I embraced my mother and continued struggling because they would like to separate us from each other. Then I continued struggling with these two men and when the handkerchiefs that covered their faces dropped, I recognized them." Because the witness was weak, the accused were able to separate her from her mother. The point of the Thompson was thrust on her breast. "They have been pushing me and they brought me to a place where there are guava groves. I noted very well that they had companions. They were probably five." The witness was brought to about 25 meters away from her house. The witness knew Del Rosario since the Americans arrived, about the month of August, 1945. She knows Santos for a long time because he is a neighbor. "When I was already brought in the guava groves they begun to do wrong with me and because I did not like them to do such thing on me, I struggled again but they held me, one held my right leg, one held my left leg, one held my arm and one held my mouth so that I could not move and shout for help, then they abused me tearing my gown and chemise. Genaro del Rosario did what he wanted to do with me. He mounted on me, Sir, and forced me. He inserted his private parts and afterwards Gerardo Santos followed. He inserted his private parts in my private parts. I felt pain." When Genaro del Rosario inserted his penis in her vagina, the others were holding her arms. She could not shout nor move. After Del Rosario was through with sexual intercourse with her, "somebody held

my eyes and then they did also in succession what the other two had done to me. There were perhaps seven of them." The incident lasted about 30 minutes. "Because I was weakened, they left me alone and they went to our house at the junction and fired in the air. I heard it several times. When I felt that they were already away, I went to the house of one Crispin Valdez who is living near bar house. When I already gained strength and having related to Mr. Valdez what happened to me, I went to our house where I found my mother and things scattered. Our neighbors came to our rescue and among them were Hilardo Santos and Vicente Ablang. Right there and then, my mother told that we were robbed and the blankets were already gone." The things which were taken was one ring with stone, one American blanket, one Ilocano blanket and one mosquito net, the total value of which amounts to P90. The chemise Exhibit F and the torn nightgown Exhibit F-1 were the ones used by the witness when she was raped. The witness identified blanket Exhibit E-1, blanket Exhibit E-2, and mosquito net Exhibit E-3 as the ones taken from her home. At 9 o'clock in the morning of Sunday, February 3, the witness went to church and there she told the parish pastor, Segundo Gutierrez, what happened to them. Pastor Gutierrez encouraged the witness to report to the authorities. But she was not able to report on that day because there was no office on Sunday. The witness went to the military police headquarters at Bayombong to report. She was accompanied by Lt. Paredes and her cousin Josefina Gaborno. She was told to have medical examination. She went to the hospital but Dr. De Leon was absent. She went to the residence of Dr. Molano but she was not examined the same day because Dr. Molano had to treat another patient that day. She returned on Tuesday and the physical examination was conducted by Dr. Molano.

On cross-examination, the witness testified that she reached first year high school. Her father Benjamin Guieb is dead already. Before going to sleep on the night in question, the witness changed her clothes for those which were in court. They were only two that slept in the house. Before sleeping she and her mother said their prayers "inasmuch as it is our custom as Methodists." No man was living with them. Their house is just a shack, the windows and door were covered with canvass and the walls were even falling so that one could see inside the house. The witness was able to recognize the accused because the covering of our door was already removed and our flooring was bamboo split and it was bright inside as it was around 3 o'clock." Genaro del Rosario and Gerardo Santos gave her mother and herself fist blows. She was hit on one side and on her breast. She felt pain below her nipples which lasted for a month. The blows were painful. The house was four by five meters in area. It has only one compartment. Of the several persons who went with her to the guava groves she was able to recognize only Del Rosario and Santos. On the night of the incident she was not wearing any panty because it was warm. It took the first man long to insert his private part into hers and that is why "I felt pain because it was the first time I experienced." After she was forced to lie down, Del Rosario inserted immediately his private part and he succeeded. "All my clothes were torn and they could put it already." They laid her on the ground bare. The place was grassy and it was not dusty. That is why the garments did not show any trace of dirt. After Del Rosario, Gerardo Santos abused her. She was able to recognize the two because she saw them with her two eyes and it was bright. There were stars. It was already dawn, around 3 o'clock of Sunday, February 3. When Del Rosario and Santos were through, they covered her eyes with their hands, so with her mouth. That is why she was not able to recognize the others. The witness did not report the rape to Crispin Valdez and Vicente Ablang because she wanted to tell it first to the authorities. She went to report to the authorities on Monday afternoon. She went to the military police headquarters where she arrived at about 2 o'clock accompanied by Josefina Gaborno and Lt. Inocencio Paredes. Her affidavit was taken by the MP. The witness knows Alfredo Estabillo, Eliseo Alay-ay, and Gerardo Santos because they are her neighbors. When coming from the residence of Dr. Molano, upon seeing Genaro del Rosario, Lt. Paredes went down from the jeep to see him at the MP headquarters. The witness and Josefina Gaborno followed. While they were sitting in the office, Sgt. Lejao inquired why they were there. While she was talking with Sgt. Lejao, Genaro del Rosario did not enter the office. When the witness entered the office of the Captain, Genaro del Rosario was already with him. Since she was raped up to the date when she was

testifying in court she did not notice in her any of the signs indicating conception. Since the night of the assault she continued to have her regular menstruation. Gerardo del Rosario was able to insert his private parts into her vagina, "but I felt that he had some difficulty because that was my first time to be done that way. I felt that his penis was already inside." The penis remained inside the vagina stationary. Then Santos succeeded. "In view of the fact that I wanted such thing would not happen to me, I did my best to move and it was the time when his penis was removed, then followed Santos." When Gerardo Santos took his turn, "I felt that he had some difficulty in inserting his penis, because I struggled and moved, however, he finally succeeded in introducing it. I tried my best to struggle for its removal but they strengthened the hold of my body and covered my eyes." Because of her movement, the penis of Gerardo Santos was dislodged from her vagina. After the third man had inserted his penis into her vagina he allowed it to remain stationary inside until he withdrew it. The same process took place in the cases of the fourth, fifth, sixth and seventh man. Among those who abused her, the witness noticed that four of them made up and down movements with their penis. The witness had never had any sexual intercourse with anybody before. Before the incident the witness heard from married women the idea of how a man and a woman perform sexual intercourse, but she was not told that one of the essential parts is the up and down movements or that the penis expels a substance called semen. Regarding their means of livelihood the witness said, "We worked as hard as we can to support ourselves. I am a bible woman and the church gives me a little amount of money and my mother does odd jobs to earn a living." The witness has the habit of washing her vagina and private parts twice a day, in the morning and again at night. It was a long habit because it was taught to her while she was a child by her mother and, while she was studying, by her teacher. She made the washing that Sunday morning after the incident happened. She did it again on Monday morning, and again at noon before starting on her way to Bayombong, "so that I will not be smelled odorous." Dr. Molano gave her something to wash and on the 15th of February she had her menstruation again. The witness can speak English.

Crispiniano Valdez, 36, married, farmer, resident of Murong, Bagabag, a neighbor of Noemi Guleb, testified that around 3 o'clock in the morning of Sunday, February 3, he heard a commotion in the house of Noemi. He was afraid because he heard somebody loading his gun near his house. He did not recognize the people who were loading guns near his house because he was inside his house. Because of fear, it did not occur to him to find out what happened in the house of the Guiebs. At 7 o'clock in the morning he had a chance of talking with Miss Guieb and Eriberta Villalobos in their house. Noemi and her mother were sorry because "they had done what they wanted to them." They found out that they lost some blankets and other articles. "They told me, Sir, that they were brought down by force and were strangled." Early in the morning of Sunday, February 3, 1946, he remembered having seen the body he believes to be that of Eliseo Alay-ay although he did not see his face. He recognized him by his voice. Then the witness was lying down in his house. He heard Eliseo Alay-ay saying: "Do not talk because there is something to happen." Upon hearing it, the witness woke up and at the same time he heard the loading of a gun near his house. Alay-ay was inside the witness's house. The witness told him "do not do anything wrong if you are thinking of something wrong." The conversation took place before the commotion in the house of Miss Guieb. Eliseo Alay-ay is a cousin of the witness. The deceased father of Noemi Guieb is an uncle of the witness. The hut of the witness and that of Noemi are adjacent and joined together with a kitchen common to both. The only and first time that the witness went to see the Guiebs was at 7 of clock in the morning of Sunday. They told him that they lost some of their belongings. The witness did nothing more but depart. They told him that they were brought down and abused. During the Japanese occupation the witness mortgaged a land of his in the sum of P100 to Eliseo Alay-ay. The agreement was not put in writing. Eliseo worked in the land in 1945 during the planting season. The witness paid Eliseo the P100 in Japanese money, because he received the loan in the same currency. He knows the voice of Eliseo Alay-ay ever since they had been together, since childhood. That night the witness looked at Alay-ay but he could not see his face in the dark.

Vicente Ablang, 44, married, teacher, testified that he knows Eriberta Villalobos and Noemi Guieb because they are related to him. The mother of Noemi Guieb is the cousin of his wife. "Our house is about 50 meters from theirs." He knows Eliseo Alay-ay, Alfredo Estabillo and Gerardo Santos because they are his neighbors. It was about 4 o'clock at dawn that the witness heard a shout for help saying that neighbors come around because something wrong had been done to Noemi Guieb and her mother. The one who shouted was Magdaleno Jaramillo. The witness awoke and went down. He heard firing near the premises, continuous firing. He does not know how many shots. The witness went to the place where the shots came, and asked what was the matter. The witness went to the house of Noemi Guieb. He found them, Noemi and her mother. They told him that they lost some of their belongings and Noemi confessed that she had been abused by persons who went to their house. They told him that they recognized the persons who went to their house. They mentioned Eliseo Alay-ay and Alfredo Estabillo. The last Wednesday before February 3, 1946, the witness met in front of the house of Santos several persons including Eliseo Alay-ay, Barit, Domingo Ablang, and Alfredo Estabillo. The witness went to the place for recreation because he came from school. Eliseo Alay-ay was inducing some of his companions to abuse Miss Guieb. The witness told them that "they must not do it or else he will be the one to make complaint against them." Addressing Estabillo, Alay-ay said in Ilocano: "How pretty Miss Guieb is. Do you dare to take advantage of her?" Miss Guieb revealed to the witness only two names, that of Eliseo Alay-ay and Alfredo Estabillo. She said that she recognized both as two of the persons who abused her on the night of February 3, 1946.

Domingo Ablang, 29, married, farmer, testified that sometime in the afternoon of February 2, 1946, he was splitting wood. Sgt. Vilorio passed by and invited him to attend the baptismal party of his child. It was probably around 5 o'clock. The witness went after having taken his supper. On his way, he passed by the house of Eliseo Alay-ay, Alfredo Estabillo and Gerardo Santos, but they had gone already. Their wives told the witness that they went to the dance. The witness went to the dance and there he met Gerardo Santos, Genaro del Rosario, Eliseo Alay-ay, Alfredo Dibat, Alfredo Estabillo, Dominador Anaten and others whom he could not remember. He happened to talk with several persons. On said occasion, Eliseo Alay-ay told Genaro del Rosario, to rob Miss Guieb. The witness said, "Why would you do that since they are our neighbors? Whom do they point out if you do that?" Alay-ay replied: "You coward." The conversation took place at about 2 o'clock. "When Alay-ay had already stated that, we all went home and everybody followed." The witness went home at around 2:30 that night. His companions were Genaro del Rosario, Alfredo Dibat, Eliseo Alay-ay, Dominador Anaten, and Alfredo Estabillo. The witness was not able to go home "because when we were in front of the house of Noemi Guieb, Eliseo immediately ran to the house of Crispin Valdez," to tell him not to talk in case something would happen. When Eliseo came down from the house of Crispin Valdez, he said: "Okay," addressing Panoy or Genaro del Rosario. Then Genaro del Rosario and Alfredo Dibat went up the house of Noemi Guieb. "We were all on the road," including Alfredo Estabillo, Eliseo Alay-ay, Dominador Anaten and Gerardo Santos. Genaro del Rosario and Alfredo Dibat brought down Noemi Guieb and Eriberta Villalobos. When she was brought down, Eliseo Alay-ay followed Noemi Guieb, and the rest went to the old woman. Eriberta Villalobos was brought down by Alfredo Dibat. Noemi Guieb was brought to the guava groves, a distance of about 100 meters from the house of Miss Guieb. When Genaro del Rosario brought down Noemi Guieb they thrust firearms at her. Genaro del Rosario was holding a Thompson. Alfredo Dibat was carrying a firearm. When Noemi Guieb was brought to the guava groves "they struggled for they wanted to have sexual intercourse with her and as she was weak and they were stronger, they were able to overcome her so they performed sexual intercourse with her." Those who did sexual intercourse with her were Genaro del Rosario, Eliseo Alay-ay, Alfredo Estabillo, Anaten, and Santos. "These people wanted to do sexual intercourse with her but she resisted. Then Genaro del Rosario took hold of her arms, Eliseo Alay-ay took hold of her legs, while she was made to pillow on the lap of Anaten." The first one who abused her was Genaro del Rosario, then Eliseo Alay-ay, after that Genaro del Rosario again and later all of them who were there. The witness was two meters away from the scene of the incident. He had to follow them

"because if I go away from them they would shoot me with the Thompson. They have arms while I have none." The witness did not say where the mother of Noemi Guieb was brought because he was with the party who were with Noemi Guieb. The rape of Guieb must have lasted about two hours. After they were through with her they let her go and she returned home. The witness was able to escape while the accused were performing sexual intercourse with Guieb. When he arrived home he heard some firing. On that occasion Jaramillo called for help. The witness came out of his hiding place to the rice-field and then to the scene. He was trembling. When he arrived at the place he saw Eliseo Alay-ay, Alfredo Estabillo, Gerardo Santos and Jaramillo. The witness saw Miss Guieb and her mother by the ladder. Four or five days before the incident, the witness used to meet Gerardo Santos, Alfredo Estabillo and Eliseo Alay-ay, in front of the house of Alfredo Estabillo at about 5 o'clock in the afternoon after coming from his work. In the meeting, Vicente Ablang, Roman Barit, Estabillo, Ablay, Santos and the witness were present. Eliseo Alay-ay proposed the plan of going up the house of Miss Guieb. Among those who answered were Vicente Ablang and the witness. The latter said, "Why do you do that when she is our neighbor?" Vicente Ablang said: "If you do that I will be the one to file complaint against you." The witness is related to Alfredo Estabillo because the latter's wife is the sister of the witness's wife. Accused Gerardo Santos is the brother-in-law of the witness, the latter being the brother of his wife. As soon as Genaro del Rosario and Alfredo Dibat went up the house of Miss Guieb, the witness heard commotion inside. After a while they came down with the two women. The women were crying. What the witness noticed when Del Rosario was performing the sexual intercourse was the up and down movements of his buttocks. He noticed the same movement in the case of Alay-ay. The others were alternating "but I do not know the sequence of it." When the witness escaped, he went to his house first but immediately proceeded to a rice field near his house, "because I was afraid that if I were present in that place they may force me to perform sexual intercourse with Miss Guieb."

Eriberta Villalobos, 56, widow, housekeeper, testified that she is the mother of Noemi Guieb. On February 2, 1946, between 6 and 12 midnight, they were at the chapel to hear the sermon. At 12 o'clock they went home. Upon arriving they changed their clothes. Then they went to sleep. "When we were asleep there were two men who came up in our house. In my calculation it was around 3 o'clock." They flashed the light directing first "to me and later to my daughter and upon finding out, they pulled the blanket of my daughter and also my blanket. I stood up immediately and my daughter also stood up. They were asking where our money was. My daughter said 'We do not have money.' They caught my daughter. I went close to my daughter and we embraced each other. When they were able to separate us, I noticed that somebody came up the house to help them and while we were thus struggling, I also noticed that somebody was opening our trunk." The witness was not able to count how many there were of them. They thrust the point of their gun on the witness's side so she lost hold of her daughter. "They got her and brought her to a place I do not know. They brought me away from our house and placed me on a road," about 20 meters away from their house. Three persons dragged her to the place. "When I reached the place I sat down and they held my arm. Then they forced me to lie down. They abused my womanhood." The three "of them". I could not recognize any of them because my sight is very poor during those hours." They abused her for around 30 minutes. After abusing her the men stayed there for a while and afterwards they left. "I stood up for a while and after regaining my strength having weakened for what they did to me, I slowly walked and went back to my house." When she arrived there her daughter was not there yet. Not finding her daughter, she kept crying until she heard shots. After the firing she heard her daughter calling from the other house: "I am here mother." She was in the house of Crispin Valdez. "She came running and told what happened to her. She told me, Sir, that they abused her by force." All of them abused her. One of their neighbors, Paulino Jaramillo, came shouting for help. Her daughter found their trunk opened and the blankets and a ring were already gone and everything in the house was scattered.

The witness reported the incident to Pastor Gutierrez on Sunday, February 3. The pastor suggested that the matter

be reported to the authorities. After telling the story to Pastor Gutierrez, the witness did not like to make any report, but her daughter left on Monday morning to report the matter. The witness was living with her daughter Noemi Guieb alone in their house in Murong, on February 2, 1946. The witness could not recognize the two men who went up their house. She slept together with her daughter in the same mat. They were separated by one pillow. The two men "lighted their flashlight and pulled out our blankets." Her daughter woke up when they were pulling her blanket. The men were asking for money. The next thing they did after her daughter said that they had no money was to pull said daughter and bring her down. "When I felt that they were pulling her I immediately embraced her. As we were struggling with them they could not separate us for the first time but later, I noticed that some men came up to help them and while we were struggling I felt that my daughter was pulled, then somebody opened our trunk." All that her daughter uttered was "Mother." To separate mother and daughter, somebody came to help the men and they thrust the muzzle of their gun on the witness's side. The latter lost her strength and loosened hold of her daughter. The intruder "had been pushing me and dragging me all the way to the ladder and they even kicked me." The witness did not recognize the intruder "because it was dark and for the reason that I am already old that I could not see." The witness was not able to count how many men brought her daughter down. The witness was not able to recognize any one of the three men who brought her down. She did not know where her daughter was brought. She did not even hear a cry for help from her. Although the three men had sexual intercourse with her, the witness was not able to recognize them. "When they inserted their penis into my vagina only the head penetrated and as they pushed through it bent. All of the three happened that way." The men went to and from the place and one guarded her. The witness was kept in the place for about half an hour. After the sexual intercourse, the witness remained in the place for some time. Then she struggled to go to her house although she was weak. She did not find her daughter in the house. She did not light the house "for my mind was in confusion." Although she knew that her neighbor Crispin Valdez was in his house, she did not call him when she came from the place of the sexual intercourse "because I could not think." The witness did not call for her daughter because "I was still crying." At the time the witness made the testimony, the session had to be suspended for ten minutes because she was in hysterics. After the incident and after Jaramillo cried for help, their neighbors, Gerardo Santos, Vicente Ablang, Eliseo Alay-ay, and Alfredo Estabillo, arrived. The witness told them that they lost some of their belongings that night. The towel Exhibit E-4 is among the things that disappeared from their house and it was discovered together with the blankets. Asked by the court to explain why the penis of those three men who had sexual intercourse with her invariably bent, the witness answered: "I do not know, Sir, but the fact is that I am already old and I have no longer the feeling of that act, and maybe they already had been satisfied for having done the same to my daughter." The way the witness saw it, the men who raped her came from the place where her daughter was, because when one left her, another arrived. No portion of the penis of the three who raped her entered her vagina except "for a little portion of the head."

The documentary evidence presented by the prosecution and admitted by the court were:

- Exhibit A, medical certificate,
- Exhibit B, affidavit of Eliseo Alay-ay, sworn to before Justice of the Peace Tengco.
- Exhibit C, affidavit of Dominador Anaten sworn to before Justice of the Peace Tengco,
- Exhibit D, affidavit of accused Alfredo Estabillo sworn to before Justice of the Peace Tengco,
- Exhibit E, joint affidavit of accused Dominador Anaten and Genaro del Rosario with respect to the blankets and mosquito net taken from Camarillo,
- Exhibit E-1, Ilocano blanket,
- Exhibit E-2, woolen blanket,
- Exhibit E-3, mosquito net,
- Exhibit E-4, towel,
- Exhibit F, chemise of Miss Noemi Guieb,

Exhibit F-1, nightgown of Miss Noemi Guieb,
Exhibit G, the Thompson gun, model 1928, serial No. 132809 with a magazine containing six rounds of ammunition, .45-caliber,
Exhibit H, subpoena which was sent to Manuel Camarillo,
Exhibit I, affidavit of accused Genaro del Rosario sworn to before Mayor Cesareo Dumlao of Bagabag, and
Exhibit J, sketch attached to the expediente on page 69 of the record.

The following testified as witnesses for the defenses Genaro del Rosario, Eliseo Alay-ay, Gerardo Santos, Alfredo Estabillo, and Dominador Anaten.

Genaro del Rosario, 27, single, farmer, resident of Tayug, Pangasinan, testified that he is one of the accused, that during the Japanese occupation he was a guerrilla, and that he came down from the mountains on September, 1945. Constantino Villalobos, cousin of Noemi Guieb, introduced the witness to her. Since then he began to have a desire to court her. He asked Gerardo Santos to prepare a letter for him addressed to Noemi Guieb, because he does not know how to read or write, and Gerardo Santos is his friend. Around five letters were sent to her. He did not receive any reply from her. She said to Gerardo Santos: "Why does he not look for another friend since as for me I am not prepared to accept any man because I am dedicated to work for the service of God." The witness was not discouraged. He used to go to see Miss Guieb and express his love for her. On January 15, the witness was able to win Miss Guieb's love. Every now and then he goes to her home and find her alone. "I used to caress her and she liked it." At around 8 o'clock on February 2, 1946, he went to the baptismal party of the child of Sgt. Vilorio. On his way, he passed with Alfredo Dibat at the Protestant church at Murong. He met at the chapel Noemi Guieb, Atty. Calderon and some ministers of the Protestant church. He was able to talk with Noemi and told her that he wanted to go to her house in order to run away because he wanted to take her to Bagabag and she agreed. He parted from her after the conversation at 10:30. He proceeded to the dance at the house of Sgt. Vilorio. He was accompanied by Alfredo Dibat. He saw there Gerardo Santos, Alfredo Estabillo, Eliseo Alay-ay, and Dominador Anaten. He did not see Domingo Ablang. He never had any conversation with Alay-ay. He just saw him at the dance. He left the dance at 2 o'clock. He went to the house of Miss Guieb, accompanied by Alfredo Dibat. "When we arrived at the house of Noemi Guieb, I went up immediately for the house is just this high (indicating the height of one meter). I put aside the canvass which served as door then touched lightly Miss Guieb whispering to her: 'Nening let us go now.' She woke up and began to stand up but the mother also woke up and grabbed Noemi, saying: 'Why my child, you do like this? Why did you not tell me so that you will be cleared of this intention?' Noemi followed me, bringing even her blanket. I left Dibat to guard her mother. We proceeded to a guava grove. Noemi was worried thinking of her mother left behind. Besides she is an orphan." The witness told her "Why would you still have to think of your mother, at any rate I will not forsake you, for we have to greet my mother in Tayug." The witness said: "You sit down for a while so we can talk together." Guieb spread the blanket, then they sat down. "I told her to lie down, because my penis stood already and when she lied down I did sexual act on her. I did not force "her." No one forced Miss Guieb to have sexual intercourse with her. It is not true as testified by Domingo Ablang that Santos, Estabillo, Alay-ay and Anaten had sexual intercourse by force with Noemi on Sunday morning, February 3. The witness had sexual intercourse with Noemi twice. "Because Noemi Guieb was very much worried already and I began to remember that it would be bad if we appeared before her mother, I returned her to their house. When we arrived at their house, the mother embraced her and said: 'Where did you go my daughter?' Because of my fear of the neighbors of Noemi and that of her mother, we went home together with my friend Dibat." The witness was apprehended by the military police on Monday, February 4, 1946. At about 3:30 he went to the MP headquarters to get his differential pay. While he was standing there, the car of Lt. Paredes stopped in front of him. When Lt. Paredes was no longer there, the witness conversed with Josefina del Rosario, cousin of Noemi Guieb. Then an MP came and told the witness: "The Lt. inside the headquarters is calling for you." Miss Josefina del Rosario with whom the witness talked to was accompanied in

the car by Miss Noemi Guieb and Nina Paredes, the small daughter of Lt. Paredes. Lt. Paredes asked him: "Why did you, according to information, rape Noemi Guieb who is my relative?" The witness answered: "Manong, I am ashamed to force a lady if she does not give her consent." Then Captain Mariano appeared to take the affidavit of the witness as, according to information, he was one of those who robbed Noemi Guieb and had sexual intercourse with her in the company of many persons. The witness gave his affidavit to Captain Mariano. Lt. Melegrito tore the affidavit and Lejao maltreated the witness. Lt. Melegrito held his collar and said: "If you are not going to tell like this and state like this and like that, we are going to punish you and be careful because you will suffer." Because in his affidavit he denied having had sexual intercourse with Noemi Guieb, Captain Mariano left and put out the light. The witness felt that somebody knocked him with a carbine. "On that very moment, Sir, Lt. Melegrito tried to convince me saying: 'You better tell the truth now. You tell the truth, say like this and like that. Is it not a fact that you were the body guard of Lt. Paredes and Colonel Manriquez and if you would do like this, Lt. Paredes and Colonel Manriquez will not let you down, they will help you. You see we went to Murong and Domingo Ablang squealed that you were the one who did sexual intercourse to Noemi Guieb. You say like this and that so that you will be free and go.'" The witness answered: "You see, I am an old guerrilla and if I do not like to tell the truth, you cannot force me to do so." As the witness had not yet eaten, he was brought to the mess hall where Sgt. Lejao gave him food. After eating he went back to the investigating place. I was forced, Sir, to submit because I was already very weak due to the maltreatment I sustained so I was made to declare things that were not really true." Those who convinced him were Lt. Melegrito, Lejao, and another sergeant whose name the witness does not know. He signed Exhibit I but he does not know the contents of it. The affidavit they had in the MP headquarters was not like it because it was written in long hand. "When I arrived from Lantap where we took a Thompson gun which they said belong to me that (referring to Exhibit I) was already prepared and they forced me to sign. Atty. Benitez, Lt. Melegrito, the Chief of Police of Bagabag, said to me: 'You better sign now so that there will be nothing wrong to happen.' It was read and translated to me in Ilocano but I could not understand the same and because of fear I signed it." Although the witness speaks Ilocano, he could not understand the contents of Exhibit I because in the office of the provincial fiscal a thing was translated to him which was different from that made known to him before. The contents of Exhibit I was read to the witness. The witness admitted that it is true that he left with Manuel Camarillo, as testified by the same, a sack containing some clothes. He did it because it was the order of his friend Dibat. He chose Manuel Camarillo because he was his co-soldier and his place was on the witness's way via Kiangnan. Exhibits E-1, E-2, and E-3, were the contents of the sack he left with Manuel Camarillo. Exhibit E-2 is his property obtained from the army. He recognized his signature in Exhibit E, but when he and Anaten arrived, the exhibit was already prepared. The witness was made to understand, that he should sign it and "they will take care of my release, so I signed it." He did not steal anything from the house of Noemi Guieb. Exhibit E-2 was given to him by an American. It is composed of two pieces, one lighter in color than the other. He let an old woman sew the two pieces into one. He does not remember the month or the date Exhibit E-2 was given to him by the American. The witness started courting Miss Guieb in September, 1945. At the chapel, the witness told Noemi: "When I come I will touch you and flashlight you and then you will go with me for we are going to Pangasinan." The witness admitted that he went to Lantap on February 5, 1946, to get a Thompson gun "because I was going to surrender that Thompson." Exhibit G is the same Thompson he has taken. Alfredo Dibat was present when the witness had sexual intercourse with Noemi Guieb, "he was the one who guarded her mother." When the blanket was spread in the guava grove, "she (Noemi Guieb) stated that she had no panties because she said she had been ready long time," meaning that she was ready for the sexual intercourse. They had been kissing and he said to her: "You better lie down now," and she lied down, and witness had sexual intercourse with her twice. At the end of January, 1946, the witness went thrice to the house of Noemi, accompanied by his friend Gerardo Santos "who had been behind and peeping at us, kissing." He kissed, hugged and embraced Miss Noemi Guieb on January, 1945. Santos was peeping then. As has been learned from the Americans, "I kissed her

lips." In January, 1946, he was residing in the house of his friend Gerardo Santos and it was the time "when I used to visit her and kiss her." When the witness separated from Miss Guieb on the morning of February 3, 1946, they had an altercation. She said: "My mother does not like and you still force me and if that be your attitude even if you had told all the things you want I would not like to go with you." She said it after their sexual intercourse. They did not reconcile on their way to her home. The witness told her: "If you do not like me any more just let it be, anyway, I am a man. It is all up to you. It is all right with me." When they arrived at their home, the witness found Dibat talking with the mother of Noemi. The mother embraced her daughter. The witness did not talk anymore with the mother because of fear. When the witness parted with Miss Guieb, she was no longer happy "because she was worried about her mother." The witness continued to love her even after she caused his incarceration. When the witness met Guieb in the car of Lt. Paredes in the MP command, he talked with her. He felt that she still loves him as he loves her. The reason for Miss Guieb's filing a complaint for robbery with rape against the accused is that her mother does not like the witness. The punishment inflicted upon him at the office of the MP was not reported by the witness to anybody. About three days before he had sexual intercourse with Noemi, the witness announced to her mother their engagement. Noemi's mother said to him: "I do not like you because you are just a transient here and I do not know the kind of person you are."

Eliseo Alay-ay, 26, married, farmer, resident of Murong, Bagabag, testified that on Saturday, February 2, 1946, at 8 o'clock in the evening, he went to attend a dance in the house of Jacinto Vilorio. He was accompanied by Alfredo Estabillo and Gerardo Santos. He did not see Dominador Anaten in the dance. He also saw Genaro del Rosario. He never conversed with Del Rosario. He does not know anything about the proposal to abuse Miss Guieb. He left the dance at 12 o'clock. He knows Domingo Ablang but he did not see him in the dance. When he left he was accompanied by Estabillo and Santos, They went home at the junction. He knows Miss Guieb and her mother, he being their neighbor. His house is around 20 meters away from theirs. Upon arriving home, he slept. He does not know what happened at 3 o'clock at dawn. He heard Lino Jaramillo calling for help. He went to the place. Jaramillo told him that there were robbers but they ran away, Jaramillo was near the house of Miss Guieb, about 20 meters away. The witness went to the house of Miss Guieb accompanied by Roman Barit, Gerardo Santos, Alfredo Estabillo and Vicente Ablang. The Guiebs told him that they were robbed. After this information, the witness went to sleep again. The other people also went away. Vicente Ablang remained. The witness did not see Domingo Ablang in the place. Asked about the testimony of Crispin Valdez that at dawn on February 3, 1946, the witness crept in his house and whispered to him not to move and interfere because something was to happen, the witness said: "I do not know anything about that, Sir." Crispin Valdez testified against the witness because of a land which Valdez mortgaged to the witness and for which Valdez wanted to pay before the time agreed upon. When Valdez insisted, the witness boxed him. The witness does not remember when he boxed Valdez, perhaps in 1944. Since then they did not talk to each other, because Valdez hated the witness. Asked about the testimony of Domingo Ablang that he went to the house of Crispin Valdez, the witness said that he does not know anything about it, the witness did not steal anything from the house of the Guiebs. About the testimony of Domingo Ablang and Noemi Guieb that the witness is one of those who abused Noemi on the morning of February 3, 1946, the witness said that Domingo Ablang "because of his desire perhaps to get out or to be freed from charge in this case, he testified against me." Domingo Ablang has been his co-defendant. Exhibit B bears his signature. It was prepared by a policeman in Bagabag. Domingo Ablang called him and the witness went to the municipal building of Bagabag. There he inquired whether he was one of those who participated in what happened in Murong. He saw there Genaro del Rosario, outside the municipal building. Del Rosario told him that it was better to tell a lie for if he would tell the truth the MPs in Bayombong would punish him as they had done to Del Rosario. Del Rosario was already in the hands of the MPs at that time. Sgt. Lejao told the witness that if he did not follow them to tell what they wanted him to tell, they would bring him to Bayombong and maltreat him as they did to Del Rosario. Lejao wanted the witness to admit that he had sexual intercourse to corroborate the affidavit of Domingo

Ablang. Exhibit B was brought for witness's signature by Sgt. Lejao. The witness was later brought before Justice of the Peace Tengco. The contents of Exhibit B was explained to the witness in Ilocano while a policemen was preparing it. What was explained to the witness in Ilocano was in consonance with the truth. After it was read to witness, the latter said that the contents of Exhibit B are not true. He did not declare what appears in Exhibit B. He did not testify having performed the sexual intercourse or having gone up the house of the Guiebs. The bad things which appear now in Exhibit B were not there when it was read to him. Judge Tengco omitted the bad words. The witness heard Judge Tengco testify that he read all the contents of the affidavit and interpreted it to the witness. The witness does not mean that Judge Tengco told a lie. "I heard him explain but I did not hear the rest." Vicente Ablang is the brother-in-law of the witness. There is no grudge between the two. The witness does not know anything about the testimony given by Vicente Ablang to the effect that in the afternoon before the commission of the robbery and rape in the Guieb house, the witness told about his plan to rape Miss Guieb. Vicente Ablang might have testified against the witness, because the latter refused to lend him his carabao once. The witness was not punished by the MP. He signed his affidavit because of the advice of Genaro del Rosario and the witness did not want to go to Bayombong.

Gerardo Santos, 26, married, farmer, resident of Murong, testified that on the night of February 2, 1946, he attended a dance in the house of Sgt. Vilorio in the company of Alay-ay and Estabillo. Genaro del Rosario attended the dance. The witness left the dance at 12 o'clock and went home. He slept. At about 3 o'clock in the morning he received information from Jaramillo that people had gone up the house of Noemi Guieb. He went to the house of the Guiebs with other people like Roman Barit, Alfredo Estabillo, Eliseo Alay-ay, Vicente Ablang and Jaramillo. The witness did not talk with the mother of Miss Guieb because he did not go inside the house. There were many people already. According to information given by Jaramillo, Noemi Guieb was robbed. The witness did not go with Genaro del Rosario to the house of the Guiebs at dawn of February 3, 1946. He did not participate in the stealing of anything in the house of the Guiebs. It is not true as stated by Domingo Ablang that he had sexual intercourse with Noemi Guieb in the guava grove. He does not know that Miss Guieb and her mother, were brought down by force by anyone. In the month of January, 1946, Genaro del Rosario requested the witness to prepare a letter addressed to Miss Guieb. After the witness sent the letter to Miss Guieb, nothing happened. The witness wrote five letters. He does not remember when he sent the first letter. The contents of the five letters only related to friendship. They were written in Ilocano. The letters were addressed to Miss Guieb. No answer was received from Miss Guieb. It is not true as testified by Del Rosario that the latter was engaged to Miss Guieb and that the witness even goes to the house of Miss Guieb to peep. Domingo Ablang is the brother-in-law of the witness. The witness has no grudge against Domingo Ablang but the latter hates the witness because the latter did not divide well the harvest of rice. The witness has no grudge against Vicente Ablang.

Alfredo Estabillo, 26, married, farmer, resident of Murong, Bagabag, testified that on the night of February 2, 1946, he went to a dance in the house of Sgt. Vilorio accompanied by Alay-ay and Gerardo Santos. He did not notice the presence of Genaro del Rosario in the dance. The witness left the dance at around 10 o'clock. He left, accompanied by Gerardo Santos and Eliseo Alay-ay. They returned to their homes. The witness slept. The witness did not know anything that happened at 3 o'clock in the morning. He did not hear any call for help. The next morning he heard from the neighbors that there was a blanket stolen from Noemi Guieb. The witness did not have sexual intercourse with Miss Guieb, neither with her mother. He did not steal anything from the house of the Guiebs. The witness did not know why he was included in the case. He recognized his signature in Exhibit D. The contents of the paragraph marked with red pencil in vertical position in Exhibit D is true, "but I have never been in company with Panoy." The other paragraphs marked Nos. 2, 3, 4, and 5 are not true. Although the contents of Exhibit D are not true, the witness signed it because Atty. Tengco just prepared it and besides there were MPs "whom I fear so I signed that affidavit." Panoy told the witness that he was maltreated by the MPs and because the

witness did not like to be maltreated, he signed the affidavit. The contents of Exhibit D are all lies. The witness was not given a chance to read it. MP Lejao and Sgt. Maka told the witness: "You follow what we say." And because the witness was afraid he signed, he did not tell Judge Tengco that they are all lies because he was afraid of the MPs. He did not participate whatsoever in the commission of robbery with rape against Miss Guieb and her mother on February 3, 1946. Witness Estabillo is related to Domingo Ablang in the sense that their wives are sisters. Before February 3, 1946, they were not in good terms "because I took his carretela and I did not pay it."

Dominador Anaten, 29, married, farmer, resident of barrio Lantap, Bagabag, testified that on the night of February 2, 1946, he attended a dance where he saw his co-accused Alay-ay, Santos, Estabillo and Del Rosario. After the dance he went home to Lantap. He did not participate in the robbery with rape committed against Miss Guieb and her mother on February 3, 1946. The witness does not know why his name was included among those who allegedly abused Miss Guieb. Judge Tengco translated to him, in Ilocano, the contents of the affidavit Exhibit C. The witness signed the exhibit voluntarily.

Noemi Guieb testifying in rebuttal declared that she had no arrangement with Genaro del Rosario to elope. It is not true that she reciprocated Del Rosario's love to her on January 15, 1946, as she was sent to Salilungan, Isabela, on November, 1945, and it was only on January 28, 1946, that she returned to Murong. In November and December, 1945, she was not able to come to Murong. She was busy preparing the Christmas program. It was on January 28, 1946, when she came to attend the conference at Murong.

Lieutenant Melegrito, 30, married, stationed in the military police headquarters in Bayombong, testified that it is not true that he maltreated Genaro del Rosario nor took hold of him in February in the military police command. It is not true that Del Rosario was threatened or intimidated. What he used was diplomacy and tact.

The evidence in this case fully supports the lower court's conclusion as to the guilt of appellants. The testimonies of the witnesses for the prosecution are highly convincing. They ring true. Natural, cogent, straightforward, they portray the facts as they happened and as would be narrated by honest and conscientious witnesses. There is no question as to their personal knowledge of the facts and there is no ground to believe that they should twist or distort them in order to serve any purpose whatsoever.

Eriberta Villalobos, if she was moved by any evil desire to visit vengeance against those who committed such bestial outrages against herself and her daughter or of vindicating their honor by procuring the punishment of those they may suspect as the offenders, could have pointed all, some, or one of the appellants, and she could have done so easily upon the identification made by her daughter and other witnesses for the prosecution. But she chose to be loyal to the oath she had taken of telling the truth, the whole truth and nothing but the truth, and accordingly she declared that due to her old age, poor eyesight and the darkness, she was not able to recognize even one of the assailants or any one of the three individuals who raped her.

Noemi Guieb, upon the identification made by the two prosecution witnesses, Vicente Ablang and Domingo Ablang, could have pointed out one by one all those who successively raped her under the guava grove. She is young and evidently has a much better eyesight than her mother. The early morning which appeared so dark to her mother, was bright enough under the shining stars of a clear sky for Noemi to identify two of her rapists. She could have testified that she was able to identify the remaining others. But as an honest girl, as a convinced Bible woman, she could not betray her own conscience and stuck to her oath of telling only the truth.

As to the credibility of the two witnesses surnamed Ablang no serious challenge was offered by the accused. As a matter of fact, each and every one of appellants has substantially corroborated what were testified by said two witnesses, when they declared having been present in the scene of the crime at about the time it was committed, although each one of them gave a different version as to the happenings, each version showing an ineffective

defense for the respective appellant giving it. The statements or affidavits of appellants show that there is no reason to have any doubt as to the truth of the version of the facts given by the witnesses for the prosecution.

As to the freedom with which the statements or affidavits were given we entertain no doubt. It is true that one of the accused, Gerardo del Rosario, testified that he gave his affidavit upon the maltreatment received from the authorities investigating him, but we are not considering now said affidavit because it is an evidence that can be taken only against the affiant, and the case of Gerardo del Rosario is not now before us, because he is not one of the appellants, he having escaped before the promulgation of the lower court's decision.

Appellants attempted to show by their respective uncorroborated declarations that they signed their statements or affidavits through fear. Their allegations deserve no belief, as they themselves were unable to show any reasonable ground for entertaining at the time such fear.

The testimonies of the accused deserve no credit. They are belied by their written statements or affidavits. Some belied the others. Gerardo del Rosario, the first and most Important witness for the defense, gave a version which is inherently unnatural and unbelievable. The substance of his testimony contains a story that cannot fit into human experience. Besides, he has been contradicted by the witnesses for the prosecution and by the appellant who, according to him, had been peeping when he was kissing Noemi. The whole effect of the testimonies of the witnesses for the defense seems rather to further corroborate the evidence for the prosecution. They appear to be a weak attempt to belie the witnesses for the prosecution, giving the impression that behind them there is the full consciousness that the attempt is directed against something which is irrefutable.

The evidence on record has conclusively proved that appellants are guilty of the crime of robbery, because, with intent to gain and by means of violence or intimidation against said two offended parties, they took two blankets and one mosquito net from Eriberta Villalobos and Noemi Guieb, the crime being defined in Article 293 of the Revised Penal Code which says:

"Who are guilty of robbery.—Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery."

The robbery committed having been accompanied by rape, the crime is a complex one and, under sub-section 2 of Article 294 of the Revised Penal Code, is punished with reclusion temporal in its medium period to reclusion perpetua. The crime was attended by two aggravating circumstances: (a) appellants took advantage of superior strength in the commission of the crime in that all of them, all men, helped together to commit the crime against two weak and defenseless women, and (b) appellants employed means or brought about circumstances which added ignominy to the natural effect of the crime, when they successively raped Noemi Guieb in one place and her mother Eriberta Villalobos in another. (U.S. vs. Camiloy, 36 Phil. 757.)

The obligation of the offender in a case of rape to support the offspring resulting therefrom, is recognized and enforced by tribunals, for obvious reasons of justice. No controversy has been or is raised when the offender is a single individual. The unanimity of opinion is explained by the fact that the identity of the criminal as the father of the offspring is not disputed. Whether the accused is guilty or not, he being the father, he is, at any rate, bound to support his child. Discrepancy of opinion arises in multiple rape, such as in this case, where the four appellants participated successively in outraging mother and daughter on the same occasion. In this case, in the present stage of physiological or medical knowledge, it is impossible to identify the paternity. There is no way of determining whose spermatozoa fecundated the ovum. Those who maintain the opposite view would exempt each and every one of appellants from the obligation of supporting the offsprings that may have resulted from the crime they committed.

We cannot share such a view. It is based on a wrong philosophical conception as to the right of the child born as a result of a criminal act. The raper is duty bound to support the offspring, not only because he is the father, but because he is civilly responsible for all the evil consequences of the offense, one of them is that which exposes the child, who has been conceived and born without its knowledge, into the open seas of world vicissitudes and in the middle of the conflicting forces of life without the care, paternal love, support and protection of a non-adventitious father.

That in multiple rape paternity cannot be identified, does not change the fact. As any one of the criminals may be the father and that each and every one of them is directly responsible that an unwilling mother may give birth to an undesired offspring, each and every one of them contributed to, and cooperated in, the giving birth of the child. In rape, the fact of paternity is not the legal ground for the support of the offspring but the moral, social and legal responsibility for the crime that caused the conception and birth of the offspring. The fact that the child cannot identify his father in view of the multiplicity of the rapers, instead of exempting the latter from the obligation of supporting him, makes heavier the obligation, because it places the offspring in harder odds and greater handicaps in life through ignorance of who his father is. The equivocality of his position by looking at any one of the multiple rapers as his possible father will be a painful shadow and strain on his mind while he lives.

Four men armed with a carbine, bent on murdering an individual, fire against the latter simultaneously. Only one bullet hit the victim which caused his death. The fact that it is impossible to determine who was responsible for his death is no reason to relieve the four murderers from the same criminal responsibility nor to exempt them from indemnifying the heirs of the murdered person.

For all the foregoing and in accordance with Articles 64 and 294, sub-section 2 of the Revised Penal Code, we sentence each appellant to life imprisonment, and, in accordance with Article 345 of the Revised Penal Code, all of them jointly and severally, to indemnify Noemi Guieb in the amount of P5,000, and Eriberta Villalobos in the amount of P5,000 and to support the offsprings of the offended parties if there are any resulting from the rape committed on them. Appellants shall also pay the costs in both instances.

Moran, C.J., Pablo, Hilado, Bengzon, Briones, and Tuason, JJ., concur.

CONCURRING AND DISSENTING OPINION

PADILLA, J.:

I concur in the Court's decision except as to the amount of the indemnity and as to the obligation to support the offspring of the offended parties, if there be any. Although the ceiling of the amount for indemnity that may be imposed in cases of rape is the sky, yet in murder and homicide cases, courts generally have imposed the minimum indemnity of P2,000. No one disputes that the sum of P2,000 to be paid as indemnity for the loss of a man's life is inadequate; nevertheless, courts have been imposing that amount, because as a rule defendants in said cases are insolvent. In this case, the indemnity of P5,000, imposed upon the appellants is purposeless. The 47-page typed decision, which sets out at length the testimony of the witnesses for the prosecution and the defense and in which quotations from said testimony are interspersed profusely, discloses that the appellants are mere peasants, unable to pay even the indemnity of P1,000 imposed by the trial court. If the purpose is to lengthen or increase the period of imprisonment for failure to pay the indemnity, it cannot be accomplished, because life imprisonment being afflictive penalty, subsidiary imprisonment on account of appellant's insolvency in the payment of the indemnity cannot take place. The possibility of appellants' acquiring means with which to pay the indemnity of P5,000, especially from the time they begin service of their sentence is quite remote, if not well-nigh

impossible. If the purpose is to express the Court's wrath or indignation for the dastardly and vile crime committed by the appellants, the Court must not express such feeling. The Court should not adopt or take an attitude which would give the impression that it is the source of authority, promulgates the law, and applies it. The Court must impose the penalty provided by law according to the facts established in the case without being carried by emotion. The main penalty imposed in this case, as provided by law, is a sufficient expression of the wrath or indignation of the people—the source of authority—for the crime committed by the appellants. I see, therefore, no reason or purpose in raising the amount of indemnity to P5,000, which subverts the practice heretofore followed by all the courts of this country, except that of gratifying a hankering after notoriety. I am of the opinion that the amount of indemnity imposed by the trial court, which is P1,000 for the rape and P50 for the value of the unrecovered ring belonging to the complainants, should not be disturbed.

The third clause of article 345 of the Revised penal Code, which provides that "in every case to support the offspring," means that support which is due to a child of a known father. In other words, the phrase "in every case" includes a natural and an illegitimate child of a known father and not a child whose paternity cannot be ascertained, as in this case where several persons, one after another, succeeded in having sexual intercourse with the offended parties—seven persons, among them Gerardo Santos, with Noemi Guieb, and three unidentified persons with Eriberta Villalobos. In *U. S. vs. Yambao*, 4 Phil. 204, this Court held:

"The judge has imposed on the defendant the obligation to support the offspring, should there be any. The woman in this case who was raped was a married woman, pregnant, four months gone, and the same reason which prevents the offender from acknowledging the offspring should also prohibit him from entering periodically the home of the woman raped, in order to comply with the duty thus imposed toward the spurious offspring. This duty, depriving it of all correlative rights on the party furnishing the maintenance, would be the source of great disturbance to the family rights of the parents, who should live in peace and enjoy the attributes of their legitimate authority over their children.

* * * * *

"Therefore we affirm the judgment below except as regards that part which imposes on the defendant the obligation of supporting the offspring, should there be any." (p. 206.)

The obligation imposed upon the appellants to support the offspring that may be born of the offended parties is equivalent to a pronouncement that such offspring are the children of each and everyone of the appellants. That, of course, is legally untenable because it is embryologically impossible.

Paras, J., I concur in the foregoing opinion of Mr. Justice Padilla.

Feria, J., I concur in this concurring and dissenting opinion.

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