

PEOPLE OF THE PHILIPPINES, PLAINTIFF APPELLEE, ESMEN CAUBAT, @ ESMERALDO CAUBAT, AURELIO LARITA, GERVASIO LARITA, DOMINGO PACHECO, @ DOMINADOR PACHECO, FELIPE CAUBAT AND GREGORI...

G.R. No. L-7285. June 28, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Esmen Caubat @ Esmeraldo Caubat, Aurelio Larita. Gervasio Larita, Gregorio Larita, Domingo Pacheco @ Dominador Pacheco and Felipe Caubat were charged with robbery in band with physical injuries and rape before the Court of First Instance of Leyte and, upon conviction, were sentenced each, with the exception of Gregorio Larita, to suffer reclusion perpetua with the accessories of the law, and to indemnify, jointly and severally, Carmen Jason in the sum of P1,050.00 and Eugenio Andrade, P5.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. Being a minor less than sixteen years of age, Gregorio Larita was sentenced to suffer an indeterminate penalty of not less than 6 years, 1 month and 10 days of prision mayor and not more than 12 years and 1 day of reclusion temporal, also with the accessories of the law, and to pay a similar indemnity, jointly and severally with his co-accused. Because of the nature of the penalty, the case was taken directly to this Court.

In the evening of March 30, 1953, at about 8:00 o'clock, Carmen Jason was preparing to rest in her house in sitio Cantohawon, barrio of San Vicente, Palompon, Leyte, together with her son Antonio, and her elder sister Priscilla Jason. Her other companions were Eugenio Andrade who slept in the living room and Estanislao Jason on a hammock in the same room. There was an oil lamp in two rooms of the house. Priscilla Jason, who was still awake, ordered her adopted child Bonifacia Jason to get tobacco downstairs, which she obeyed, but after a while Bonifacia came up in a hurry and told Priscilla that there were some persons of suspicious character below. Carmen stood up and, taking a piece of wood, held the shutter of the room. Priscilla in turn embraced her nephew, Antonio Jason and went to hide under a pillow rack.

In the meantime, Felipe Caubat and Aurelio Larita entered the sala and pointing their guns to Estanislao Jason, who was sleeping in a hammock, asked him for money. Estanislao said that he did not know where the money was kept. At the same time he saw Dominador Pacheco near the head of Eugenio Andrade who was sleeping in the same room near the partition wall. Then Aurelio Larita joined Pacheco and both pointed their bolos to Andrade, while Gervasio Larita entered the bedroom of Carmen and Iriscilla Jason despite the resistance of Carmen.

Upon entering the room, Gervasio Larita went to the window at the north, closed it and, coming to Carmen, slapped and boxed her and pulled her hair. Esmeraldo Caubat, armed with a gun, also entered the room and holding Carmen by the hair, he pushed her head against a post, and at this instant, Gervasio said to her, "Look at out boss, he is brave and has killed many." (referring to Esmeraldo) Both asked Carmen where she put the

P560.00 she got as proceeds of the land they had sold but Carmen replied that she did not have it. And because of such refusal Esmeraldo Caubat thrust his gun at Carmen's stomach causing her to fall and scream, while Gervasio Larita slapped her and told her to keep quiet, Both intruders insisted once more in asking for the money and as Carmen refused Caubat hit her on the head with his gun causing Carmen to shout. Asked once more for the money, and fearful of further torture, Carmen said that she would look for it.

In the meantime, Caubat looked around and found a trunk, opened it and saw a bag containing money. He went out of the room with the bag leaving to Gervasio his gun. After a while Caubat returned and remonstrated with Carmen for giving him Japanese money, and when Carmen explained that she merely kept the Japanese money with her P10.00 in coins, Caubat tried to insert said paper money into Carmen's mouth. She made a motion to prevent it which awakened more his anger and caused Esmeraldo to aim his gun at her. Forwith, Gervasio Larita said, "Bring her outside and we will kill her there." When Esmeraldo tried to do so, Carmen resisted by holding herself to a post at which moment Gervasio struck her finger causing her ring to break. Caubat brought Carmen to the balcony and there boxed her on the chest. Then he threw her down and embraced her and as she lay on the floor he raped her notwithstanding her resistance, The act was seen by Estanislao Jason who tried in vain to help her. :

While that was going on, in the bedroom, Gervasio Larita surprised Priscilla Jason in her hiding place and forthwith he boxed her and hit her with his gun at her left eye. Shortly thereafter, Esmeraldo Caubat came and also boxed Priscilla at the right eye. After boxing her both asked Priscilla for the money they got for the sale of their land which she denied saying that they did not sell any land. Thereafter, Caubat brought Carmen to the room where she saw and recognized Gervasio and Gregorio Larita, and then told his companions, "Punish her and kill her." At this juncture, Eugenio Andrade told her to get the P5.00 he had in his polo shirt just to appease the robbers but Priscilla was not able to find it because during the search somebody from below got hold of the polo shirt and took the money. Thereupon, Dominador Pacheco with the bolo on his waist, went to the window on the west side of the sala and after approaching the front door said to his companions, "Tie them", referring to the inmates of the house. Esmeraldo Caubat shoved Priscilla and said to his companions, "Tie her in the bedroom" They also said to Priscilla, "Give the child because we will kill him", but the boy, Antonio Jason, embraced Priscilla and the robbers grabbed him and maltreated him. While this was going on in the sala, Gervasio and Gregorio Larita took turns in raping Carmen Jason in the bedroom. After the outrage, Gervasio told Carmen that if she will not give them the amount of P100.00 they will kill her and it was at this moment when she stood up and went to the altar and took a box containing P40.00 in coins which Gervasio grabbed from her. Thereupon Gregorio pulled her dress causing her to fall on the floor.

Eugenio Andrade was brought to the room by Felipe Caubat who tied his hands at his back. He did the same thing to Estanislao Jason. This done, the robbers left the house after warning the inmates not to report what they have done to the authorities on pain of death. The following day the victims went to Jalompon and reported the matter to the chief of police who took down in writing the declarations of Carmen Jason, her sister Priscilla, and Estanislao Jason. These statements were sworn to before the justice of the peace of Jalompon.

The appellants set up the defense of alibi. Gervasio Larita and his aunt Justina Alforque testified that Gervasio Larita was in the latter's farm in barrio Togbong in the night of March 30, 1953 to help in the division of her crop and thereafter retired to her house in the same barrio at about 8:00 o'clock in the evening and did not go away until the following morning.

Aurelio and Gregorio Larita declared that they were at the house of one Cristelo Empeno in sitio Pagsanga-an Togbong, Kananga at the time the crime was committed where they attended a thanksgiving party given to celebrate their bountiful harvest and that the two did not return to their homes until the next morning.

Esmeraldo Caubat testified that in the afternoon of March 30, 1953 he and his wife went to the house of his brother-in-law, Candido Coste, in barrio Visares, Capoocan to invite him to catch fish but due to lack of time they postponed their trip until the next morning, and that night they slept in the house of Coste.

Felipe Caubat and Dominador Pacheco on their part tried to prove that they were in Ormoc on March 30, 1953 to attend the Palm Sunday services and stayed in the house of one Teofilo Baclohan; that at about 8:30 at night they attended a dance at barrio Alegria where they stayed until 10:00 o'clock; and this place is quite far from where the crime was committed.

There is no dispute that in the night in Question a robbery was committed in the house occupied by Carmen Jason, Priscilla Jason, Estanilao Jason and their companions in barrio San Vicente, Palompon, Leyte by a band of armed men who maltreated and tortured them in the course of which Carmen Jason was raped three times. There is also no question in the mind of the court that those who committed the robbery and perpetrated the assault and outrage above pointed out are the herein appellants because their identity has been sufficiently established by reliable and trustworthy witnesses. The alibi these appellants have set up cannot in any manner weaken nor overcome the positive identification made of them by the witnesses for the prosecution.

One of such witnesses is Carmen Jason, the principal victim of this dastardly act. She was able to recognize at least three of her assailants not only in the sworn statement she made before the authorities (Exhibit 4) but also in her testimony in court. Thus, she pointed to Gregorio Larita as one of those who raped her and the one who opened the window before going away. She also recognized him well when she testified in court. She likewise pointed to Gervasio Larita as the first intruder who forcibly opened the door of her bedroom and who, without compunction, slapped her, boxed her and pulled her hair. And, as one of their companions, she also pointed to Esmeraldo Caubat who played an important part in the commission of the robbery. And, as she intimated, she cannot fail to recognize these three appellants because she used to see them gamble and drink tuba in her place. She was also able to identify Gervasio Larita because he used to harvest palay for her family, and Esmeraldo Caubat because she often met him in barrio Togbong. She even pointed to him as the man who was carrying a short-barrel gun and pulled her hair while the outrage was being committed.

On the other hand, Estanislao Jason did his share in the identification of the appellants. He pointed to Esmeraldo Caubat as the man who entered the house, went to the window of the sala, and followed Gervasio Larita to the bedroom of Carmen and Priscilla Jason. He used to see him in the market in San Vicente and, therefore, was sure of his identity. He also pointed to Gervasio Larita as the man who went up the house and entered the bedroom of Carmen and Priscilla Jason. He knew him well because he used to meet him in the market. He also pointed to Aurelio Larita as the man who, bolo in hand, asked him for money. He was sure of his identity because he was his neighbor in the ricefield. He also pointed to Felipe Caubat as one of those who slapped him and cannot fail to identify him because he used to see him in the market although he did not know his name. He also recognized Dominador Pacheco as one of the men who assaulted the house with a bolo and threatened Eugenio Andrade because he used to see him during the market days in barrio San Vicente.

As regards Priscilla Jason, while she was able only to name Dominador Pacheco and Gervasio Larita in her testimony, she was however able to point to the other appellants when she testified in court in relation to the commission of the crime. Thus, she pointed to Gervasio Larita as the person who boxed Carmen and asked for money and boxed her time and again when she refused to accede to his wishes. She also identified Esmeraldo Caubat as the man who maltreated her and asked her for money, and pushed her around. She also recognized Gervasio Larita as the person who surprised her in the room, boxed her and maltreated her. And as to Dominador Pacheco, she pointed to him as the man who, bolo on waist, opened and closed the window on the western side and went near the front door and said to his companions, "Tie them."

The defense assails the credibility of these witnesses by pointing out some discrepancies between their testimonies in court and the contents of the affidavits they subscribed before the justice of the peace of Palompon, but these discrepancies are more apparent than real and they have been explained. This explanation appears well related in the brief of the Solicitor General.

The defense also assails the claim of rape made by Carmen Jason simply because the medical certificate, of Dr. tador Ilfasnuaz does not contain any indication that rape was committed on her person or that he Las made an internal examination of her organ. This claim is untenable. Said medical certificate (Exhibit A) discloses the presence of "stumps of vulvar hairs and evidence of uneven symmetry of the arrangement of said vulvar hairs as though some portions had been removed." According to the doctor, this unevenness of the vulvar hairs is caused by a "forcible, pull". The doctor further said, "There was still attached some hair cut in the middle. The cutting of some vulvar hairs correspond to the insertion of force," which is an indication that violence was employed on the victim. The fact that no laceration of the vagina or other sign of violence was found by the doctor is not strange it appearing, that Carmen Jason has already borne a child.

As regards the defense of alibi, little can be said as to its merit. The rule is well-settled that this defense can merit but scant consideration if the presence of the accused appears sufficiently established by credible and reliable witnesses. This is the situation of the appellants. As we have already, stated, they not only have been sufficiently identified but the role they had played has been well depicted by the witnesses. There is nothing that can detract from their testimony and the lower court found them to be truthful. The following is what it says on the matter of credibility:

"After having considered closely and seriously all the testimonies of the witnesses in support of the alibis put forth by the herein accused, the Court has arrived at the conclusion that the same cannot prevail and stand over the clear and convincing affirmations of the witnesses for the prosecution. Each one of the herein accused has been clearly and positively identified by the victims of the robbery and rape perpetrated by them in the evening of March 30, 1953. There is absolutely no reason why the court should disregard the straightforward and sincere declarations of said witnesses."

The penalty imposed by the trial court is in accordance with law and the evidence, except with regard to Gregorio Larita, who, being less than sixteen years of age when the crime was committed, should have been committed to the custody of a public or private benevolent or charitable institution for the care of orphans and delinquent children until he shall have reached his age of majority, to be dealt with in accordance with Article 80 of the Revised Penal Code.

Wherefore, the decision of the trial court with regard to appellants Aurelio Larita, Gervasio Larita, Esmeraldo Caubat, Dominador Pacheco and Felipe Caubat is hereby affirmed, with costs against said appellants.

With regard to Gregorio Larita, the case shall be remanded to the lower court in order that it may make the necessary disposition as regards his commitment to any of the institutions mentioned in Article 80 of the Revised Penal Code to remain there for such time as the circumstances may warrant as provided for in said article.

Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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