

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HERNANI ACANTO, ET AL., DEFENDANTS. HERNANI ACANTO, DEFENDANT AND APPELLANT.*G.R. No. L-14362. October 31, 1960*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/792b8269e9a3/>**PADILLA, J.:**

Hernani Acainto and David Tingson were charged in an information filed by the Provincial Fiscal in the Court of First Instance of Iloilo with the crime of robbery in band with rape. Irineo Quimba, Aniano Porras, Pio Quintero and one John Doe, the alleged confederates, were at large and have not been apprehended. Upon arraignment the two defendants entered a plea of not guilty. After trial, the Court found Hernani Acanto guilty of the crime of robbery in band with rape, as provided for in paragraph 2, article 294, of the Revised Penal Code, and sentenced him to suffer reclusion perpetua; and David Tingson, of robbery in band and sentenced him to suffer 4 years and 2 months of prision correccional to 8 years and 21 days of prision mayor. Both defendants were ordered to indemnify Consuelo Cartera in the sum of P154 and to pay the costs. Hernani Acanto appealed to the Court of Appeals (C.A.-G.R. No. 18559), which certified the case to this Court, pursuant to the provisions of section 17, paragraph 4, of Republic Act No. 296, as amended. David Tingson did not appeal.

Consuelo Cartera, her sister Segunda and niece Amalia lived in the sitio of Malosgod, barrio of Balingasag, municipality of Dueñas, province of Iloilo. At about 9:00 o'clock in the evening of 14 November 1951, a group of men came to their place and asked them to open the door of their house. The inmates of the house seized by fear refused to do so. The men threatened to fire at the house. Afraid that the men would carry out their threat, Amalia Cartera unbolted the door of the house. The appellant, armed with a gun, Irineo Quimba, with a long pointed bolo and Pio (or David) Quintero, with a gun, entered the house, while, two other men, namely, Aniano Porras, armed with a jungle knife, and David Tingson, stayed downstairs. The three men who went up to the house told the inmates to light up a lamp and the latter did as told. Then they ordered the helpless inmates to lie down on the floor face downwards. As Consuelo lay down flat on the floor, Irineo approached her and pointed his bolo at her, resting it on the back of her neck and warned her not to stand up or else he would strike her and while his bolo was thus resting wounded one of her fingers. The two other confederates ransacked the house. Irineo searched the body of Consuelo and found concealed on her waist and took from her the sum of P32 in coins. From her trunk, he took two necklaces valued at P70, four rings valued at P28, clothing materials valued at P18 and six silver bracelets valued at P6. Then the malefactors told Amalia to stand up and go with them downstairs. The appellant took hold of her left hand and with the help of his two companions, one pulling and another pushing her, dragged her downstairs. She resisted by clinging to a post but she was no match to the strength of the three men. A little distance from the house, the malefactors told her to lie down on the ground. Irineo pressed her shoulders on the ground, Pio held her legs, and the appellant removed her gartered elastic panties and had sexual intercourse with her. She felt the pain in her genitals. After the appellant had satisfied his lust, he took Irineo's place and Irineo ravished her. Again she felt the pain in her genitals. Irineo held her legs and Pio took hia turn in having sexual

intercourse with her. After the three malefactors had satiated their lust, the victim rose. As she was standing, Aniano Porras and David Tingson arrived on the scene and they too wanted to have sexual intercourse with the victim. She freed herself from Pio's hold, threw away her panties that remained between her legs and ran to her house. As she was crying when she reached her house, Consuelo asked her what happened. She answered "that she was wrestled by the men" and that they had sexual intercourse with her. She showed her blood stained panties.

On 16 November 1951 Consuelo reported the incident to the police authorities and before the Justice of the Peace of Dueñas Iloilo, subscribed and swore to an affidavit recounting the incident (Exhibit 1), while Amalia subscribed and swore to a criminal complaint against the malefactors (Exhibit A). On 20 November 1951 Amalia and her aunt Consuelo went to the Iloilo Provincial Hospital where the former was physically examined by Dr. Juana Jardiolin, junior resident physician, who issued the following medical certificate:

To Whom It May Concern:

This is to certify that I have examined Amalia Cartera this day.

The following are the findings:

Laceration hymen, 3 and 9 o'clock position.

Vagina hardly admits 2 fingers.

Smear negative for spermatozoa. (Exhibit B)

At the trial, she testified that the lacerations in the hymenN could have been caused by sexual contact.

The appellant's defense is alibi. He denies that he was with Irineo Quimba, Pio Quintero, David Tingson and Aniano Porras in sitio Malosgod on the night of 14 November 1951 and that he took part in the commission of the robbery at the house of Consuelo Cartera and rape of Amalia Cartera on that occasion. He claims that in the afternoon of 14 November 1951 he was in the hacienda of Juan Locsin, a kilometer away from the town of Janiuay; and that from 5:00 o'clock or 6:00 o'clock in the evening of 14 November until the early part of the morning of 15 November 1951, he was with Juan Locsin, a candidate for member of the provincial board of Iloilo, Geronimo Jaque and Ruperto Cosculuela, inquiring about the result of the elections in some of the towns of the first representative district of Iloilo, namely, Oton, Tigbawan, Quimbal, Miagao and San Joaquin. Juan Locsin corroborated the appellant's testimony.

The appellant's defense of alibi, a defense in criminal proceedings that is inherently weak,[1] cannot overcome the positive, clear and direct testimony of the victims, Consuelo and Amalia, that he was among those who robbed the former and raped the latter. When the malefactors entered the victim's house, they ordered the helpless inmates to light up a lamp. This they did. Besides, 14 November 1951 was a moonlight night and the light of the moon penetrated the sides of the victim's house. Consuelo testifies that she knew the appellant before the incident because she used to see him in her sitio (place) and that she recognized him and his companion Irineo when they entered the house on the night of 14 November. Amalia testifies that in the barrio of Madarag, she met the appellant, who is from Janiuay and has a sister in a nearby barrio, and that she used to meet him in her barrio at parties and dances. These preclude the possibility that the victims could have been mistaken in identifying the appellant. Besides, no reason for testifying falsely against him has been imputed to the victims. Moreover, although distantly, Juan Locsin is related to the appellant and during his election campaign for membership in the provincial board of Iloilo in 1951, the appellant used to accompany him as a bodyguard. The witness' relation to the appellant and a feeling of gratitude must have prompted him to testify as witness in favor of the appellant.

The appellant tries to make much out of Exhibit 2, which is a motion for dismissal signed by Amalia Cartera, where she states that "she is in doubt after seeing the said accused here in Court, whether they are really among

those who committed the crime complained of." The motion to dismiss (Exhibit 2) is dated 5 January 1951 while the crime charged took place on 14 November 1951. It is clear that an error was committed as to the date of the motion and that the correct date is 5 January 1952. Amalia testifies that the motion to dismiss was prepared by a sergeant of the police force of Duenas; that the reason why she signed the motion was because the appellant had been telling the people of her barrio that he would "roast" her and feed her body to the hogs; and that she was threatened with death by the appellant if she would not sign it. At the time Amalia testified in Court on 12 May 1954, she was only 19 years old, and on the date of the incident in question, 14 November 1951, must have been only a little over 17 years old. She finished only the intermediate course and lived in the barrio with her aunts Consuelo, who is 65 years old, and Segunda. Young, naive, simple, innocent, scant in education, helpless and not used to the worldly ways, it is not strange that she would believe that the appellant would carry out his threats to kill her. Moreover, the fact that Amalia had to live with her aunt at the house of the chief of police of Duenas, Ramon Landar, after she had filed her complaint against the appellant and his co-defendant, for security reason, shows that the danger to her life was real. Under the circumstances, it is not far fetched to conclude that she acted under duress in signing the motion to dismiss (Exhibit 2).

The crime of robbery was committed by a band. Four of the five malefactors were armed-the appellant with a gun, Irineo Quimba, with a long pointed bolo, Pio Quintero, with a gun and Aniano Porras, with a jungle knife. Taking band and dwelling as aggravating circumstances that attended the commission of the crime, without any mitigating circumstance to offset any of them, the penalty of reclusion perpetua imposed by the trial court upon the appellant is within the range provided by paragraph 2, article 294, of the Revised Penal Code. However, in line with the rule in *People vs. Demetrio*, 86 Phil., 344; 47 Off. Gaz. (Supp. 12) 23, the appellant should be ordered to indemnify the victim Amalia Cartera in the sum of P5,000.

Modified as above stated, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Judgment affirmed with modification.

[1] *People vs. Pakingan*, 105 Phil., 541; 56 Off. Gaz., 4227.

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