

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. LONGENOS PEÑAFIEL, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-17669. December 30, 1961*

Ponente: BAUTISTA ANGELO, J.

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Emilio Porras, Longenos Peñafiel, and Glicerio Pawag were charged with robbery in band with rape before the Court of First Instance of Iloilo. After trial, Porras and Pawag were found guilty as charged and each was sentenced to an indeterminate penalty of from 10 years 4 months and 1 day of prision mayor to 17 years 8 months and 1 day of prision temporal, to indemnify the offended party in the aggregate sum of P3,368.55, without subsidiary imprisonment in case of insolvency, and to pay the costs. Peñafiel in turn was found guilty only of robbery and was sentenced to an indeterminate penalty of 2 years 11 months and 10 days of prision correccional to 8 years of prision mayor, to indemnify the offended party in the sum of P368.55, without subsidiary imprisonment in case of insolvency, and to pay the costs. After the three accused had appealed, the case was certified to us by the Court of Appeals on the ground that, under the evidence, the imposable penalty upon the accused is *reclusión perpetua* which comes within the exclusive jurisdiction of this Court.

In the evening of June 8, 1958, the only companions of Paz Presidente in her house situated at barrio Layahan, Pototan, Iloilo, were her three minor children, her aunt Epifania Comoda, her sister Peregrina Patosa, the latter's husband Casimiro Patosa, and a young boy who was a herder. Paz' husband Eliodoro was then away, from home because he was working in Iloilo City. At about eight o'clock at night, while Paz Presidente was washing their clothes on the backporch of their house, all of a sudden she heard the voice of someone saying: "Don't move", and when she looked up she saw Emilio Porras pointing a revolver at her with a bolo hanging on his waist. She ran to the kitchen and closed the door calling at the same time Casimiro Patosa to help her. Casimiro and his wife who were then lying down in the kitchen helped Paz in keeping the door closed but their joint efforts proved of no avail. When they could no longer hold the door, Paz and Gasimiro ran towards the sala while Peregrina remained in the kitchen where one of her sister's children was. Emilio Porras, holding a revolver and followed by two unidentified persons entered the door leading to the kitchen. They followed Casimiro to the sala and ordered him to lie flat with his stomach on the floor.

Meanwhile, Paz had taken her baby from a hammock and sat on a bamboo bed. Emilio Porras took the rope used for tying the hammock and with it and a cloth belt he tied the hands of Casimiro behind his neck. Thereafter, Porras went to the kitchen and told Peregrina to light a lamp. She lighted the lamp and gave it to Porras. The latter then slapped Peregrina and ordered her to lie down with her stomach on the floor. She did as bidden. At this juncture Porras who was wearing tennis shoes stepped on the right side of Peregrina, who was slapped and ordered to keep the child quiet by his two unidentified companions. They opened a trunk they found in the sala and ransacked and took the money of Epifania Comoda which was kept there amounting to P15.00 and two eyeglasses. Porras then asked Paz where her money was and the latter gave him the amount of P5.55 wrapped in a piece of paper. Meanwhile, Glicerio Pawag who had entered the sala lacked Casimiro Patosa. Porras again asked

Paz where was the amount of P300.00 which she intended to give to her lawyer in connection with a case warning her that he would kill her if she did not give the money. Paz said that he could take everything he wanted provided he does not kill her. One of the unidentified culprits took the locked trunk of Paz Presidente to the backporch and Longenos Penafiel was asked to watch it in the meantime.

Emilio Porras then ordered Paz Presidente to give her three months old baby to her aunt which she did. Then he told her to lie down on the bamboo bed. She wrestled with Porras¹ but he was finally able to force her to lie down because he threatened her with his revolver. Due to fear she told him to do whatever he wanted provided he does not kill her. After slapping her Porras had intercourse with her. After he has finished another person unknown to Paz came and also raped her. Longenos Peñafiel who remained in the backporch to watch the locked trunk entered the main house after the unknown person had succeeded in having intercourse with Paz. Then Glicerio Pawag, who was armed with a bolo also approached Paz and after boxing her on the mouth he also succeeded in raping her.

The intruders searched the whole house and asked for the key to the locked trunk. When the trunk was finally opened the culprits took therefrom the amount of P250.35, a short bamboo tube containing documents, suiting material worth P32.00, two gold necklaces worth P30.00, two rings worth P8.00, two pairs of earrings worth P30.00, and a bolo worth P8.00. While this was happening, an unidentified culprit armed with a bolo approached Peregrina Patosa and told her to lie down or else he would kill her. He placed himself on top of her but at this precise moment the dogs barked and the malefactors fled from the house. After they had fled the herder untied the hands of Casimiro Patosa. Then the latter and his wife Peregrina took two of their sister's children and ran to the house of a cousin. Paz Presidente likewise sought refuge in the house of an aunt. That same evening she and her sister went to the house of barrio lieutenant Teodoro Porras whom they informed of the incident.

Paz Presidente early the following morning went to the municipal building and related to the chief of police what happened in their house the night before. She pointed to appellants and two other persons whom she did not know as the perpetrators of the crime. She was taken to Dr. Andres Guanco of the Pototan General Hospital who, after examining her, found multiple superficial contusions on her lips and a superficial laceration on the right part of her labia majora, and after examining a sticky mucus found in her vagina, the result showed the presence of some dead spermatozoa. After the examination, Paz Presidente accompanied the chief of police to her house so that he may examine the scene of the crime.

Appellants set up the defense of alibi. Emilio Porras declared that he is a resident of barrio Danao, Pototan, and about 12 o'clock noon of the day in question (June 8, 1958) he was gathering corn on his farm; that he was accompanied by his wife and one Jesus Penolvo in his work which lasted up to 4 o'clock in the afternoon, that after four o'clock they brought the corn ears to his house where Jesus Penolvo helped in husking the corn and in separating the grain from the cob; that they worked until about eight o'clock in the evening when they ate their supper; that he had not left his house since four o'clock that afternoon until the evening; that Jesus Penolvo went to the house of Glicerio Pawag after taking supper because Glicerio came to fetch Jesus to treat his sick child, Jesus being a sort of a quack doctor; that Jesus returned to his house about nine o'clock to get his share of the harvest; that Eliodoro Presidente, husband of Paz Presidente, had a quarrel with one Maura Potente sometime in 1948; that he was one of the witnesses of Maura Potente in the criminal case which the latter filed against Eliodoro Presidente; that he has not gone to the house of Paz Presidente for he never left his house since four o'clock that day; that early in the morning of June 8, 1958, he worked on a dike of one Nicomedes Paracale at the latter's ricefield which was about one-half kilometer from his house; that they began working on the dike at about seven o'clock a.m. and one hour thereafter some policemen came to arrest him and Glicerio Pawag who was working with him; that they did not know why they were arrested and it was only at the municipal building that

they came to know the reason for their arrest because Paz Presidente pointed to them as the persons who went to her house in the evening in question. To support his testimony, he presented four witnesses, namely, Jesus Penolvo, Bella Peñarubia, Conrado Provido and Manuel Dayaday.

Glicerio Pawag declared that in June 8, 1958, at about six o'clock, he at barrio Danao; that his child was sick and complained of stomach ache since 12:00 o'clock that noon; that the persons in his house were his wife, children and one Manuel Dayaday; that Manuel Dayaday arrived about 5:30 that afternoon to ask him to build his dike but he told Manuel that he had already promised to work with Nicomedes who came that same morning; that Manuel stayed in his house for sometime and left past eight o'clock p.m.; that Conrado Provido also came with his father that same evening and when they arrived Manuel Dayaday was boiling water and was sitting near his child who was lying down; that later on he left his house to fetch Jesus at the house of Emilio Porras because he came to know that Jesus was there gathering corn that afternoon; that the house of Porras was about one-fourth kilometer; from his house; that when he arrived Jesus was separating the grains from the cob of the corn; that Jesus immediately went with him to his house; that Jesus stayed in his house for about half hour and Manuel Dayaday left as he and Jesus went up the house; that Jesus returned to the house of Emilio later on.

Longenos Peñafiel in turn declared that he worked as helper of Ireneo Peñarubia since April, 1958 and their agreement was that he was to stay with Peñarubia until the harvest and he will be paid 8 bultos; that he stayed in the house of Peñarubia since he worked with him up to June 8, 1958; that in the afternoon of this day Teopisto Lihao went to the house of Peñarubia to collect his debt of one-half bulto of palay; that Peñarubia paid Lihao on his account because Peñarubia owed him for his services; that Lihao took his supper at the house of Peñarubia together with him, his wife and children; that they went to sleep about nine o'clock p.m.; that he grazed his carabao at dawn; that he began plowing about six a.m. and he took his breakfast with him to the field; that after breakfast he was told to gather mangoes and while doing so some policemen arrived and arrested him; that he did not know why he was arrested; that he was taken to the municipal building where he was told by the chief of police that he was accused of robbery with rape to which he answered that he has never gone to the house of Paz Presidente. He presented Ireneo Peñarubia and Teopisto Lihao as witnesses to corroborate him.

The dastardly act with which appellants are charged in the instant case appears to be fully substantiated by the witnesses who testified for the prosecution, namely, the main victim Paz Presidente, who was mercilessly raped. in succession by three of the malefactors, her sister Peregrina Patosa who was illtreated and slapped by them several times, and her brother-in-law Casimiro Patosa, whose hands were tied behind his neck while lying down with his stomach on the floor of the house. These witnesses could not have been mistaken in identifying them not only because they were not masked and there was light in the house but especially because they had been known to them for sometime. It appears from the evidence that they were residents of the same neighborhood and their houses were not so far apart.

While the testimony of Paz Presidente insofar as the sexual intercourse forced upon her by appellants with the exception of Peñafiel does not appear corroborated by other witnesses for the prosecution, this cannot detract any from her credibility, because when the raping occurred she was in one room while the other witnesses were in another. However, it appears proven that on the night in question her husband was in the City of Iloilo and that in the following morning immediately after the outrage, Paz Presidente was examined by Dr. Andres Guanco who found the following: "Multiple superficial contusions on her lips; superficial laceration, two cm. long, 1/3 cm. wide of the right labia majora; about 5 cc of sticky mucus was present in the vagina; microscopic examination of this mucus showed presence of dead spermatozoa." This is an eloquent corroboration of the fact that Paz Presidente was really raped as claimed in her testimony.

The defense chose alibi as shield for the exculpation of appellants which is the weakest that an accused can put up

in view of the easiness with which it can be fabricated. Indeed, it was held that in order that that defense may prosper the evidence to support it must be clear and convincing as to preclude the possibility of the accused's presence at the scene of the crime, while the evidence relative to his identification must be weak and insufficient. These requisites are not here present for the evidence is clear that appellants are the perpetrators of the outrage committed against Paz Presidente and her family. Thus, we are impressed by the following findings of the court a quo: "In the present case the offended party Paz Presidente and her witnesses have identified the herein three accused as the ones who were in the house of Paz Presidente committing the crime as charged in the information. Their identification cannot be doubted because the offended party and her witnesses had been living in the place where the three accused are residing and that the accused are known to them very well. Although the accused had been able to present several witnesses in order to support their weak defense of alibi, yet the strength and the probative value of their testimonies could not overcome the clear and convincing proof adduced by the prosecution that said accused were identified by those witnesses in the house of Paz Presidente on the night of June 8, 1958. This Court has been impressed by the testimony of the offended party Paz Presidente, a married woman who has been relating to the Court her plight on the face of the atrocious and heinous acts of the accused. Her story is very touching with regards to the brutalities employed by the accused upon her. The accused, having been identified by Paz Presidente and her witnesses, the defense of alibi is not tenable under the present circumstances."

The claim of appellants that Paz Presidente had an axe to grind against them because Emilio Porras and Mariano Pawag, the latter father of Glicerio Pawag and father-in-law of Longenos Peñafiel, were among those cited as witnesses in a complaint filed in the justice of the peace court against her husband Eliodoro, deserves scant consideration, for it cannot be conceived that a Filipino woman, who is married at that, would concoct a story that would expose her honor and dignity to public contempt merely to satisfy a feeling of revenge. Such an attitude is repugnant to the character and innate modesty of a Filipino woman.

The crime committed is robbery with multiple rape punishable under Article 294, paragraph 2 of the Revised Penal Code. The penalty prescribed is reclusion temporal in its medium period to reclusion perpetua. As the crime was committed with the aggravating circumstances of dwelling and nocturnity, with no mitigating circumstance, the penalty should be imposed in its maximum period. Hence, each of the appellants should be sentenced to serve the penalty of reclusion perpetua, with the exception of Longenos Peñafiel who was found not guilty of the crime of rape. The lower court found that this accused was not aware of the outrage committed by his companions on the offended party, and the evidence on this point not being clear, we are inclined to agree with this finding.

The total value of the money and articles stolen amounted to P373.90. However, since the suiting material worth P32.00 had been recovered, said amount should be reduced to P341.90. Appellants should also be made to pay to Epifania Comoda, the sum of P15.00.

Wherefore, the decision appealed from is modified as follows; appellants Emilio Porras and Glicerio Pawag are each sentenced to serve the penalty of reclusion perpetua, to indemnify Paz Presidente in the sum of P3,000.00 and P356.90, without subsidiary imprisonment in case of insolvency, and to pay the costs. The penalty with regard to Longenos Peñafiel is hereby affirmed. Costs against appellants.

Bengzon, C.J., Labrador, Concepcion, Reyes J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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