

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CESAR LUNETA ET AL., DEFENDANTS. CESAR LUNETA, APPELLANT.***G.R. No. L-840. January 12, 1948*

Ponente: PARAS, J.

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This is an appeal from a judgment of the Court of First Instance of Capiz finding the appellant, Cesar Luneta, guilty of robbery with rape, and sentencing him to an indeterminate prison term ranging from 8 years and 1 day to 14 years, 8 months and 1 day, to indemnify the offended spouses, Leon Gonzales and Segunda Fuentes, in the sum of P375, with the accessories of the law, and to pay one-half of the costs.

At about three o'clock in the afternoon of January 5, 1946, while Leon Gonzales and his wife Segunda Fuentes were walking along an uninhabited place in the sitio of Mahayag, barrio of Malocloc, municipality of Ivisan, Province of Capiz, they were stopped by the appellant and one Dominador who is still at large. The appellant and his companion were both armed with revolvers and represented themselves as MP soldiers. Leon Gonzales was asked whether he was an army man to which he answered in the negative, whereupon appellant's companion gave him a fist blow on the stomach and another blow with his revolver. In the meantime the appellant was an onlooker with his revolver pointed at the spouses. Dominador ordered Leon and his wife to take off their clothes, a command which was obeyed. Dominador thereupon asked the appellant to take away and kill Leon Gonzales, and after the two had gone, Dominador, by means of force, succeeded in having carnal intercourse with Segunda Fuentes. Leon Gonzales, however, was able to escape from the appellant who then returned to the place where Dominador and Segunda Fuentes were. Upon learning that Leon Gonzales had fled, Dominador went to look for him, whereupon the appellant, left alone with Segunda Fuentes, and also by means of force, succeeded in having sexual intercourse with the woman. The appellant and Dominador thereafter left the scene, carrying with them the clothes of Leon Gonzales and Segunda Fuentes and several other articles having a total value of P375. The spouses did not meet each other again until the next day and, in their scanty clothes, they proceeded to the municipality of Ivisan and reported the incident to the chief of police. Accompanied by the latter and two policemen, the spouses went around in the hope of meeting their assailants. The search proved to be successful, as they were able to recognize the appellant in the house of a lady doctor. Thus identified, the chief of police arrested and investigated him. Appellant's defense consisted of a denial and of the allegation that he was on the day in question in the house of his relative in the municipality of Ivisan.

We have no hesitancy in concluding that the appellant committed the offense for which he was sentenced in the appealed judgment. The promptness with which the offended spouses reported the incident to the authorities, and the short interval between the time of the commission of the offense and the time when said spouses identified the appellant, readily lead us to the belief that they were not concocting an imaginary story. They would not, to say the least, complain of acts that would bring disgrace on their honor, and considering the facts that the offense was committed in full daylight and that the outrage lasted long enough for the appellant and his companion to have left a good impression of their identity, said spouses could not have possibly made a mistake in recognizing the

appellant. It is noteworthy that there is absolutely no showing that the offended spouses could have any motive for testifying falsely against the appellant. Upon the other hand, their testimony coincides essentially with their statements before the chief of police, a circumstance lending force to the theory of the prosecution. Much less could the chief of police have any reason for incriminating the appellant who admitted before said officer that the wound on appellant's forehead resulted from a quarrel with his companion over the division of the spoils. At any rate, we are not inclined to disregard the advantage of the trial judge in hearing and seeing the witnesses for both sides testify.

Contrary to the contention of appellant's counsel de officio, the weight of the evidence for the prosecution has not been adversely affected, much less overcome, by the circumstance that the offended woman did not submit herself to a physical examination and that her soiled chemise was not presented in evidence. While said details are useful, they are not essential, especially where, as in this case, there is already sufficient evidence establishing appellant's guilt.

We cannot, however, agree with the Solicitor General in his contention that the offense is aggravated by the circumstance that it was committed in an uninhabited place, because it has not been proved that the appellant and his companion purposely chose said place as an aid either to an easy and uninterrupted accomplishment of their criminal designs or to a surer concealment of the offense. (*U. S. vs. Vitug*, 17 Phil., 1.) On the contrary, it is not improbable that the offended parties were casually encountered, there being no evidence that the accused had previously sought the former for any purpose whatsoever (*U. S. vs. Vitug*, supra), or that said offended parties were known by the accused to be habitual travelers in that vicinity.

The offense committed is robbery with rape and penalized under article 294, paragraph 2, of the Revised Penal Code with reclusion temporal in its medium period to reclusion perpetua. In the absence of any aggravating or mitigating circumstance, said penalty should be imposed in its medium degree, or from 17 years, 4 months and 1 day to 20 years. The maximum of the indeterminate sentence imposed by the trial court is below this range.

It being understood, therefore, that the appellant shall suffer an indeterminate prison term carrying a maximum of 17 years, 4 months and 1 day, reclusion temporal, the appealed judgment is in all other respects affirmed, with costs. So ordered.

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

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