

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. FAUSTO LINDE AND MANUEL PRISNO, DEFENDANTS AND APPELLANTS.

G.R. No. L-10358. January 28, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

From the evidence adduced by the People, the following appears to have been fully proved.

At about 10:00 o'clock in the night of April 27, 1955, while Margarita Planillo, Francisca Planillo, Federico Requiez, Sixta Cadaves, Catalina Rafalda and six (6) small children, were sleeping in the house of Leocadio Planillo, barrio lieutenant, in the barrio of Gibaca-an, Palo, Leyte, someone was calling from downstairs, saying, "Cadio! Cadio! Will you not wake up? We are not bad men. We are peace officers!" Sixta Cadaves who was sojourning there, for harvest purposes, lighted a lamp and ordered Federico Raquiez, 13 years of age, to open the door. Five (5) men entered the house, among whom was accused Fausto Linde and Manuel Prisno. One was called "Gen" or "sergeant" by his companions, and was armed with a revolver and a carbine, while Linde carried a bolo, Prisno a carbine and the rest bolos. Once in the house, Linde grabbed Sixta Cadaves by the right arm, which was holding the lighted lamp, and told "Gen" who apparently was the leader, "Gen, here she is". Linde, upon orders of "Gen", put out the light. Accused Prisno, Linde and "Gen", tried to drag Sixta downstairs, but did not succeed because Sixta clung to the shutter of the door. So the three brought her to the kitchen.

In the kitchen, Gen pulled Sixta down, Linde pointed his bolo at her and Prisno held her by the feet. Later, Linde held her by the hands and Gen forced himself on top of Sixta and had carnal access of her. When Gen was through, he relieved Prisno from holding the feet of Sixta and Prisno had carnal intercourse with her. And when Prisno had satisfied his lust, he replaced Linde in holding the hands of Sixta and Linde ravished her also. All along the ordeal, Sixta struggled hard to evade the brutal attacks, but her efforts were in vain.

In the living room, and in the meantime, the two (2) other companions of Linde were ransacking the trunk which they ordered Francisca Planillo, a young girl of 16, to open with the key, and took therefrom two gold rings worth P10.00, three pairs of earrings costing P30.00, a bracelet valued at P15.00; trousers costing P5.00, T-shirt price P2.00, two flashlights worth P2.40 and P4.00 cash. Thereafter, the two men dragged Francisca to the kitchen, just after Linde, Prisno and "Gen" had released Sixta and had gone downstairs. The two men raped Francisca, who declared that the carnal acts with them were painful, as they were the first in her life.

On May 1, 1955, Sixta and Francisca were examined by Dr. Vicente Ramo, resident physician of the Leyte Provincial Hospital, who reported that their genital organs were negative of sperm cells due, according to said doctor, to the length of time that had elapsed and that Francisca's hymen was no longer intact (Exhibits A and B).

When the case was brought before the Justice of the Peace of Palo, Zoila M. Redoña, for preliminary investigation, she found among the record of the case an extrajudicial confession of accused Linde (Exhibit D).

She called Linde, read and translated to him said Exhibit D and asked him whether the same was true or not. Linde admitted the statements contained therein, affixed his signature on it and swore to the truth of said statements. Accused Fausto Linde testified that from 9:00 o'clock on the night of April 27, 1955 to 5:00 o'clock the next morning, he was sleeping in the house of his aunt Quiteria Linde, at sitio Cagumbang, Palo; that at about 10:00 o'clock in the morning of April 30, 1955, constabulary soldiers took him to the uninhabited house of Pedro Pedrosa and questioned him whether he had raped Sixta Cadaves in the house of Leocadio Planillo; that when he refused to admit having raped Sixta, two PC soldiers boxed him on the stomach, ribs and on the right and left sides of his body for several times, such that he lost consciousness six (6) times; that when he could no longer endure the punishment, he admitted his guilt of the crime imputed to him. After having made the admission, the two soldiers took him to a coconut grove and again questioned him as to the names of his companions. When he refused to do so, he was again boxed by the soldiers, one of whom threatened to shoot him "face backward". Then he was ordered to lean against a coconut tree and he was kicked until he lost consciousness. Linde further told the court that he could not recognize the soldiers who investigated and maltreated him; that when he was brought to the vicinal road, he named Manuel Prisno and Arturo Gonzaga, as his companions, because they were his enemies; that at the encampment, the soldiers prepared a statement, after which he was brought before Justice of the Peace Redona in Tacloban, who asked him to sign the same, which he did; that he did not know of any motive why Sixta had testified against him, although he believed that she and her relatives were entertaining grudges against him because they were the ones who convinced his (Linde's) wife to separate from him, an act which he resented.

The accused Manuel Prisno claimed that on April 27, 1955, he was in barrio Cagumbang, Palo, in the ricefield of Petra Gonzaga, harvesting palay, finishing the work at 4:00 o'clock in the afternoon; that he, his mother and other persons returned to barrio San Joaquin, where he resided; that at 7:00 o'clock in the evening he took supper and thereafter retired for the night; that at about 9:00 that same night, he was awakened by one Ricardo Gonzaga, but he went to sleep again until the following morning. He also informed the court, that he (Prisno) and Linde were enemies because of a previous fight; and that Linde wanted him to go to jail.

Predicated upon the above evidence, accused Linde and Prisno were found guilty of the crime of robbery with multiple rape, and considering the presence of the aggravating circumstance of the offense having been committed in band, without any mitigating circumstance to compensate it, sentenced each to suffer the penalty of reclusion perpetua, with the accessories of the law, to indemnify Leocadio Planillo in the sum of P64.80, which was the aggregate value of the personal properties robbed, and to pay 2/5 of the costs. They interposed the present appeal.

It is contended by the defense that the evidence of record does not warrant the conviction of the appellants of the crime charged. Their main defenses are alibi; the alleged failure of the witnesses for the People to identify both appellants; and the inadmissibility of Exhibit D, the extra-judicial statement of Linde.

Familiar is the rule that the defense of alibi has no weight whatsoever, if the perpetrators of the offense have been positively identified by the eye witnesses for the prosecution. At the time of the commission of the crime at bar, state witnesses Sixta Cadaves, Francisca Planillo, Federico Requiez and Margarita Planillo, who knew the appellant Linde prior to the incident, for they were all first degree cousins of his wife, recognized him as one of the malefactors. The crime was committed in the house of Leocadio Planillo, scarcely 1-1/2 kilometers from the residence of Linde and it was not physically impossible for the latter to have been at the place of the incident.

But this is not all. Exhibit D, statement of Linde, where he admitted his participation and guilt in the commission of the offense, was presented. Indeed, the defense impugned its efficacy, alleging that it was obtained through force and intimidation. We are of the belief, however, that appellant Linde's story of his supposed "martyrdom" is but a figment of his imagination. If he was really maltreated, he should or would have complained to the Justice of

the Peace or to any of his relatives, against the alleged maltreatment, or submitted himself to a physical examination. These he failed to do. No motives was shown why the PC soldiers should have displayed any interest in doing him harm. The appellant had not even taken the trouble of recognizing the faces of his supposed tormentors. Exhibit D, a detailed narration of the commission of the offense, could not have been prepared by the PC soldiers, if appellant Linde had not supplied its contents.

The same thing can be said about appellant Prisno. It is true that only Sixta recognized and identified him as one in the group of the three who raped her. Withal, her testimony describing in detail the participation of this appellant in the offense charged is credible, convincing and satisfactory, and is, in our opinion, sufficient to convict said appellant. Sixta's testimony finds confirmation in the extrajudicial confession of appellant Linde who stated therein that one of his companions in the perpetration of the rape was Prisno. Conspiracy among those who entered the house having been clearly established, the confession of one (Linde) is admissible and can be considered as corroborative evidence against the other (People vs. Piamonte, et al., 94 Phil., 293.)

In view hereof, we hold that the guilt of appellants Fausto Linde and Manuel Prisno of the offense charged has been established beyond cavil of doubt, the commission of which was attended by the aggravating circumstances of night time, dwelling and by a band. There being no mitigating circumstances to offset them, the penalty imposed by the trial court is in accordance with the law and the evidence. The judgment appealed from is hereby affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, and Dizon, JJ., concur.

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