

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONSTANCIO VINERAS, DEFENDANT-APPELLANT.***G.R. No. L-6081. December 29, 1954*

Ponente: BAUTISTA ANGELO, J.

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Constancio Vineras was charged in the Court of First Instance of Iloilo with the crime of robbery in band with rape which, according to the information, he has committed together with Jose Secular, Dominador Hospital, Raymundo de la Cruz, Miguel Pastrana, and Peregrino Atimonan, who have not yet been apprehended. After trial, the court found the accused guilty and sentenced him to an indeterminate penalty, the minimum of which is 12 years and 1 day of prison mayor and the maximum of 17 years, 4 months and 1 day of reclusion temporal, to suffer the accessory penalties of the law, to indemnify the offended party in the sum of P1,363, value of the articles stolen, to indemnify the same offended party in the sum of ,000 for the rape committed against her, and to pay the costs. The accused appealed directly to the Court of Appeals, but the case was certified to this Court because the penalty for the crime committed involves reclusion perpetua.

In the evening of May 16, 1949, at about 7:30, Constancio Vineras went to the house of Consuelo Boteros located at "barrio San Nicolas, municipality of Oton, province of Iloilo, accompanied by Jose Secular, Dominador Hospital, Miguel Pastrana, Raymundo de la Cruz, and Peregrino Atimonan. They were looking for Juan Cofreros, son of Consuelo, and when the latter informed them that he was not home, they ordered her to open the door. Consuelo did as bidden, who noticed the barrels of two rifles being introduced into the opening of the door, and once the door opened, the intruders, all armed with rifles, entered the house. At the time, the occupants of the house, besides Consuelo, were her children, namely, Francisco Cofreros, 18 years of age, Gabriel Cofreros, 17, Josefina Cofreros, 14, and Magdalena Cofreros, 1 1/2 years old, all of whom were Herded in the living room of the house. The husband of Consuelo was then in Guam.

Vineras and Secular demanded P5,000, and not having this Sum Consuelo fell on her knees and pleaded for mercy. At this juncture Vineras, Secular, and Hospital went into one of the rooms, and finding three trunks therein, they opened them by force and took therefrom several articles, to wit: P50 in coins, a pair of shoes, two flashlights, several pieces of jewelry worth P300, two pairs of earrings worth P312, 4 chains worth P400, 1 breast pin worth P50.00, 2 Elgin watches, 1 wrist watch costing P90, a pocket watch costing P30, 1 bracelet costing P40, and a puncheon worth P40. The two flashlights cost P8.00 and the pair of shoes P15. After wrapping up these articles, the trio took Consuelo inside the room and, with Secular and Hospital holding her hands, she was forced to lie down to enable Vineras to rape her as he did. This outrage Vineras succeeded in accomplishing notwithstanding the stubborn resistance of Consuelo. She was sacrificed before the very eyes of the other occupants of the houses including her 14-year old daughter Josefina. After warning Consuelo that if she did not cause her son Juan to return as they wanted, they would return to liquidate him, they put out the light and left the house.

Early the next morning, May 17, 1949 Francisco Cofreros, son of Consuejo, reported the incident to the local

authorities. In the afternoon of that same day the chief of police arrived from Negros and immediately investigated the matter. On the following morning, May 18, a complaint was filed against Constancio Vineras, who was arrested at noon of that day. His other companions have not been apprehended up to the time of the trial. In the investigation conducted by the chief of police, while 'at first he refused to talk, Vineras admitted in the end that the charge against him was true, except that part which accuses him of having stolen the jewelry or having abused Consuelo Boteros as charged. He admitted being the only one who went to her house.

The accused set up the defense of alibi, contrary to what he admitted before the chief of police. He said that in the evening of May 16, 1949, at about 7 o'clock, he was in the store of one Ana Cofreros located at barrio San Antonio, Oton, Iloilo, taking some rest, it being his habit to go for a walk his evening meals; that he stayed in that store until 9:30 o'clock and from there he went home directly and slept up to 8 o'clock the following morning. His presence in the store during that period was corroborated by his uncle Ambrosio Barason and by a relative named Sixto Buron.

To bolster up his defense, the accused presented other witnesses in an effort to prove that the crime was committed by a group of six individuals composed of Jose Secular, Dominador Hospital, Baymundo de la Cruz, Miguel Pastrana, Peregrino Atimonan, and Guillermo ViHavencio. These witnesses are Rufino de la Torre, Cornelio Galarga, and Gregorio Caday, the first said that he saw the six persons above mentioned on May 20 or 21, 1949 when they went to his house asking for food and it was then that they revealed to him that they had just escaped from Oton, but did not tell him the reason why they escaped. The testimony of this witness can hardly be given credence it appearing that, notwithstanding their suspicious character and the fact that they were armed with rifles, he did not report them to any local authority, or agent of the law, and instead merely relayed the information, according to him, to the two sisters of the accused. This is an indication of his partiality to the defense.

The second witness, Cornelio Galarga, testified that in the evening of May 16, 1949 while he was in the street leading to San Nicolas from San Antonio, he saw the same group of individuals but on that occasion the accused Vineras was not one of them, implying from his testimony that said individuals are the only ones who committed the crime in question. While the third witness, Gregorio Caday, testified that on May 21 or 22, 1949 he also saw the same group of men going to the house of Ablceta Vineras, sister of the accused, which was located at barrio Bayag, Leon, Iloilo, and that on that occasion said men went up the house and were served with supper by Aniceta and her sister Adela. The accused was not with them and, according to Aniceta, these men informed her that the accused did not take part in the commission of the crime.

Despite the efforts made by the defense in bolstering up the plea that the appellant is not one of those who committed the heinous crime we have before us, the lower court turned a deaf ear to such plea, in spite of its opportunity for analysis and observation of the witnesses of both parties, and came to the unremitting conclusion that the accused is the one who, with some companions, ravished the victim after depriving her of her earthly possessions. The court took part cellar notice of the testimony of the victim Consuelo Boteros and of her children Gabriel and Josefina Cofreros who testified with such candor and sincerity that one cannot but conclude that what they said rung with truth. The same observation can be made with regard to the offended woman who, according to the trial court, was intelligent and trustworthy and made a natural and sincere narration of the incident, especially when, as in this case, there is no showing that she had any improper motive to prefer against the accused a charge which involves her very honor and that of her entire family. There can therefore be no doubt as to the participation of the appellant considering the nature of the act committed and the positive identification made of him by the witnesses for the prosecution.

The attempt made by the defense to show that there may have been an error in the identification of the appellant

because her resembles in physical features and mannerism one known as Peregrino Atimonan, who was one of the six persons who allegedly committed the crime and are still at large, must also fail, not only because the attempt has not materialized for the failure of the defense to bring him to court so that it can properly appreciate if there has really been an error in identification, but because the same appears completely overcome and obliterated by the positive identification made of the appellant by the offended party and her children. Apparently, this is an eleventh hour effort to throw the mantle of culpability upon the shoulder of someone who is now beyond the reach of the authorities.

The appellant is guilty of the crime of robbery with rape, aggravated by the circumstances of dwelling, nocturnity and band. The temporal in its penalty provided for this crime is reclusion temporal in its medium period to reclusion perpetua and there being no mitigating circumstance that may be considered in favor of the accused, said penalty should be imposed in its maximum period, or reclusion perpetua.

With the modification that the appellant be sentenced to suffer reclusion perpetua the judgment appealed from is affirmed in all other respects, with costs.

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

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