

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE DE CASTRO, DEFENDANT AND APPELLANT.

G.R. No. L-547. June 28, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

Appellant has been convicted of treason by the Fifth Division of the People's Court and sentenced to life imprisonment, to a fine of P10,000, and to pay the costs. The facts proven by the prosecution are as follows:

Appellant was a USAFFE soldier and upon the occupation of the province of Cebu by the Japanese Army he joined the Bureau of Constabulary and became a regular constabulary soldier under the government of occupation.

On January 13, 1945, at 2 o'clock A.M. a group of four Japanese soldiers accompanied by some constabulary soldiers, one of them the herein appellant, went to the house of the Bacani family of Bulacao, In the suburb of El Pardo, Cebu City. The four Japanese soldiers, headed by Sgt. Yoshida, investigated the two girls, Anita and Rosario Bacani, living in that house and suspected of having some connection with the Cebu guerrillas. The two girls were hanged by their arms, which were tied behind their backs, by the Japanese soldiers and they were later arrested and imprisoned together with their younger brother Ricardo in a house near the Redemptory Monastery. For lack of evidence, the Japanese soldiers released Ricardo, and also Anita and Rosario subsequently, after fourteen and twenty days confinement; respectively. Yoshida reminded Rosario before releasing her that she was very lucky for not having been killed.

On or about February 22, 1945, Rosario Bacani was taken from her house by appellant and others and was brought to the house of Yoshida in Cebu City. Yoshida made some amorous advances to Rosario and threatened to kill her and all the members of her family should she not consent to live with him. Rosario had to yield, according to her, because she was afraid of his brutality. Yoshida told her to go home and to return the next day with her mother which she did. Yoshida told Rosario's mother of his desire to have Rosario as servant, cook and laundrywoman, and from then on Rosario became a mistress of Yoshida.

Rosario testified that while she was living in the house of Yoshida, appellant was also living there and was giving reports to Tanamaya, Yoshida's interpreter. There is no evidence, however, of what those reports were, and their felonious character is not to be presumed.

The facts above Stated do not constitute treason. Appellant's membership in the Bureau of Constabulary under the government of occupation is not treason. That institution was intended for the promotion and preservation of law and order which were essential during war to the life of the civilian population. Appellant personally did nothing serious except his having taken Rosario Bacani from her house to bring her to the house of Yoshida, but again this is not treason. It may be an aid to satisfy the lust of a Japanese officer, an aid which is not treasonous, as held in *People vs. Perez*, G. R. No. L-856.

Neither is appellant guilty as co-author of rape, for no rape is alleged in the information and no rape had been committed by Yoshida against Rosario, she having yielded her body to him not because an actual force was being exerted upon her, but because she was afraid that otherwise she might be the victim of his brutality. It is well settled that when "some hesitation was shown by the woman or that she had contributed in some way to the realization of the act" there is no rape. (Viada as quoted in U.S. vs. De Dios, 8 Phil., 279, 282.)

Judgment is reversed, appellant is acquitted with costs de oficio.

Ozaeta, Paras, Feria, Bengzon, Tuason, and Reyes, JJ., concur.

PERFECTO, J.:

We concur in appellant's acquittal. Our reason for not convicting him of rape is because this crime is not alleged in the information. It is, therefore, unnecessary for us to decide it, under the circumstances, Rosario Bacani has been raped or not by Yoshida and if appellant has any share in the criminal responsibility, if any.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

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