

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MANUEL BANIAGA, ET AL., DEFENDANTS. MANUEL BANIAGA,
DEFENDANT AND APPELLANT.**

G.R. No. L-14905. January 28, 1961

Ponente: DIZON, J.

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DIZON, J.:

Brigido Tagubat, Fernando Dalapa, George Crisostomo, Felipe Guntalilib and Manuel Baniaga were charged with the complex crime of robbery with rape in the Court of First Instance of Nueva Vizcaya. Upon arraignment they pleaded not guilty. As during the trial below, Fernando Dalapa and George Crisostomo escaped from the provincial jail where they were detained, the trial proceeded only with respect to (1) Manuel Baniaga, (2) Brigido Tagubat and (3) Felipe Guntalilib, all of whom were subsequently found guilty and sentenced as follows:

"En virtud de las consideraciones arriba expuestas, el Juzgado halla a los acusados Manuel Baniaga, Brigido Tagubat y Felipe Guntalilib culpables fuera de toda duda racional del delito de robo cometido en la casa y restoran de Vicenta Zabat y acompañado de violacion en las personas de las jovenes Arsenia Caoili y Florencia Bautista, segun se ha alegado en la querella, y teniendo en cuenta la concurrencia de las circunstancias agravantes de morada y de nocturnidad, les condena a cada uno de dichos acusados a sufrir la pena indeterminada de doce (12) años y un (1) dia como minima a veinte (20) años como maxima, ambas de reclusion temporal, a las accessorias de la ley, a indemnizar mancomunada y solidariamente a la Sra. Catalina Santos y su familia la suma de P90.00 y a la Sra. Vicenta Zabat la suma de P231.00, cuyas cantidades representan el valor de los objetos y dinero robados y no recobrados, a indemnizar mancomunada y solidariamente a Arsenia Caoili la suma de P3,000.00 y a Florencia Bautista la suma de P6,000.00; sin prision subsidiaria en caso de insolvencia; y a mantener las proles que tuvieran las citadas Arsenia Caoili y Florencia Bautista como resultado de las violaciones de que fueron objeto, y a pagar la parte proporcional de las costas del juicio."

From the above decision (1) Manuel Baniaga and (8) Felipe Guntalilib appealed to the Court of Appeals, but the latter's appeal was dismissed by said court on March 28, 1958 due to his failure to file his brief within the reglementary period.

After a review of the evidence, the Court of Appeals agreed with the judgment of conviction rendered by the trial court, but in view of the fact that the penalty prescribed by law for the crime of robbery with rape should be imposed in its maximum period, namely, reclusion perpetua, considering the presence of the aggravating circumstances of dwelling and nighttime, not compensated by any mitigating circumstance, the case was elevated to Us in accordance with the provisions of Section 17, paragraph 3, of the Judiciary Act of 1948.

The evidence for the prosecution shows the following facts: Vicenta Zabat owned a combination store-restaurant located at Bato Ferry, Busilac, Bayombong, Nueva Vizcaya, managed by the spouses Paulino Santos and Catalina Santos. Arsenia Caoili, Florencia Bautista, Pacita Buen and Rosita Gauan were employed thereat its waitresses.

On the evening of September 8, 1954, Arsenia, Florencia and Pacita slept together on top of two tables joined

together inside the restaurant, while Rosita slept on a cot inside the store. The Santos spouses occupied a separate room. The store, the restaurant and the room of the Santos spouses were all in one building. Between 11 and 12 o'clock that evening, Arsenia, Florencia and Pacita were awakened by a kick at the bamboo door of the restaurant, followed by the entry of six masked men, some of whom carried firearms. Two of them put out the Coleman lamp that lighted the restaurant and then proceeded to the room of the Santos spouses, while a third one went to the store. The other three stood guard over Arsenia, Florencia and Pacita, threatening to kill them if they moved. One of the two men who entered the room of the Santos spouses—whom his companions addressed as "Commander"—pointed a gun at Mrs. Santos and ordered her to bring out her money. When Catalina answered that she forgot where she placed the key to her aparador, the "Commander" pointed his flashlight at a post where the key hung together with a wrist watch and a bracelet. He took the articles and handed the key to Mrs. Santos, ordering her to open her aparador—which she did. From it she brought out a box and gave it to the "Commander". It contained a pair of earrings value at P60.00, a chain valued at P6.00, a ring with pearls valued at P20.00, and cash amounting to P45.00, all belonging to Mrs. Vicenta Zabat, the, owner of the restaurant. The robbers also dispossessed Paulino Santos of his wrist watch valued at P120.00 and P100.00 in cash. They then ordered Mrs. Santos to lie on her face, while Mr. Santos, who tried to get out of the room, was likewise ordered to lie face downwards.

Meanwhile, one of the three men who stood guard over the girls inside the restaurant, took Arsenia Caoili to where Rosita Gauan was lying down. After telling Rosita to leave, he poked gun at the stomach of Arsenia and ordered her to lie down on the cot. After she had obeyed the order, appellant kissed her, fondled her breasts and finally placed himself on top of her and succeeded in having sexual intercourse with her. The chemise which Arsenia wore (Exhibit A) was torn and stained with blood. She was also deprived of her wrist watch worth P55.00. In the meantime, the two other men who were left watching Florencia Bautista and Pacita Buen left the restaurant and, upon their return a short while later, took Pacita Buen with them. One of the men returned to the place where Florencia Bautista was and pointed a gun at her. He then unmasked himself and started kissing her, finally raping her. Florencia recognized the accused Brigido Tagubat as her offender. After Brigido Tagubat left, another companion likewise abused her. Florencia was able to identify him as the accused Fernando Dalapa. A third companion took Florencia to the bathroom where he also succeeded in raping her. Having also removed his mask in kissing her and because of the lighted lamp in the store, she was able to recognize the accused Felipe Guntalilib as her third abuser. Florencia Bautista then passed out and upon coming to she discovered that her gold-filled earrings worth P20.00 were gone. Another accused, George Crisostomo, also raped Rosita Gauan.

The following morning, Florencia Bautista, Arsenia Caoili and Rosita Gauan were brought to the provincial hospital in Bayombong for physical examination. The attending physicians, Dr. Raymundo Bernardo, chief of the hospital, and Dr. Florentino C. Bernardo, resident therein, found that the girls had been raped.

The girls later proceeded to the PC headquarters at Bayombong where they were made to identify the offenders from among a group of persons presented to them. Arsenia Caoili readily pointed to Manuel Baniaga as her abuser and Brigido Tagubat as one of those who participated in the robbery that night. Florencia Bautista identified Fernando Dalapa, Brigido Tagubat and Felipe Guntalilib as the persons who raped her, while Rosita Gauan pointed to George Crisostomo as the person who raped her.

Appellant denies having participated in the commission of the crime in question and relies upon an alibi, claiming that at 12:00 p.m. of September 8, 1954 he left Bayombong, Nueva Vizcaya bound for Diffun, Nueva Vizcaya, to fetch some pigs, which, his mother was going to buy, arriving at Diffun at about 6:30 p.m. in the afternoon of the same day; that upon his arrival at Diffun he was taken to the municipal building by the Chief of Police of Diffun, Francisco Gonzales, for questioning on suspicion of being a Huk; that the investigation lasted up to 7:45 that

evening and that upon his release he went to the home of Juan Asis, where he and his mother passed the night; that at 7:00 o'clock the following morning he and his mother left Diffun for Bayombong in a bull-cart, arriving at Bayombong at about 5:00 o'clock in the afternoon of the same day, September 9, 1954.

Appellant's defense is unconvincing. In the first place, his testimony is insufficient to overcome the clear and straightforward testimony of Arsenia Caoili who positively recognized and identified him as one of the malefactors who entered the restaurant in the evening of September 8, 1954 and raped her. It must be borne in mind in this connection that Arsenia had seen appellant in the marketplace a few days before the date aforesaid and that she had full opportunity to recognize him "because when he abused me (her) and kissed me (her), I (she) took or remembered of his marks." (Transcript, page 9, May 27, 1955). To this must be added the circumstance that when on September 9 several persons were shown to Arsenia at the PC barracks in Bayombong, she readily pointed to appellant Baniaga and Brigido Tagubat as among those who committed the crime the night before. Lastly, there is nothing at all in the record to show that Arsenia had any motive to perjure herself and incriminate appellant. In the second place, it is well known that alibi is a defense easily concocted and must be received with caution. Where nothing supports it except the testimony of relatives, and friends it deserves scant consideration—more so in a case like the present where the prosecution evidence positively established the presence of appellant at the time and place of the commission of the offense.

In view of all the foregoing, we are of the opinion, and so hold, that the guilt of appellant Baniaga has been established beyond reasonable doubt. The penalty for the offense committed—robbery with rape—is reclusion temporal in its medium period to reclusion perpetua. There being present in the present case the aggravating circumstances of nighttime and dwelling, with no mitigating circumstance to offset them, said penalty must be imposed in the maximum period. Consequently, the penalty imposed by the trial court upon appellant Manuel Baniaga is modified and elevated to reclusion perpetua.

Modified, as above indicated, the decision appealed from is affirmed in all other respects.

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

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