

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LIBERATO GAGUI, DEFENDANT AND APPELLANT.***G.R. No. L-20200. October 28, 1966*

Ponente: MAKALINTAL, J.

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In the Court of First Instance of Pampanga Liberato Gagui, Arsenio Mañgila, Angel de la Cruz and a person designated in the information as William Doe (who had not been apprehended and whose identity was still unknown) were charged with the offense of robbery with rape and less serious physical injuries. Angel de la Cruz entered a plea of guilty and was sentenced accordingly. Mañgila and Gagui stood trial and were pronounced guilty of the crime of robbery with rape, complexed with less serious physical injuries, as defined and penalized under Article 294, paragraph 2, in connection with Article 48, of the Revised Penal Code. They were each sentenced to suffer an indeterminate penalty of from 14 years and 8 months to 20 years of reclusion temporal, with its accessory penalties; to indemnify the spouses Benito Sarmiento and Patrocinia Millares, jointly and severally, in the sum of P96.80, without subsidiary imprisonment in the case of insolvency; and to pay the costs proportionately. Mañgila accepted the sentence. Gagui appealed to the Court of Appeals, which, after reviewing the case found that the penalty properly imposable under the law is reclusion perpetua, and consequently certified the appeal to this Court pursuant to section 34 of the Judiciary Act.

Appellant claims that the lower court erred: (1) in not considering the evidence for the prosecution as unnatural and improbable, and thus insufficient to establish his guilt beyond reasonable doubt; (2) in not considering his defense of alibi and in holding that Exhibit 2, which is an entry in the police blotter presented by him, constitutes hearsay evidence; (3) in not considering his "confession" as involuntary and therefore invalid; and (4) in not acquitting him of the offense charged.

The evidence given by Benito Sarmiento concerning the commission of the offense is to the following effect: He the caretaker of a fishpond belonging to Venancio Quiambao, at sitio Kitalid, barrio Malanday, municipality of Lubao, province of Pampanga. On June 26, 1955 at about eleven o'clock in the evening, while he and his wife Patrocinia Millares were in their hut near the fishpond, four men arrived, all of them strangers to him. They requested that they be permitted to cook the fish they were carrying, even asked him for some rice. While they were eating the food after it was cooked, Patrocinia Millares was breast-feeding her child at a corner of the house.

The meal over, Gagui, Cruz and William Doe went down the house, leaving Mañgila behind. Gagui called Sarmiento to follow. They took him near a dike of the fishpond and there demanded money from him. He said he had none, but offered to give rice instead. Refusing the offer, they frisked him and took his watch as well as the watch of his wife, both valued at P50.00. Then Cruz hit him with a piece of bamboo, inflicting a wound on the eyebrow. As he fell the other two stabbed him. Sarmiento jumped into the fishpond and tried to swim away, but the three chased him in a banca. When they caught up with him, he capsized the banca and was able to elude them by hiding beneath the trees on the other side of the fishpond.

At break of dawn the next day the wounded Sarmiento crawled back to his hut. A few minutes later the other fishpond guards came and found him lying at the door. He asked them to look for his family so that he could be taken to the hospital.

Sarmiento was confined for a period of one month in " provincial hospital of Bataan, where he was treated I the following injuries:

- "1. Wound, stab, axillary gerion, left.
2. Wound, stab, axillary region, right.
3. Wound, stab, interscapular.
4. Wound, lacerated, upper eyelid, right."

Patrocinia Millares corroborated her husband's testimony up to the point when he was called by three of the four man to follow them after they went down the house. Thinking, she added, that something untoward might happen, she called to her husband to come back, but he assured her from beneath the window that there was nothing to worry about. Arsenio Mañgila also tried to allay her suspicion, saying that they were not had people. About half an hour later she heard a sound which seemed to be that of a club striking something. In a few minutes the three men returned to the hut. She asked them where her husband was and they said he was downstairs, and that he had been very good to them. Arsenio Mañgila, who had remained inside the hut, then asked for the key of her trunk, threatening to kill her when she refused to give it. With the key Mañgila opened the trunk, and as he was taking out its contents Liberato Gagui approached Patrocinia and ordered her to lie on the floor. She balked at the order, but Gagui shook her by the shoulders and drew a fan knife, which he opened and pointed at her throat. Gagui succeeded in having sexual intercourse with her, after which his three companions took their turns, one after another. Their lust satisfied, the four man left with the loot, consisting of 2 blankets worth P10.00; 4 pants worth P28.00; undershirts valued at P2.00; 2 trubenized shirts valued at P8.00; 5 dresses worth P15.00; one unsewed dress costing P3.80; and P6.00 in cash. As soon as they left Patrocinia went downstairs to look for r husband, but came back when she failed to find him. Taking her child with her she proceeded to the hut of one of Le guards, who accompanied her to the house of Teofilo Quiambao to seek his help. They finally found her husband, bathed in blood and lying at the door of his hut, and forthwith took him to the provincial hospital.

Exequiel Apostol testified that in the night of June 26, 1955 at about 9:00 o'clock, he was buying milk-fish at the fishpond of Doña Maxima Vda, de Blas located in a place Señora, within the jurisdiction of either Lubao or Sexmoan, Pampanga. While he and his companions were sorting the catch on top of a pilapil, four men came in a banca. Three of them alighted and asked him for some fish, which he gave. They then rode in their banca toward Malanday, thru the Pamugsok River. According to Apostol the place where they were sorting the catch was lighted with a Coleman lamp. When asked on the witness stand to identify the four men, he pointed to Liberato Gagui, Angel de la Cruz and Arsenio Mañgila.

Gagui signed two affidavits: the first (Exh. A for the prosecution; Exh. 1 for the defense) on June 30, 1955 and the second (Exh. A-1 for the prosecution; Exh. 2 for the defense) on July 26, 1955. He admitted in both his presence at the scene of the crime, but shoved the burden of guilt to his companions.

Appellant assails the evidence for the prosecution as unnatural and improbable, referring particularly to the fact that while the four men were cooking their food Patrocinia just stayed in a corner of the hut breast-feeding her child, without leaving her position. We find nothing unnatural in this at all, nor in the fact that she did not cry for help while the men were preparing and eating their meal or even when they took her husband away. She did suspect something untoward might happen, but her husband himself allayed her suspicion; and so far up to that moment there was no real cause for alarm such as would provoke from her an outcry.

Appellant's defense is alibi. He testified that on June 26, 1955, at about 8:00 or 9:00 o'clock in the evening, he and one Pascual Cubacub were confined in jail in Orani, Bataan, for having committed some scandalous acts after some drinks in the store of a certain Dionisio Manalili. To prove this assertion he presented the police blotter (Exh. 3) the municipality of Orani.

In the first place, a defense of alibi will not stand against positive identification of the defendant, which in this case was made by Benito Sarmiento and Patrocinia Millares. The hut was adequately lighted at the time, and men who committed the offense stayed inside for a considerable while. Secondly, the alibi put up by appellant is belied by his two affidavits, wherein the events of the night in question are narrated by him in detail.

Appellant says that his affidavits were involuntary, because his signatures thereon were obtained by force. Fiscal Eleno Kahayon, however, testified that he read the contents of said documents part by part to appellant, who affirmed the truth thereof before him. The signing of the documents was witnessed by a sergeant of the constabulary, who accompanied appellant to the fiscal's office and who testified for the prosecution in rebuttal.

The evidence of the police blotter was disregarded by the trial court in this wise:

"As to the blotter, we seriously doubt its veracity and authenticity. According to Sgt. Benigno Decena; he prepared the entry but admitted that same was signed by the chief of police, Francisco Sevilla, who, significantly, was not presented as a witness to identify his signature and to be cross-examined on its contents. Even accepting the genuineness of said entry, its probative value is questionable for the reason that according to Decena, what he had entered on the blotter was merely reported to him. It, therefore partook of the nature of a hearsay evidence."

We find no reversible error in the conclusion reached by the trial court on this point.

The offense of robbery with rape is punished under Article 294, paragraph 2, of the Revised Penal Code, with reclusion temporal in its medium period to reclusion perpetua.

Considering the attendance of aggravating circumstances, such as nighttime, dwelling place and abuse of superior strength, with no mitigating circumstance to offset them, the penalty prescribed must be imposed in its maximum period.

The judgment appealed from is therefore affirmed, with modification as to the penalty alone, which is hereby raised to reclusion perpetua and its accessory penalties. Costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Judgment affirmed with modification.

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