

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEONILO GANAL ET AL., DEFENDANTS. LEONILO GANAL, ARCADIO RAMOS (ALIAS DOMINADOR RAMOS), AND CASIMIRO CLEMENTE, APPELLA...

G.R. No. L-1990. March 15, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

About 11 o'clock in the evening of March 7, 1947, in the barrio of Amistad, municipality of Angadanan, Isabela, various individuals armed with rifles and revolvers broke into the house of the spouses Victoriano Vallejo and Primitiva Pagaduan. At that time the spouses and their six children were sleeping in the bedroom, and four other persons including Braulio Simon, granduncle of Primitiva Pagaduan, were sleeping in the sala. Both the bedroom and the sala were lighted by a kerosene lamp. The spouses, who got up startled by the intrusion, were ordered by the intruders to lie on the floor face down and then asked for their money. They told the robbers to look for it in the trunk (baul) located in the bedroom. The robbers ransacked the trunk and took P900 in cash, jewelry consisting of watches, rings, necklace, and earrings, and two blankets. The total value of the loot, including the cash, was P1,460.

Not content with the robbery, one of the robbers dragged Primitiva Pagaduan, 31s downstairs and handed her to two other robbers, who took her to a rice field about 100 meters north of the house, where three of the robbers raped her one after another. The last one to rape her was the same robber who had dragged her down from the bedroom, and he warned her that should she reveal their identity she and all the members of her family would be killed. While the last rapist was performing the bestial act, Primitiva Pagaduan heard a gunshot somewhere near the house. The robbers fled immediately afterwards. Primitiva found her husband dead about 17 meters south of the stairway of the house. He had been shot thru the head.

The crime was reported that same night to the nearest authority, the barrio lieutenant named Severiano Kasing, who lived about 400 meters from the scene of the crime and who early the following morning went there to investigate. Primitiva Pagaduan did not reveal to him the identity of the malefactors but told him that she did not recognize them. However, she asked the barrio lieutenant to send for the chief of police of Angadanan. when the latter came in the afternoon of March 8, Primitiva confided to him that she recognized six of the robbers who entered her room and who, according to her, were Leonilo Ganal, Arcadio Ramos, Casimiro Clemente, Venancio Nolasco, Mauro Nolasco, and Venancio Lagrmay. She did not reveal to the chief of the police, Antonio Melad, that she had been raped because, she said, she was ashamed.

By order of the chief of police the body of Victoriano Vallejo was taken to the municipal building of Angadanan, where it was examined and embalmed by Dr. Eligio A. Montero. The following day, March 9, the family took the corpse to Tayug, Pangasinan, for burial.

A complaint for robbery in band with homicide was filed by the chief of police in the justice of the peace court of

Angadanan on March 17, 1947, against the six persons named by Primitiva Pagaduan.

On March 16, 1947, since the robbers who were known to Primitiva Pagaduan and some of whom were residents of the same barrio of Amistad had not been arrested, Primitiva went to the town of Gamu, Isabela, and there reported to Lt. Artemio P. Bahia of the Constabulary that she could not return to her home in Amistad because Leonilo Ganal and his companions were still at large. Lieutenant Bahia accompanied Primitiva Pagaduan the following day to the barrio of Amistad, where he continued the investigation. She revealed to Lieutenant Bahia the same names of the six persons whom she said she recognized as the robbers. Upon being questioned by him as to what the robbers did to her after being dragged to the rice field, she revealed that she was raped by them one after another. On March 21 Lieutenant Bahia filed an amended complaint accusing the six persons above named of robbery in band with homicide and rape. Of the six accused, only Leonilo Ganal, Arcadio Ramos, and Casimiro Clemente were apprehended, the other three—Mauro Nolasco, Venancio Nolasco, and Venancio Lagmay—having escaped and not having been arrested up to the time of the trial of this case.

The trial court found the said three accused guilty of robbery in band with homicide and rape and sentenced each of them to reclusion perpetua and to indemnify Primitiva Pagaduan in the amount of P1,460, the value of the articles and money stolen by the accused.

The appellants challenge the sufficiency of the evidence to prove their guilt.

The witnesses who testified as to the identity of the robbers were Primitiva Pagaduan, her granduncle Braulio Simon, and her 11-year-old daughter Eufegenia Vallejo. Primitiva Pagaduan swore that she was able to recognize six of the robbers, namely, Leonilo Ganal, Arcadio Ramos, Casimiro Clemente, Venancio Nolasco, Mauro Nolasco, and Venancio Lagmay. Braulio Simon said that he was able to recognize only two of the robbers, namely, Mauro Nolasco and the cross-eyed man, pointing to the accused Arcadio Ramos. And Eufegenia Vallejo said that she recognized only Mauro Nolasco and Venancio Nolasco, both of whom were still at large.

We shall examine the proofs as to the identity of each of the three appellants.

- Leonilo Ganal.—This appellant was well known to Primitiva Pagaduan because he resided in the barrio of Amistad, he being married to a niece of the barrio lieutenant, Severiano Kasing, and because in 1946-1947 he cultivated as tenant a parcel of land belonging to the spouses Victoriano Vallejo and Primitiva Pagaduan. As a matter of fact he admitted having been to the house of said spouses several times before the crime in question was committed. Primitiva Pagaduan identified him as one of the six robbers who entered her bedroom on the night in question and as the one who dragged her downstairs and later raped her and warned her not to reveal his and his companions' identity on pain of death. She said that she did not recognize the two other robbers who raped her because each of them covered her face with his hat while raping her. Leonilo Ganal admitted during the trial that there was no enmity between him and Primitiva Pagaduan and that he knew of no reason or motive why she should testify falsely against him.

The fact that Primitiva Pagaduan did not reveal to barrio lieutenant Severiano Kasing the identity of any of the robbers including Leonilo Ganal was satisfactorily explained by her during the trial by saying that she feared that Leonilo Ganal and his companions might kill her and the members of her family if she then and there revealed their identity. Besides, she did not feel free to denounce Leonilo Ganal to Severiano Kasing in view of the latter's relation of affinity to the former.

A perusal of the testimony of Primitiva Pagaduan convinces us of her sincerity and veracity. Besides, if she had no regard for the truth and intended to make a false accusation, she could have induced her 11-year-old daughter Eufegenia Vallejo and her granduncle Braulio Simon to corroborate her testimony that Leonilo Ganal was one of

the robbers.

Although Frimitiva Pagaduan's testimony as to the identity of Leonilo Ganal is uncorroborated, we believe with the trial court that it is sufficient. She had ample opportunity to recognize Leonilo Ganal unmistakably. Leonilo Ganal was well known to her. She knew his voice. There was light in the bedroom which Leonilo Ganal and his companions entered to rob, and it was a moonlit night. It was Leonilo Ganal who dragged her downstairs, followed his two unrecognized companions in raping her, and then warned her not to reveal their identity on pain of death.

We think the trial court did not err in not believing Leonilo Ganal's alibi. He said that on March 7, 1947, he was in the barrio of Magrumbuan, Cauayan, Isabela, threshing palay from 7 o'clock in the morning up to midnight. It is certainly unusual for rice threshers to work continuously from early morning to midnight. He also said that he transferred to that barrio to live with his mother on March 6, 1947, the day before the crime in question was committed. Nevertheless he was arrested in the barrio of Amistad while he was playing blackjack in the house of one Alberto de Jesus. He testified on cross-examination that in May, 1946, he talked to Primitiva Pagaduan regarding his tilling of her land.

"Q. And you talked to her in her house, is not that a fact?—

A. Yes, sir.

"Q. You are familiar in /with/ the house because you have been there for many days. Is it not?—

A. Yes sir.

"Q. You know that house has one room and also has one sala. Is it not?—

A. I never went up the house of Primitiva Pagaduan, I only reached the yard of the house." (Pages 365-366, t.s.n.)

The last answer contradicts the previous answers and to our mind evinces prevarication. Why should he lie about knowing that the house of the victim has one room and one sala? He was evidently afraid to admit the truth lest he exposed his guilt.

We are convinced by the evidence of this appellant's guilt.

- Arcadio Ramos, alias Dominador Ramos.—This appellant is also well known to Primitiva Pagaduan because he is married to the sister of the wife of an uncle of hers named Mariano Simon. He was positively identified by Primitiva Pagaduan as one of the robbers who entered her bedroom on the night in question. Braulio Simon, the granduncle of Primitiva Pagaduan who was her visitor on the night in question and who slept in the sala, also identified Arcadio Ramos as the one who pointed a revolver at him while Mauro Nolasco held him down by the neck. Although at that time Braulio Simon did not know Arcadio Ramos' name, he said he recognized him by face and that he is cross-eyed. No reason is suggested by this appellant why Primitiva Pagaduan and Braulio Simon should testify falsely against him.

The testimony of this appellant in his defense is patently unbelievable. He said that he did not know Victoriano Vallejo and had not even heard of his name before March 7, 1947. He also said that he did not know Primitiva Pagaduan. He even denied having heard the news of the killing of Primitiva Pagaduan's husband, when he was arrested by the constabulary on March 20, 1947, he gave his name as Dominador Ramos and not Arcadio Ramos, and during the trial he insisted that his name was Dominador Ramos, although at the beginning when he was asked to state his name and other personal circumstances he replied: "Arcadio Ramos, 42 years of age, carried, farmer, residing in the barrio of Pinoma, Gauayan, Isabela." He admitted on cross-examination that when the

interpreter called the name of Arcadio Ramos he responded to that name, and that when Braulio Simon pointed to him the interpreter asked his name and he answered, "Arcadio Ramos." He testified that on March 7, 1947, he did not leave his house because he was taking care of his wife, who was then complaining of headache.

In view of the apparent insincerity of the testimony of this appellant, on the one hand, and of his positive identification by the witnesses Primitiva Pagaduan and Braulio Simon as one of the robbers, on the other, we believe the trial court did not err in finding him guilty.

- Casimiro Clemente.—This appellant was identified by Primitiva Pagaduan as one of the six robbers who entered her bedroom on the night in question. Her testimony, however, as to this appellant is debilitated by that of Eduardo A. Abesamis, justice of the peace of Angadanan, who testified that on Sunday, March 9, 1947, he met Primitiva Pagaduan in Echague, Isabela, on her way to Tayug, Pangasinan, to bury her deceased husband, and that he then and there took the opportunity to ask her how her husband was killed, and that she told him that he was killed by robbers; "that there were six of them and among those six she said she recognised four of them"; that Casimiro Clemente was not mentioned by Primitiva Pagaduan as one of the robbers; that she mentioned Leonilo Canal, Arcadio Ramos, and the two Nolascos; that she also did not mention the name of Venancio Lagmay (one of those still at large).

In view of the fact that when Primitiva Pagaduan was called as a witness in rebuttal she was not asked to comment on the testimony of Justice of the Peace Abesamis, that, testimony remains uncontradicted. Hence there is no explanation from her as to why she failed to mention to the justice of the peace the name of Casimiro Clemente as one of the robbers. There is a possibility that she was not very positive as to this appellant's identity. Her testimony on this point being uncorroborated, and having been weakened by that of the justice of the peace, we entertain doubt as to the sufficiency of the proof of this appellant's identity. Such doubt must necessarily be resolved in favor of the accused, it being preferable to acquit a guilty person rather than convict an innocent one.

It results from the foregoing that the appellants Leonilo Ganal and Arcadio Ramos are guilty, while the appellant Casimiro Clemente is entitled to an acquittal on reasonable doubt.

The crime committed is robbery with homicide and rape. Robbery with homicide is punished by paragraph 1 of article 294 of the Revised Penal Code with reclusion perpetua to death. The fact that the crime was committed by a band and was accompanied by rape must be considered as aggravating circumstances. Under the second paragraph of article 296, any member of a band who is present in the commission of a robbery by the band shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent it. The appellants Ganal and Ramos must therefore be punished as principals of the crime of robbery with homicide. The penalty should be imposed in the maximum degree, but in view of the lack of sufficient votes to impose the death penalty, we are constrained to affirm the penalty of life imprisonment imposed by the trial court. The trial court, however, erred, in not sentencing the appellants to pay indemnities for the killing of Victoriano Vallejo and the rape of his wife.

Wherefore, the sentence of the trial court is modified as follows: Leonilo Ganal and Arcadio Ramos, alias Dominador Ramos, shall suffer reclusion perpetua, shall jointly and severally indemnify the heirs of the deceased Victoriano Vallejo in the sum of P6,000 for the homicide and Primitiva Pagaduan in the sum of P4,000 for the rape, plus the sum of P1,460 as the value of the stolen articles, and shall each pay one third of the costs.

The appellant Casimiro Clemente is acquitted on reasonable doubt, with one third of the costs de oficio.

Moran, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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