

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NORBERTO SILERIO, FLORO LAPIZ, AND CORNELIO ATIENZA, DEFENDANTS AND APPELLANTS.

G.R. No. L-1228. May 28, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

In the evening of February 6, 1946, four men armed with rifles entered the house of Alejandro Flores in Barrio Mabacan, Calauan, Laguna. Posing as officers of the law, they required Flores to surrender "his revolver. He replied he had none. Then they asked him about the money he had obtained through the sale of his carabao. He answered he had already used it. Thereupon the intruders — sufficiently identified as the herein accused Norberto Silerio, Floro Lapid and Cornelio Atienza, and the fugitive from Justice Loreto Maghirang — ransacked the house and took therefrom money, clothes and jewels amounting to P788. But that was not all: after bringing Alejandro Flores outside of the house to be guarded by Floro Lapid, the bandits dragged Felicidad downstairs only to be abused at the point of a gun first by Norberto Silerio and later by Cornelio Atienza. Another woman in the house, Pilar Porciuncula escaped the men's bestiality by pleading her physical condition — her menstruation period.

The next morning the outrage was reported to the authorities; and the three accused were arrested on February 8, 1946. After a short investigation by Corporal Oculito of the military police they all admitted having taken part in the robbery. Silerio furthermore admitted that he and Maghirang had raped the woman. On the other hand Atienza and Lapid pointed to Maghirang as the sex offender. The three detainees signed — or thumbmarked — and swore their statements before Pastor Timog, justice of the peace of Calauan, Laguna, on February 10, 1946. During the investigation Norberto Silerio indicated the place where a portion of the loot was kept. It was immediately retrieved, its items being listed in Exhibit D, valued at P80.

There is no question as to the happenings in Mabacan that night of February 6. The identity of the robbers is sworn to by the occupants of the house and by the ravished woman. These have no reason falsely to impute to herein prisoners the commission of so grave a wrong. The immediate apprehension of the malefactors, the prompt start of proceedings against them, the discovery in their possession of part of the looted articles, plus the confessions they have subscribed, all make out the case for the prosecution.

In a way that case is strengthened by the poor alibi they tried to set up. They attempted to prove that during the whole month of February they were in the neighboring town of Pila engaged in the harvest of palay. However, they presented no one to corroborate their story. And Mabacan being a barrio between Calauan and the neighboring town of Pila, it is not impossible that in the evening of February 6 — when harvesting was not done — they went to Calauan to perform what they actually performed.

To be sure there are deficiencies in the declarations of the eyewitnesses and offended parties. The attorney for the defendants has diligently specified them. Yet they are obviously owing to the manner in which questions were asked, and the inexperience of the witnesses, what with the impressive solemnity of court proceedings. And

considering that such oral testimony is not the only evidence against appellants — note the confessions and other circumstances hereinbefore related — we are not inclined to ascribe such deficiencies to simple perjury or harmful insincerity. It must be observed specially that one of the accused, Cornelio Atienza, testifying in court, admitted that he and his co-accused had raided Flores' house on the eventful night — although he exculpated himself by alleging that he had accompanied the others through fear and intimidation.

A procedural incident is the subject of the principal assignment of error: when the case was called for hearing in the court of first instance on October 23, 1946, the accused appeared without counsel. The judge appointed Attorney. De Leon as counsel de oficio. After a conference with his charges said attorney made the following remarks:

"I have talked to the accused * * * and told them to get their attorney because I am always busy. That is why I am not prepared for the trial".

The judge, however, ruled that the trial could proceed. Witnesses were presented for the people. Counsel de oficio cross-examined them. A two-hour recess was had. Then the three accused testified upon his direct examination. They were in turn cross-examined by the fiscal.

As everything appears to have been normally conducted, we can not say that under the circumstances there was prejudicial error. It must be remembered in this connection that the first complaint was filed against these accused on February 10, 1946, before the justice of the peace of Calauan. The preliminary investigation was held there, and these defendants were represented by Atty. Damaso Tengco. The fiscal filed his information in the Court of First Instance on August 31, 1946. They were arraigned on October 9, 1946. Trial was set for October 23, 1946, the court advising the parties of its desire to proceed with the case without fail on that day. Then when the case was called on October 23 these accused appeared without counsel. It was therefore no abuse of discretion for his Honor to insist on holding the trial, the accused having had enough time to prepare for it, had the benefit of counsel's assistance and apparently were bent on delaying the termination of the proceedings, they having on a previous occasion failed to show up and were consequently arrested by the court's order. Anyway, it is not shown in what manner their representation by counsel de oficio had substantially impaired their defense.

The offense was robbery with rape (article 294, paragraph 2, Revised Penal Code) aggravated by the circumstances of night time and band. Wherefore, inasmuch as the appealed judgment imposing on them the penalty of life imprisonment and requiring indemnity to the offended parties is in accordance with law (U.S. vs. Tiongco, 37 Phil., 951; U.S. vs. Bretana, 49 Phil., 444) it is hereby affirmed, with costs. So ordered.

Parás, Feria, Perfecto, and Tuason, JJ., concur.

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