

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ULDARICO DARA-UG, DEFENDANT-APPELLANT.*G.R. No. L-11470. September 30, 1957*

Ponente: BENGZON, J.

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Based on the complaint subscribed by Susana Castellano, the Acting Provincial Fiscal of Iloilo presented on February 13, 1954 in the court of first instance of the same province an information charging Uldarico Dara-ug", and four other unidentified individuals, with the crime of robbery with rape.

Tried accordingly, Dara-ug was found guilty by the Hon. Pantaleon A. Pelayo, Judge, who sentenced him to life imprisonment plus accessories, and to indemnify the offended woman in the sum of P3,000.00.

After his motion for reconsideration had been denied, Dara-ug appealed to the Court of Appeals, which court forwarded the record because the matter properly belonged to our appellate jurisdiction, the penalty imposed being reclusion perpetua.

On January 10, 1954 Susana Castellano, 20-year old and married, lived in her house in barrio Malaguit, Municipality of Calinog, Iloilo in the company of Geronimo Fuasan 15, and Asucena Fuasan 12. Her husband was schooling in Cebu. That night, the inmates were asleep when the accused Uldarico Dara-ug 24 single, entered and woke Susana up. The latter got her flashlight and focused it on the intruder, who instantly grabbed the flashlight, and at the point of a bayonet threatened to kill her unless she gave money. Susana pleaded with his saying "Don't kill us, just get what you want inside the house." The man searched for valuables, and got ten pesos from a cardboard box. He was not yet thru. He wanted something else: the honor of the woman in the house. So he opened the door to let four confederates in. The latter held Susana's legs and arms even as Dara-ug had sexual intercourse with her by force and intimidation. Afterwards noticing the presence of the boy and the girl in the same sala Dara-ug brought the latter into the room, and locked the door. Then the four newcomers with his help and their mutual assistance took turns in ravishing the same married woman.

In court Susana described in detail the story of her vain struggle against the brutality of five men. Geronimo and Azucena spoke in corroboration in an intelligent and straight-forward manner. No unworthy motive could have prompted false testimony against herein defendants. It was therefore natural for the court to find him guilty as charged, notwithstanding his futile effort to establish an alibi - defense which as consistently held in several decisions necessarily yields to direct evidence by eye-witnesses who saw him performing the criminal act under investigation. Contrary to what counsel asserts, it was unnecessary for the prosecution to introduce rebuttal evidence to contradict defendant's proof of his confinement thru sickness in another barrio on the day of the crime. The evidence in chief was sufficient for that purpose; for it showed he was very much in good health and at the house of Susana Castellano.

In this connection we note that, after the prosecution had rested its case the defense submitted to the lower court a motion to dismiss, wherein it set out the various inconsistencies and contradictions allegedly weakening or

destroying the testimony of the witnesses for the prosecution. This motion was denied by Judge Roman Ibañez who had heard the witnesses testify. Thereafter upon the termination of the trial a memorandum for the accused was submitted, again discussing the evidence at length. And after promulgation of the decision, a detailed motion to reconsider was filed by defendant's counsel. Now the printed brief submitted in this appeal constitutes a revised, enlarged and improved edition of the aforesaid memoranda, which failed to impress the trial court. Upon a careful consideration thereof our opinion is that, while it bespeaks the zeal and diligence of counsel, it falls short of demonstrating the innocence of the accused-appellant. It does not even succeed in implanting in one's mind some reasonable doubt of the prisoner's guilt.

A word of explanation might be needed in connection with the testimony of the doctor who said that in conducting the physical examination of the offended party, he found no laceration in her vagina. It appears that such examination took place five days after the rape; and he explained upon further questioning, "this (non-laceration) is due to the fact that the woman was married and has delivered already."

Having found no valid ground upon which to reverse the trial court's findings of guilt, we must sustain the appealed decision inasmuch as it conforms to the statutory provisions punishing robbery with rape (Art. 294 par. 2, Revised Penal Code)

Judgment affirmed, with costs against appellant. So ordered.

Paras, C.J. Bengzon, Padilla, Montemayor, Reyes, A. Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L. Endencia, and Felix, JJ., concur.

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