

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
WENCESLAO FLORES, ET AL., DEFENDANTS, ELFREN TINO, RAFAEL
DEE AND MANUEL SAGUITAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-17077. April 29, 1968

Ponente: ANGELES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d4d71d911a21/>

ANGELES, J.:

A review of Criminal Case No. 944 of the Court of First Instance of La Union, wherein the trial court found the accused, Elfren Tino, Federico Estoesta, Itting Dee and Manuel Suguitan guilty of the crime of robbery in band with rape, and were each sentenced to an indeterminate penalty of 8 years and 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusión temporal as maximum; to pay jointly and severally the amounts of P3,520.00 and P10.00 to the spouses Domiciano Gatchalian and Cecilia Diaz and to Alberto Aquino, respectively, in reparation of the value of the properties robbed of them; the amount of P1,000.00 as indemnity to the rape victim; and to pay the costs.

The case was elevated to the Court of Appeals on appeal from the decision by the defendants-appellants, however the said Court of Appeals after a review of the evidence, was of the opinion that the penalty of reclusión perpetua is legally imposable, in view of the attendant aggravating circumstances concurring in the commission, of the offense, and so in its resolution of April 4, 1960, certified the case to Us.

On the night of July 1, 1949, a group of men armed with revolvers and daggers broke into the house of the spouses Domiciano Gatchalian and Cecilia Diaz in the barrio of Sta. Rita, Aringay, La Union, shortly after said owners and some members of their household had retired to their bed-rooms. That evening, Adela Diaz, a high school student of 17, was still up and about the house engaged in conversation with her five (5) male guests. With the use of force upon and intimidation of the persons found in the house, the intruders succeeded in securing from the owners the keys to an aparador and a trunk containing their money which the malefactors took along with other personal belongings. The intruders also stripped the inmates of their jewelries before they finally left the place with their booty. It appears that shortly after the intruders left, one of the women in the house confided to her husband the horrible experience she allegedly had in the hands of one of the robbers who, according to her, had carnal knowledge of her in the kitchen of the house at the point of a dagger.

As a result of this incident, Wenceslao Flores, Florentino Picar, Elfren Tino, Federico Estoesta @ Ricardo Roe, Itting Dee, Manuel Suguitan and Florencio Gayo were later apprehended and indicted for “robbery in band with rape” before the Court of First Instance of La Union. Florentino Picar had earlier executed an extrajudicial confession wherein he owned the robbery and pointed to his co-accused, Flores, Itting, Estoesta, Suguitan and Tino, as his companions in the commission thereof.

Florentino Picar and Wenceslao Flores had escaped from the provincial jail and have not yet been re-arrested; on motion of the prosecution, the case against Florencio Gayo was dismissed. The trial proceeded against the remaining accused, Elfren Tino, Federico Estoesta, Itting Dee and Manuel Suguitan, who as stated earlier, were

found guilty of the offense charged.

Elfren Tino, Manuel Suguitan and Itting Dee were granted provisional liberty pending appeal after filing personal bonds in the amount of P25,000.00 each. Federico Estoesta who has since languished in jail in Muntinglupa, had thereafter filed a motion withdrawing his appeal which the Court granted in its resolution of August 23, 1965. Hence, only the remaining appellants, Elfren Tino, Manuel Suguitan and Itting Dee are principally concerned in this review.

At about 9:00 o'clock in the evening of July 1, 1949, the spouses Domiciano Gatchalian and Cecilia Diaz retired to their bedroom in their house situated in the barrio of Sta. Rita, Aringay, La Union. Their two children, aged 7 and 10, slept in another room adjacent to that of the couple. The younger sister of Cecilia, Adela Diaz, a high school student of 17, however, was still awake at the time. She was in the balcony of the house entertaining her guests, Juanito Marcos, Reynaldo Ordonez, Roberto Aquino, Casimiro de Vera and one Mr. Barba. Suddenly, four (4) armed men, later identified as Elfren Tino who was carrying a gun, Itting Dee who was holding a revolver, and Manuel Suguitan and Florentino Picar who were both armed with a dagger, went up the balcony. They were looking for the owner of the house, Domiciano Gatchalian, whose presence in the house was denied by Adela Diaz. Upon receipt of such information from Adela Diaz, Elfren Tino who was then wearing khaki suit, a badge, and a policeman's hat, struck one of the lady's visitors, Juanito Marcos, with the barrel of his gun. Then the intruders pushed and herded all the persons in the balcony into the sala where Arturo Dulay and his wife Cristina Dulay were sleeping under one mosquito net, and three (3) young girls, Marina Rivera, Lydia Pascua and Maria Diaz were also sleeping under another mosquito net. Two (2) other armed men, later identified as Wenceslao Flores who was armed with a revolver and Federico Estoesta who was carrying a gun, entered the sala from the kitchen. One of the intruders pulled Cristina Dulay out of the mosquito net, and when her husband was about to get up, the same man knocked him down and dumped the beddings upon him. All the men were ordered to lie down flat on the floor and their hands tied, while the women and girls remained seated on the floor. They were warned that should anybody shout or try to run away, they would get killed. Wenceslao Flores and Florentino Picar asked Lydia Pascua to produce the key, but she had none to give. From the bedroom, Domiciano Gatchalian heard the noise outside. He groped for his pistol under his pillow and tried to get up; but as he rose from the bed with the pistol in his hand, Wenceslao Flores and Florentino Picar approached him and grabbed the pistol from him. Posing as peace officers, Flores and Picar knocked down Gatchalian and told him to lie flat on the floor. They tied his hands with his own belt. He was kicked and stepped upon every time he tried to move. Cecilia Diaz was all the time present when her husband received the rough treatment from Flores and Picar, but she could not do anything; Flores was all the time pointing his revolver at her husband while Picar held a dagger in his hand. After a slap on her face by Flores, Cecilia finally delivered the keys to him. Flores snatched her necklace, took her watch and that of her husband. She voluntarily took off her earrings also and gave it to Flores who tried to remove it. Then Flores took Cecilia out of the room to the sala, gave her the keys when he failed to open the trunk with them, and asked her to open it herself. Flores ransacked the contents of an aparador and the trunk as soon as they were opened and seized therefrom the couple's money and other valuables as Picar stood near him holding the kerosene lamp. All these took place as Cecilia remained seated on a big trunk at the center of the sala where she had a full grasp of the situation. There were three kerosene lamps in the sala at the time and she was able to have a good look at the intruders who were all in the sala. Adela Diaz tried to escape through the window but she failed. Thereafter, the intruders appeared to have turned their attention to some of the women in the house. Elfren Tino, who all the while that Flores and Picar were making the search for valuables in the house, started pulling Adela Diaz down the stairs, but the latter was able to return up the house. Catching up with her by the door to the sala, Tino stripped Adela of her wrist watch. A married sister of Cecilia Diaz living nearby must have heard the noise in the house and moved over. The intruders saw her and immediately pushed her into the sala

of the house also. Still later, Adela Diaz succeeded in escaping from the house. She proceeded to the municipal building of Aringay about a kilometer away from their place, taking the road by the railroad tracts. There she met her brother-in-law, who had gone there on a truck after the robbers left. Together they reported the matter to the authorities.

Soon after the arrest of all the accused, some of the inmates of the house were called to the municipal building where they identified them as the ones who broke into their house on the night of July 1, 1949. They pointed at the same persons during the trial of case.

One of the witnesses for the prosecution, Cristina Dulay, testified that Florentino Picar, pulled her out of her mosquito net and then, dragged her to the kitchen of the house where he gained carnal knowledge of her against her will. A medical officer who examined her on the day immediately following the robbery also testified that when he conducted the said examination, he found fluid, seminal in nature, inside the internal sexual parts of Cristina Dulay. He admitted, however, that he did not exert effort to determine the age of the semen inside the vagina. He also opined that it could be possible that the semen were those of her husband for he did not conduct any microscopic examination thereof for lack of proper clinical facilities. Cristina Dulay concluded her testimony by saying that the other members of the band that broke into the house that evening knew about the sexual intercourse Picar had with her, for while he was on top of her doing the carnal act, Federico Estoesta who was carrying a lamp, followed by Itting Dee, went to the kitchen and saw them there; and that upon seeing them, they returned to the sala of the house.

For his defense, Manuel Suguitan offered evidence to prove alibi. He testified that he was in the house of the late Mauro Selga at barrio Gonzales, Tubao, La Union, from 7:00 o'clock to 12:00 o'clock on the night of July 1, 1949, attending a prayer ceremony. The Chief of Police of Tubao, La Union corroborated Suguitan's testimony and presented the police blotter wherein an entry appears that two policemen were assigned in barrio Gonzales that evening, and one of said policeman declared that he was at the said prayer ceremony and saw Suguitan there. To the same effect were the testimony of two other neighbors of Suguitan, a man and a woman, who said that Manuel Suguitan was really there that evening, where they saw him dance the tango. Said witnesses were unanimous in their assertions that Manuel Suguitan stayed in said prayer ceremony up to midnight.

Elfren Tino claimed that he was at barrio Leones, Tubao, La Union, in the house of one Mrs. Juanita Vda. de Cacananta on the night of July 1, 1949. He was with some men there where they cooked chickens and a goat. It was not any special occasion; they just chanced to visit the woman upon the invitation of his cousin, Florencio Baltazar, who helped Mrs. Cacananta secure her pension. He was corroborated in his testimony by said Florencio Baltazar, Mrs. Cacananta, and one Marcelino Viduya who all testified to the effect that they really had a sort of picnic on that evening; that they all slept in the veranda of the house of Mrs. Cacananta after they ate shortly before midnight, and only dispersed after taking their breakfast in the same house the following morning. Asked why they (Viduya and some of his companions) had to sleep there that evening after supper when their houses were only about 250 to 300 meters away, it was explained that it rained that evening, that is why they decided not to go home anymore.

For his part, Itting Dee testified that on the night of July 1, 1949, he played mahjong in the store of Lorenzo Baltazar from 7:00 to 12:00 o'clock in the evening, after which he went to the market place to buy meat from Lorenzo Baltazar who is a butcher and who, shortly after they stopped playing mahjong that evening, proceeded to the market to slaughter a carabao. To this effect was the testimony of said Lorenzo Baltazar; and so with the testimony of Benedicto Mércelles who claimed to have watched the mahjong that evening until midnight, although he admitted that he does not know how to play the game.

All the herein appellants were unanimous in their claim that they knew of no reason why the victims of the robbery should implicate them in the commission of the robbery.

Upon the foregoing evidence, the trial court rendered judgment which, as stated hereinabove, convicted' herein appellants.

Appellants contend that the testimonies of the witnesses for the prosecution are incredible and unreliable. Thus, counsel for appellant Itting Dee points out in his brief portions of the testimony of Adela Diaz which he says are self-contradictory, to wit: that while under direct examination, she declared that at about 9:30 o'clock on the night of July 1, 1949, four (4) armed men came up the balcony and asked her where Domiciano Gatchalian was,[1] she later answered under cross examination that it was Elfren Tino alone who asked her that question;[2] that after saying the four (4) armed men struck one of her guests, Juanito Marcos, when they saw him in the balcony, she thereafter qualified her said statement by pointing to Elfren Tino alone as the one who struck Juanito Marcos;[3] that after she stated that the robbers got the keys from Lydia Pascua, she later contradicted herself by saying that they merely asked Lydia Pascua for the keys which the latter was unable to give;[4] that while she testified that Wenceslao Flores and Florentino Picar asked Lydia Pascua to open the door of the bedroom where Domiciano Gatchalian and Cecilia Diaz were sleeping, she said later that as soon as she opened the door of the kitchen, Flores and Picar began boxing Domiciano Gatchalian when they saw him there;[5]and that while she first said Flores and Picar tied Domiciano Gatchalian after they have knocked him down the floor, she later declared that it was Flores alone who tied Domiciano.[6] And to show how unintelligible the answers of Adela Diaz were, Itting Dee points out specifically portion of her testimony to which even the trial court (presiding judge) had commented, "I cannot understand you." This is the portion referred to:

"COURT:

Q.- Your sister was sleeping with your brother-in-law that night when the robbers came?

A.- Yes, because they have one bed, your Honor.

Q.- And she knows better what happened to your brother-in-law that night?

A.— I do not know because my sister was outside.

Q.- When your brother-in-law was knocked and fell at the doorway, your sister was then outside the room, was that it?

A.— She went out.

Q.— That is before your brother-in-law was boxed and fell down, your sister was already outside the room where they slept that night?

A.— She was still inside, your Honor”[7]

To Us the testimony is not vague. What is vague are the questions themselves. Let us take the second question and the answer thereto. It would convey to the reader that the questions could be referring to what transpired from the moment the intruders entered the room until they had tied the hands of Domiciano, and understandably the witness was correct in her answer, because there was an occasion, as the witness had shown, that the wife of Domiciano was dragged into the sala from the bedroom. Also, the third question referred to a fact after Domiciano was boxed, while the last question referred to a fact before Domiciano was boxed.

Appellants Elfren Tino and Manuel Suguitan, likewise, point out to alleged contradictions in the testimony of the witnesses for the prosecution. They make the following observations in their brief: Cristina Dulay testified that Florentino Picar came from the kitchen,[8] while Adela Diaz maintained that Picar entered through the balcony of the house;[9] Cecilia D. Gatchalian testified that she herself opened the trunk,[10] while Adela Diaz declared that they (the accused) opened the same;[11] while Adela Diaz testified that Flores took the steel safe of her sister (Cecilia D. Gatchalian), [12]containing P2,668.00,[13] Cecilia herself declared that the intruders took from the trunk an envelope containing P2,400.00 and a purse containing P280.00;[14] and as against the declaration of Adela Diaz that she was at the balcony of the house entertaining her guests at the precise time that the robbers went up the house, [15] Cristina Dulay testified that when the intruders entered she was sleeping in the sala with her husband under one mosquito net while other young girls (including Adela Diaz) were under another mosquito net in the same sala.[16] In a word, all the herein appellants would assail the credibility of the witnesses for the prosecution by reason of the alleged contradictions in their declarations as above pointed out by them, and would impugn the credence and weight placed by the trial court upon their testimony.

Upon a review of the evidences, We find that the alleged contradictions in the testimony of the witnesses for the prosecution are really not so serious as to affect their credibility, as herein appellants would try to put it. While it is true that at various instances, in the course of her testimony, Adela Diaz had attributed certain acts to the robbers as a group, We also note that she was always ready to point at the particular person among the accused who committed the said acts when specifically asked to do so. The witness is a young girl at 17, yet she withstood the long and searching cross examinations conducted by the defense counsel, and We find nothing in the record to sustain a belief that she had lied in her testimony. The same is true with the testimony of the other witnesses, the alleged contradictions of which, anyway, pertain to minor details that do not detract anything from the fact that robbery was in reality committed against the complaining witnesses on the night of July 1, 1949. And We find no compelling reason to disturb the finding of the lower court on this point.

But appellants contend that their identity was not convincingly established by the witnesses for the prosecution so as to prove their guilt beyond reasonable doubt. They make capital of the fact that in the affidavit executed by Cecilia D. Gatchalian before the Chief of Police of Aringay immediately after the commission of the robbery, she failed to mention any name or description of the persons who went up their house on the night of July 1, 1949; that although Adela Diaz made mention of Wenceslao Flores and Florentino Picar in her affidavit, she, nevertheless, failed to mention the names of herein appellants nor made any declaration that she recognized them, or could identify them should she see them again, when during the trial of the case, both affiants claimed that they have seen herein appellants even before the commission of the robbery in question. It is, therefore, charged that none of the witnesses for the prosecution really recognized the companions of Wenceslao Flores and Florentino Picar in the commission of the robbery; and that said witnesses merely pointed at them during the confrontation in the municipal jail and at the trial as the persons they saw that evening to conform with the extra-judicial confession of Florentino Picar wherein their names were mentioned as his companions in the commission of the robbery.

The allegation should be denied. It was but natural that they made no mention of the names of herein appellants in their affidavits, for the witnesses for the prosecution really admitted that they do not know their names. Florentino Picar was arrested on July 2, 1949, the day immediately following the night of the robbery. His statement wherein he owned the robbery and pointed to herein appellants as among those with him in the commission of the crime was taken by the Chief of Police of Aringay on that very day. The names of the accused were already known to the police when the witnesses for the prosecution signed their statements on July 3, 1949, but it will be noted that still said witnesses made no mention of the names contained in Picar's statement. If they had wanted to exaggerate, they could have mentioned their names. Herein appellants were arrested thereafter; and when the said witnesses were subsequently called for purposes of identifying them, they recognized herein appellants as among those seen by them on the night of the robbery. Adela Diaz and Cecilia Diaz Gatchalian could not possibly be mistaken in their identification of herein appellants for they testified that they have seen them (appellants) many times before in the market place of Tubao where Adela and Cecilia use to sell rice on market days. Adela Diaz used to see Elfren Tino also in the school in Agco, although she admitted that she does not know his name. And their mere failure to state in their affidavits that they have seen herein appellants before, or could recognize them should they see them again cannot be a basis to discredit their positive testimony in court that herein appellants were among those who robbed them that evening. In the first place, we cannot expect these witnesses to recall all the facts then considering the harrowing experience they had on the night of the incident. Secondly, it is a matter of judicial experience that affidavits, as species of evidence usually suffer from infirmities.[17] Omissions therein often pass and escape the notice of police officers who, unlike lawyers and judges, are not well versed in the law on evidence; and it is not unlikely that questions relating to matters that are material and relevant are inadvertently omitted by them when they conduct investigations. This is specially true in this case where the affidavits in question appear to have been taken by making the witnesses narrate the circumstances surrounding the commission of the robbery and not by the usual question-and-answer method employed by those better trained in the art of investigations. It is, therefore, not surprising that the affidavits of the witnesses referred to are incomplete or inaccurate for want of proper suggestion or inquiry from the examining officer to enable the witnesses to recall all the facts.

The facts of *People vs. David & Baesa*, [18] heavily relied upon by herein appellant, do not square on all fours with the case at bar. There, there was failure on the part of the victim to report the fact that she could identify two of the alleged malefactors because she had previously known them at least by face when she first reported the matter to the police authorities, which is also true in this case with respect to the affidavit of Cecilia D. Gatchalian. But with respect to the affidavits of the other witnesses which are also attached to the record of the case, it will be seen that said witnesses made mention of two names in the said affidavits, although at the time, the police already knew the names of other persons involved in the crime as contained in the statement of Florentino Picar who was the first to fall into the hands of the authorities. Such failure to state the names of all the accused in this case in their affidavits, suggests to our mind, good faith on the part of said witnesses who did not mention any other names until they first saw their faces after their arrest. Moreover, in that case cited, there was a declaration made by the complaining witness in her affidavit describing the malefactors as "five unknown Filipinos"; wherefrom, it may be inferred that the said witness really did not recognize the culprits in the first place. The affidavits here in question contain no such statements wherein a similar inference may be drawn. The case of *People vs. Barcena*, [19] is also not in point, for there the witnesses explained that they did not immediately make mention of the names of the robber-killers for fear of their own lives which the court did not believe, taking into consideration the fact that it took them about a year to reveal the secret even as they claimed thereafter that they had known the robbers before the commission of the robbery with murder. Here, it is different for the witnesses for the prosecution readily identified herein appellants as soon as they were shown to them in the municipal building. Last but not least, any doubt as to the guilt of herein appellants with respect to the robbery is dispelled

entirely by the behavior of their co-accused Federico Estoesta who had withdrawn his appeal and is now serving sentence in Muntinlupa, and the flight of Wenceslao Flores and Florentino Picar during the trial of the case which may be considered as an admission of guilt.

Finally, appellants assail the finding of the lower court that rape was committed on the occasion of the robbery. They claim that the only evidence tending to show the alleged criminal assault upon the honor of the alleged victim, Cristina Dulay, is her own testimony and that of a medical officer who allegedly examined her after the night of the robbery, and since the said medical officer admitted the possibility that the semen found in the woman's private part at the time of the examination could be that of the husband, then it is argued "that the lone testimony of the alleged victim stands uncorroborated and should be carefully scrutinized because of the apparent inconsistencies therein noted.

Rape, of course, may be established by the lone testimony of the victim; and if it is not inherently improbable or contradictory, it is not essential to a conviction that there be corroboration.[20] We have serious doubts, however, whether one of the robbers really assaulted Cristina Dulay that evening. The following portions of her testimony are revealing:

"Q.-

And when you were being pulled out, you did not know what was going to be done to you also, is that right?

A.- Yes, sir.

Q.- And was he able to take you out from the sala, I am referring to that man?

A.- Yes, sir.

Q.- Until where?

A.- Up to the kitchen.

Q.- In your direct testimony you stated that while a person came inside the mosquito net, you rose up and sat down; when you were sitting on the trunk, and when you were sitting then he took you from the mosquito net and wanted to drag you outside but you cried and because he took pity on you, he did not continue dragging you outside, do you remember that, and you returned to sit on the trunk inside the sala, do you remember having stated that?

A.- Yes, sir.

Q.- Now you stated here now that from the mosquito net, you were dragged outside of the sala and brought to the kitchen, which is which?

A.- What is true is the fact that I was brought to the kitchen.

Q.- So you never sat on the trunk inside the sala after you have come from the mosquito net?

A.- No.

Q.- And you stated in direct examination that while you were in the kitchen, that fellow who dragged you out abused you, is that right?

A.- Yes, sir.

Q.- And you stated in direct examination that while you were in the kitchen, that fellow who dragged you out abused you, is that right?

A.- Yes, sir.

Q.- And according to you when you were being brought out and laid to the kitchen, there were two men inside the room of Domiciano Gatchalian, is that right?

A.- Yes, sir.” [Tsn, Manipon, pp. 9-13]

“Q.- And you also stated in the direct examination, that while you were in the kitchen, Florentino Rear lighted a match, because according to you, he wanted to verify whether you were really on the menstruation period because that is what you said, is that not right?

A.- Yes, he did.

Q.- What was your position when Picar lighted his match, you were standing, sitting, or lying down?

A.- I was lying down when he lighted the match, because he laid me down at the kitchen.

Q.- Why were you lying down that particular moment?

A.- Because he laid me down.

Q.- And when he lighted his match, was Florentino Picar standing?

A.- He was seated and he pressed his legs over my two legs.

Q.- Did he see your panty?

A.- Yes, sir, he saw it.

Q.- And were you really in the menstruation period?

A.- Yes, sir.

Q.- And having seen that you were menstruating, Florentino Picar still persisted?

A.- Yes, sir, he insisted. As a matter of fact, he took off my panty and threw it away.

Q.- How did he take out your panty?

A. - He took down from the waist and although I did not want to open my legs, he held my two legs and separated them and then pulled down off from my legs my panty.

Q.- And what did you do when he was taking out your panty?

A.- Well, I was afraid. He simply took off my panty.

Q.- You did not shout?

A.- I screamed then, after that, he laid me down, his dagger on my neck and warned me if I will scream again, he will kill me.” (Tsn, Manipon, pp. 16-18)

“Q.- You have stated that Picar laid you down; he lighted a match to verify what you have told him that you have then menstruation. When Picar wanted to verify that you have menstruation, who lifted up your dress, you or Picar?

A.- He was the one, your Honor.

Q.- Now when Picar told you "Sigue" and in the meanwhile he was unbuttoning his trousers, what did you do when Picar was seen to begin his attack against your honor?

A.- I cried and I was even trembling.

Q.- When Picar was going to introduce his private part into your part, what did you do? Did you not resist?

A.- I struggled but he laid his body on my two legs. He laid his stiff body on my two legs.

Q.- You have stated that you are married. Were you married that time when Picar attacked you?

A.- Yes, I am already married,

Q.- Did you not shout for help when Picar attacked you?

A.- When I was about to shout, he drew out his dagger and pointed it at my throat, on the base of my throat.”
[Tsn, Calip pp 60-61]

“Q- You stated on direct examination that while he was on top of you and penetrated his penis on yours, you felt pain, is that not right?

A.- Yes, sir.

Q.- How long ago were you married before that night of the incident?

A.- I was married with my husband on May 16, 1949, and were held up on July 1, 1949." [Tsn, Manipon, pp. 25-26] "

Q.- What place in the kitchen did Picar attack you?

A.- On the bench near the passageway and near the place where the jar for drinking water is located." [Tsn, Calip, p. 64]

From the foregoing portions of the testimony of Cristina Dulay and other evidence of record, We deduce the following: Cristina Dulay was dragged from her mosquito net into the kitchen, after that same fellow who pulled her out had knocked down her husband and dumped the beddings upon him.- Cristina Dulay narrated that as soon as she was in the kitchen, the man who dragged her laid her down. Asked in what particular place in the kitchen she was abused, she answered that she was attacked on a bench. She struggled with the man, she shouted for help, but the man pointed the tip of his dagger at the base of her throat and warned her not to repeat her cry, otherwise, he would kill her. She pleaded to him, telling him that she was menstruating, and the man lighted a match to see if she was really in her menstruation period. The man saw the blood in her panty, but still he persisted. And she felt pain as the man performed the sexual intercourse with her. It was at that precise moment when the man was on top of her that the other intruders in the house entered the kitchen from the sala after opening the shutters or doors from the sala to the kitchen, and they saw the man in the act of abusing her. According to Cristina Dulay, she struggled as the man removed her panty, after the man allegedly lighted a match to see if she was really menstruating; that he persisted in spite of the fact that he saw she was really in her menstruation period; that she felt pain as the man performed the sexual act with her. And yet, in spite of the struggle or resistance she offered, while the man was performing the act on her, they remained and finished the act on that kitchen bench. She claimed to be in her menstruation period at the time of the intercourse, yet, it is claimed that when the medical officer performed an examination of her private part on the following day, semen was still present in her vaginal canal. Worse still, We see no reason why the said medical officer failed to make any mention whatever, both in his medical examination report and in his testimony before the trial court, that the seminal fluid he discovered inside the victim's private part was mixed with blood to give some semblance of truth to the testimony of the dishonored woman that she was menstruating at the time. Then too, it is quite unnatural that a man seized of a beastly desire could find time to verify and see for himself first if the object of his cravings was menstruating when, as claimed by the victim herself, he persisted just the same and proceeded with the act after he saw for himself the sign of her menstrual currency. Of course, no woman in her right senses would concoct such a tale so repugnant to her virtue, and undergo the rigors of a public trial concerning her very honor, but this is no guaranty that all self-inflicted indignities are for the sake of truth. Perhaps there is truth in Cristina Dulay's declaration that she was dragged into the kitchen by one of the robbers who might have attempted against her honor, but under the circumstances described by her, and with the observation heretofore made, We cannot but entertain doubts as to the probability of her claim that the intercourse complained of could have been consummated, unless, which is also highly improbable, she cooperated in the act. And moreover, there was not even one person who corroborated her claim. With these doubts which should be resolved in favor of the accused, We have to discard the rape theory of the prosecution. With the elimination of rape, the crime committed is robbery in band punished in Article 294, paragraph 5 of the Revised Penal Code, as amended by Republic Act No. 18, in connection with Article 295 of

the same Code, as amended by Republic Act No. 373, with prision correccional in its maximum period to prision mayor in its medium period. As the robbery was committed in band, the penalty imposable is prision mayor in its maximum degree. The aggravating circumstances of nighttime and dwelling may no longer be considered in the imposition of the penalty which is already in its maximum period. Pursuant to the provisions of the Indeterminate Sentence Law, the minimum penalty shall be within the range next lower to that prescribed by the Code which is arresto mayor in its maximum period to prision correccional in its medium period. WHEREFORE, the decision appealed from is modified as to herein appellants who are each hereby sentenced to 4 years, 2 months oí prision correccional, as minimum, to 10 years of prisi3n mayor, as maximum, and the P1,000.00 indemnity to Cristina Dulay is eliminated. Judgment affirmed in all other respects.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Fernando, JJ., concur.

Judgment modified.

[1] Tsn, Zambiano, Vol. n, p. 2.

[2] Ibid, pp. 57-58.

[3] Ibid, pp. 2-3

[4] Ibid, p. 3.

[5] Tsn, Zambrano, Vol. II, p. 5.

[6] Tsn, Zambrano, VoL II, p. 6.

[7] Tsn, Zambrano, Vol. II, pp. 72-73.

[8] Tsn, Calip, p. 62.

[9] Tsn, Zambrano, Vol. II, p. 3.

[10] Tsn, Zambrano, Vol. I, pp. 32 & 77.

[11] Tsn, Zambrano, Vol. II, p. 6

[12] T'sn, Zambrano, VoL II, p. 12.

[13] Tsn, Zambrano, Vol. II, p. 8.

[14] Tsn, Zambrano, Vol. I, pp. 32-33.

[15] Tsn, Zambrano, Vol. II, pp. 2-3.

[16] Tsn, Calip, p. 31; and Manipon, p. 7.

[17] See People v. Timbang, 74 Phil. 295, citing 2 Moore on Facts, sec. 952, p. 1105.

[18] 75 Phfl. 776.

[19] 79 Phil 629.

[20] See People vs. Dazo and Tiongson, and cases therein cited.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.