

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CATALINO ORTEZA, DEFENDANT AND APPELLANT.*G.R. No. L-16033. September 29, 1962*

Ponente: MAKALINTAL, J.

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Convicted of robbery with rape by the Court of First Instance of Quezon, and sentenced to suffer eight (8) years, eight (8) months and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, with the accessory penalties prescribed by law, and to pay the costs, Catalino Orteza appealed to the Court of Appeals, which found upon the facts that the imposable penalty is reclusion perpetua because of the presence of the aggravating circumstances of nocturnity and dwelling, and that appellant should be ordered to indemnify the offended party in the amount of P5,000.00, plus P52.00 actual damages. The case was certified to us in view of such imposable penalty.

The evidence presented by the prosecution has established the following facts:

At about 9:00 o'clock on the night of January 5, 1957 Eufemio Romantico went with some companions to the public market of Infanta, Quezon, to slaughter a carabao, leaving his wife Marianita Ruidera and their four-year old foster-child in their house on Plaridel St. of said town. At about midnight Marianita was suddenly awakened from her sleep, and noticed that appellant, wearing a white shirt, was at her side. She recognized him by the light of the flourescent electric bulb in the sala of the house. Holding an open balisong against her throat, he whispered to her, "Bigyan mo ako ng isang bagay!" Stricken with fear, all she could say was "Diyos Ko, Panginoon ko po." He pulled up her skirt and tried to remove her panties. In her effort to keep them in place he wounded her hands with his knife. Through the use of force, he succeeded in placing the woman's thighs apart and, with the knife still held against her throat, in satisfying his carnal lust.

After consumating the act appellant warned his victim not to tell her husband or the authorities about it, otherwise he would come back and kill everyone in the family. He also ordered her not to shout, because he was a Huk commander and her house was surrounded by his men. He then demanded money, and Marianita had to give him the two pesos hidden under her pillow. After appellant left Marianita went to another room of the house and found that the aparador there had been ransacked, the clothes scattered and the sum of P50.00 missing.

Very early the following morning Eufemio Romantico returned home and found his wife distraught, her dress smeared with blood and her panties torn. She told him that a man had come, robbed and abused her. However, remembering appellant's threat and afraid that her husband might kill him, Marianita did not reveal his identity.

One hour later Eufemio reported the incident to the chief of police, who immediately proceeded to the victim's house. She narrated the incident and gave him a general description of her assailant, but still did not reveal his identity. In a short while the municipal health officer arrived, examined Marianita and found abrasions on her cheeks and neck and wounds on her hands and arms.

That same morning the chief of police saw appellant, in underwear, washing a white shirt at the faucet opposite the municipal building some forty meters from appellant's house. For several days thereafter, appellant continued to loiter in the premises of the municipal building. Noting that it was rather unusual for him to do so and knowing that he had been prosecuted in the past for robbery, physical injuries and assault with the use of a bladed weapon, the chief of police became suspicious and called appellant for investigation. His statement was reduced to writing but Orteza refused to sign it. Nevertheless, the result of the investigation was reported to the constabulary. On January 23, 1957 both Marianita and appellant were summoned to the PC headquarters at Sta. Cruz, Laguna, and there the victim revealed for the first time that he was the perpetrator of the crime. Considering the evidence thus far gathered as insufficient, the commanding officer did not order the detention of appellant, who promptly went into hiding.

Meanwhile, sergeant Alejandro Borja, the PC investigator assigned to the case, gathered additional evidence. On April 10, 1957 appellant was arrested in Gumaca, Quezon. The next day he was taken to Sta. Cruz where, after being shown Marianita's affidavit attributing the crime to him, he admitted its commission. That afternoon he executed an extra-judicial confession, which he ratified before the justice of the peace of Sta. Cruz, Laguna the following day. He was later on taken to Marianita's house, where he staged a reenactment of the crime, of which photographs were taken and subsequently presented as evidence at the trial.

On April 15, 1957 the complaint for robbery with rape and physical injuries was filed against appellant with the Justice of the Peace Court of Infanta. After preliminary investigation the case was elevated for trial to the Court of First Instance, where the corresponding information was filed by the Provincial Fiscal on May 25, 1957.

The defense interposed by appellant is alibi. His testimony is to the effect that on January 5, 1957, from 4:00 o'clock in the afternoon to 7:00 o'clock in the evening, he was in his house engaged in a drinking spree with one Manuel Portera; that from the house they went to the public market and there played cara y cruz; that afterwards they saw a movie until about 10:00 o'clock, when they returned to the market to resume the game; that they went to the store of Baldomero Larita where they met Celso Claustro, Lauro Rutaquio, Nerio Ello and Teodoro Peñamante, who were then drinking; that at about midnight a quarrel arose between Celso Claustro and a soldier; that appellant separated from Portera and joined the rest of the group, which proceeded to the market; and that after buying meat at the market he went home to sleep at about 2:00 o'clock the following morning.

The defense deserves no serious consideration. Appellant could not produce any one of the many persons he mentioned to corroborate his testimony. His claim that Patrolman Teodoro Peñamante was among them is belied by the police blotter, which shows that the latter was on guard duty in the municipal building from 7:00 o'clock in the evening of January 5, 1957 to 1:00 o'clock the following morning. Manuel Fortera testified that after drinking with appellant at the house of Rosario Ruanto they separated from each other at about 10:00 o'clock, appellant proceeding in the direction of the post office, which is towards the house of the offended party. In other words appellant's own evidence, by the testimony of said witness, places him within the vicinity of the crime at the time of its commission. His own uncorroborated declaration cannot prevail against the offended party's clear evidence regarding his identification. *People vs. Divinagracia*, 105 Phil., 281; *People vs. Alban, et al.*, 111 Phil., 668; March 29, 1961. Marianita Ruidera stated positively that appellant was the perpetrator of the crime and no possible motive is shown why she would falsely impute to him so grave a crime as robbery with rape. She could not have been mistaken, for she had known appellant for many years and the bedroom was sufficiently illuminated by the light coming from the fluorescent bulb attached to the ceiling in the sala. It is the natural reaction of every victim of criminal violence to strive to know the identity of the assailant; and in this particular case the assault was such that it took some time before it could be consummated, affording the victim sufficient opportunity for unequivocal recognition. Furthermore, the issue here being one of credibility of witnesses, the

findings of the trial court, which saw and heard the witnesses testify and observed their deportment and manner of testifying during the trial, will not be disturbed on appeal in the absence of a showing that it overlooked certain facts of substance and value that, if considered, would affect the result of the case. *People vs. Berganio, et al.*, 110 Phil., 922.

Appellant assails his conviction despite the absence of medical examination of the offended party. Medical examination is not an indispensable element in the prosecution for the crime of rape, because it all depends upon the evidence offered and as long as such evidence convinces the court, a conviction therefor is proper. *People vs. Belandres et al.*, 85 Phil., 874; *People vs. Suarez*, 40 Off. Gaz., 11th Supp., No.11, p. 28; *People vs. Selfaison*, 110 Phil., 839.

Repudiating his extrajudicial confession, appellant claims that he executed the same because he was maltreated by the constabulary soldiers. It has not been sufficiently explained why, if such claim is true, he did not report the same to the justice of the peace before whom his oath was taken. Besides, the written statement contains details regarding the commission of the crime which could have come only from a person who could furnish them of his own free will. Appellant's subsequent reenactment of the crime in the presence of a number of people, among whom were Dr. Rogelio Pradellada, president of the sanitary division of Burdeos, Quezon, and Crispo Potesta, a photographer from Infanta, militates strongly against his claim of maltreatment.

The crime committed by appellant is robbery with rape, for which the law imposes the penalty of reclusion temporal in its medium period to reclusion perpetua. Article 294 (2), Revised Penal Code. Considering the presence of the aggravating circumstances of nocturnity and dwelling with no mitigating circumstances to offset them, the penalty should be fixed in its maximum period.

The decision of the court a quo is modified and appellant is sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, and to indemnify the offended party in the sum of P5,052.00, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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