

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO CORPIN AND HONORIO GAYRAMA,
DEFENDANT-APPELLANT.**

G.R. No. L-28356. January 30, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Marciano Corpin and Honorio Gayrama from the decision of the Court of First Instance of Leyte finding them guilty of the crime of robbery with rape committed in the municipality of Naval, Leyte on November 28, 1964 and sentencing each of them to suffer the penalty of reclusion perpetua, with all the accessories provided for by law; to indemnify, jointly and severally, Lydia Layon in the sum of P5,000.00 and Pilar Mondelo in the sum of P1,000.00, and to pay the costs. They now urge us to re-verse said decision claiming that the trial court committed the following errors:

"I. THE COURT A QUO ERRED IN FINDING THE ACCUSED SUFFICIENTLY IDENTIFIED AND DISREGARD-ING ALTOGETHER THE EVIDENCE FOR THE DEFENSE;

"II. THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY OF THE CHARGE BEYOND REASONABLE DOUBT AND SENTENCING THEM ACCORDINGLY."

The prosecution evidence has conclusively established the following facts:

At about 10:30 in the evening of November 28, 1964, while Pilar Mondelo and her granddaughter Lydia Layon were asleep in the former's house located in sitio Panimbangan, Catmon, Naval, Leyte, Lydia was awakened by the noise produced by the opening of a window. Frightened, she covered her face with her blanket, but when she heard footsteps inside the house she uncovered her face and then saw the appellants approaching her grandmother. Corpin awakened the latter by kicking her and once she had been awakened, he demanded money from her. When she told him that she had no money, she was boxed, and thereafter appellants tied her hands and made her lie face downward. Appellant Gayrama then ransacked the house and found P25.00 in a small cardboard box, took a guitar worth P9.00, a pair of pants valued at P8.00, a mat worth P4.00 and a chicken, all of which he handed to a companion who had remained downstairs. Thereafter, Gayrama also tied the hands of Lydia with a rope and, having thus rendered her helpless, started mashing her. She was later brought downstairs by both appellants and once there Corpin, through force, succeeded in felling her to the ground. He then grabbed and pulled out her panty and, inspite of Lydia's resistance, succeeded in having sexual intercourse with her. Thereafter, Gayrama and their other companions took turns in raping her. After thus satisfying their lust, appellants took Lydia upstairs and then left with their loot not without first warning her and her grandmother not to tell anybody of what had happened.

Shortly after the events just stated, Avelino Liquiran, son-in-law of the old woman Pilar Mondelo, arrived and after being told of what had happened, he took both women to his house, one and one-half kilometers away, and early the following morning, he accompanied them to file the corresponding complaint with the authorities. In the afternoon of the same day (November 29) Pilar Mondelo was examined at the Naval General Hospital and was

found to have been suffering from a 2 by 1 centimeter Hematoma in the scapular region. Two days later Lydia was also examined at the same hospital and was found suffering from, and was treated for the following injuries –

“1. Fading linear petechiae both wrist on lateral medial & dorsal surface, 1 cm. maximum width.

“2. INTERNAL EXAMINATION: Bleeding from vaginal orifice moderate in amount with fleshy smell. Lacera-tion of the hymen & vagina lip at 6:00 o'clock 2 cm. in length at posterior end. (Exh. A, B; pp. 87, 88 t.s.n., Aug. 10, 1965).”

Appellants rely on an alibi claiming that on November 28, 1964 they attended the barrio fiesta of Villacaneja, within the same municipality of Naval, having stayed there until they went home to barrio Caray-Caray between five and six o'clock in the afternoon; that both of them remained in their respective house the whole night of November 28.

The only issues before us are, on the one hand, the sufficiency of the prosecution evidence identifying appellants herein as the men who committed the acts mentioned heretofore, and, on the other, the sufficiency of the defense evidence to prove the defense of alibi.

After going over the record, We are fully convinced that the identity of the two appellants as the perpetrators of the crime charged has been established beyond question. Lydia Layon saw them from the moment they succeeded in entering the house of her grandmother through the window. She could not have been mistaken as to their identity because at that time there was a big petroleum lamp inside the house. Her grandmother likewise recognized them and she, as well as her granddaughter, informed her son-in-law of what had happened when the latter arrived in the house shortly after the departure of the malefactors. Moreover, Pilar Mondelo and her granddaughter gave the authorities the names of both appellants herein as the perpetrators of the crime charged the very day following the commission of the crime, and lodged the complaint on the same day. On December 2, 1964 Lydia made a sworn statement before the P.C. Detachment, pointing to the two appellants herein as the ones who had committed the robbery and that they were the first to rape her on that tragic evening.

Upon the other hand, there is absolutely no evidence showing bias or malice on the part of the old woman Pilar Mondelo and her granddaughter, nor on the part of the former's son-in-law, sufficient to have impelled them to falsely charge appellants with such a grave crime as that of robbery with rape.

In connection with their defense, appellants claim that they had gone to barrio Villacaneja to attend the fiesta on board a passenger jeep, but the truth is that they could not even give the name of the driver of the vehicle. Moreover, the barrio of their residence, Caray-Caray, was only one and one-half kilometers away from the scene of the crime and it is obvious that this circumstance does not make it physically impossible for them to have committed the crime after they had reached home. Besides, their testimony is not supported by any other solid and credible evidence.

The information filed against appellants charges them only with robbery with rape. The lower court, however, found them guilty of the crime of robbery with rape, and slight physical injuries. We agree with the office of the Solicitor General that the conviction for slight physical injuries should be disregarded. Likewise, the indemnity awarded to the offended parties should be reduced to the sum of P58.00 which, according to the evidence, is the total value of the cash and articles of which the victims were robbed.

In accordance with the provisions of Article 335 of the Revised Penal Code, as amended by Republic Act No. 4111, whenever the crime of rape is committed by two or more persons as in the present case - the penalty shall be reclusion perpetua to death. As the record does not show conclusively the existence of any aggravating circumstance attending the commission of the offense charged, We are of the opinion that the penalty of reclusion

perpetua imposed by the trial court is in accordance with law.

WHEREFORE, modified as above indicated, the appealed decision is affirmed in all other respects.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., took no part.

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