

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE DEMETRIO Y LAGRADA ET AL., DEFENDANTS, MAURICIO
ARROYO AND ERNESTO POBLETE, DEFENDANTS-APPELLANTS.**

G.R. No. L-2443. June 30, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

Jose Demetrio, Ricardo Mendoza, Ernesto Poblete, Eduardo Ignacio, Mauricio Arroyo, and John Doe alias Pedro were accused of robbery with rape in the Court of First Instance of Manila in an information which reads as follows:

"The undersigned accuses Jose Demetrio y Lagrada, Ricardo Mendoza y Ramirez, Ernesto Poblete y Mendoza, Eduardo Ignacio y Malam, Mauricio Arroyo and 'John Doe' alias Pedro, the true name and whereabouts of the last named accused being still unknown, of the crime of robbery with rape, committed as follows:

"That on or about the 25th day of August, 1946, during nighttime purposely sought, in Sta. Mesa Heights, Quezon City, but within 2-1/2 miles from the limits of the City of Manila, and, therefore, within the jurisdiction of this court, the said accused, conspiring and confederating together and mutually helping one another, willfully, unlawfully and feloniously broke into and entered the house at No. 18 Pulog, Sta. Mesa Heights, in said Quezon City, inhabited by Severo Mapugay, Belen Cube, Carmen Cube and others, and once inside, by means of threats and intimidation, to wit: by threatening to do bodily harm with their firearms and knives with which they were all armed, upon the occupants of said house should they resist, willfully, unlawfully and feloniously, with intent of gain and without the consent of the owners thereof, took, stole and carried away the following personal property, to wit:

"Money in cash amounting to P500, belonging to the said Severo Mapugay;

"Various pieces of jewelry, all valued at P2,000, belonging to both Belen Cube and Carmen Cube,

to the damage and prejudice of the said owners in the total sum of P2,500, Philippine currency.

"That on the occasion of said robbery, the accused Jose Demetrio y Lagrada, by the use of force and intimidation, to wits by violently pushing the said Belen Cube and forcibly causing her to lie down on the floor and threatening to stab her with the knife he was then holding should she resist, willfully, unlawfully and feloniously succeeded in having sexual intercourse with her against her will and consent.

"All contrary to law.

(Sgd.) "JOSE B. JIMENEZ

"Assistant Fiscal."

The case was tried only as to four of the accused, Ricardo Mendoza having escaped from detention before the trial and John Doe alias Pedro not having been arrested. The court found the said four accused guilty, stating hat the acts committed by the accused constitute the complex crime of robbery with rape." However, it senneed only the

accused Mauricio Arroyo for the complex crime of robbery with rape; and the accused Jose Demetrio, Eduardo Ignacio, and Ernesto Poblete, for robbery only.

Jose Demetrio and Eduardo Ignacio chose to abide by the decision of the trial court.

Mauricio Arroyo and Ernesto Poblete appealed to the Court of Appeals, which subsequently endorsed the case to this court because it was of the opinion that upon the facts of the case both appellants were guilty of robbery with rape, with the aggravating circumstances of the crime's having been committed by a band and in the dwelling of the offended parties, without any mitigating circumstance, and that therefore the penalty that should be imposed against them is life imprisonment.

It appears from the evidence that between 1:30 and 2:30 a. m. on August 25, 1946, a band of five malefactors, one of whom was armed with a carbine, another with a revolver, two with hunting knives, and one unarmed, broke into the house designated as No. 18 Pulong Street, Santa Mesa Heights, Quezon City, but within 2 1/2 miles from the limits of Manila, which was inhabited by Severo Mapugay, Belen Cube, Carmen Cube, Jesus Cube, Natividad Fernando, Gregorio Fernando, Samuel Fernando, Alejandro Mapugay, Lolita Gabriel, and Romulo Bunao. These inmates of the house were aroused by the malefactors and herded at the point of guns into one of the rooms of the house where one of the intruders kept them under guard. The intruders then tied the hands of Severo Mapugay and another adult male companion and brought them to an adjoining room where they were kept separate from the women. After gaining control of the situation the robbers ransacked the place and took money, jewelry, clothes, and other valuable personal properties belonging to Severo Mapugay and the sisters Belen and Carmen Cube amounting to P1,450 and P2,000, respectively. In the course of the robbery one of the robbers took Belen Cube, a twenty-two-year-old student of dentistry in the Centro Escolar University, to another room where by means of force and intimidation and despite her vigorous but futile resistance he succeeded in having carnal knowledge of her. Her companions could not succor her because they were being guarded by the other robbers.

At the request of Sgt. B. Herrera of Precinct No. 2, Dr. Angelo Singian, Medical Examiner of the Manila Police Department, performed a physical examination of Belen Cube on August 31, 1946, and found that her hymen had been recently lacerated at 3, 6, and 11 o'clock positions and that there was slight bleeding on the lacerations when he inserted his index finger. The doctor further certified: "The recent lacerations of the hymen indicate that the subject had been a victim of sexual intercourse in the past few days. From the appearance of the hymen and vagina, it is believed that she was a virgin previous to this sexual incident." (See Exhibit G and testimony of Dr. Angelo Singian.)

That same morning of August 25 Severo Mapugay reported the crime to Precinct No. 2 of the Manila Police Department located in the old Bilibid compound, describing the physical features of most, if not all, of the five robbers. According to Severo Mapugay, Carmen and Belen Cube, while the lights in their house were out at the time of the robbery, it was not dark because the lights of the neighboring houses were on and reflected thru the shell windows of their house; that, moreover, the robbers carried flashlights which they constantly used during the commission of the robbery, specially while ransacking the place; and that those flashlights plus the reflection of the lights from the neighboring houses furnished sufficient illumination for them to see and remember the facial and physical features of the robbers.

It turned out that a series of robberies with rape and one robbery with homicide were committed in or near the same vicinity about the same time that the crime in question was committed. Based on the descriptions of the robbers furnished by the victims and on other data obtained in the course of the investigation, members of the Manila Detective Bureau succeeded in arresting the five herein accused on different dates: Jose Demetrio and Ricardo Mendoza on August 31, 1946; Eduardo Ignacio on September 4, 1946; and Mauricio Arroyo and Ernesto

Poblete on September 12, 1946. Eleven cases of robbery in band, some with rape and one with homicide, were presented against them.

A carbine (Exhibit A), which was presented and identified during the trial to be the same as or at least similar to that used by the robbers in committing the crime in question, was found in the possession of the appellant Mauricio Arroyo when he was arrested. He was also prosecuted for and convicted of illegal possession of the firearm.

On September 4, 1946, Severo Mapugay and Belen Cube were shown a group of detained prisoners in the detective bureau of the Manila Police Department, and right then and there they identified from among the group the accused Jose Demetrio, Eduardo Ignacio, and Ricardo Mendoza as three of the malefactors who robbed them in the early hours of August 25, 1946. When Belen Cube was asked to identify the one who raped her, she said that he was not among those present; but after Mauricio Arroyo was arrested on September 12, 1946, she positively pointed to him as the one who had raped her. She confirmed that identification of the said accused in her testimony during the trial.

Each of the four accused (excluding Ricardo Mendoza, who escaped and was not tried), upon being investigated by the police after the arrest, admitted his participation not only in the robbery in question but in other robberies with rape that had been reported to the police, and each named his companions in the commission of the crime. According to them, however, the amount of the loot was much smaller than that claimed by the victims in the present case. From their statements (Exhibits B, C, D, and E) which were taken by questions and answers in Tagalog and respectively signed by them, it appears that pursuant to a previous agreement they gathered at 1449 Lealtad Extension, Manila, where the accused Ernesto Poblete was residing, on the evening of August 24, 1946, spent part of the night in that house, and about 1:30 in the morning of August 25 they went together to the house at 18 Pulong Street, Quezon City, which they had agreed to rob. Jose Demetrio was then armed with a pistol; Mauricio Arroyo, with a carbine; and Eduardo Ignacio and Ernesto Poblete, with hunting knives. Ricardo Mendoza was not armed. They found the door of the house locked, but above it there was an opening which was not yet covered by a panels as the construction of the house was still unfinished. Ernesto Poblete entered the house thru that opening and opened the door for his companions. However, the accused Eduardo Ignacio, Mauricio Arroyo, and Ernesto Poblete, in their respective statements, imputed the rape of Belen Cube to one Pedro or Pedring. Jose Demetrio, in his statement Exhibit B, admitted having raped one Amada Ranido on the occasion of the robbery committed by him and his coaccused at 1533 Int. 14 G. Tuazon, Sampaloc, Manila, on the night of August 19, 1946, as well as Fortunata Sadian on August 28, 1946, at 1533 Int. 13-A G. Tuazon, Sampaloc, Manila; and that Mauricio Arroyo also raped the last-mentioned victim. Jose Demetrio, however, denied having participated in the robbery committed at 18 Pulong Street, Santa Mesa Heights. Nevertheless, he did not appeal from the sentence of conviction.

Each of the two appellants Mauricio Arroyo and Ernesto Poblete, testifying in his own behalf, limited himself to impugning the validity of his written statement before the detective bureau (Exhibit D by Mauricio Arroyo, and Exhibit E by Ernesto Poblete), saying in effect that he had been compelled to sign it thru force and intimidation.

We are inclined, however, to give more credence to the testimony of Detective Avelino Evangelista, who took the statements, to the effect that the appellants made their statements voluntarily and without the use of any force or intimidation. It is difficult to believe that the answers given by the appellants to the questions propounded to them were mere inventions of said detective; for, in the first place, the facts disclosed by said answers could have been known only to the appellants themselves and, in the second place, the answers reveal an intention of the declarants to minimize their responsibility for the crime. For instance, both appellants attributed to one Pedring the possession of the carbine as well as the commission of the rape. If Evangelista himself had fabricated the answers,

he would have made them conform to the theory of the prosecution and would not have included therein any exculpatory indication.

In any event, even if we should disregard appellants' extrajudicial admissions, there would still remain the uncontradicted and unimpeached testimony of Severo Mapugay, Belen Cube, and Carmen Cube positively identifying the appellants as two of the robbers. That Belen Cube was correct and sincere in her identification of the appellant Mauricio Arroyo as the one who raped her on the night in question, may be seen from the fact that before the arrest of said appellant and when she identified Jose Demetrio, Eduardo Ignacio, and Ricardo Mendoza as three of the robbers, she positively informed the detectives that the one who had raped her was not one of the said three accused. That shows that she had a fixed recollection of the identity of her assailant.

We cannot, therefore, entertain any doubt as to appellants' guilt.

The crime committed is that of robbery accompanied by rape, which is penalized in paragraph 2 of article 294 of the Revised Penal Code with reclusion temporal in its medium period to reclusion perpetua. This penalty must be imposed in the maximum degree, inasmuch as the crime was committed (1) by a band and (2) in the dwelling of the offended parties. (Article 14, paragraphs 6 and 3, Revised Penal Code.) These two aggravating, circumstances were erroneously not taken into consideration by the trial court.

The second paragraph of article 296 provides that any member of a band who is present at the commission of a robbery by the band shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent it. In the present case the offense charged against all the accused was the complex crime of robbery with rape. It was fully established during the trial that on the occasion of the robbery Belen Cube was raped by one of the robbers but only was there no proof introduced by either of the appellants that he attempted to prevent the rape but on the contrary, the prosecution proved beyond reasonable doubt that the appellant Mauricio Arroyo was the one who committed the rape and that his companions, far from preventing him from committing the rape, facilitated its commission by guarding and preventing the other inmates of the house from succoring his victim.

Since under such circumstances all the accused were liable as principals for the crime of robbery with rape in accordance with paragraph 2 article 296, the mistaken allegation in the information that it was the accused Jose Demetrio who raped Belen Cube is immaterial and non-prejudicial, because even if neither of the appellants had committed the rape both of them would have been liable therefor provided it was committed by one of the band. (See also *U. S. vs. Tiongco*, 37 Phil. 951; *U.S. vs. Bretaña*, 49 Phil., 444.)

The judgment appealed from is modified in the sense that the appellants Mauricio Arroyo and Ernesto Poblete shall each suffer reclusion perpetua and shall jointly and severally indemnify Belen Cube in the sum of P1,000. In all other respects not inconsistent herewith the sentence appealed from is affirmed, with the costs of this instance against the appellants.

Moran, C.J., Feria, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

OZAETA, J.:

I certify that Mr. Justice Pablo voted for the above modification of the sentence appealed from.

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