

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AMADOR CASTILLO, ET AL., DEFENDANTS. ILDEFONSO (ALFONSO)
ALILLANA, DEFENDANT AND APPELLANT.**

G.R. No. 11793, May 19, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

In an amended information subscribed by the Assistant City Attorney of San Pablo and filed in the Court of First Instance of Laguna, Amador Castillo, Edilberto Bautista, Leonardo (Nardo) de Villa, Ernesto de Villa, Lauro Canapati (Calapati), Ildefonso (Alfonso) Alillana, Bonifacio Arago and Pedro Anlakan (Anlakan) were charged with the crime of robbery with rape (crim. case No. 15961). All but Canapati had been apprehended. Miile confined in the city jail of San Pablo during the pendency of the trial, Castillo, Bautista and Anlakan escaped from confinement.

At the start of the trial on 28 July 1954, the prosecuting attorney informed the Court that the witnesses for the prosecution were Rosauro Tapay, Amparo Alimario, Fermin Cornista and David Cabiles. Upon resumption of the trial on 27 January 1956, the prosecuting attorney asked leave to amend the information to include Rosauro Tapay and filed an amended information (Exhibit 4-A). Counsel for the defendants objected to the filling of an amended information, on the ground that the offended parties already had given their testimony. Over such objection the Court admitted the amended information. Thereafter, the prosecuting attorney orally moved for the discharge of Rosauro Tapay from the information under the provisions of section 9, Rule 115, to be a witness for the prosecution. Counsel for the defendants objected to the motion. Whereupon, the Court suggested that a written motion and objection thereto be filed, where both parties should set forth their respective positions. The prosecution and the defense did what the Court suggested. On 31 January 1956, after considering both parties' reasons and objections, the Court entered an order directing the discharge of Rosauro Tapay from the information to be a witness for the prosecution. The trial proceeded with respect to the rest of the defendants, namely, Leonardo (Nardo) de Villa, Ernesto de Villa, Ildefonso (Alfonso) Alillana and Bonifacio Arago.

After trial, on 31 October 1956 the Court rendered judgment finding the defendants Leonardo (Nardo) de Villa, Ernesto de Villa and Ildefonso (Alfonso) Alillana guilty of the crime charged with the following aggravating circumstances: "that the crime was committed by armed men in the dwelling of the offended party and at night time, with no mitigating circumstance to offset the effects of the same," and sentencing them to suffer *reclusión perpetua*, the accessories of the law, to indemnify in equal shares, Fermin Cornista in the sum of P778, the total value of the articles stolen, and Amparo Alimario in the total sum of P1,000 as moral damages, and to pay the proportionate costs. The Court acquitted the defendant Bonifacio Arago on reasonable doubt and ordered the cancellation of his bond. The convicted defendants have appealed. Pending consideration of the appeal and review by this Court of the judgment appealed from the appellants Leonardo de Villa and Ernesto de Villa withdrew their appeal.

At about 6:00 o'clock in the evening of 19 June 1951, Amador Castillo coming from town passed by the house of Rosauro Tapay in barrio Santo Niño, city of San Pablo, and told him that "Ponso" (Ildefonso or Alfonso Alillana) and "Pacio" (Bonifacio Arago) were waiting for him (Tapay) at his (Castillo's) house in the same barrio because "May be they want to tell you something." Tapay said that he would take his dinner first. At about 6:30 o'clock in the evening, Tapay left for the house of Castillo. Upon arrival at the latter's house, aside from the owner of the house, he saw Leonardo (Nardo) de Villa, Ernesto de Villa, Lauro Canapati (Calapati), Ildefonso (Alfonso) Alillana, Pacio Bonifacio Arago, Pedro Anlacan (Anlakan) and Edilberto Bautista. Castillo called him aside to a corner and informed him that Anlacan, Alillana and Arago knew of a person in barrio Putol whom they could rob. Tapay told Castillo that he would not join them as he had a family and was afraid of the consequences of the proposal. Castillo asked him to join them so as to have a companion from the same barrio, adding that if he (Tapay) trusted him (Castillo), he would go with them and, as if to threaten or to reassure him, said "Ako ang bahala." (I will take care of it.) Afterwards, Tapay sat with the group of persons whom he earlier had met and drank with them "lambanog," locally made wine, mixed with "pepsi-cola." While thus seated and drinking, Castillo asked his three informants in the group if they were sure of getting money from their intended victim and they assured him that they would get it. After staying in the house of Castillo for about one hour and a half, during which the group drank "lambanog," the contents of two large bottles, mixed with "pepsi-cola," and Tapay three glasses of the concoction, the group proceeded to the house of Fermin Cornista in barrio Putol, city of San Pablo. On that occasion, Castillo and Leonardo de Villa were armed with .45 caliber pistols, Canapati with a Garand rifle, Anlacan with a carbine rifle and Arago with a Springfield rifle. Upon reaching the house of their intended victim, Alillana called for Fermin Cornista after encircling the house.

It was about 9:00 o'clock in the evening, as the spouses Fermin Cornista and Amparo Alimario were about to retire, when they heard from outside of the main door of their house someone calling "Ka Fermin, Ka Fermin." Believing that the callers were Huks, Fermin told his wife to give them rice and that he would hide in the ceiling of their house. Amparo whispered to her husband that should the call be repeated, she would answer that he was out. Again someone called and said: "Ka Fermin, give us some food because we have been from a raid (salida), we are hungry." Whereupon, Fermin climbed and hid himself in the ceiling of the house and Amparo answered that her husband was not in and that she had no more cooked but uncooked food. The man replied "Any kind of food, because we are hungry, just to satisfy our hunger." Holding a lighted lamp Amparo opened the back door to give them rice. Castillo, Anlacan, Ernesto de Villa and Leonardo de Villa, all with firearms, entered the house one after another. Aiming his firearm at Amparo, Castillo told her to produce the key to the wardrobe (aparador) and Anlacan urged her to do so for she would be killed if she should refuse. She produced the key and Anlacan told her to open the wardrobe (aparador) which they ransacked and took the following: 10 towels worth P20, 4 pants and 6 shirts worth P80, 5 pieces of assorted clothing materials for dress and pants worth P50, 1 lady's watch, Hamilton, worth P180, 1 men's watch, Bulova, worth P80, 5 bedsheets, worth P48 and P400 in cash, or a total of P858. Afterwards, Anlacan told Amparo that he would take her downstairs to the "Chief" because the latter wanted to talk to her. At the door, as they were going down, Anlacan warned Amparo not to report the incident to anybody, otherwise they would kidnap and kill her and her family. She gave her word not to report it to the authorities. While Anlacan and Amparo were downstairs, Anlacan's companions continued to ransack the house. Downstairs, Anlacan presented Amparo to the "Chief," Ildefonso (Alfonso) Alillana, who was wearing a raincoat. Alillana told Anlacan to have Amparo produce P1,000 in coins. Anlacan brought her up the house and told her of his "Chief's" desire. She answered that they already had taken all her money and that should they find some more they could have it. In the sitting room (sala) Castillo, Anlacan, Leonardo (Nardo) de Villa and Ernesto de Villa forced her to lie down. She resisted and pleaded to them not to abuse her. Castillo, Anlacan, Leonardo (Nardo) de Villa and Ernesto de Villa took turns in having sexual intercourse with Amparo against her will. Afterwards Edilberto Bautista came up the house and also had sexual intercourse with Amparo. When Castillo was about to

depart he warned Amparo not to report the incident to the authorities for, if she did, she and her family would be liquidated.

While Castillo, Anlacan, Leonardo (Nardo) de Villa and Ernesto de Villa were in the house of the victims ransacking it and raping Amparo, Alillana was downstairs. Feeling that it was already late, he ordered Edilberto Bautista to go up and call his companions. After a while Castillo came down and told Alillana that his companions were having sexual intercourse with Amparo. Alillana was angered, kicked the side of the house and said "Let us go, what you are doing is not right." Castillo remarked "Why are you so impatient, they are also our friends," and challenged Alillana to "shoot it out with each other," throwing away a can containing some coins and firing two shots in the air. Anlacan came out of the house and intervened to pacify the two and said "Let us settle this matter amicably, we are friends and companions." Castillo answered "It is nothing to me," and said "Let us go." On the way home to Santo Niño, Rosaiuro Tapay saw a bundle carried by Edilberto Bautista. He saw Canapati with a lady's watch and Castillo holding some paper bills. Castillo remarked "I was told that there are much money but this is what we got." They arrived home at about 9:30 o'clock in the evening.

Back to the house of the victims, after the malefactors had left, Fermin Cornista came down from the ceiling of his house. He tried to revive his unconscious "wife by making her drink water. After coining to and resting for a while, Am par o and Fermin checked up the contents of their wardrobe (aparador) and found that the articles and cash already mentioned were missing. They never reported the incident to the police or prosecuting authorities until February 1954 when the Assistant City Attorney of San Pablo who filed the information in Court and an agent of the Philippine Constabulary investigated them.

As already stated Leonardo (Nardo) de Villa and Ernesto de Villa withdrew their appeal. Hence this opinion will be confined to the appeal of Ildefonso (Alfonso) Alillana, the only remaining appellant.

Ildefonso (Alfonso) Alillana claimed that on 19 June 1951 he was in barrio Santiago with the 3rd BCT under the command of Captain Corpus and Lieutenant Tagorda, conducting operations against dissidents, having joined the unit as an informer; that the operation in Santiago began on 13 June and lasted up to 20 June 1951; that he knew the spouses Fermin Cornista and Amparo Alimario, his next door neighbors; that when Fermin Cornista and his brother Laureano were students, he lived in their house in San Pablo City for almost a year; that he knew of no reason why the said spouses would falsely testify against him; and that the reason why Rosauro Tapay testified against him was because he was an informer of the army and he refused to give him (Tapay) food and supplies. Jovito Vargas, a private of the BCT, Lightning Sector, stationed at San Pablo City, corroborated Alillana's testimony that the latter was an informer of the army; that during the operation conducted by his unit in San Pablo City and its environs from 13 to 19 June 1951, Alillana accompanied him and his unit; and that they left barrio Santiago at 2:00 o'clock in the morning of 20 June 1951 and Alillana slept at the camp in San Pablo City.

Appellant's and his witness' testimony cannot prevail over the clear, positive, direct and definite testimony of the offended parties that he was among those who robbed them. They could not have been mistaken as to his identity. Amparo Alimario testified that she knew Alillana before the outbreak of the second world war. Fermin Cornista testified that he knew all of the malefactors long before 19 June 1951; that he knew Ildefonso (Alfonso) Alillana personally before the incident; that during the night of 19 June 1951 the weather was fine and the moon was bright; that the malefactors wore "maong" or denim clothes during the incident; that he saw everything that happened during that night while he was up in the ceiling of his house peeping through the slits 1½ inches wide; and that after the incident he used to see the malefactors in town drinking.

There is no reason for the offended spouses to pervert the truth. And it is inconceivable that Amparo Alimario, a married woman of good reputation in the community and the wife of a man of moderate income, being the owner

of a freight truck, would cast aside her modesty and bare to the public her terrible misfortune of having been raped by a band of robbers; if she were not ravished by the defendants. Moreover, Alillana himself testified that he knew of no reason why they would falsely testify against him. Furthermore, he said that he lived with Fermin Cornista and his brother Laureano in San Pablo City for about a year while the two brothers were still studying.

The fact that it took the offended spouses until February 1954 to bring the matter to the attention of the police and prosecuting authorities, while the incident happened on 19 June 1951, has been satisfactorily explained by the spouses. In 1951 they were staying in the barrio. Peace and order at that time were still unsolved problems; many people disappeared without any clue or trace; and there were many Huks in the vicinity causing a lot of trouble, let alone the fear that the malefactors might carry out their threat to liquidate them should they report it to the authorities concerned. In 1954, when the matter was brought to the attention of the prosecuting attorney and an agent of the Philippine Constabulary, there was already peace and there were no more Huks in the locality.

Rosauro Tapay's discharge from the information to testify as a witness for the prosecution and the questions raised by the appellant arising from such discharge are of no consequence. The appellant's guilt still stands proven beyond reasonable doubt even if Tapay's testimony be discarded.

Whether Ildefonso (Alfonso) Alillana was the leader of the band comes to the fore, because if he was the penalty next higher in degree has to be imposed upon him pursuant to the provision of paragraph 2, article 295, of the Revised Penal Code, as amended by section 2, Republic Act No. 12. Neither is it alleged in the amended information nor shown by the evidence who among the band of malefactors was the leader. True, Anlacan, one of the malefactors, referred to Alillana as their "Chief," to whom the offended wife was presented and that he (Alillana) was among the three confederates who tipped Amador Castillo of the person whom they were to rob, but it is equally true that it was Amador Castillo who induced Rosauro Tapay to join the band and carry out their plan to rob their intended victim. Furthermore, when Alillana upbraided Castillo for what the latter, Anlacan, the de Villa brothers and Bautista did in ravishing the offended wife, Castillo was angered and challenged Alillana to a duel. These facts taken together engender serious doubt as to whether Alillana was the leader of the band.

As to the penalty to be imposed upon Alillana, it appearing that there was conspiracy to commit robbery only and no conspiracy to commit rape; that he was not present and took no part in the commission of the last named crime; and that he did not approve of what his five companions had done in raping the offended wife, he should be found guilty of robbery only under article 294, No. 5, of the Revised Penal Code, as amended by Republic Act No. 18. Pursuant thereto, the penalty is *prisión correccional* in its maximum period to *prisión mayor* in its medium period. The aggravating circumstances of dwelling and nighttime should be taken into account. No mitigating circumstance may be appreciated in his favor. Taking into consideration the provisions of paragraph 1, article 295, of the Revised Penal Code, as amended by Republic Act No. 12, the maximum period of the proper penalty is from 8 years and 1 day to 10 years of *prisión mayor*; and applying the provisions of the Indeterminate Sentence Law, the minimum of the penalty to which he should be sentenced is from 6 years and 1 day to 8 years of *prisión mayor*. It appearing further that the total value of the articles and cash stolen from the offended spouses was not P778, as found by the trial court, but P858, and no part thereof was recovered, the appellant must be sentenced to indemnify the offended spouses in the total sum of P858.

Accordingly, the appellant Ildefonso (Alfonso) Alillana is sentenced to suffer from 6 years and 1 day to 8 years of *prisión mayor*, as minimum, and from 8 years and 1 day to 10 years of *prisión mayor*, as maximum, the accessories of the law, and to indemnify the offended spouses in the sum of P858, with costs against the appellant.

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

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