

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RUFO TIONGCO ET AL., DEFENDANTS. RUFO TIONGCO, PEDRO HUERVA, NARCISO CASTAÑO AND CRISTETO LEDESMA, APPELLANTS.*G.R. No. 12270, March 26, 1918*

Ponente: TORRES, J.

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This cause was commenced by a complaint filed by the provincial fiscal on January 12, 1916, in the Court of First Instance of Iloilo, charging the defendants with the crime of robbery in a band, accompanied by rape. On the 25th of the same month judgment was rendered whereby they were sentenced, Cristeto Ledesma and Narciso Castaño, to the penalty of cadena perpetua; Pedro Huerva, to that of 14 years, 8 months, and one day of cadena temporal; Rufo Tiongco, to that of 12 years' imprisonment, and all of them to the accessory penalties, to pay an indemnity equal to the value of the property stolen from the offended parties, and each one-sixth of the costs of the trial. Alejo Coloso and Jose Ilisan were excluded from the proceedings. The four defendants first above named appealed from the sentence.

The facts of the present case are as follows: On or about December 3, 1915, in the municipality of Sara, Province of Iloilo, six men, among whom were the four defendants, Narciso Castaño, Cristeto Ledesma, Pedro Huerva, and Rufo Tiongco, all carrying arms, entered at night the house of Catalina Balinon and, employing violence and intimidation upon the inmates thereof, seized and carried away with them certain articles of personal use, valued at P357.50 and belonging to Catalina Balinon and Rosario Juaneza. In order to obtain an easy entrance into the house, one of said defendants wore the uniform of a Constabulary private, and another was dressed like a policeman. Upon their arrival at the house and after making known that they were there Pedro Huerva, in reply to the questions asked him from within, told the inmates of the house that they were Constabulary inspectors. The defendants and their two companions were then invited to enter. Pedro Huerva and Cristeto Ledesma went in, and the others remained outside. When inside the house, Huerva and Ledesma again told the inmates that they, these defendants, were Constabulary inspectors and had come to search the house to see whether the people living in it had firearms. Then they bound the two men they found in the house, an old man and a young man, and conducted them below where they were left in charge of the rest of the band, while Huerva and Ledesma reentered the house to see whether they could find any articles of value.

After the robbers had seized such things as they wished to carry off and when ready to go out, they took the three women below blindfolded. The band then headed for the river near by to embark in the banca in which they had come. When they left the house, Cristeto Ledesma and Narciso Castaño compelled two of the women, Juaneza and Eusula, to accompany them, and while the band was on its way to the banca these two men separated from the rest, took these two women with them to a place near a marsh not far from the river bank, and there raped them, employing force and intimidation to accomplish their purpose. Cristeto Ledesma raped Rosario Juaneza, and Narciso Castaño, Nieves Eusula, after which Cristeto and Narciso went to the banca, where the other robbers were waiting for them, and all left.

The facts above related, fully proven in this case, constitute the complex crime of robbery in a band, accompanied by rape committed upon the persons of two women who resided in the house where the robbery took place. Said crime is provided for and punished by articles 502 and 503, No. 2, of the Penal Code, and the facts in this case fall within their provisions, inasmuch as the malefactors were armed and were more than four men, searched the inside of the house and some of its furniture, seized money and various other effects, including important documents, all together valued at P357.50, belonging to the owner of the house, Catalina Balinon, and Rosario Juaneza, both inmates thereof. Upon going out of the building, two of the robbers, Narciso Castaño and Cristeto Ledesma, separated from their companions, took with them the said Rosario Juaneza and Nieves Eusula to a secluded place near a river not far away, where they raped them and, immediately after the commission of these outrages, abandoned their victims and rejoined the other robbers, their companions, who were awaiting them in a banca moored to the river bank. As the crime of robbery, with that of the rape of said two women—a crime against chastity committed on the occasion of the robbery—was perpetrated by the malefactors in the said house of Catalina Balinon, both crimes should be punished as one single complex crime, as defined and qualified by paragraph 2 of article 503 of the Penal Code; for, besides the robbers seizing the money and the other effects they found in said house, two of them sullied the honor of the two women living therein, and the companions of the two men who committed the rape made no opposition nor prevented these latter from consummating this other crime, apparently unconnected with and unrelated to that robbery, but which, as well as sanguinary crimes, is often committed on such occasions, and it is for this reason that the penal law, in odium of such offenses against property and chastity, has considered them complex and punished them by one single penalty.

In the case of a complex crime, like the one here under prosecution, all the persons who took part in its commission are identically liable therefor and should be punished with the penalty provided in article 503, paragraph 2, of the Penal Code. The defendants Rufo Tiongco and Pedro Huerva, who took no part in the rape of the women Juaneza and Eusula, cannot be excepted from this penalty for the reason that the penal law does not require the condition that the rape be committed prior to, or simultaneously with the robbery, it being sufficient that this crime be perpetrated on the occasion of the robbery. So the law says, in the definition of the crime, that when the robbery is accompanied by rape or mutilation caused purposely, all the robbers who took part in the perpetration of the complex crime are liable for all the offenses falling within the limitation of certain circumstances specified by the law, committed by the members of the band.

It is unquestionable that, in the act of the robbery, two of the robbers conceived the purpose of raping two of the three women whom they forthwith abducted, and that they therefore compelled them go down from the house and took them to a secluded site not far from the landing place, where the boat was moored, in which boat they had crossed the river on their way to the place of the robbery; that against said forcible conduction, the other robbers made no remonstrance nor any material opposition to the commission of the crime against the chastity and the honor of the two women who were raped. Therefore, the defendants Tiongco and Huerva, for the very reason that they are liable for the said crime of robbery in a band, are likewise liable for all the other acts performed on the occasion of the robbery, although they may not actually and materially have taken any part in the rape committed upon those two women by the other two defendants, their companions Ledesma and Castaño.

If any of the defendants had wounded or killed an inmate of the house that they robbed, all the defendants would, under the law, have been punished for the complex crime of robbery with the infliction of wounds or the commission of homicide; and, in the present case, because two of the robbers raped two women, all the malefactors are liable for the complex crime in question.

In the commission of the crime, due weight should be given to the attendance of the aggravating circumstances of its having been perpetrated at night, in the dwelling of the offended parties, in a desolate place, and in a band.

There is no extenuating circumstance to offset or compensate the effects of said aggravating circumstances. Therefore the defendants have incurred the maximum penalty fixed by law.

For the foregoing reasons we should sentence, as we hereby do, each of the defendants Narciso Castaño, Cristeto Ledesma, Pedro Huerva, and Rufo Tiongco, to the penalty of cadena perpetua and to the accessory penalties of paragraphs 2 and 3 of article 54 of the Penal Code; and, in case they be pardoned from the principal penalty, they shall suffer those of absolute perpetual disqualification, subjection to the surveillance of the authorities for the remainder of their lives, if these accessory penalties be not remitted in the pardon of the principal penalty, and they shall make restitution of the stolen articles, or jointly or severally pay the value thereof to the aggrieved parties, without subsidiary imprisonment in case of insolvency, pursuant to article 51 of the Code. The defendants Cristeto Ledesma and Narciso Castaño are each sentenced to pay an indemnity of P200 to Rosario Juaneza and Nieves Eusula, respectively. Each of the four appellants shall pay one-fourth of the costs of both instances. The judgment appealed from is therefore affirmed, in so far as it agrees with this decision, and reversed, in so far as it does not. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Fisher, JJ., concur.

Street, J., did not sign.

DISSENTING OPINION

MALCOLM, J., dissenting:

I concur with the judgment in so far as it relates to the defendants Cristeto Ledesma and Narciso Castaño. They are guilty as charged, of the complex crime of robbery in a band accompanied by rape. I dissent from the judgment in so far as it relates to the defendants Rufo Tiongco and Pedro Huerva. They are guilty of the crime of robbery in a band not accompanied by rape. Tiongco and Huerva were not present at, and did not take any part in, the rape of the women. It seems perfectly clear to me that four persons can participate in a robbery, and when the robbery is finished, two of them can be satisfied, while the other two can only rest content with taking two of the inmates of the house away with them and then raping these women. The first two should not be punished for the deeds of their comrades. The record also discloses that Rufo Tiongco should be the recipient of executive mercy.

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