

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANATALIO PRADO, RICARDO PELGRIN AND JUANITO EULOGIO, DEFENDANTS AND APPELLANTS.

G.R. No. 12403. June 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Iloilo, finding defendants Anatalio Prado, Ricardo Pelgrin and Juanito Eulogio guilty of the complex crime of robbery with rape, with the aggravating circumstances of nocturnity and dwelling of the offended party, and sentencing each of them to suffer the penalty of reclusion perpetua, the three of them jointly and severally to indemnify Priscilla Forro in the sum of P4,000, also to indemnify the offended parties Hermenegildo Pillo and Priscilla Forro in the sum of P553.00, the value of carabaos and articles taken away, without subsidiary imprisonment in case of insolvency, and to pay 1/3 of the costs each.

On and before August 7, 1956, spouses Hermenegildo Pillo and Priscilla Forro lived in a small house in the barrio of Nalibugan, Municipality of Calinog, Province of Iloilo. They had two children of minor age. In the night of August 7, 1956, one Jesus Laviste was also at their house because he had come to collect from them payment of a loan of palay borrowed by the spouses. The house was only 5 meters by 3 meters in size. The floor was less than a meter from the ground and access there to was by means of a bamboo stair with two steps. The door was closed by a shutter. This was fastened by a small string in the upper corner. The house had also a window at one side. The kitchen was in a small corner of the house.

At about 8:00 that evening of August 7, when the family and the guest were still awake, a voice was heard at the foot of the stairs near the window, calling "pare, pare, pare," (friend, friend, friend). Hermenegildo immediately stood up, went to the window and opened it, and saw five individuals in front of the house. His older child went to the door to open the shutter, but in trying to do so the shutter fell down. Thereupon Hermenegildo approached the door, and as he did so, defendant Juanito Eulogio pulled him down below to the ground. There he was hogtied, boxed and kicked by Juanito and his companions. He saw that the five persons down below were, aside from Juanito, Anatalio Prado, Ricardo Pelgrin, Agustin Cepeda and Luciano Pelgrin. After having hogtied him, two of the five persons went up. They were the accused Juanito Eulogio and Luciano Pelgrin. The other three were left behind to guard Hermenegildo. Of the three who were left behind, one held a carbine, which he pointed at Hermenegildo, while the other two carried fighting boloes. Juanito Eulogio was carrying a revolver, while Luciano his companion was unarmed. Juanito immediately ordered Laviste to lie down flat on the floor, face downwards, and Laviste did as ordered. He also ordered Priscilla to sit down in a corner. They then proceeded to ransack the room and the personal belongings of the spouses, putting the clothes, jewels and rice that they wanted to take in two small sacks.

Once the ransacking was over, Juanito ordered Priscilla to lie down flat on the floor, face upwards, and after

giving his pistol to Luciano Pelgrin, he placed himself on top of her and had carnal intercourse with her against her will. This was done while Pelgrin directed the revolver at Priscilla. After Juanito had satisfied his carnal desire, he took the revolver from Pelgrin and the latter also lay down flat on Priscilla and satisfied his bestial desires on her. When Pelgrin stood up, Juanito again gave the revolver to Pelgrin and had a second intercourse with Priscilla, and after this was done, Pelgrin in turn handed the revolver to Juanito and also had a second intercourse with her. After this was done, they went down the house, and together with the three left downstairs went away, bringing Hermenegildo with them. As they went away, they also took a female carabao of Hermenegildo together with its two calves. After continuing along with them for some distance, Juanito untied Hermenegildo and told him to say his prayers as he was going to kill him, but instead of doing so he ran to his companions and all went away.

The above story is testified to by Hermenegildo Pillo and his wife Priscilla Forro, and Jesus Laviste. Pillo recognized the three members who stayed down below as Anatalio Prado, Agustin Cepeda and Ricardo Pelgrin. However, the only ones who could be charged as accused are the defendants-appellants Anatalio Prado, Ricardo Pelgrin and Juanito Eulogio, as the others have not yet been apprehended.

The day after the incident, Hermenegildo Pillo proceeded to the barrio lieutenant to inform him of the robbery. The barrio lieutenant accompanied him to the Chief of Police, who sent three policemen with them to the house of Hermenegildo Pillo to investigate the robbery. However, Hermenegildo did not at that time disclose the names of the persons who had committed the robbery.

A certain Jose Fernandez, who lived near the road leading to the house of Pillo, had seen five men on the evening in question, four of whom were armed, one with carbine, another with revolver and two others with fighting boloes, but he did not recognize any one of them except Luciano Pelgrin. He noticed that they were going into the direction of Pillo's house. On August 22, Priscilla Forro went to the Municipal Health of Calinog for the purpose of having her private parts examined. The physician made the following findings:

"Physical examination:

General Survey: Fairly nourished and fairly developed female subject

External Findings:

1. Breasts.....

Rounded, soft in consistency, globular in outline, slightly sagging; nipples protruding and lactating.

2. Abdomen

Presence of Lina Gravidarum

3. Pubic Hair.....

Abundant and evenly distributed

4. Labia Majora.....

Fleshy and supple with reddish coloration with the presence of an old healed laceration on its posterior aspect corresponding to 6:00 o'clock on the face of the clock

Internal Findings:

1. Vagina.....

Admits 2 fingers easily with evidence of slight bleeding

2. Labia Minora

Inflamed, congested and tender with erosion on the right lateral fornix

3. Hymen.....

Ruptured irregularly with presence of caruncula myrtiformis

4. Cervix.....

Markedly tender with minute erosions reddish in color from which punctiform hemorrhages occur.

CONCLUSION: "SEXUAL INTERCOURSE PREVIOUSLY CONSUMMATED."

After the investigation of the robbery by the police authorities of Calinog, Pillo went to the barrio of Luag with his wife. Pillo was then suffering from stomachache and he went there for treatment. After treatment, he and his wife went to the barrio lieutenant to report the robbery. Barrio Luag belongs to the municipality of Dueñas, far away from Calinog. Pillo had brought his children with them because they were afraid they may be killed by the persons who had robbed them. Twenty days after their transfer to Luag, Pillo and his wife again went to the Municipality of Calinog and then reported to the police lieutenant the names of the three robbers, namely, Anatalio Prado, Agustin Cepeda and Luciano Pelgrin, So the corresponding affidavits against these were executed. Jesus Laviste and Jose Fernandez were also investigated and they signed affidavits.

The arrest of Juanito Eulogio was accidental. While Pillo was going aboard the truck from Pader to the town of Duenas, he recognized among the passengers one of the robbers who took part in the robbery on August 7, in their house. The truck stopped at the municipal building of Duenas, at the request of Pillo, and once there, Pillo alighted from the truck, went to the police and pointed out to him (Juanito) as one of those who had committed the robbery in the night in question. The man thus pointed to was arrested and he gave his name as Juanito Eulogio, one of the defendants-appellants. The criminal complaint was filed before the justice of the peace court of Calinog on August 29, 1956. In that court the defendants waived the preliminary investigation, so the record Was forwarded to the Court of First Instance for trial. In this court the story as above described was testified to by the spouses, Jesus Laviste, Jose Fernandez, the police corporal of Calinog and the physician who examined Priscilla Forro. The spouses testified that the things taken away were three carabaos, three fighting boloes, three trousers, one blanket, one pair of earrings, eight gantas of clean rice, one pair of slippers, ten ladies dresses and P4.00 in cash, all of which were valued at P553.00.

On the basis of the facts above set forth as testified to by the witnesses for the prosecution, the court below rendered judgment of conviction, from which the appeal has been taken by the defendants-appellants. In this Court, various issues of fact have been raised, each of which will now be considered.

The first issue is the supposed lack of experience on the part of the physician who examined the private parts of Priscilla Forro. The physician admitted that that was the first instance in which he had examined a victim of the crime of rape. We find no merit in the objection to the supposed lack of experience on the part of the physician. The finding about the inflamed condition of the private parts of the victim required no past experience because the incarnation was visible to the naked eye and nothing could have produced it but the rape perpetrated on her by, the defendants-appellants. The inflammation could not have been produced in the ordinary course of cohabitation with the husband who would not have used force, as the assailants did, to have intercourse with her.

Counsel for appellants next attacks the supposed probability of the criminal assault in view of the refusal of the victim of the rape to categorically answer a question supposedly propounded to her by a police officer in the

course of the investigation by the police as to whether she had been raped or not. The incident to which counsel refers is the fact that when the police corporal conducted an investigation of the robbery and rape the following day, Priscilla Forro refused to answer the corporal when the latter asked her if she had been raped. Not much importance can be given to this incident. It appears that the spouses reported to the barrio lieutenant and to the police authorities that they had been robbed and the wife had been raped. The report as to the robbery was made to Tomas Castro, the corporal (tsn., p. 130). But when asked about the rape, Priscilla Forro did not deny that she was raped, she only cried (tsn., p. 132). This conduct on her part is not a denial of the rape; the victim must have been ashamed that she had been the victim of such a heinous offense and all that she could do was to cry when she was pointedly asked that question.

However, she testified to this fact in court. The examination of her private parts by the physician as well as the testimonies of Jesus Laviste and her husband, all point out expressly to the commission of the criminal assault.

The third argument raised by appellants' counsel is that Hermenegildo Pillo and his wife did not tell the names of the robbers the day immediately following the robbery because said spouses perhaps did not actually identify the robbers. The conduct of the spouses in leaving the barrio soon after the commission of the crime indicates that the authors must have been suspected to be their own barrio mates or neighbors, as the defendants-appellants were. That Pillo knew that the Pelgrins participated in the robbery may also be gleaned from the testimony of a witness for the defense, namely, Luis Piz, who declared that Pillo confidentially disclosed to the witness his suspicion or perhaps knowledge that the son of Manuel Pelgrin might have been one of the robbers (tsn., p. 135). The positive fact is, however, when the spouses transferred their dwelling to a barrio of Duenas, far away from the residences of defendants-appellants, and decided to have the malefactors prosecuted, they immediately disclosed the names of at least four of them, namely, Anatolio Prado, Luciano Pelgrin, Agustin Cepeda and Ricardo Pelgrin. This is evident from the complaint dated August 29, 1956 and the affidavits attached thereto. Lastly, the manner in which Hermenegildo Pillo identified Juanito Eulogio while both he and Eulogio were aboard the truck and the readiness with which Pillo reported Juanito's identity to the police indicates that Juanito Eulogio was recognized beyond question on the eve of the robbery. The fact that Pillo may not have known the name of Juanito Eulogio is no reason for holding that there was no identification by Pillo of said defendant-appellant.

We have carefully read the testimonies of the witnesses both for the prosecution and the defense and we are satisfied that truth rings in those of the offended parties and their witnesses. Their testimonies are direct, positive, reasonable and unimpeached. On the other hand the defense of defendants is alibi, and this is testified to in a very general manner by Demetria Prado, wife of one of the defendants-appellants, and by one Nicanor Bugarin, and by defendants-appellants themselves. Bugarin testified that from seven o'clock in the evening of August 5, and during the following Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, Ricardo Pelgrin and Juanito Eulogio were in their house to help them build the same. This general statement finds no corroboration in any of the evidence presented. If such actual construction was done in which defendants-appellants were present why was no corroboration submitted. Why were the other laborers supposedly working with the other defendants-appellants not introduced so that the truth as to the supposed presence of defendants-appellants in that far away place may be more truthfully explained? Or if there were no other laborers aside from defendants-appellants, why was this fact not so stated in the court below? Such general statement, especially when not corroborated by other people not entitled to credence, can not overcome the testimony of no less than three persons who saw the robbers, two having seen them going up the house and by a fourth one who had actually seen them together armed early in the evening of August 7, before the commission of the robbery later.

We are therefore fully satisfied that the evidence submitted by the prosecution clearly proves beyond reasonable doubt that the defendants-appellants committed the acts of robbery and rape imputed to them on the night of

August 7, 1956. The two aggravating circumstances found by the court below, namely, dwelling of the offended party and night time, are correct. There is an additional aggravating circumstance, namely, that of commission of the crime in. band because four of the five robbers were armed, one with a carbine, one with a shotgun and two with fighting boloes. There was no mitigating circumstance proved by the defense, for which reason, the findings of the lower court as well as the judgment and sentence rendered, must be upheld.

The judgment appealed from is hereby affirmed with costs against the defendants-appellants at the rate of one-third each. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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