

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BLAS YAMBALLA, DEFENDANT AND APPELLANT.

G.R. No. 14607. February 25, 1919

Ponente: MOIR, J.

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MOIR, J.:

Blas Yamballa was accused in this case of rape committed as follows:

"The undersigned provincial fiscal of Ilocos Norte, P. I., charges Blas Yamballa, a resident of Paoay, of the same province, with the crime of rape committed within the jurisdiction of this court and in the following manner:

"That the said Blas Yamballa, on or about the night of the 23d of December, 1917, in said municipality of Paoay, did, willfully, unlawfully and criminally, lie with Calixta Bagasol, his sister-in-law, while she was asleep in her own house, and when she was awakened, finding the accused still on top of her, she immediately made resistance, shortly after which the accused, by force and in spite of her resistance, did again lie with her.

"Acts committed in violation of law."

The accusation was originally presented before the justice of the peace of Paoay, Ilocos Norte, who after a preliminary investigation dismissed the case, and the fiscal presented it in the Court of First Instance where the accused was tried by the Hon. Francisco Santamaria, judge, found guilty and sentenced to seventeen years, four months and one day of reclusion temporal, and to pay the costs.

He appealed to this court.

The attorney for the accused in this court alleges two errors committed by the trial court, which are:

"(1) The court erred in giving credit to the declarations of the witnesses for the prosecution. (2) The court erred in not appreciating the existence of a reasonable doubt as to the guilt of the accused."

The facts are that on the night of the 23d of December, 1917, Calixta Bagasol, who is a sister-in-law of the defendant, was sleeping in her house with her three young children in a barrio of the town of Paoay, Province of Ilocos Norte, her husband being absent for the night. The accused entered her house and attempted to have illicit relation with her. He placed himself upon her while she was asleep and began the act of intercourse, but she was immediately awakened and threw him off. He struggled with her and the second time he succeeded in beginning the act of intercourse. She again succeeded in throwing him off and ran to the batalan (back porch) of her house. While struggling with the accused she called for help but none came. The accused followed her to the batalan and begged her to forgive him and then went away. While he was on the batalan begging Calixta to forgive him for his act, Victorino Ramos passed by and heard his statements.

When her husband, Pablo Yamballa, arrived the next morning she did not tell him of the crime committed against her by the accused, because, as she testified, she was afraid Pablo would kill the accused, and she waited until

Candido Pobre came to their house the fourth day when she told her husband the facts in the presence of Candido Pobre, because he could prevent Pablo from taking the law into his own hands. Ordinarily, suspicion is aroused when the complaining witness fails to denounce her assailant at once, but under all the circumstances of this case, the delay shows the woman acted with unusual discretion. Although her honor had been sullied by the accused, she did not want her husband's hands stained with the blood of his own brother.

Candido Pobre was a "testigo de casamiento" of Blas Yamballa. He went to him and told him that his brother was *afilando*, which means sharpening his bolo, and the accused said to him "do me the favor to act as mediator, and I will ask pardon of my brother, and if he will pardon me he may do to me whatever he pleases," and the accused admitted to Candido Pobre that he had committed the act, "because he could not resist the demon, and it would be better for him to die at once than to suffer the shame." There is not the slightest reason to doubt the testimony of this witness.

Not only the sister-in-law of the accused testified against him and Candido Pobre, the witness at his marriage, but also his brother Urbano Yamballa. Urbano testified that he was in the house of Candido Pobre when the accused came there and admitted that he was guilty of the rape of his sister-in-law Calixta Bagasol. Urbano says his father and others were in the house at the same time for the purpose of arranging the matter between the brothers, but the father denies this.

The attorney for the accused waxes indignant because Candido Pobre, who was a witness at the marriage of Blas Yamballa, testified against him.

The evidence shows that Candido Pobre did what he could to arrange the matter between the parties and to keep Pablo Yamballa from attacking his brother. The fact that Pobre was a friend and had been "padrino [best man]" at the marriage of the accused tends to enhance the value of his testimony.

Those who testified in favor of the defendant were his sister Baldomera Yamballa and his wife, Leona Tolentino, as well as his father, Timoteo Yamballa. These witnesses all stated that Blas Yamballa did not leave the house on the night of the occurrence, and Timoteo Yamballa stated that his sons were jealous of the accused, because they thought he gave him money to buy horses. The father also says he was sick and did not sleep at all, and Leona Tolentino says she was sewing all night long on a *camisa* for her husband to wear to the "misa de gallo [midnight mass.]"

In view of the positive identification of the defendant as her assailant by the complaining witness and of his voluntary confessions, the testimony of the witnesses for the defense cannot be true.

There is no doubt that the accused is guilty of the unpardonable crime charged against him in the complaint.

The Attorney-General in his brief recommends the imposition of the penalty in its maximum degree.

Due to the fact that there are present the aggravating circumstances of nocturnity and of relationship, and that the offense was committed in the house of the offended party, we agree with the Attorney-General that the penalty should be imposed in its maximum degree.

The judgment of the Court of First Instance of Ilocos Norte is, therefore, modified, and the accused, Blas Yamballa, is sentenced in accordance with article 438 of the Penal Code to twenty years of reclusion temporal, and to suffer the accessory penalties of article 59 of the Penal Code, and to pay the costs. So ordered.

Arellano C.J., Torres, Johnson, Araullo, Street, and Avanceña, JJ., concur.

Malcolm, J., is of the opinion that the judgment should be affirmed.

Judgment modified, penalty increased.

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