

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSEFINO G. SELFAISON, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 14732. January 28, 1961*

Ponente: GUTIERREZ DAVID, J.

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Appellants Josefino G. Selfaison, Nemesio Dalisay, Domingo Ureta and Bernardo Bautista—in company with Arsenio Amacio, Reynaldo Bautista, Domingo Salde and Amrafil Dalisay who were alleged to be still at large—were accused in an amended information of the crime of robbery with rape in the Court of First Instance of Capiz. After trial, Josefino G. Selfaison was found guilty of the crime charged and sentenced to suffer the penalty of reclusion perpetua, to indemnify the complainants, Angelita Sinag and Angelina Maghibon, the amounts of P212.50 and P110, respectively, and to pay one-fourth of the costs. The other three accused, namely Nemesio Dalisay, Domingo Ureta and Bernardo Bautista, were found guilty of the crime of rape and sentenced to suffer an indeterminate penalty of 12 years of prision mayor to 17 years, 4 months and 1 day of reclusion temporal, plus proportionate costs. From the judgment of conviction, the four named accused appealed to the Court of Appeals, but in view of the penalty imposed, that court certified the case to this Court.

The evidence for the prosecution shows that on April 6, 1954, the complainants Angelina Maghibon, 19 years old, and Angelita Sinag, 16, of barrio Jibon and Kumalaskas, respectively, of the town of Nabas, Capiz, boarded the "S.S. General del Pilar" bound for Capiz. The young girls, who worked for three years as housemaids in Manila, were going home with their savings, Angelina during that period having been able to save P110 and Angelita, P206. At 4 o'clock in the afternoon of the following day, the ship arrived at the port of New Washington, Capiz. At the dock, the two girls saw an old acquaintance, Josefino G. Selfaison, and boarded the passenger truck he was driving, which was bound for the town of Nabas. The truck started its journey at about 5 o'clock and passed through several towns picking up and letting out passengers along the way. At barrio Ondoy, municipality of Ibajay, Selfaison stopped the truck, got off and went to his house. After a short while, he returned accompanied by four men who accommodated themselves on top of the truck. These men were later identified as Domingo Ureta, Domingo Salde, Amrafil Dalisay and Reynaldo Bautista. The two complainants wanted to be taken to their respective barrios, but Selfaison informed them that they would have to pay an additional fare of P5 each. The girls agreed, giving him the money, and Selfaison saw them extract the money from bundles of paper bills hidden in the garments over their breasts.

With Selfaison still at the wheel, the trip was resumed. In the vehicle then, aside from the two complainants, and Selfaison at the driver's seat, were two lady passengers, Nemesio Dalisay (the conductor), Bernardo Bautista (the "washing") and the four men on top of the truck. At about 10 o'clock in the evening, the truck arrived at the poblacion of Nabas. It was in this town that Arsenio Amacio boarded the truck. After discharging his two other lady passengers, Selfaison turned the truck and drove towards the direction of barrio Ondoy. When the girls noticed this, they became apprehensive and protested. Selfaison, however, drove very fast saying that he had to get something from his house.

At sitio Pulang Data of Barrio Solido, a mountainous and isolated place, Selfaison suddenly stopped the truck. He and the other men then alighted and went to the rear of the truck. After a while, they returned and forced the girls to go down. Josefino G. Selfaison, Amrafil Dalisay, Reynaldo Bautista and Domingo Ureta pulled Angelita Sinag to one side of the truck, while Bernardo Bautista, Nemesio Dalisay, Arsenio Amacio and Domingo Salde dragged Angelina Maghibon to the other side.

Angelita was pushed by Selfaison to the ground. She struggled to free herself and shouted for help, but her hands were pinned down above her head by Reynaldo Bautista. Domingo Ureta took hold of one of her legs, and as Amrafil Dalisay held the other, Josefino G. Selfaison raised her clothes, pulled down her panties and succeeded in having sexual intercourse with her. When he was through, he groped for Angelita's remaining P200 and slapped her, saying that she was arrogant ("suplada"). Reynaldo Bautista, Domingo Ureta, Amrafil Dalisay and, finally, Arsenio Amacio then took turns in raping her. Exhausted and with her genitalia bleeding, Angelita slowly stood up, put on her panties and climbed back to the truck.

Angelina Maghibon suffered the same ordeal. After she was forcibly thrown to the ground, Arsenio Amacio held both of her hands over her head, while Bernardo Bautista and Domingo Salde held her legs. Helpless and pinned to the ground, Angelina Maghibon made desperate struggles and frantic calls for help, but her efforts proved futile. Nemesio Dalisay pulled out her "pedal pusher" and panties and then ravished her. When he was through, he held the girls hands, while Arsenio Amacio took his turn. Bernardo Bautista followed Amacio. Then Josefino G. Selfaison came and also had carnal knowledge of her. When he had finished, he felt for and took Angelina's money amounting to P105, which was wrapped in a handkerchief fastened to her brassiere.

After everybody had given vent to his lust, Josefino G. Selfaison asked Angelita for the key to her trunk, but the latter refused. Thereupon, Selfaison broke the trunk open with a stone and took away six pieces of dress materials worth P9, a can of biscuits and a dozen oranges all worth P3.50. Thereafter, Selfaison drove the girls back to the town of Nabas and threatened them with death should they say anything about the whole affair. The girls went to the house of one Emma Dalisay and spent the night there.

In the following morning, Angelita Sinag, accompanied by her brother, reported the incident to the Chief of Police of Nabas. The latter, however, was skeptical. Just then a PC lieutenant arrived to whom Angelita narrated her story. After the other complainant, Angelina Maghibon, was fetched, the officer brought them to the municipal building for questioning. In the course of the interrogation, Josefino G. Selfaison, who was then driving his passenger truck, was called by the PC officer and was promptly identified by the girls. When he was asked why he abused the girls, the latter even heard him say that "devil must have entered his head." On that same day, the girls were examined by a physician. The physical examination on Angelina Maghibon showed "recent laceration of the hymen" and "contusions of the wall of labia minora." The findings on Angelita Sinag showed "slight laceration at the posterior commissure." Three days later, the girls were again examined at the provincial hospital and the examining physician made similar findings on their genitals.

On April 21, 1954, Angelita Sinag and Angelina Maghibon filed separate complaints in the Justice of the Peace Court of Nabas for robbery with rape. Named as defendants were Jose G. Selfaison, Raymundo Dalisay, Arsenio Amacio, Reynaldo Bautista, Domingo Martinez, Berling Bautista, Amrafil Dalisay and alias Mengoy. After preliminary investigation, warrants of arrest were issued against the eight accused. As the returns on the said warrants stated that there were no persons answering to the names of Jose G. Selfaison, Raymundo Dalisay and alias Mengoy, the private prosecutor filed a joint motion to correct the complaints asking that the names of the accused Jose G. Selfaison be changed to Josefino G. Selfaison, Raymundo Dalisay to Nemesio Dalisay, Domingo Martinez to Domingo Salde and alias to Domingo Ureta. The motion was granted by the Justice of the Peace Court of Nabas. Thereafter, Josefino G. Selfaison, Nemesio Dalisay, Bernardo Bautista and Domingo Ureta were

arrested, but the other accused remained at large.

After the records of both cases were elevated to the Court of First Instance of Capiz, the provincial fiscal there filed the corresponding informations, but on motion of defense counsel, the cases were consolidated under one amended information.

At the trial of the case, the appellants put up the defense of alibi. Josefino G. Selfaison testified that when the truck arrived at barrio Ondoy, he ordered one Doming Martinez to relieve him as driver of the truck because he was feeling tired, sick and hungry and that after the truck left, he went to bed to rest. Domingo Ureta, on the other hand, declared that he was the driver of another truck belonging to Josefino G. Selfaison and that after he returned his truck to the garage at about 9 o'clock in the evening, he went to the house of one Ramon Solis at barrio Ondoy and spent the night there. Nemesio Dalisay, on his part, testified that he was the conductor of the truck driven by Domingo Ureta and that he was included in the charge because he is the brother-in-law of Josefino G. Selfaison. The other accused, Bernardo Bautista, testified that on April 7, 1954, he was in his house in barrio Ondoy the whole evening and that while he was then a helper in the truck driven by Selfaison, his work began only from 6 o'clock in the morning and ended at 12 noon.

The trial court, however, discredited their defense of alibi, and believing the testimony of the witnesses for the prosecution, rendered the judgment of conviction which is now before us on appeal.

After going over the records of the case, we find that the guilt of the accused, as found by the trial court, has been established by the evidence beyond reasonable doubt. The defense of alibi interposed by the appellants cannot be allowed to prevail over the testimony of the offended parties, who positively identified them as four of their assailants. Josefino G. Selfaison was well known to the complainants because they had previously ridden in his truck when they went to New Washington in 1951 where they boarded a ship for Manila. They were not personally acquainted with Nemesio Dalisay and Bernardo Bautista, but these two accused as the conductor and "washing" of the truck, respectively, were constantly seen by them during the whole trip. With respect to Domingo Ureta, the two girls were able to recollect his features and recognize him as one of the four men who boarded the truck at barrio Ondoy. The complainants' recognition of the appellants as their attackers cannot be doubted, for aside from what has already been said, they had during the carnal acts ample opportunity to scrutinize the faces of the men who did them wrong.

There is no merit in the contention that, on account of the excitement and horrors of the moment, the complainants could not have identified their attackers and remembered the sequence in which they were raped. It is a natural reaction for victims of criminal violence to strive to know the identity of their assailants and the manner in which the crime was committed creates a lasting impression which cannot easily be erased in their memory.

Appellant Josefino G. Selfaison claims that he was included among the accused because the offended parties knew that he was the owner of three trucks and that they would get nothing if the charge were brought only against the others. The evidence shows, however, that the complainants knew him only as a truck driver, and not as a wealthy man. Hence, the charge that the said complainants were prompted by mercenary motives is without basis.

Citing Dr. Anzures' "Lectures on Legal Medicine" which states that an examination within 3 days after intercourse would reveal the presence of spermatozoa, the appellants underscore the fact that the physical examinations to which the complainants were subjected to were negative as to the presence of spermatozoa. The absence of such spermatozoa, however, does not necessarily mean that the complainants had not in fact been raped. The very authority cited states that such absence does not necessarily mean that the girl subject of the

examination has not had any sexual intercourse. It need hardly be said here that in the crime of rape, the slightest penetration is enough. In the case of the complainants, we agree with the trial court that the recent lacerations in the hymen and the contusions on the walls of the labia minora of their genitals—together with the evidence adduced during the trial—sufficiently show that the copulative act had been performed by means of force and violence. (U. S. vs. Huertas, 39 Phil., 440). In fact, it is not even necessary that there be a medical examination of the victim in cases of rape. Whether or not the charge will prosper depends upon the evidence offered and so long as such evidence convinces the court, a conviction for rape is proper. At any rate, it is not improbable that the complainants washed or flushed themselves not only for the sake of cleanliness but more particularly in order to avoid possible conception. It is, indeed, difficult to believe that the complainants, who are very young and unmarried, would tell a story of defloration, allow the examination of their private parts, and thereafter permit themselves to be the subject of a public trial, if they were not motivated by an honest desire to have the culprits apprehended and punished.

It is argued that Josefino G. Selfaison, who is a man of means, could not have robbed the two complainants, and to impugn the credibility of the said complainants, the defense points to the lack of corroboration and to certain inconsistencies in their testimony. Wealth, however, is not always a badge of good conduct (People vs. Ramps, 85 Phil., 682; 47 Off. Gaz., 4571) and it is not the poor alone that succumb to the impulse to rob. (People vs. Amoco, 89 Phil., 792; People vs. Llagas, et al., G. R. No. L-5015-17, May 31, 1957.) As to the alleged inconsistencies or contradictions, we find, after examining the record, that they exist only in minor details and are not of sufficient magnitude so as to denote a deliberate intent to utter falsehood. Such inconsistencies by themselves preclude probable coaching, and far from detracting anything from the witnesses' credibility, only tend to bolster the probative value of their testimony. (People vs. Duldulao, People vs. Del Prado, et al., G. R. Nos. L-13335-36, November 29, 1960.) In this connection, the trial court, which had the opportunity to observe the demeanor of the complainants on the witness stand, said:

"* * * Barring slight contradictions which are natural in unrehearsed witnesses, there was no act of theirs that betray their candor and which would give rise to doubt their sincerity and veracity. They were frank and straightforward in answering question, bereft of artificiality and hesitancy that is easily detected in one who tells a concocted story * * *".

On the subject of corroboration, the rule in this jurisdiction is well-settled that in crimes of rape the sole testimony of the offended parties is sufficient to sustain a conviction. (U.S. vs. Ramos, 1 Phil. 81; People vs. Dazo, 58 Phil., 421; People vs. Macaya, et al., 85 Phil., 540; 47 Off. Gaz., 4125; People vs. Ganal, et al., 85 Phil., 743.)

The defense also argues that the second warrants for the appellants' arrest were illegally issued because the complaints were not actually amended. It will be recalled that the prosecution sought to amend the complaints so as to correct the names of some of the accused who were misnamed therein. The motion to correct or to amend the complaints was granted by the Justice of the Peace Court, and while no amended complaints were filed anew, we do not think this is a reversible error, since no substantial right of the accused were prejudiced thereby. Indeed, there was never any doubt as to who were the persons meant to be accused, and in resorting to the argument that the complaints were not actually amended, the defense is simply availing itself of a small technicality that does not affect in any manner the rights of the appellants.

The defense finally contends that the appellants were deprived of their right to preliminary investigation. The contention deserves scant consideration, for nothing appears affirmatively on the record that such preliminary investigation has not been had. On the other hand, it is presumed that the inferior court proceeded in accordance with law. (People vs. Silos and Bagano, G. R. No. L-5158, March 28, 1952.) At any rate, appellants appear to have waived such right, because immediately after their arrest, they filed bonds for their release and subsequently

proceeded to trial, without previously claiming that they did not have the benefit of a preliminary investigation. (People vs. Ricarte, 49 Off. Gaz. 974; People vs. Quinto, 60 Phil., 451; People vs. Moreno, 77 Phil., 548; Bustos vs. Lucero, 81 Phil., 640; 46 Off. Gaz. [Supp.] 445.)

The crime committed by appellant Josefino G. Selfaison, as correctly found by the trial court, is robbery with rape, for which the law imposes the penalty of reclusion temporal in its medium period to reclusion perpetua. (Art. 294 [2], Revised Penal Code.) Considering the aggravating circumstances of nocturnity, use of motor vehicle and superior force without any mitigating circumstances to offset them, the sentence of reclusion perpetua imposed upon him plus restitution, is in accordance with law. As to the other appellants, there being no showing that they took part or were in conspiracy with appellant Josefino G. Selfaison in robbing the complainants, they were, likewise, correctly convicted of rape, and again considering the aggravating circumstances above-mentioned, the indeterminate penalty of 12 years of prision mayor to 17 years, 4 months and 1 day of reclusion temporal imposed upon them should, therefore, also be affirmed. As recommended by the Solicitor General, however, all the appellants should, in addition to the penalties imposed upon them, also be sentenced to indemnify, jointly and severally, each of the complainants in the sum of P5,000. (People vs. Demetrio, et al., 86 Phil., 344; 47 Off. Gaz., Supp. 12, p. 23; People vs. De Asis et al., 61 Phil., 384.)

With the above modification, the judgment appealed from is hereby affirmed in all other respects. With costs.

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

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