

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. INOCENTES BRET ANA ET AL., DEFENDANTS.
INOCENTES BRETANA AND BONIFACIO DAVI, APPELLANTS.**

G. R. No. 25905. October 08, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Inocentes Bretana and Bonifacio Davi have appealed to this court from the judgment of the Court of First Instance of Iloilo convicting them of the crime of robbery in band, defined in paragraph No. 5 of article 503, and penalized in paragraph No. 1 of article 504, of the Penal Code as principals by direct participation, and sentencing each of them, in view of the aggravating circumstances of nocturnity and of the crime having been committed in an uninhabited place, without any mitigating circumstance to offset them, to suffer ten years and one day presidio mayor, with the accessories of the law, to indemnify the Precioso family in the sum of P154,65, without subsidiary imprisonment in case of insolvency, in view of the amount of the penalty, and each to pay his proportional share of the costs.

In support of their appeal, the appellants assign the following alleged errors as committed by the trial court in its judgment: (1) The lower court erred in finding the accused Inocentes Bretaña and Bonifacio Davi guilty, beyond a reasonable doubt, of the crime of robbery in band charged in the complaint, and (2) the trial court erred in not acquitting the accused Inocentes Bretaña and Bonifacio Davi of the crime of which they are accused.

The facts proven beyond a reasonable doubt at the trial are as follows: At about 8 o'clock on the night of March 7, 1926, while Francisco Precioso was inspecting his carabao which was in a corral, located in a field near his house in the barrio of Macatol, municipality of Pototan, Province of Iloilo, the herein accused Inocentes Bretaña and Bonifacio Davi arrived, each armed with a bolo and accompanied by an unknown, armed with a revolver, and representing themselves as Constabulary soldiers, caught hold of him, threatening him with death if he offered any resistance and made any out-cry, tied his hands behind him and took him to the foot of the stairs of his house where they were joined by three other companions also unknown, armed with bolos, and leaving the said Francisco Precioso under the vigilance of one of them, Inocentes Bretana, Bonifacio Davi and the three other unknown went upstairs. Francisco Precioso's wife and her three daughters, named Caridad, Jovita and Maria, 18, 16 and 11 years of age, respectively, upon seeing the malefactors, escaped from the house with the exception of Jovita, who was caught by one of the bandits and was asked where her parents kept their money. As she denied all knowledge of its whereabouts, Bonifacio Davi and one of the unknown took her into a room, leaving Inocentes Bretana with the other two unknown in the drawing-room. Once in the room, Bonifacio Davi, who carried a light, and his companion ordered Jovita to open a trunk which was there, and the said Bonifacio Davi took two pairs of earrings, a gold chain, a pearl ring, a ring set with stones and a silver comb which were in a small drawer in the trunk, and various other articles of clothing belonging to Francisco Precioso's family, valued at P145.70. After Bonifacio Davi had wrapped up all of the stolen articles, the culprits put out the light and left the house, taking the said articles and Jovita Precioso with them, and, once downstairs, ordered her to call loudly to her mother. As she

did not appear, Bonifacio Davi and two of his companions took the said Jovita a distance of about 10 meters from the back of the house and there, by means of force and intimidation, raped her one after the other. After this brutal act, the satyrs took her to the bottom of the stairs where her father was and left her there. When they saw that the culprits had left, Jovita and her sister Maria untied their father's hands, who immediately called for help and went to the municipality of Pototan to report what had happened to the local authorities. When Doctor F. Cordero made a physical examination of Jovita Precioso on March 12, 1926, he found a strange gelatinous substance resembling human semen within the vagina. He also found that the hymen membrane was ruptured and scarred and the clitoris was inflamed as if a strange object had violently penetrated in the genital organs of the girl. Jovita Precioso, her father and her sisters knew the accused-appellants, because Bonifacio Davi had been helping one of their neighbors in threshing rice. Jovita did not immediately tell what Bonifacio Davi and his companions had done to her, because being single, she was very much ashamed.

The accused-appellants, Inocentes Bretaña and Bonifacio Davi, did not testify at the trial of the case, but attempted to prove by the testimony of their principal witnesses, Pedro Daraog and Salvador Daraog, that from 4 o'clock in the afternoon until 10 o'clock on the night of March 7, 1926, which was Sunday, they and their witnesses were loading sugar cane on a wagon of the railroad to be carried to the Asturias Central in Capiz; that when they finished their work, the accused Inocentes Bretaña went to his house accompanied by Pedro Daraog, who amused himself with chewing buyo (betel leaves and nut with lime) while the former was eating his supper, after which he went to a hiding place; that the accused Bonifacio Davi and one Doroteo Marquez proceeded with Salvador Daraog to the latter's house where the three of them slept on a single floor mat.

They attempted also to prove that when Francisco Precioso went to the municipal building at about half past 10 on the night of March 7, 1926 to report the robbery of his house on the same night, he stated that he did not know any of the culprits; that the following day when the chief of Police of Pototan, Donato Limjucu, with four policemen went to Francisco Precioso's house to investigate the case, the latter and his daughters Caridad, Jovita and Maria stated that they did not know the robbers; that it was only on the 9th of the same month that Francisco Precioso and his daughters Jovita and Maria declared before the Constabulary that the accused Inocentes Bretaña and Bonifacio Davi were two of those who had perpetrated the robbery and subscribed the affidavits, Exhibits D, F and G before the justice of the peace of Pototan; that it was also on the same date that Jovita Precioso, for the first time, stated to the justice of the peace of Pototan that on the night of the robbery she had been raped by the accused Bonifacio Davi and two of his companions, one after another; that Francisco Precioso, upon being asked by the chief of police why he did not denounce the accused Inocentes Bretaña and Bonifacio Davi when the preliminary investigation was made, said that he had kept quiet because he was afraid.

It will be seen that the only point in question is the identity of the criminals. The reason why Jovita Precioso and her father Francisco Precioso did not immediately tell that the herein accused-appellants were the ones who entered their house and robbed them of their jewelry and clothes in company with other four unknown persons, was that the threats of death which had been made by the accused-appellants produced such an effect upon their minds that the fear that they would carry them out prevented them from revealing their names. This fear is not strange when it is taken into consideration that Francisco Precioso and his family lived in an uninhabited place, at the mercy of any knave who might wish to injure them.

Neither will it seem strange to anyone who knows the peculiarities of the young Filipina country girl that Jovita Precioso kept quiet about the outrage of her honor which had been made by the accused Bonifacio Davi and two of his companions. She herself explains her silence by saying that being single, she was very much ashamed of her dishonor and her modesty prevented her from revealing the fact that her virginal purity had been sullied. This same reluctance to expose her shame, notwithstanding that it was caused against her will and by means of force, is

proof of her veracity, especially when it has not been proven that she had not the slightest motive for accusing the said defendants.

The evidence of the alibi alleged by the accused which consists principally of the mere testimony of their companions who worked with them is not of sufficient weight to overthrow the clear and positive evidence of the prosecution with respect to their participation in the commission of the crime of robbery with rape now before us.

The court below, upon the facts proven at the trial, has found that the crime is that of robbery in band, provided for in paragraph No. 5 of article 503 in connection with paragraph No. 1 of article 504 of the Penal Code. The evidence shows, however, that immediately after the robbery, the accused Bonifacio Davi, with two of his unknown companions, carried Jovita Precioso about 10 meters from the house, and by means of force and intimidation, she was raped by the three, one after another, being held down on the ground face upward, by two while the other outraged her. These two criminal acts committed on the same occasion constitute the complex crime of robbery with rape defined and penalized in paragraph No. 2 of article 503 of the Penal Code, the penalty provided by law being cadena temporal in its medium degree to cadena perpetua; and the persons criminally liable being not only those who took direct part in the robbery as well as in the rape, but also those who, like Inocentes Bretaña and his other companions, took part in the robbery and witnessed the rape, for it does not appear that they made any attempt to prevent its consummation, in accordance with the provisions of paragraph No. 2 of article 505 of the Penal Code (U. S. vs. Tiongco, 37 Phil., 951). In the application of the penalty there should be taken into consideration the aggravating circumstances of nocturnity and the fact that it was committed in an uninhabited place, and in band, the last not being a qualifying circumstance of robbery with rape, on account of said complex crime not being included in the provisions of article 504 of the same Code, the same not being offset by any mitigating circumstance; wherefore the penalty provided by law must be imposed in its maximum degree, or cadena perpetua.

For the foregoing, the appealed judgment is modified and the accused-appellants Inocentes Bretaña and Bonifacio Davi are found guilty of the complex crime of robbery with rape and each of them is sentenced to suffer the penalty of cadena perpetua, the judgment appealed from, being affirmed in all other respects, with his proportional share of the costs. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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