

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ELPIDIO CORCINO, DEFENDANT AND APPELLANT.

G.R. No. 30715. July 27, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal by Elpidio Corcino from the sentence of the Court of First Instance of Cagayan finding him guilty of the crime of rape in accordance with the information, and considering the presence of the aggravating circumstances of nighttime, unlawful entry, and dwelling-place, imposed upon him the penalty of seventeen years, four months and one day reclusion temporal, with the accessories of law, and costs.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court below in its decision, to wit:

"The lower court erred:

"1. In finding that the defendant had confessed by means of Exhibit A that he was guilty of the crime of rape (violacion) of which he had been accused.

"2. In finding that the defendant quietly approached Maria Tezano, raised her skirt and abused her by having carnal knowledge of her.

"3. In finding that the accused must have put out the light.

"4. In finding the defendant guilty of the offense charged against him upon the evidence presented, which is far from establishing his guilt beyond a reasonable doubt."

The following facts were proved at the trial beyond a reasonable doubt:

Maria Tezano, the offended party, aged 19, lived with her husband Rosendo Palacio and a daughter of tender age, in the municipality of Alcala, Province of Cagayan. A short time before sunset in the afternoon of June 18, 1928, Rosendo Palacio invited his neighbors Alfredo Custodio and Fabian Palacio, aged 15 and 8 respectively, to keep his wife company while he was away fishing in a nearby creek. While Maria Tezano was preparing supper, the defendant Elpidio Corcino, aged 19, arrived and started playing with matches with Alfredo Custodio, Fabian Palacio, and a 2-year old brother of the latter. After a while, the defendant left. After having taken their supper in the kitchen, the offended party and her companions went into the main room of the house, closing the door leading to the kitchen and the four windows, and went to sleep, leaving a small lamp lighted. At about midnight, while everybody was asleep, the offended party, Maria Tezano, awoke feeling the weight of a man upon her in carnal communication with her. Believing he was her husband, she called him by his name but received no answer. She again called him and he answered in a low voice, from which she knew that the man on top of her was not her husband, and she pushed him away. The satyr then held her down by her forehead. As it was dark, the light having gone out, she woke up her brother-in-law, Alfredo Custodio, and told him to light the lamp because there was an outsider in the room. When the lamp was lighted, the intruder, who turned out to be the defendant, attempted to jump out through the window, with his drawers down to his knees,

but the offended party caught hold of the tail of his shirt, and so prevented him from jumping. Segundo Palacio and one Modesto Paguing also ran to help Maria Tezano. Alfredo Custodio went in search of Rosendo Palacio. Meanwhile Segundo Palacio, a neighbor who had been called by Alfredo Custodio, arrived and finding the defendant struggling with Maria Tezano as the former was buttoning his trousers, asked him why he fought with her. In answer, the defendant prayed to be pardoned because he had offended her. At daybreak on June 19, 1928, the barrio lieutenant, the parents and the father-in-law of the offended party arrived. Upon being questioned by the officer why he was in that house, the defendant answered: "Pardon me. I have done wrong." The barrio lieutenant asked him what fault he had committed, and the defendant replied: "I approached the offended party stealthily to lie with her." The barrio lieutenant then reduced to writing the defendant's declaration, which was an admission of his guilt, and the said defendant voluntarily signed it in the presence of five witnesses (Exhibit A). The window through which the defendant attempted to jump out in order to escape was one of those which the offended party had shut with a bamboo bolt before going to sleep, and which was afterwards found open, with the string cut.

The defendant tried to prove that he and the offended party had sustained illicit relations from the time they were students, such relations having continued even after Maria Tezano had married Rosendo Palacio; that he was ready to plead guilty of adultery; that on the night of the crime he was at home and the offended woman's husband invited him to go to his house and play with Segundo Palacio, Modesto Paguing, Alfredo Custodio, Rosendo Palacio and three others; that after playing, they went fishing in a creek where they met others; that a short time afterwards he went to Maria Tezano's house with her husband in order to take the shirt which he had forgotten, in his hurry to take home the money he had won at the game, but that when he came to the house, the offended party shouted: "Catch that fellow because he has done evil here at home;" that on that occasion, Segundo Palacio, Modesto Paguing and Alfredo Custodio, were in the house, as well as the barrio lieutenant Daguiag, who together with Segundo Palacio and Modesto Paguing ordered the defendant to sign the paper he had prepared, and which was presented in court as defendant's confession marked Exhibit A; and that the defendant was compelled to sign said document because those who made him do it were armed with bolos.

The defense admits that the evidence establishes beyond all doubt that the defendant was found in Maria Tezano's house on the night of the crime, in the absence of her husband, but contends that he only went there in order to lie with Maria Tezano as he had done on previous occasions.

The witnesses for the prosecution unanimously declare that when the defendant was asked why he fought with the offended party, he begged to be pardoned because he had offended her. If it were true that the defendant had illicit relations with the offended party, she would have known who was on top of her and would not have awakened those who kept her company calling for help because there was an unknown man; on the contrary, she would have tried to keep everybody from noticing that the defendant was in her house.

As to the offended party's testimony that when she woke up, the defendant was already on top of her and had inserted his genital organ into hers, though it may at first seem improbable, is not so, if the details of her testimony are carefully examined. She said she thought it was her husband who was on top of her, and she even called him by name. As he did not answer, she called him again and when he answered in a low voice, she discovered that it was not her husband, and pushed him away, thus beginning a struggle during which she woke her companions that they might help her. The fact that the defendant's drawers had fallen down to his knees when he attempted to jump out through the window by which he had entered, breaking the rope with which it was tied, corroborates the offended party's testimony. As the offended party is a married woman with a daughter, accustomed to the acts of generation, young, and therefore a deep sleeper in the first hours of the night, it is not impossible that the accused succeeded in inserting his organ into her genitals before she awoke. The fact that she thought the man on top of her to be her husband, warrants the belief that she had awakened when the defendant

had placed himself upon her, but believing him to be her husband, she let him go on until by his movements and his weight, she began to doubt and calling him by his name, discovered that he was another man.

Considering the testimony of the offended party and of the witnesses for the prosecution, together with all the circumstances of the case, we are of the opinion, and so hold, that the defendant, taking advantage of the offended party's sleep, succeeded in having carnal knowledge of her.

The facts alleged in the information as proved at the trial constitute the crime of rape defined and penalized in article 438 of the Penal Code, the penalty fixed by law being reclusion temporal in its full extent. In the commission of the crime the presence of the aggravating circumstances of nighttime, dwelling-place and unlawful entry must be taken into consideration, because the defendant took advantage of the darkness of the night, and committed the crime in the offended party's home, passing through a window not intended for entrance; and there being no extenuating circumstance to offset them, said penalty must be imposed in its maximum degree.

Wherefore, the judgment appealed from being in conformity with the proof and the law, the same is hereby affirmed in all its parts, with costs against the appellant. So ordered.

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

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