

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIPE DE ASIS ET AL., DEFENDANTS. FELIPE DE ASIS AND EUSTAQUIO CABANILLAS, APPELLANTS.*G.R. No. 42868. April 17, 1935*

Ponente: DIAZ, J.

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Of the three accused who were originally charged with the crime of rape in this case, only Felipe de Asis was convicted. No judgment was pronounced against Eustaquio Cabanillas for he was under eighteen years of age, and the trial judge ordered that he be sent to the Philippine Training School for Boys for confinement until he reaches majority. Juan Cote was acquitted, the lower court being of the opinion that his guilt was not proven beyond a reasonable doubt. The first of the three named accused was condemned to suffer an indeterminate sentence of six years and one day of imprisonment to fourteen years, eight months, and one day of reclusion temporal, with the accessory penalties of the law, and to pay one-third of the costs. With Eustaquio Cabanillas he appealed from the judgment of conviction on the ground that error was committed by the trial court in not acquitting them of the crime charged while their coaccused Juan Cote was acquitted and in giving much weight to the testimony of the sanitary inspector as a witness in this case, notwithstanding his inexperience on the subject of vaginal examination and his lack of the necessary training to give an opinion on the matter.

The evidence for the prosecution, consisting principally in the testimony of Elena Cadayong and Maria Bagason, two unmarried girls 14 and 20 years of age respectively, shows that on their way home from barrio Giporlos, municipality of Balangiga, Province of Samar, where they had gone to buy fish by order of their respective mothers, to the sitio of Iraya of the same barrio, their residence, about the hour of six on the afternoon of July 29, 1934, the appellants with a companion approached them and offered to accompany them to their homes. The girls objected explaining that for this they may be reprimanded by their mothers. The appellants and their companion pretending not to insist on their wishes, went in opposite direction to that taken by the two girls on their way home; but on reaching a stream which they had to cross they were unexpectedly met by the appellants and their companion who, according to the girls' testimony at the trial, was no other than Juan Cote. It was then about seven o'clock at night. The appellant Felipe de Asis, without wasting as much as a word, took hold of Maria Bagason, then closely followed by Elena Cadayong, but the girl, turning out to be faster than De Asis, succeeded in escaping from him to the other side of the road to hide. On losing sight of her, Felipe de Asis immediately turned to Elena Cadayong to get hold of her, as in fact he held her by the legs, and without releasing her threw her down on her back. In this position, Juan Cote held her arms in the fashion of a cross, while Eustaquio Cabanillas mounted upon her after raising her skirt to rape her, as in fact he did, notwithstanding the efforts of the girl to free herself from the three. The appellant Eustaquio Cabanillas was followed by Juan Cote, or the companion of the two appellants, in the revolting act of which the girl was made a victim, while Felipe de Asis continued holding her by the legs to render her helpless, assisted by said Cabanillas who taking the place of Cote, held the girl's arms. After Juan Cote's turn, he was followed by Felipe de Asis, while the girl was held by the arms and legs by

Eustaquio Cabanillas and Juan Cote to render resistance impossible. After the consummation of the crime, the three appellants fled, and without losing time Maria Bagason, emerging from her hiding place, not very far from the scene of the crime, ran to the nearest house about 50 brazas from the place to report what had happened and to ask for help.

Monico Maracas, who is the owner of the nouse to which Maria Bagason went, repaired to the place of the crime and, with Maria Bagason, assisted Elena Cadayong to gather the things which the two girls had purchased in the barrio Giporlos, and which had been thrown abort on the ground when they were taken by surprise and attacked in the manner related.

Appellants argue that the testimony of the offended party and her witness Maria Bagason should not have been given credit by the trial court because the night being very dark, it would have been impossible for them to recognize those who raped the offended party. They base this defense on the testimony of Monico Maracas to the effect that when he went to the scene of the crime at the request of Maria Bagason, he had to use a torch to be able to see because the night was dark, and that neither the offended party nor the witness then told him who were the perpetrators of the crime committed on the person of the offended party. The trial court gave more credit to the testimony of the two girls, and we do not feel justified in disturbing his conclusion on questions of fact, because he saw and heard all the witnesses testify and was, consequently, in a better position to ascertain by the witnesses behaviour and manner of testifying, whether or not they told the truth. (U. S. vs. Pico, 15 Phil., 549; U. S. vs. Maralit, 36 Phil., 155; U. S. vs. Remigio, 37 Phil., 599; People vs. Cabrera, 43 Phil, 64.) This we say not only for the reason stated, but also because of the fact, evidenced by the record and likewise by the calendars, that there was moon at the time, and that thanks to its light the two girls were able to recognize those who attacked them on the way. Also, an hour before the occurrence, the appellants offered to accompany the girls to their homes; moreover, they were not unknown to the girls; and there were a number of short cuts to get to the place in question. The calendars in fact show that the hour of the full moon in July, 1934, was 8.09 o'clock on the night of the 26th of said month, hence it cannot be doubted that on the night in question, July 29, 1934, about the hour of seven, the moon had already risen. It should be stated that there is not the slightest indication in the record which would give rise to the suspicion that the two girls, the offended party and Maria Bagason, testified in this case moved by any resentment against the appellants other than that naturally resulting from the abuse to which they were subjected.

The acquittal of Juan Cote cannot be invoked as an argument in favor of the appellants, because it was due merely to a doubt arising from the failure of the prosecuting attorney to explain why the said Juan Cote was not designated by his own name in the complaint which gave origin to this case in the justice of the peace court of Balangiga, Samar (Exhibit C), knowing, as the two witnesses for the prosecution knew according to their testimony at the trial, that the name of the said accused was Juan Cote.

Appellants' defense of alibi is not satisfactory because not proved convincingly, especially taking into consideration the categorical statement of the offended party and Maria Bagason that the said appellants were two of the three persons who attacked and took them by surprise as seen by their own eyes. We repeat once more that the defense of alibi should not and can not prevail over the positive statement of truthful witnesses who testified having seen and heard facts and acts tending to show that an accused wants to resort said means of defense (U. S. vs. Roque, 11 Phil, 422; U. S. vs. Ambrosio and Falsario, 17 Phil., 295; U. S. vs. Lasada, 18 Phil., 90; U. S. vs. Viilano, 18 Phil., 359; U. S. vs. Oracion and Lambino, 18 Phil., 530; U. S. vs. Lasada and Lasada, 21 Phil., 287; U. S. vs. Banagale, 24 Phil., 69; U. S. vs. Evangelista, 24 Phil., 453; U. S. vs. Garcia, 26 Phil., 289; U. S. vs. Hudieres and Sagun, 27 Phil., 45; U. S. vs. Oxiles, 29 Phil., 587; U. S. vs. Valdez and Gatmaitan, 80 Phil., 293; U. S. vs. Lumanlan, 31 Phil., 486; People vs. Cabantug, 49 Phil., 482; People vs. Palamos, 49 Phil., 601), because it

is a very common defense easy of concoction (*People vs. Badilla*, 48 Phil., 718), especially between parents and children as in the case of the appellant Eustaquio Cabanillas whose witness is his own father; between relatives and friends which is the case with the appellant Felipe de Asis, and even between those not so related.

In the commission of the crime of which Felipe de Asis was convicted, the aggravating circumstances of nocturnity and abuse of superior strength must be taken into consideration (*U. S. vs. Molina and Barbosa*, 20 Phil., 603; *U. S. vs. Iglesia and Valdez*, 21 Phil., 55; *U. S. vs. Camilo*, 36 Phil., 757; *People vs. Solon*, 47 Phil., 443), without any compensating mitigating circumstance. Wherefore, he should be sentenced to reclusion temporal in its maximum period, that is, seventeen years, four months, and one day to twenty years. (Articles 335, 64, rules 4 and 6 of the Revised Penal Code.)

We noted the failure of the trial court in the appealed sentence to provide for indemnity to be paid to the offended party and for the support of her offspring, if any. The law requires that this be done, (Article 345 of the Revised Penal Code.)

It should be said as to the appellant Eustaquio Cabanillas that he was under 18 years of age at the time of the commission of the crime, being then only fifteen years and some months old. Consequently the order of the trial court directing his confinement in the training school for boys until he reaches majority is in accordance with the provisions of article 80 of the Revised Penal Code.

In view of the foregoing, the appealed judgment is modified by sentencing the appellant Felipe de Asis to suffer an indeterminate penalty from ten years of *prisión mayor*, to eighteen years of reclusion temporal, to indemnify Elena Cadayong in the amount of P500, and to support her offspring, if any, in the amount of P10 every month. The said judgment is affirmed in all other respects, with the costs of this instance taxed against the appellants. So ordered.

Malcolm, Abad Santos, Hull, and Vickers, JJ., concur.

Judgment modified.

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