G.R. No. L-11991

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Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-11991 October 31, 1960

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
ORFIRIO TAÑO, ET AL., defendants.
PORFIRIO TAÑO and DIONISIO CANTONG, defendants-appellants.

Humberto C. Garganera for appellant.
Asst. Solicitor General Esmeraldo Umali and Solicitor Pacifio P. de Castro for appellee.

LABRADOR, *J.:*

Appeal from a judgement of the Court of First Instance of Iloilo, Hon. Hilarion Y. Jarencio, presiding, finding Porfirio Taño, Guellermo Camina and Roman Caldito guilty beyond reasonable doubt of the crime of Robbery in band with Rape, and sentencing each of them to suffer the penalty of *reclusion perpetua*, and to indemnify jointly and severally the offended parties in the amount of P210.00, and also finding Dionisio Cantong and Maximo Calico guilty of the crime of simple robbery in band and sentencing them also for said offense. Parfirio Taño and Dionisio Cantong appealed from the judgement, but while the case was pending in this Court, the latter withdrew his appeal. The present appeal, therefore, refers to that of Porfirio Taño.

It is not disputed by the appellant, as found in the decision appealed from, that on July 25, 1955, at 8:00 in the evening, some persons called at the house of the spouses Leodegario Domingo and Herminigilda Domingo in barrio Talacuan, municipality of Loo, province of Iloilo, informing the inmates of the house that there was a letter for Leodegario. As soon as Leodegario reached the ground, carrying a lamp and the fell down and the light was put out. Then Taño pointed a rifle at Leodegario, while Camina tied his hands at the back. After giving a blow on the face of Leodegario, Taño ordered his companions to take Leodegario to the river bank 40 meters away. Then Taño Camina and Caldito went up the house, each carrying with him a firearms. They searched the house, and upon seeing a trunk forced it open and took away some pieces of men's and women's apparel and an envelope containing P210.00.

The evidence shows that after the money had been taken away Taño dragged Herminigilda, pushing her down the floor. Taño then placed himself on top of Herminigilda, while his companions held legs apart. He gave a blow at her left high and tore her "panty" away and then had intercourse with her. After his Camina also had access to her, while his companions held her down. Caldito also did this. After raping her, they went down the house and, thereafter, all of them ran away.

Counsel for appellant Taño argues that there is no sufficient evidence to sustain the finding that appellant had access to the offended party, for the reason that the physician who examined her made no examination of her private parts. That no such examination was made is true; the physician who examined Herminigilda

found a contusion on the face of her left thigh (Exhibit "M"), but made no mentioned of having examined her private parts or having found evidence involving intercourse forced on her.

We have, however, carefully examined the evidence in this respect and we found that Herminigilda testified that when Taño placed himself on top of her, she scratched his face, but Camina came and took hold of, and then stretch her legs apart to aid Taño; hit her on the lap and tore away her "panty"; that her "panty" had a coloration at the lower part caused by the semen of Taño while on top of her (t.s.n. pp. 16-18). Her testimony is corroborated by the finding of a contusion on her left thight and of a coloration of her "panty" which was produced to the court. Besides, the offended party expressly declared that Taño was able to have carnal knowledge of her (*Id*, pp. 18-19). It is well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We can not believe that the offended party would have positively stated that intercourse took place it did actually take place.

Another circumstance which supports the claim that rape was committed is the fact that following the day of the commission of the crime of rape, the offended party stated in her affidavit that three accused, including appellant Taño, had taken turns in committing the crime of rape on her. The imputation of rape is not, therefore, the product of fabrication, because no appreciable time had elapsed between the commission of the rape and the execution of the affidavit.

Last, the trial judge who heard the offended party testify believed her testimony and found that rape was actually committed. We find nothing to indicate that the court's finding in this respect are not correct. We are, therefore, forced to the conclusion that the claim of appellant Taño that the rape imputed to him was not sufficiently proved, is without merit.

We also agree with the trial court that four aggravating circumstances namely, commission by a band, taking advantage of nighttime and dwelling, and use of superior strength attended the commission of the offense. There being no mitigating circumstance in appellant's favor, the penalty should be imposed in it maximum degree.

The judgement of conviction appealed from should, therefore, be as it hereby affirmed. With costs against appellant.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

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