1 Phil. 351

[G.R. No. 881. August 30, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO ALVAREZ, DEFENDANT AND APPELLANT.

D E C I S I O N

LADD, J.:

On the 27th of December, 1901, Maria Esperanza Evangelista, a young woman 21 years of age, left her parents' house without their knowledge and went to the house of the defendant in the same pueblo, where she remained in his company ten days. The defendant was married, but it would appear that he lived apart from his wife. He had represented himself to Maria to be a widower, and had agreed to marry her. The intimacy between them had existed for some months prior to the elopement. Maria testifies that she went to the defendant's house in pursuance of an arrangement had with him, and this evidence, taken in connection with the natural inference which arises from the facts which we have stated—all of them established independently of her testimony—affords ample warrant for the finding of the court below to the effect that she was induced to leave her home by the persuasions of the defendant. Nor can it be doubted, in view of the deceit practiced by the defendant and in the entire absence of any evidence upon which any other explanation of his conduct in receiving her in his house can be based, that his purpose was an immoral one. It is not, however, shown that he actually assisted her in any way in making her escape from her home, further than to receive and conceal her in his house.

Upon these facts, the defendant was convicted under article 446 of the Penal Code, which punishes "the abduction of a virgin under 23 and over 12 years of age, effected with her consent."

It is claimed that the conviction is wrong (1) because the young woman was not taken physically from her parents' home, either by the defendant or through his agency, and (2) because the fact of her virginity at the time of the alleged *rapto* was not established.

(1) The etymology of the word *"rapto"* would indicate that the offense involves a physical taking of the person, but in the case of a *rapto* with the consent of the woman, where *ex hypothesi*s the woman is not taken away from her home by force, but abandons it of her own accord, enticed by the wiles and persuasions of the *raptor*, it is apparent that the word is not used in its original and proper signification, but is employed in the sense of seduction.

> "There are two kinds of *rapto—rapto* by force, punished by article 445 of the Penal Code, and *rapto* by seduction; the first is that which is effectd by violence, against the will of the person abducted, and the second is that which is accomplished without the resistance of the person, when she consents to it through promises, enticements, or artifices of her *raptor*." (4 Escriche, Dictionary of Legislation and Jurisprudence, 793; article *Rapto*.)

In the latter case, if the woman leaves her home in the company of the *raptor*, or if he provides means whereby she may effect her escape, and so, in a sense, takes her from her house, these circumstances are merely incidents in the commission of the offense, and do not pertain to its essence.

The essence of the offense is not the wrong done to the woman, but "the outrage to the family and the alarm produced in it by the disappearance of one of its members." (Judgment of the supreme court of Spain of November 30,1875.) It has accordingly been held by the same court, in a case where the facts were not distinguishable from those now before us, that all the essential elements of the offense were present, the court stating the law to be that "it is not necessary * * * that the virgin * * * should have been taken physically from her parents' house, but it is sufficient that «he has abandoned it, and that, yielding to the allurements and promises of the seducer, she has withdrawn herself for a time from the power and vigilance of her parents." (Judgment of October 29, 1895.)

To the same effect is the judgment of March 31, 1896. We are satisfied, both upon principle and authority, that a forcible taking of the woman is not an element of the offense described in the article under which the defendant was convicted.

(2) Under the Spanish system of proof, the mere fact that a woman was unmarried did not give rise to a presumption *de jure* of her virginity; nor would this fact, without any other evidence tending to show her good repute, be a sufficient basis for a presumption of fact. (Judgment of the supreme court of Spain of July 4, 1896. See also judgment of June 30,

1891.)

Under the system of proof established by the new Code of Civil Procedure, a presumption *de jure* of the woman's virginity would arise whenever it was shown that she was unmarried, and would continue until overthrown by proof to the contrary. (Section 334, 1.)

The provision cited establishes, we think, a rule for both civil and criminal cases, and might be applied to the present case. It is not, however, necessary to decide that this is so, because we think that there is sufficient evidence in the case to warrant the inference of the young woman's virginity, without the aid of any artificial legal presumption. Slight evidence is sufficient of a fact of this character, when there is no absolute proof to the contrary. (Judgment of the supreme court of Spain of June 30, 1891.) Here it is shown, not only that the young woman was unmarried, but that she lived at home with her parents, a mode of life not commonly or naturally associated with dissolute habits. This, we think, was sufficient.

The court below did not find the existence of any aggravating or extenuating circumstances, and we do not discover any. The penalty should, therefore, be applied in its medium degree, and the court erred in applying it in its minimum degree. We are also of opinion that the sum in which the defendant is required to endow the young woman is too large, having regard to the circumstances of the parties and the social and economic conditions of the country.

The defendant should be sentenced to one year eight months and twenty-one days of *prision correccional;* to endow the young woman in the sum of 500 pesos, Mexican, with costs. With these modifications the judgment is affirmed, and the case will be remanded for execution of the judgment as modified. It is so ordered.

Arellano, C.J., Cooper, Torres, and *Willard, JJ.,* concur.

Mapa, J., did not sit in this case.

Date created: April 03, 2014