

[G.R. No. 892. September 11, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN LUNA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

This case was prosecuted in the Court of First Instance of Manila against Juan Luna for attempted abduction, and was brought before us by an appeal taken by the defendant against the judgment of the 12th of March last, by which he was condemned to one year eight months and twenty days of prision correctional, with accessories, and to the payment of costs. While the appeal was pending in this court the attorney for the appellant, by petition dated the 17th of May last, presented to the court a public instrument dated the 15th of the same month, by which, with the consent of the defendant, Tomasa Rivera y Felipe, a widow, who states that she is the mother of the minor Juana Isidro y Rivera, 12 years of age, the alleged victim of the crime prosecuted, granted an express pardon of the offense committed, as the representative of her said daughter, in favor of the defendant, Juan Luna, remitting the penalty to which he may have become liable, this pardon having been granted generously, without consideration of recompense and without coercion. The attorney for the defendant moved the court to declare that the penal action brought by the complaining witness was extinguished, and asked that the bail bond given by the defendant be canceled.

This case deals with an offense in which the penal action or liability to the penalty fixed for its punishment may be extinguished by the express or implied pardon of the party offended, in accordance with the last paragraph of article 448 of the Penal Code.

The motion of the counsel for the defendant is based upon an express pardon, recorded in a public instrument, by the mother of the injured party, who, being a widow, exercises over the complaining witness the rights of parental authority. The Solicitor-General opposes this

motion on the ground that the pardon was not granted by the injured party herself, as is expressly required by the Penal Code.

In view of the clear and precise terms in which paragraph 4 of article 448 is drawn, there can not be the slightest doubt that the express pardon for the offense must be granted by the injured party, and in case the injured party should be a minor, or should lack the necessary capacity to maintain an action, then, in order that the pardon have its effect, it is necessary that this defect be cured by the completion of this deficient personality. In the third paragraph of article 448 it is provided that if the injured party, by reason of nonage or moral condition, should be without capacity to sue, and should be so unprotected as to be without parents, grandparents, brothers, tutor, or curator, then the fiscal may denounce the crime. It appears, therefore, that the right to prosecute the crime or to appear in the action is attributed in the first place to the person aggrieved, and, in the event of such person being unable to do so by reason of lack of personality, then the law designated in successive order the persons upon whom devolves the duty of prosecuting the crime.

Correlative to this precept, the following paragraph establishes the right, conferred by the law upon the injured party, to grant a pardon. In order that the pardon produce its effects it must be made by the person injured, or, in case that person be a minor, then the parents or guardian of such person must take part in the granting thereof. But the granting of pardon by these persons alone, in the name or on behalf of the minor, is not sufficient, because, as the offense essentially and directly affects the injured party, she alone is entitled to remit the offense and to authorize the extinction of the penal action. This pardon can only be presumed in the case of the marriage of the injured party with the offender, and can not be presumed from any act on the part of her representatives.

The best confirmatory demonstration of the doctrine that it is absolutely necessary and indispensable that the pardon be granted by the victim of the attempt herself is a decision of the supreme court of Spain of the 5th of January, 1898, applying the precept of section 4 of article 448 of the Penal Code, to the effect that a marriage entered into by a girl under age, although illegal because of lack of consent of the parents, is sufficient to produce the extinction of the penal action and of the penalty, because, by the celebration of this marriage, the pardon of the offense is presumed, and the crime is blotted out by the marriage of the injured party to the offender. Consequently, as it has not been made to appear that the offended party, Juana Isidro, has expressly pardoned the injury alleged to have been done her by the defendant Juan Luna, and the pardon of the girl's mother not being sufficient to authorize the dismissal of the case in accordance with the provisions of

the Penal Code, we are of the opinion that the contention of the attorney for the defendant can not be sustained, and therefore the motion is overruled, with the costs, and the prosecution of this case in the second instance will be continued. So ordered.

Arellano, C. J., Cooper, Smith, Willard, Mapa, and Ladd, JJ., concur.

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