

[G.R. No. 892. March 14, 1905]

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

D E C I S I O N

TORRES, J.:

Juan Luna was charged with the crime of attempted abduction in that he tried to take away in a carriage a young girl of the age of 12 years, at about half past 11 o'clock on the morning of February 14, 1902, and while the injured party was standing in the door of her house, situated on Calle Azcarraga, district of Tondo. The complaint stated that he performed said act with unchaste designs for the reason that he caught the child around the waist when he attempted to put her in the carrromata which was in readiness in said street. He did not succeed, however, because of the resistance offered by the child and because of the intervention of the policeman, Ramon Babilona, who came in answer to the cries of the child; that the defendant also tried to throw the said child on the ground on the night previous, while she was in the kitchen of her house, although he did not accomplish his purpose because of the child's aunt appearing on the scene in answer to the cries of the child.

These facts are fully proven in the case and constitute indeed the crime of attempted abduction. The principal in this crime made a beginning in the execution of the same, performing all the acts which tended directly to insure the execution of his purpose, and if he did not realize the consummation of his object it was because of reasons outside his will or accidents and not because of his own voluntary desistance. That the attempted abduction was committed with unchaste

designs is furthermore corroborated by the other attempt made upon the chastity of the injured party on the previous night.

We agree with the court below as regards the weight and preponderance of the evidence adduced by the prosecution over that adduced by the defense, and also as regards the statement that there was no aggravating circumstance present in the commission of the crime and that the special extenuating circumstance provided for in article 11 of the Penal Code should be taken into consideration. Therefore the penalty is imposed in its minimum degree.

Taking into consideration article 445 of the Penal Code, together with articles 3 and 66 of the same code, this court is of the opinion that the judgment below, rendered March 12, 1902, should be affirmed. Juan Luna is sentenced to the penalty of one year eight months and twenty days of *prision correccional*, with the accessories provided for in article 61 of the code, and to pay the costs.

This case to be remanded to the court below, together with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith.

Arellano, C. J., Mapa., Johnson, and Carson, JJ., concur.