

5 Phil. 722

[G.R. No. 2452. March 15, 1906]

**MATILDE BALLESTER, COMPLAINANT AND APPELLEE, VS. GONZALO LEGASPI,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C. J.:

The Court of First Instance sentenced Gonzalo Legaspi to three months and one day imprisonment (*arresto mayor*) with the accessory penalties provided in article 61 of the Penal Code, to pay the injured party the sum of 2,000 pesos, local currency, as endowment and 500 pesos, in local currency, by way of indemnification, or in default thereof to suffer subsidiary imprisonment. The court further sentenced him to recognize and support the issue and to pay the costs. From this judgment the defendant appealed.

Further than the testimony of Natividad Garcia there is no proof in the case showing that the accused had sexual intercourse with her. As against her testimony we have the express denial of the defendant. Nothing has been established except the existence of amatory relations between the parties; that the defendant frequently visited the house of the complainant and that others did the same and stopped there as guests. It was also shown that the defendant had written two letters to the girl which in themselves expressed nothing. It further appears that she gave birth to a child in the month of August, 1904, and according to her own statement the parties had sexual intercourse in November, 1903.

The letters in question contained no formal promise of marriage. If in the month of April, 1904, the complaining mother had "cited two witnesses to be present at the wedding," as alleged, which wedding was to take place one Saturday night, and the accused was to "take them along in a carriage" (fol. 21); if, as claimed by Natividad Garcia, "in the month of April the accused asked me whether I wanted to marry secretly, and when I replied that I did and had made the necessary arrangements for the witnesses and prepared everything else to marry secretly, he disappeared and has not shown up since" (vol. 27), it would seem natural

that those two persons who were to be present at the wedding should have been called as witnesses for the purpose of testifying as to the promises made by the defendant at the time. But not even this proof, whatever it might have been worth, was introduced or offered in evidence.

The Spanish criminal jurisprudence in its bearing upon the case at bar is very clear:

(1) In a judgment rendered January 28, 1885, convicting the defendant, the supreme court of Spain held that deceit had been employed by the accused, basing its conclusion upon the fact that both parties lived in the same house at the same time; that they were formally engaged; that they had made presents to each other with the consent of their families; that the girl had become pregnant and had given birth to a child during the course of their engagement; and that the defendant had written certain letters to the complainant in which he insisted that the relations existing between them were not a mere pastime but that it was his earnest desire to marry her.

(2) In a judgment rendered May 14, 1875, in a case where it appeared that the parties had had amatory relations for about two years; that a proposal to compromise had been made; that the girl had given birth to a child; that the child resembled the defendant in the shape of its head, its complexion, and some other features, according to the testimony of two physicians who examined the child, the supreme court of Spain held that deceit can not be said to exist in the absence of a specific promise of marriage on the part of the defendant, or some other circumstance from which deceit can be inferred.

(3) In a judgment rendered March 27, 1885, in a case where amatory relations between the parties were proven by means of letters and the testimony of witnesses, and it' was further shown that the girl had never accepted the attentions of other persons; that she was deceived and seduced by the accused; that she became pregnant and gave birth to a child; that both parties had been seen at different times walking together toward an inn and had stopped at the gate of the inn; that they had also been seen together at the porch of a house situated in a suspicious street of the city, etc., it was held that the evidence was insufficient to convict the accused of the crime charged in the complaint, in view of the finding of the trial court that nothing but love relations had been proven, the complainant having failed to show that the birth of the child was the result of such relations, sexual intercourse, a necessary ingredient of the crime, not being logically and reasonably presumable under the circumstances.

Such is the law on the subject. According to the doctrine laid down in the above decisions, the crime of seduction is committed where a man lies with a woman over 12 and under 23 years of age, through deceit. The law requires that in order to convict of a violation of paragraph 3 of article 443 of the Penal Code, sexual intercourse between the parties and deceit on the part of the accused be proven.

For the foregoing reasons we are of the opinion that Gonzalo Legaspi should be acquitted, with the costs of both instances *de officio*. So ordered.

Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.
