

6 Phil. 26

[G.R. No. 2695. March 26, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO YSIP,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The accused in this case is a Macabebe, a native of the Province of Pampanga, and a peddler by trade. In the course of his journeys he reached the town of Bacon, in the Province of Sorsogon, where he made the acquaintance of one Jacinta Dichoso, a damsel some 17 years of age, to whom without delay he proceeded to pay his addresses. After a few weeks' courtship, he asked her to marry him, and finding that she was not unwilling he sought and obtained the consent of her mother, though for some reason which does not appear of record he did not venture to broach the tender subject to her father.

On an occasion when the father was absent on a visit to a neighboring town, the girl, with her mother and her two little brothers, left their home with the accused, with the avowed intention of accompanying him to his native province where the young couple were to be married. Two days afterwards the bereaved and enraged father overtook the party at the town of Sorsogon, where they were awaiting the arrival of a steamer to take them to their destination, whereupon he promptly filed a complaint charging the accused with abduction (*rpto*) and took the wife of his bosom and his three children back to their so lately deserted home.

A severe penalty is prescribed in article 446 of the Penal Code for the taking away from her home of a damsel more than 12 and less than 23 years of age without the consent of her father, or lawful guardian, and this even though she herself consents thereto. But this court has heretofore held, in line with the decisions of the supreme court, of Spain, that it is an essential element of this crime that it be committed for immoral purposes (*con miras deshonestas*) (United States vs. Enrique Rodriguez, 1 Phil. Rep., 107), and in this case there

is not a scintilla of evidence to support the allegation that the girl was taken away *con miras deshonestas*.

The trial judge was of opinion that improper motives on the part of the accused must be presumed, in view of the fact that he proposed taking the girl to his native province without having previously assumed the lawful bonds of matrimony. We think, however, that the premises do not justify the conclusion, and we are confirmed in this opinion by the fact that the accused burdened himself in his flight with the *impedimenta* of a prospective mother-in-law and her two minor children, and also by the exemplary conduct of the young couple on their journey as far as they succeeded in making it, for it was conclusively proven that during their flight the girl never left her mother's side.

It does not affirmatively appear why so long a journey was undertaken under such adverse conditions; but the prompt pursuit and capture of the party by the angry father offers a reasonable explanation for the anxiety of the accused to put the sea between himself and his sweetheart's home without unnecessary delay; and in, the limited time at his disposal, and in the neighborhood where his prospective father-in-law was more or less known, it was not likely that he would find any lawfully authorized person who would perform the marriage ceremony without full and sufficient proof of the consent of both parents. Similar difficulties would have confronted him had he taken the girl by herself to his native province, though it is easy to understand that he could hope to overcome these difficulties by taking her mother and family with him, as the consent of the mother, in the absence of the father, might be sufficient, in a distant province, to satisfy the scruples of some official with authority to perform the ceremony.

Both mother and daughter corroborate the accused in every important detail of his statement, which was a full and frank relation of all that occurred, though they seemed to suggest that in inducing them to leave their home he must have exercised some hypnotic influence or mysterious power of witchcraft. They say that after performing some strange feats of legerdemain, such as drawing out a piece of wood to a thread as fine as a hair, and reading something which they did not understand out of a little book which he carried, he commanded them to go with him, and they at once found that they had to obey as they had lost all control of themselves and had no will of their own. We are inclined to think, however, that so far as the girl was concerned, a sufficient explanation of her conduct is found in "the round, unvarnished tale of the whole course of Ibe" of the accused, which sufficiently explains "by what drugs, what patience, what conjuration, what mighty magic he won the old man's daughter." And the willingness of the mother to accompany her

daughter is perhaps explained by the fact that she herself is a native of Bulacan, a province adjoining Pampanga, to which the accused proposed to take them, and she may have been glad of the opportunity to visit her old home and friends even at the risk of a temporary or permanent estrangement from her husband.

The accused should be, and is hereby, acquitted of the crime with which he is charged, and will be set at liberty forthwith. The judgment and sentence of the trial court is reversed, with costs de oficio in both instances. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Willard, JJ., concur.
