

[G.R. No. 2891. August 16, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EPIFANIO MAMINTUD,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a written complaint filed on the 29th of August, 1905, by the provincial fiscal in the Court of First Instance of Misamis, Epifanio Mamintud, the defendant in this case, was charged with the crime of rape, in that he, by force and intimidation, in the fore part of May, 1905, had carnal intercourse with his daughter, Grenoveva Mamintud, an unmarried girl of 20 years of age, in a small house situated in an uninhabited place in the mountain of Canibungan, in the barrio of Loculan of the town of Misamis, in violation of the law.

Proceedings having been instituted upon the said complaint, the court, after hearing the evidence introduced at the trial, entered judgment on the 29th of August, 1905, sentencing the defendant to twenty years' imprisonment (*reclusion temporal*) with the accessories provided by law; to endow the offended party with the sum of 500 pesos, and to pay the costs. From this judgment counsel for the defendant appealed.

The only evidence of record as to the existence of the crime and the guilt of the defendant is the sworn statement of the girl, Genoveva Mamintud, who claims that her father, on the pretext that they were going to harvest hemp, took her with him to the aforesaid place, about three hours' walk from Loculan, and upon their arrival at the small house above mentioned, threatened her with a bolo, forced her down upon the floor and had sexual intercourse with her three times between 8 and 11 o'clock that morning. The testimony of the alleged ravished woman is not supported by any other evidence, even circumstantial, but has been denied by her father, the defendant in this case, who alleged that the story of the daughter was a falsehood; that he took her to that place with the knowledge of his wife; that they remained there for about three days, going thereafter to the house of a brother of

his; and added that his daughter had made this charge against him because he and his wife were opposed to her frequenting certain houses.

According to the testimony of the daughter, the assault took place in the early part of May, 1905, but at the earliest after the third day of the month, and the complaint was filed on the 29th of the August following. It does not appear whether any complaint was made prior to this date. If an examination of the girl by a physician had been made immediately thereafter, the result of such examination would have been an element of proof as to the existence or nonexistence of the crime.

It is to be regretted that the provincial fiscal, having, as he had, within his power the means to prove the truth or falsity of the charge made against the defendant and his criminal liability if any, failed to make proper use of such means.

The mother of the girl alleged to have been raped, and the latter's uncle, the younger brother of the defendant, should have been examined for the purpose of ascertaining the truth, but unfortunately this was not done, the fiscal contenting himself with the testimony of the girl and that of the defendant only. It will be noted that the defendant denied the charge and pleaded not guilty and there is no proof of record to overcome the presumption of innocence which exists in his favor until his guilt is satisfactorily established by competent evidence.

It is the duty of the public prosecutor to take an active and direct part in the trial of a case. He is charged with the defense of the community aggrieved by the commission of a crime and with the prosecution of the public action as if he himself were the aggrieved party.

The fate of a defendant depends upon the zeal, ability, and good faith of the public prosecutor, and it is not proper to torture the minds of the members of a court by placing them in the trying position of running the risk of convicting an innocent man or acquitting a criminal, and this only because the public prosecutor did not desire, or did not know how, to do his duty and comply with the provisions of the Penal Code.

We are therefore of the opinion that the judgment appealed from should be reversed and the defendant, Epifanio Mamintud, acquitted, with the costs of both instances *de officio*. He shall be forthwith released from confinement, and after the expiration of ten days from the date of final judgment the case will be remanded to the court below for proper action. So ordered.

Mapa, Carson, Willard, and Tracey, JJ., concur.

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