8 Phil. 64

[G.R. No. 3241. March 16, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS CABANAG, DEFENDANT AND APPELLANT.

D E C I S I O N

TRACEY, J.:

The accused, an Igorot, was convicted in the Court of First Instance of Nueva Vizcaya of the crime of unlawful detention, under article 481 of the Penal Code, which punishes "any private person who shall lock up or detain another or in any way deprive him of his liberty."

An Igorot orphan girl called Gamaya, 13 years of age, was taken from the possession of her grandmother, Ultagon, in the *rancheria* of Anao, in the Province of Nueva Vizcaya, by one Buyag, also an Igorot; whether this was done with or against the will of the grandmother is not altogether clear in the evidence. We accept the version least favorable to the accused—that of the child—who testified that in the daytime Buyag came to the house and took her away, although the grandmother objected, saying "Do not take off that little girl," but not speaking when she went away. The man brought her to his house, about a half mile distant, where she was not confined, but on the contrary was allowed to go back alone to her grandmother, with whom she would spend a little while, returning the same day. She testified that on last leaving, the grandmother was angry and did not wish her to go, but did not prevent her. According to her recollection she remained with Buyag, in the vicinity of her grandmother's residence, some two or three months.

Buyag testified that more than two years before, in order to help the family after the father's death and for the purpose of keeping the child at home, he had bought her for three pigs, twenty-five hens, two measures of rice, and a cloak worth two pigs, from her mother, with whom she remained until the third year, when (her mother presumably having died) she was brought away by one Eusebio, at the instance of himself and another Igorot named YogYog, who had furnished part of the purchase price. Together they instructed Eusebio to sell her

for a carabao and 50 pesos. Eusebio, together with his sister, Antonia, brought her to Quiangan, in the Province of Nueva Vizcaya, and sold her to the accused, Tomas Cabanag, for 100 pesos.

In respect to this last sale, the stories of Tomas, Antonia, and the girl substantially agree. Cabanag had previously been instructed to buy a girl by one Mariano Lopez of Caoayan, to whom after a few days Gamaya was delivered in return for the price, which appears to have been 200 pesos. In his hands she remained for about two months until she was taken away by an officer of Constabulary. Afterwards this prosecution was instituted. Although Gamaya made objection to leaving the house of Cabanag, she appears to have gone without actual constraint and at no time in any of these places was she physically restrained of her liberty; she was not under lock or key or guard, went into the street to play, returned at will, and was not punished or ill used in any way, but was employed about the household tasks; in short, she appears to have been treated by Mariano Lopez as a household servant and to have been well cared for while in the custody of the accused.

It is proved in the case that it is an Igorot custom to dispose of children to pay the debts of their fathers, the transaction in the native language being termed a sale, and the defendant appears to have engaged in the business of buying in Nueva Vizcaya children to sell in the lowlands of Isabela.

In his sentence, the judge below said:

> "However much may be said in extenuation of the alleged custom among the ignorant Igorots of seizing and abducting children for sale and even in selling their own children voluntarily, there is nothing in all this to palliate or extenuate the conduct of the accused in this case.
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> "The Congress of the United States has declared that human slavery shall not exist in these Islands and while no law, so far as I can discover, has yet been passed either defining slavery in these Islands or fixing a punishment for those who engage in this inhuman practice as dealers, buyers, sellers, or derivers, the facts established in this case show conclusively that the child Gamaya was by the defendant forcibly and by fraud, deceit, and threats unlawfully deprived of her liberty and that his object and purpose was an unlawful and illegal one, to wit, the sale of the child, for money, into human slavery. This constitutes the crime of *detencion ilegal*, defined and penalized by article 481 of the Penal Code and this

> court finds the defendant guilty as charged in the information.
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> "There are neither extenuating nor aggravating circumstances found in the case.
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> "The court therefore sentences the accused, Tomas Cabanag, to eight years and one day of *prision mayor* and to pay the costs of this instance with the accessories of the law."

This sentence can not be sustained. There can be no unlawful detention under article 481 of the Penal Code without confinement or restraint of person, such as did not exist in the present case. (U. S. *vs*. Herrera, March 28, 1904, 3 Phil. Rep., 515.)

Under the complaint for this crime it is possible to convict for *coaccion* upon proof of the requisites of that offense (U. S. *vs*. Quevengco, 2 Phil. Rep., 412), but among those requisites is that of violence through force or intimidation, even under the liberal rule of our jurisprudence (U. S. *vs*. Quevengco, *supra*; U. S. *vs*. Vega, 2 Phil. Rep., 167; U. S. *vs*. Ventosa,[1] 4 Off. Gaz., 573); consequently the charge of *coaccion* against the accused can not be sustained upon the evidence.

The Penal Code, chapters 2 and 3, title 12, articles 484 to 490, provides punishment for those who carry off children under 7 years of age or those who devote children under 16 years of age to certain hazardous occupations; but none of these articles can apply to the case before us, except article 486, which punishes him who induces a child over 7 years of age to abandon the house of its parent or guardian. Under this article it is possible that on full proof of the facts, Buyag might be held, but not the accused. It was not the design of the law to prevent parents or grandparents from devoting their children to customary work, nor from receiving compensation for such work in wages or otherwise. Such agreements binding out minors are sanctioned in most countries, usually, however, subject to stipulations for their welfare expressly prescribed by statute. In the absence of proof of what the agreement of the parties or the custom of the people called for in respect of the use, treatment, and care of the child, the term of her service and her final disposition, and particularly in respect of the maintenance of her relations with her grandmother and the prospect of an ultimate return to her, it is not possible to hold that the arrangement was a criminal or even an illicit one. The name applied to it by the custom of the Igorots is not enough to establish that in truth and in effect it was a sale, or anything more than a contract for services. While there is much in this practice to condemn, we do not feel it to be our province to strain the law in order to bring this local custom of this mountain people to an

end. This condition may present matter for the consideration of the legislature but not for action by the criminal courts. Not even the abhorrent species of traffic apparently carried on by the accused justifies a sentence not authorized by law.

The judge below quotes the Bill of Rights of the Philippines contained in the act of Congress of July 1, 1902, declaring that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in said Islands." This constitutional provision is self-acting whenever the nature of a case permits and any law or contract providing for the servitude of a person against his will is forbidden and is void. For two obvious reasons, however, it fails to reach the facts before us:

First. The employment or custody of a minor with the consent or sufferance of the parents or guardian, although against the child's own will, can not be considered involuntary servitude.

Second. We are dealing not with a civil remedy but with a criminal charge, in relation to which the Bill of Rights defines no crime and provides no punishment. Its effects can not be carried into the realm of criminal law without an act of the legislature.

It is not unnatural that existing penal laws furnish no punishment for involuntary servitude as a specific crime. In the Kingdoms of the Spanish Peninsula, even in remote times, slavery appears to have taken but a surface root and to have been speedily cast out, the institution not having been known therein for centuries. It is only in relation to Spain's possessions in the American Indies that we find regulations in respect to slavery. In general they do not apply in their terms to the Philippine Islands where the ownership of man by his fellow-man, wherever it existed, steadily disappeared as Christianity advanced. Among the savage tribes in remote parts, such customs as flourished were not the subject of legislation but were left to be dealt with by religious and civilizing influences. Such of the Spanish laws as touched the subject were ever humane and radical. In defining slavery, law 1, title 21 of the fourth *Partida*, calls it "a thing against the law of nature;" and rule 2, title 34 of the seventh *Partida* says: "It is a thing which all men naturally abhor." These were the sentiments of the thirteenth century.

To sum up this case, there is no proof of slavery or even of involuntary servitude, inasmuch as it has not been clearly shown that the child has been disposed of against the will of her grandmother or has been taken altogether out of her control. If the facts in this respect be interpreted otherwise, there is no law applicable here, either of the United States or of the

Archipelago, punishing slavery as a crime. The child was not physically confined or restrained so as to sustain a conviction for illegal detention, nor are the acts of the accused brought within any of the provisions of the law for the punishment of offenses against minors; consequently the conviction in this case must be reversed, in accordance with the recommendation of the Attorney-General, with costs *de oficio*, and the prisoner is acquitted.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and *Willard, JJ.,* concur.

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[1] 6 Phil. Rep., 385.

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