

[G.R. No. 3620. March 25, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CATALINO DE LA CRUZ
AND JOAQUIN DE LA CRUZ, DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TRACEY, J.:

Catalino de la Cruz and Joaquin de la Cruz, in the Court of First Instance of Bulacan, were adjudged guilty of the crime of frustrated abduction.

With eight companions they went first to one of two contiguous houses in the barrio of Santol in Malolos and tied up some men whom they found therein; they then proceeded to the adjoining house where they called out that all the men there must come down, as they were police agents. The women above answering that the men were absent from the house, Catalino de la Cruz, with one companion, went up and meeting Eulalia de los Santos, forcibly dragged her downstairs and in spite of her resistance carried her away to a distance of 25 *brazas* from the house, when they were interrupted by neighbors answering her cries.

It appears that Catalino, having for a long time been seeking to marry this girl, had been rejected by her about a month before and told that she was pledged to another. One defense set up in his behalf is that even if we accept the facts of the charge as proved, yet we should assume that his object in carrying her off was not to do her any injury other than the notoriety of the adventure. There is nothing in the evidence that justifies such a forced interpretation of his acts, which we think, on the contrary, must be given their natural significance and held to indicate an unchaste design, under article 445 of the Penal Code.

The trial court characterized the crime as frustrated abduction. In an occurrence of this nature it is extremely difficult to draw the line between the attempted and the frustrated crime. It seems, however, that this court in various causes has held facts similar to those now before us to constitute a mere attempt, and it is the opinion of the majority that this criterion is to be adopted in the present case. (U. S. vs. Salazar,^[1] No. 2483, November 15,

1905; U. S. vs. Luna, 3 Off. Gaz., 267.^[2])

Catalino de la Cruz also by his own testimony and that of other witnesses sought to prove an alibi. On this point we do not think that his testimony overcame his positive identification by three witnesses who were present at the occurrence and who also identified his brother Joaquin.

There were three aggravating circumstances in this case, nocturnity, the false impersonation of an officer of justice, and the perpetration of the offense in the woman's house.

The judgment of the lower court is reversed and both accused are sentenced to the punishment of five years' imprisonment (*prision correccional*) with the accessories under article 61 of the Penal Code and to indemnify the injured party, Eulalia de los Santos, in the sum of 200 pesos; in case of insolvency to suffer subsidiary imprisonment, not exceeding one year, and to pay the costs of both instances.

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, and Johnson, JJ., concur.

^[1] Not reported.

^[2] 4 Phil. Rep., 269.
