8 Phil. 205

[G.R. No. 3273. July 13, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. QUIRINOPERALTA AND VICENTE PERALTA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On the 18th day of April, 1904, a complaint was filed with the Court of First Instance of Occidental Negros, of the following tenor:"The undersigned fiscal accuses Quirino Peralta and Vicente Peralta, now on bail, of the crime of kidnapingwith *lesiones leves*, defined and punished by article 484 in connection with article 587 of the Penal Code, committed as follows:

> "Esteban Gemefino, a servant, having run away from the house of the above-named Quirino Peralta and Vicente Peralta, father and son, respectively, on the morning of November 1, 1903, the latter went to the house of Isabel Geranda, at a place named Naga, within the former town of Cabancalan, now consolidated with the town of Hog, in this province, and employing violence upon the said Isabel Geranda, whom they kicked, breaking one of her right ribs, and seized and took away with them Cenon Gemefino, a child under 2 years of age, a grandson of the latter. They took the child to their house and tied it to a wooden pillar, for the purpose of holding it until the said Esteban Gemefino, an elder brother to said Cenon, should make his appearance or return to the house of the accused. This act being a violation of the law."

In our opinion, the facts stated in the foregoing complaint have been fully proven in this case. It has been clearly established that the accused went to the house of Isabel Geranda on the morning of November 1, in search of Esteban Gemefino who had run away while in their service. As they did not find him there, they caught hold of Cenon, a child about 2

years old, brother to the missing Esteban, and as his grandmother Geranda, who carried him in her arms, refused to deliver the child, both the accused Quirino and Vicente illtreated her, and forcibly took the child away from her. They then compelled a young woman named Petronila Lagotar, of 15 years of age, who at that time was in said house, to carry the child to the house of the accused, and when the latter arrived there, they tied the child to a wooden pillar of the house and as the girl Petronila commenced to weep on seeing what they were doing to the child Cenon, the accused dismissed her.

Petronila then went in search of Juan Gemefino, the child's father, and informed him of what had happened. In the afternoon of that day Juan Gemefino reported the case to the justice of the peace of Cabancalan who, on the following day, ordered the arrest of the accused, and directed the child to be taken to his court.

If should be noted that at midnight of the, same date, November 1, the child Cenon was untied by his brother Urbano, who was also in the service of the accused, because of pity for the child and at a time when.the accused Peralta were asleep.

It can not be denied that when the accused seized and removed the child to their house from which he was recovered by two policemen, their intention was only to compel the parents of Esteban, the runaway, to look for him, thus using pressure on them through the seizure of a creature of tender age, for the purpose of compelling the runaway Esteban to make his appearance, because the Gemefino family owed them 100 pesos.

The important question which this cause offers is, How should the crime which the commission of such acts implies, be classified? The complaint merely refers to the crime as that of kidnaping, prescribed and punished in article 484 of the Penal Code, which reads:

> "The abduction of a child under 7 years of age shall be punished with the penalty of *cadena temporal*" (imprisonment for a number of years).

The commentators do not agree as to whether such facts as have been proven in this cause constitute a violation of said article. Apparently, Viada thinks affirmatively, since at page 288 of volume 3 of his commentaries to the code he says:

"The object of the provision contained in this article is to punish severely the sequestration of children, which unfortunately is still too frequently committed, either for the purpose of obtaining ransom from the afflicted parents,or to employ the child as victim of vile

passions, or to make of it a puppet-player or the like, or for the purpose of imploring public charity, etc,.

"The abduction being carried out for any of the above mentioned objects, or for others similar to them, the victim being a child of either sex under the age of 7, whether it was effected by means of violence or by fraud, we have the crime herein defined and punished with *cadena temporal*, to its full extent.'

Pacheco, commenting on article 408 of the Penal Code of 1850, which is the equivalent of article 484 of the present code in force in these Islands, states on page 249 of the third volume of his commentaries, the following:

> "The abduction of a child, whatever may have been the reasons inducing thereto, is a crime of unusual gravity by itself, of great perversity on the part of the person who commits it. Whether it be to cause him injury,.and even if it were to do him good, it is always a step which attacks the holiest and most intimate affections, and the most sacred rights. The law has at all times and in every country looked upon it with just severity, and the article under examination punishes it, as it should be punished,with one of the heaviest penalties which the code inflicts. This is more than the detention referred to by us in the preceding chapter, and there would be no justice if it were not punished more severely.
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> "We do not believe that any difficulty will occur in applying this article. Would any person who seized a child for the sole purpose of locking it up and depriving him of liberty, unless afterwards returned to liberty or to its parents, fall within the provisions of the same? No. Such an act comes under the provisions of articles 405 and 406, which are equivalent to articles 481 and 482 of the Penal Code now in force. The question at issue here is the abduction of a child for the purpose of keeping it, or to cause it to lose all notion regarding its origin, the possession of its true and actual existence. It is like the alleged custom of gypsies, or what a person desiring to suppress the rights of others might do, and for such purpose abducts minors and when in possession of them finds that they are an obstacle to him."

Groizard has evidently the same opinion as Pacheco since at page 575 of volume 5 of his commentaries he says:

> "The crime of abduction of a minor, in view of these reasons and on account of the indications made by us in the introduction of this chapter, has no reason to be thus considered in most of the cases, according to the literal terms of this article. In our opinion, its special meaning should be limited to include, only such parties who abduct minors for purposes other than to obtain ransom, for unchaste designs, to change the status of the abducted party or to commit any other crime expressly defined and punished by the code."

In view of the foregoing, the culpability of the indicted parties as principals, justly convicted of the crime of illegal detention, has been fully proven, although they had no manifest intention of retaining the child permanently, or to cause him to absolutely disappear from the home of his parents, but simply to keep him until Esteban, the abducted child's brother, who had run away from the house of the accused, appeared and returned to their service. For this reason we adopt the view taken by Pacheco in his commentaries, and hold that the act committed by the accused is not included within article 484, but is covered by article 481 of the Penal Code now in force.

The question at issue is a crime against the liberty and safety of a person, and the complaint states facts which actually constitute the crime of illegal detention, and not that of abduction of a minor, as it has been wrongfully termed by the provincial fiscal. In view of the fact that such an error in the classification does not affect any of the rights which the penal law insures to the accused, and whereas the court, upon accepting the opinion of the judge who rendered the decision, considers the offense under a light which, in its opinion, leads to a more exact and proper interpretation of the law, to the benefit of the accused, because of the fact that the penalty is comparatively lower, it is proper, as we deem it, that the accused be punished in accordance with the provisions of the first paragraph of said article 481, in its medium degree, because no mitigating or aggravating circumstances are present.

Nor can the lesser penalty prescribed in the third paragraph of said article be applied, since it has not been shown that the accused spontaneously set at liberty the child that they had so cruelly abducted. The liberation, on the contrary, was ordered by the authorities after proceedings had been commenced upon the strength of the information filed by his own father.

Therefore, basing our opinion on the facts above set forth; the judgment of the lower court

is hereby reversed and the accused, Quirino Peralta and Vicente Peralta, are each sentenced to the penalty of eight years and one day of *prision mayor*, to the accessories prescribed by article 61 of the code, and to pay one-half of the costs in both instances. So ordered.

Arellano, C. J., Johnson, Willard, and *Tracey, JJ.*, concur.

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