

46 Phil. 775

[G.R. No. 19034. February 17, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
PEDRO CRISOSTOMO ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

ROMUALDEZ, J.:

The appellants were prosecuted and tried in the Court of First Instance of Cavite and sentenced by said court as follows:

“For the foregoing reasons, the court finds Pedro Crisostomo, Lorenzo Alcoba, and Casimiro Garde guilty as principals, and Segundo Espiritu, Primitivo Alcoba, and Bartolome Caguiat as accomplices, of the consummated crime of abduction through violence, without any modifying circumstance and sentences the first three to fourteen years, eight months, and one day of *reclusion temporal* and the last three to eight years and one day of *prision mayor*, with the accessories prescribed by law and to pay each a one-sixth part of the costs.

“Pedro Crisostomo is further sentenced to pay to the offended party the sum of P500 as an endowment.”

Such is the judgment from which all of the accused appeal to this court, alleging that the trial court erred:

“1. In holding that the evidence of the prosecution was sufficient and that the facts alleged in the information were proven beyond a reasonable doubt.

“2. In holding that the conspiracy and connivance between the accused at the

time of committing the supposed crime of abduction were duly proven.

“3. In sentencing the accused Pedro Crisostomo to pay the supposed offended party the sum of P500 as an endowment.

“4. In holding that the crime committed by the accused falls within the provision of article 445 of the Penal Code and in sentencing them under said article.”

It is an undisputed fact that after 8 or 9 o'clock in the morning of December 26, 1920, Macaria Gabriel, the offended party, and the accused Pedro Crisostomo were found in the barrio of Salinas, municipality of Bacoor, Cavite. Neither is it disputed that the other accused were there on that occasion. Where the prosecution and the defense disagree it is in that while the former contends that the offended party was abducted by the accused against her will, the latter assert that there was an agreement between her and Pedro Crisostomo and that both of them, by mutual accord, had escaped from the parental house of said Macaria Gabriel when the latter's brother Constantino Gabriel overtook them.

The evidence shows sufficiently and beyond a reasonable doubt that while Macaria Gabriel and her aunt Candida Acuña were walking in the direction of their houses from that of Gregoria Acuña, to whom Macaria had paid the sum of P30, the accused met them on the way and Pedro Crisostomo, Lorenzo Alcoba, and Casimiro Garde, who were with the accused, dragged Macaria Gabriel along and took her against her will to a rice field, Macaria Gabriel not having been able to prevent it by her cries and strife, and the insults proffered by her against those people who maltreated her in such a way, while the other defendants, Segundo Espiritu, Primitivo Alcoba, and Bartolome Caguiat, caught hold of Candida Acuña, thus preventing her from helping her niece until another woman, Gregoria Acuña, attracted by the cries of Candida, repaired to the place and, with a club with which she was provided, attacked those who were holding Macaria Gabriel, and they lastly released her. As soon as Candida Acuña was released by her aggressors, she went to the house of Macaria Gabriel and reported the matter to the latter's brother, Constantino, who ran after the abductors of his sister, overtaking them when they had just released her, which they did upon seeing Constantino.

Aside from the earmarks of veracity prevailing in the testimony of the witnesses for the prosecution, whom the trial judge saw while testifying and gave credit to, it must be taken into consideration that the manner of eloping planned, according to the defense, by Macaria Gabriel, is improbable in the case of a woman like the offended party who, by reason of her 30 years' age, must be presumed more reflexive and cautious in carrying out a preconceived plan than a young woman who, on account of the vehement impulse of passion, does not usually take any precaution and possess a serene judgment which by its own nature is the lesser developed, the tenderer is her age. If it were true that it was Macaria's object to escape, she would not have done so in the daytime, nor would she have gone in company with Candida Acuña, nor would she have, so childishly and in the presence of several persons, as the defense pretends, taken advantage of the circumstance (which does not appear to have been sought by her) of her companion entering the house of Gregoria Acuña to speak with the latter for some minutes. It does not appear that the offended party was under the vigilance of her relatives and, in view of her age, she would have naturally enjoyed a certain degree of liberty such as to go, as she did, to the barrio of Salinas, Bacoor, from her residence in Palicot, Imus; with which liberty she could have planned and carried into effect with full success her escape from the parental house.

Furthermore, the accused Pedro Crisostomo spontaneously admitted to Lieutenant Sotto of the Constabulary having, with his companions, deemed it advisable to abduct Macaria, in view of the fact that she firmly answered in the negative to his proposal and, on another occasion, he requested Epifanio Gabriel, another brother of the offended party, to intervene in his favor and that he considered the fault committed by him as an offense not only against Macaria but also against her family.

The record as a whole does not leave room for doubt that the defendants took away Macaria Gabriel against her will.

But in order that this fact may constitute abduction, it is necessary that the other element thereof should have been proven, to wit, that of unchaste designs.

The defendant Pedro Crisostomo testified that his intention in eloping with

Macaria was to get married with her in Bacoor. While it was not proven that the offended party consented to such an elopement, the violent taking away is not incompatible with such intention to marry the woman taken away. Does this intention to marry constitute unchaste designs? Our answer is in the negative in this particular case in which not only the woman, but the man as well, had the required age for consenting to marriage, and it does not appear that either of them had any impediment to contracting it.

In arriving at this conclusion we are not unmindful of the fact that as a general proposition the intention to marry may sometime constitute unchaste designs not by itself but by the concurring circumstances which may vitiate such an intention, as in the case of abduction of a minor with the latter's consent, in which the male knows that she cannot legally consent to the marriage and yet he elopes with her. In an abduction of this nature seduction is presumed by the law which may very well be covered by the intention to get married.

For this reason, Viada, in defining abduction under the old Spanish laws, says in general as follows:

“By abduction is meant the taking away of a woman from her house or the place where she may be for the purpose of carrying her to another place with intent to marry or to corrupt her (*libidinis causa*).”

But when, in explaining abduction through violence, he specifies the elements constituting the same, he says:

“The elements constituting this crime are these: * * * 3. That it be committed with *unchaste designs*, that is to say, with intent to abuse her. If such an intention does not exist, the act will no longer constitute the crime of abduction, but a crime against liberty, or that of illegal detention denned and punished in article 495 and following of this Code.”

Consequently, the unchaste designs that constitute the essential element of the crime of abduction through violence is the intention to abuse the abducted woman.

Therefore, even considering it as proven that in kidnapping Macaria Gabriel, Pedro Crisostomo had the intention to marry her, such designs cannot in this case be considered as unchaste.

There is, however, the testimony of the offended party, the only one of course on this point, to the effect that, while the accused and his two companions held her and dragged her along, he kissed her many times against her will. However, she herself says the following:

“They dragged me along and at a certain distance I got seasick and became unconscious” etc. (Folio 2, transcript of stenographic notes.)

Those acts that she thought were kisses under those circumstances in which she was seasick and unconscious cannot be considered proven, and the kissings cannot be held to be such in fact and not merely accidental collisions of heads or faces in those moments in which, according to her, Pedro Crisostomo had caught hold of her by the waist and the back and her head was hanging (folio 9, transcript of stenographic notes); and much less can such kissings be held proven over the categorical denial of Pedro Crisostomo of having kissed her (folio 49, id.).

Furthermore, it does not appear from the evidence that outside of those supposed kissings, the accused or any of them ever committed any slight unchaste act with the offended woman during the whole time in which she was in their hands, the length of which time is not specified in the evidence, but which ought to have been sufficient for them to commit any unchaste act, inasmuch as the offended party was under the control of her abductors during the long period of time that elapsed from the moment that her companion Candida Acuña was seized by the other three accused until Gregoria Acuña succeeded in driving them away and from the time that Candida Acuña took the way to the barrio of Salinas, Bacoor, where the affair occurred, and then to the barrio of Palicot, Imus, where the house of the offended party was, reported the matter there to Constantino Gabriel and the latter went to the barrio of Salinas and saw the abductors, until the latter saw him and released their victim.

If Pedro Crisostomo was in such a state of passion that he kissed several

times the offended party, while he and his companions were pushing her and dragging her along, it cannot be conceived why the same or greater exteriorations of such a vehement and disorderly passion were not made during the rest of the period, which was long enough, in which he held Macaria Gabriel in his power.

But such testimony alone of the offended party as to Pedro Crisostomo's having kissed her, perceived by her in those moments in which she was excited and was doing all her efforts to escape and was seasick, and which was positively denied by said accused, cannot be considered proven beyond a reasonable doubt.

It was incumbent upon the prosecution to prove that the defendants were actuated by unchaste designs, but such unchaste designs were not proven. It was not necessary to show that such unchaste designs were carried into effect, but it was required to establish the existence itself of the unchaste intention; but no act or circumstance tending to show such a fact was proven in the record.

We have, therefore, the kidnapping of a woman which was not proven to have been committed with unchaste designs. Abduction, being one of the ways in which illegal detention can be committed, specially qualified by lewd intention, the kidnapping of a woman without unchaste designs must, according to Viada and to our Penal Code, be considered as illegal detention.

And the act proven in the record constitutes this last crime. It is no argument against this conclusion that the accused deprived the offended party of her liberty without placing her in an inclosure; because illegal detention, as denned and punished in our Code, may consist not only in imprisoning a person but also in detaining her or depriving her in any manner of her liberty. Our Penal Code says:

“ART. 481. Any private individual who shall lock up or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of *prision mayor*.”

Neither is it an argument against this finding in the present case that the

information by which this prosecution was initiated is for another crime, for it is alleged therein that the “defendants conspiring and confederating together, did intentionally, unlawfully, and criminally and with unchaste designs” (the latter were not proven) and “through force kidnap” (the information gives the verb in singular but it must be considered as plural, it being a grammatical error) “Macaria Gabriel on a road leading to Salinas, Bacoor, Cavite, taking her therefrom to a rice field in said municipality against her will.” As may be seen, it is alleged in this information that the defendants, in the manner aforesaid, deprived the offended party of her liberty.

It was intimated in the discussion of this case among the members of the court that the crime committed as shown by the record may be held to constitute attempted coercion in so far as the defendants attempted through force to compel the offended party to marry Pedro Crisostomo. In the first place, while it is not sufficiently proven that the defendants, or any of them, had any lewd design in performing the act, yet it is not proven also that they did in fact attempt to compel the offended party to contract marriage. According to the facts proven, it can rather be supposed, which hypothesis is incompatible with compulsion to contract marriage, that the accused merely tried to take the offended party away from the environment of the family, in the hope that, in that way, she might be persuaded without force or violence whatsoever to marry Pedro Crisostomo. Finally there is doubt as to whether the acts committed by the defendants may be held as directly tending to compel the offended party to get married, for, in order that there may be an attempt to commit such a crime, the acts performed must be direct; that is to say, they must be the beginning of the execution of the crime, with a direct, rational, and necessary tendency to produce the aforesaid result. The mere fact of taking away the offended party which is an external act, in view of the evidence introduced, might as well have been for the purpose of injuring or affronting her, or of compelling her through force to marry Pedro Crisostomo. Viada gives an example which appears to us clear:

“A criminal decides to poison his father, which is an internal act and which is beyond the sanction of the law. He buys a poisonous substance. There we have an external act. But is it in itself sufficient to constitute a crime? Certainly, not, for said poison might as well have been bought for the purpose

of killing a person, or for getting rid of venomous animals; in a word, it is an act which is not necessarily connected with the crime." (Viada, Penal Code, vol. 1, pp. 34, 35, edition of 1890.)

Turning now to the participation of the defendants in the commission of the crime, there can be no doubt that Pedro Crisostomo took part therein as principal. Neither can there be any doubt that the defendants Lorenzo Alcoba and Casimiro Garde, who held the offended party and dragged her along to a rice field, assisted by Pedro Crisostomo, are likewise principals for having taken direct part in the commission of the crime (art. 13, No. 1, Penal Code).

As to the defendants Segundo Espiritu, Primitivo Alcoba, and Bartolome Caguiat, who, according to the evidence, did not lay hands on the offended party, but did hold the latter's companion Candida Acuña, evidently for the purpose of preventing said Candida from helping Macaria, they must be held to be accomplices for having cooperated in the performance of the crime by simultaneous acts (art. 14, Penal Code).

The defense alleges that there is not in the record any proof of the confederacy and conspiracy between the defendants. It is true that no witness testified to having seen or heard the accused conspire or confederate. But in view of the simultaneous act of the defendants—three seizing Macaria Gabriel and the other three getting hold of her companion to prevent her from helping Macaria in any manner possible, which is a joint act and tends to the same end, to wit, that of illegally depriving Macaria of her liberty—it cannot be conceived that there was no agreement between the defendants and, for this reason, said act constitutes in itself evident and sufficient proof of the conspiracy and confederacy.

The errors assigned by the appellants to the action of the trial court are groundless, except the one concerning the classification of the crime committed, which we find to be that of illegal detention defined and punished in article 481 of the Penal Code, and as to the endowment which Pedro Crisostomo was sentenced to pay to the offended party, it cannot be upheld, this not being a case of abduction, but illegal detention.

The judgment appealed from is reversed and the appellants found guilty,

without any mitigating or aggravating circumstance, of the crime of illegal detention, Pedro Crisostomo, Lorenzo Alcoba, and Casimiro Garde, as principals, and Segundo Espiritu, Primitivo Alcoba, and Bartolome Caguiat, as accomplices, and each of the first three abovementioned is sentenced to eight years and one day of *prision mayor*, with the accessories of the law, provided in article 61 of the Penal Code; and the three appellants lastly mentioned, to two years, four months and one day of *prision correccional*, with the accessories of the law provided in said article 61 of the Penal Code. Each of the appellants shall pay his proportionate part of the costs of this instance. So ordered.

Malcolm, Ostrand, and Johns, JJ.,
concur.

CONCURRING

STREET, J.:

I concur in the result reached in the decision written by Mr. Justice Romualdez as the determination of the case most favorable to the accused that can be practically attained, considering the diversity of views held by the different members of the court. I cannot refrain from saying, however, that in my opinion if article 481 of the Penal Code is to be applied, the case should be placed under the third rather than the first paragraph.

DISSENTING

**ARAUULLO, C. J., AVANCEÑA and VILLAMOR,
JJ.:**

The majority hold that the crime committed by the defendants is illegal

detention and not abduction through violence, because in their opinion the violent kidnapping of Macaria Gabriel was not done with unchaste designs, that is to say, with intention on the part of the accused Pedro Crisostomo to abuse her, there lacking therefore one of the essential elements constituting the crime of abduction.

The majority having stated in the foregoing decision how and in what manner said kidnapping was accomplished by the defendants, we deem it unnecessary to repeat the same. But it must be added that it also appears proven, without any peradventure of doubt, that while the defendants Pedro Crisostomo, Lorenzo Alcoba, and Casimiro Garde were carrying in their arms and dragging Macaria along against her will, and in spite of her cries and the insults proffered by her against them, to a rice field, the first of said accused kissing her from time to time, and telling her "keep silent, as you do not want to do it willingly, you must do it by force." And it cannot be said that Macaria Gabriel merely thought she was kissed under those circumstances, because, the decision says, said woman had then become, and was thereafter unconscious, as she testified, for from the whole testimony given by her it clearly and evidently appears that the abuses of which she was a victim and the brutality with which she was treated by Pedro Crisostomo and his companions were of such a nature that she fell unconscious and one of those abuses was precisely the act of the accused Crisostomo having been kissing her while she was absolutely incapacitated to repel it. It was also proven that said accused had no amorous relations with Macaria Gabriel, notwithstanding the fact that he had been courting her persistently for two or three years, because, as she herself testified, she did not accept the proposal of the accused, nor his pretensions because she did not like him. What would then be the meaning of the kisses made by the accused to Macaria Gabriel while she was being carried in their arms and dragged along by Lorenzo Alcoba and Casimiro Garde to a rice field, that is to say, to a place where they might be away from the reach of her family or from being seen by any person, except Crisostomo himself and his two companions who might leave both of them on that hidden place on time, in order that the victim might be completely and absolutely at the disposal of her abductor? Undoubtedly, it was not the purpose of contracting marriage with said woman for it can in no way be reconciled with the means employed by the accused and his companions, all of them armed with bolos for the purpose of seizing and taking her to said field

and with the fact of the accused having been kissing her in the presence of those individuals, as criminal as he was, but the desire to continue committing upon her the lewd acts already commenced and terminate by unchastely abusing her, thus satisfying his carnal instincts and the vile passion by which he was in those instants dominated.

It is clear that the accused did not kidnap said woman for the sake of detaining her or depriving her of her liberty and holding her subject to his will and caprice. It is also undeniable that she having constantly rejected the proposal of the accused Crisostomo, because she did not like him, after having been so brutally treated by the accused and the latter having told her that if she did not do it willingly she had to do it by force, what ought logically and naturally to happen after having been a victim of such an abuse was that instead of loving the accused and consenting to marrying him, she would hate and despise him, and once the accused was the absolute owner of the person of said woman, the accused being in the possession of her person, if he began with kissing her in public and before the other defendants, that would have necessarily terminated, since it is natural and human, by satisfying his brutal instincts and unchastely abusing her and even having carnal knowledge with her, when both of them might have been alone in the rice field.

In the case of *United States vs. Ramirez* (39 Phil., 738) this court said: "In a criminal action for abduction, in order to demonstrate the presence of the lewd designs, actual illicit criminal relations with the person abducted need not be shown. (Decision of the supreme court of Spain, June 19, 1891; *U. S. vs. Bernabe, supra*; *U. S. vs. Meneses* [1909], 14 Phil., 151.) The intent to seduce the girl is sufficient. The evil purpose need not be established by positive evidence but may be inferred from acts or conduct proved. (*People vs. Marshall* [1881], 59 Cal., 386.)"

And in the same decision this court said:

"The presence of the lewd designs is here revealed by the actions of the accused. Among other indications of this intent can be mentioned the taking of the girl at night by the use of force and threats to overcome her resistance; the act of embracing her while in the automobile; the proposition to go to a

house in Balic-balic; the beating of the chauffeur who did not want to start the engine of the automobile, and the fact that Rufino Ramirez had been making love to the girl prior to the abduction.”

There can be no doubt that there is complete similarity between the case above-mentioned and the one now before us. In both cases the respective defendants made use of force and threats to overcome the resistance of the woman. In both of them the accused began with committing lewd acts upon the woman; in the first, by embracing her when she was in the automobile; in the second, by kissing her while they were carrying the woman to a rice field and, finally, in the one as in the other case, the accused had been making love to the girl before the abduction was carried into effect. The only difference between both cases is that in the one above cited the taking away of the girl was done in the nighttime, while in the instant case, the taking away of Macaria Gabriel took place in the daytime, but this difference is of no importance whatsoever for establishing any distinction between the one and the other case, because the abduction of Macaria Gabriel, while it took place in the morning, the accused met said woman and her aunt who was accompanying her, or stopped them on a part of the road that was one hundred meters distant from the house whence they had come and in which place there was but another house and, as stated in the same decision, three of them caught hold of her and carried her and dragged her along while the other three carried her aunt to another isolated place of the field, in order that she might not help her niece and to prevent the cries for help which she was making from being heard; that is to say, the taking away of Macaria Gabriel was carried into effect in a place almost uninhabited which, for the purposes contemplated by the accused Pedro Crisostomo, was equivalent to having performed the act in the nighttime.

We do not see, therefore, any reason for not holding the defendants in the present case guilty of the crime of abduction, defined and punished in article 445 of the Penal Code, as the defendants in that other case were. Other cases may be cited in which for a still less stronger reason than that in the case before us, this court, as well as that of Spain, has declared that the act was attended by the third essential element of the crime of abduction, to wit, the lascivious or unchaste designs in the kidnapping of a woman, committed against her will, holding the accused in those cases guilty of said crime, for the

simple reason that in cases like the present, it is seen that the intention of the accused is not merely to deprive the woman of her liberty, if there are sufficient grounds or reasons for deducing the same from his acts and the antecedents, but that such intention is that of unchastely abusing her in any manner, and these acts are sufficient to reveal, as was said by this court in the above-cited decision, the unchaste designs of the accused and constitute sufficient indicia of said designs and it is not necessary to show such intention by positive evidence.

The accused Pedro Crisostomo, Lorenzo Alcoba, and Casimiro Garde are criminally responsible as principals for having taken direct part in said crime of abduction, and the other three defendants, Segundo Espiritu, Primitivo Alcoba, and Bartolome Caguiat, as accomplices because acting under a common agreement and confederating with the preceding three, as shown by all of the acts committed by them in stopping Macaria on the road in company with them and getting hold of her aunt, Candida Acuña, taking the latter by force to another isolated place of the field, thus separating her from Macaria Gabriel and preventing her from rendering any assistance to the latter and asking for said help through her cries to those who might be passing by the place, as well as to the members of the family of the offended party herself, it is undisputable that they cooperated in the execution of the deed by previous and simultaneous acts, although not of such a nature as to be indispensable for the carrying into effect of the abduction, inasmuch as in view of the fact that those who materially executed the deed, by kidnapping Macaria Gabriel, were three and armed, and although her aunt, Candida Acuña, was free, little or nothing could have been done by her to prevent them from accomplishing their criminal intent.

For the foregoing reasons, we dissent from the majority opinion and hold that the three accused, Pedro Crisostomo, Lorenzo Alcoba, and Casimiro Garde, as principals in the commission of the aforesaid crime of abduction, and the other three, Segundo Espiritu, Primitivo Alcoba, and Bartolome Caguiat, as accomplices, without the attendance of any circumstance modifying their criminal responsibility, must be punished with the penalty respectively given for each of them in the judgment appealed from, thus affirming the same with a one-sixth part of the costs against each of the appellants.

Date created: September 27, 2018