

46 Phil. 891

[ G.R. No. 20819. December 03, 1923 ]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.  
BONIFACIO MANALILI Y MORALES, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**VILLAMOR, J.:**

The appellant was sentenced by the Court of First Instance of Cavite to the penalty of seventeen years, four months, and one day of *reclusion temporal* with the accessories prescribed by the law, to pay the costs and to endow the offended party in the sum of P500, for the crime of abduction through violence committed, according to the information, as follows:

“That on or about the evening of the 22d day of January of this year in the municipality of Cavite, Cavite, P. I., the above-named accused being the step-father of Juanita Agabig, fifteen years old, through craft first and then through violence succeeded in carrying away said Juanita Agabig with lewd designs to the municipality of Noveleta, where he did willfully, unlawfully and criminally and through force, lie with her against her will on the night of the same day, the act having caused ruptures in the vaginal mucosa of the girl. Contrary to law.”

Defendant’s counsel in this court contends that the defendant should be acquitted, and in the event of being found guilty, should be convicted under article 446, and not article 445, of the Penal Code. With this contention the Attorney-General is in accord.

We have examined the evidence introduced in this case, and have found that the offended party without any violence whatsoever went with the accused in a *carromata* to Noveleta, where they spent the night, sleeping in a small room almost at the side of the owners of the house. There the accused had carnal knowledge with the offended party with such a passivity on her part as bordered on acquiescence, for she not only failed to ask for help from the owners of the house, but has been pleasantly talking with the accused, according to the testimony of Silvestre Alvarez, the owner of the house.

Without the consent of the offended girl it was not possible for the accused to place her on the following day in a train bound to Manila, without having given rise to public scandal in the Noveleta station, which scandal should have prevented that trip. Moreover, once in Manila she was left by the accused on Calle Magdalena in the house of one Felisa Reyes from the morning of the 23d of January up to the evening of the next day, and yet the offended girl did not do anything in the sense of escaping from her abductor and denouncing the fact to the authorities.

All of which shows in our opinion that the abduction of the complainant Juanita Agabig, single, 15 years old, was done with her consent. And following the doctrine laid down by this court, among other cases, in *United States vs. Bernabe* (23 Phil., 154) and *United States vs. Yumul* (34 Phil., 169), the accused must be held guilty of the crime of abduction with the consent of the offended party, and, in accordance with article 446 of the Penal Code, must be, as is hereby, sentenced to the penalty of two years of *prision correccional* with the accessories prescribed by the law. As thus modified the judgment appealed from is affirmed in all other respects with costs against the appellant. So ordered.

*Johnson, Street, Malcolm, Avanceña, Ostrand, Johns, and Romualdez, JJ.*, concur.

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