

45 Phil. 573

[G.R. No. 20927. December 21, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTANISLAO BALOTAN ET AL., DEFENDANTS. JUAN ROTABIA ALIAS RAMOS, FORTUNATO FAVICO, AND SEVERINO GUTIERREZ, APPELLANTS.

D E C I S I O N

OSTRAND, J.:

The defendants are accused of the crime of abduction, with violence, the information alleging that “on or about the 30th day of October, 1922, in the municipality of Santo Domingo, Province of Ilocos Sur, Philippine Islands, the said accused, accompanied by three others named Eusebio Billon, Luis Pagalanan, and Clemente Aviso alias Calvo, the defendants in criminal case No. 3981 of this court, voluntarily, maliciously, illegally, and criminally, acting together and mutually aiding each other, abducted, with unchaste design, Carmen Aquino, 17 years of age, against her will.”

Billon, Pagalanan, and Aviso, the principal participants in the crime, were tried and convicted in case No. 3981 (R. G. No. 20926 of this court)^[1] upon a similar information. On motion of the private prosecutor, the defendant Estanislao Balotan was discharged from the information in the present case for lack of evidence. The defendants Juan Rotabia alias Ramos, Fortunato Favico, and Severino Gutierrez were found guilty and each of them sentenced to suffer fourteen years, eight months and one day of *reclusion temporal*, with the prescribed accessory penalties and to pay one-fourth of the costs. AH of those defendants who were convicted have appealed to this court.

The evidence

shows that the offended party, a young girl 17 years of age, was present in the public market of the town of Santo Domingo in the morning of October 30, 1922, accompanied by her aunt Agustina Adivisa and her cousin Felicidad Aquino. While there she was set upon by Eusebio Billon who, with the aid of four companions, carried her to a passenger motor truck which had just at that moment arrived at the market place. The girl resisted vigorously and her aunt endeavored to rescue her, but both of them were overpowered by Billon and his companions and the girl was placed aboard the truck and carried to the town of Sinait, some 30 kilometers distant from Santo Domingo.

The motive for the abduction appears to have been the desire of Billon to marry the girl and at the trial she testified that while she was being carried to Sinait, Billon repeatedly kissed her and that he threatened to kill her unless she consented to marry him.

The defendants were seated in the truck when it arrived at the market and all of them accompanied Billon and his other companions to Sinait, but counsel for the defense maintains that the truck was a public vehicle and the defendants were but ordinary passengers, who had no connection with Billon's affairs. There are, however, strong indications in the record that the truck was hired for the occasion by Billon and that the "passengers" were his invited friends. He undoubtedly expected that the young girl, swept off her feet by his resolute attitude, would yield her consent to the marriage and he probably thought it best to bring the wedding party with him.

Upon the arrival of the defendants in Sinait they were detained by the local chief of police, to whom the chief of police of Santo Domingo had telephoned information as to the abduction, and both the defendants and the offended party were immediately sent back to Santo Domingo.

Testifying at the trial of the case," Billon asserted that he had known the girl for some time, that she had agreed to marry him on the occasion in question, but that upon their arrival in Sinait, she changed her mind and withdrew her consent to the proposed marriage.

Billon's testimony is, however, so strongly contradicted by the other evidence in the case that it must be wholly disregarded.

The Attorney-General recommends the acquittal of Severino Gutierrez and Juan Rotabia *alias*

Ramos, and we are inclined to accept the recommendation. There is practically no evidence that these defendants laid hands upon the offended party or that they, in any other manner, aided Billon in his enterprise. Neither is the fact that they were present in the truck conclusive evidence of any conspiracy among them and the other defendants to carry the offended party off by violence.

The court below found that Favico was the driver of the truck. The evidence presented by the prosecution merely establishes that he and Severino Gutierrez were sitting in the driver's seat on the truck, but does not show directly or definitely that he was the driver and the findings of the trial judge are probably based on the evidence for the defense by which this fact is fully established. Counsel for Favico, in his oral argument, strongly insisted that the elements of the crime must be proven by the evidence for the prosecution and that the court below, therefore, erred in taking the evidence for the defense into consideration for the purpose of directly proving the allegations of the information.

There is no merit in this contention, especially so since no exception was taken to the order denying the defendants' motion for the dismissal of the case as to Favico and others upon the completion of the prosecution's evidence in chief. Under the circumstances, it certainly was entirely proper for the trial judge to consider the entire record in determining the defendants' guilt.

We think, however, that the trial court erred in finding the defendant Favico guilty as a principal; his case is very similar to that of *United States vs. Lagmay* (R. G. No. 15009),^[1] in which the defendant Lagmay was the driver of an automobile used by

the codefendants for the purpose of the abduction of a young woman, and in which he was convicted as an accomplice.

For the reasons stated, the judgment appealed from is hereby reversed in regard to the defendants Juan Rotabia *alias* Ramos and Severino Gutierrez, who will stand acquitted of the offense charged in the information, with the costs de *oficio*.

The judgment is modified as to the defendant Fortunato Favico by finding him guilty as an accomplice and reducing the penalty imposed upon him to eight years and one day of *prision mayor*, with the accessory penalties provided for in article 61 of the Penal Code, and the payment of one-fourth of the costs in the first instance and one-third of the costs in this instance. So ordered.

Street, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

Malcolm, J., concurring in part: I concur except as to the defendant Favico who should be acquitted.

^[1] People vs. Billon, promulgated December 21, 1923, not reported.

^[1] Promulgated August 30, 1919, not reported.
