

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANATALIO SALIENTE (ALIAS UDTUHAN) AND JULIAN MONTILLA, DEFENDANTS AND APPELLANTS.

G.R. No. L-2427. June 28, 1949

Ponente: REYES, J.

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REYES, J.:

Found guilty by the Court of First Instance of Leyte of the crime of illegal detention and sentenced to an indeterminate penalty ranging from 2 years, 4 months and 1 day of prision correccional to 7 years, 4 months and 1 day of prision mayor, and to pay the costs, the defendants above named have appealed to the Court of Appeals, but a division of that court has certified the case here as one beyond its jurisdiction on account of the penalty which, in its opinion, should be imposed.

The evidence shows that at about 9 o'clock in the evening of November 4, 1946, the defendants came to the house of Telesfora Alentejo in the barrio of Umating, Abuyog, Leyte, where Telesfora's niece, Juana Briones, was then staying. Telling Juana that they had come for her by order of their "chief," they asked her to go along with them and when she refused she was threatened by defendant Montilla with a bolo and by defendant Saliente with a pistol and then taken against her will to the latter's house in the barrio of Tambis, about two kilometers away. It would appear that the defendants were accompanied by some soldiers, although these were neither named nor identified. Once in Saliente's house, defendants let Juana know that what they had told her about their "chief" wanting to see her was a mere ruse to enable Montilla to have a talk with her in private so that he could persuade her into, marrying him. Juana retorted that she did not want to marry anybody.

Juana was kept in Saliente's house for two nights and one day, but no attempt was made against her honor, thanks to the presence of Saliente's wife. On the third day, Juana was able to persuade the defendants to take her to the house of her brother, Brigido Enclona, so that they could talk the matter over with him. There they were joined by Montilla's father who, in behalf of his son, asked for Juana's hand in marriage. As Juana turned a deaf ear to the proposal, the trio took their departure, leaving her in the house of her brother.

In the evening of that same day, however, the defendants came back and, complaining that Juana had fooled them, they forcibly took her downstairs. Montilla then led her away, while Saliente stayed behind to wait for Enclona, who was then absent. Meeting Enclona on the road, Juana warned him that Saliente was lying in wait for him with the intention of doing him harm. On hearing this, Enclona ran away, while Montilla, on his part, left Juana to herself and went back to rejoin Saliente.

The defendant Montilla admitted having taken Juana from the house of her aunt, but put up the defense that this was done with her consent, since they had long been sweethearts and had, on the day in question, exchanged notes regarding their elopement. On this point he was corroborated by Agustin Jayma and Leonardo Sillar, who claimed to have seen those notes.

We are with the trial court in rejecting this defense. If Juana were really in love with Montilla and had agreed to

elope with him, we do not see why she should refuse to marry him and even try to send him to jail on a false charge. Proof that Juana had not given her consent is the fact that defendants were obviously expecting resistance, for they were not only armed but also accompanied by soldiers. The alleged exchange of notes between Juana and Montilla must be pure fabrication, since it is admitted that these two did not know how to read and write.

The defense of alibi put up by defendant Saliente has nothing to support it other than the biased testimony of himself and his mother and is not sufficiently convincing to overcome the positive testimony of the witnesses for the prosecution as to his participation in the crime. And even supposing that Brigido Enclona had really a grudge against him because he had confiscated his gun and given him a fist blow besides, this in itself would hardly furnish a sufficient reason for Juana Briones to implicate him in a crime in which he had no part.

The contention that the trial court had no jurisdiction to try this case without a new information after it had been provisionally dismissed without defendants' consent, and that the reopening of the case after such dismissal placed them in double jeopardy, lacks concrete basis, for the record before us does not disclose the facts upon which the contention is founded. As the Solicitor General observes, all that can be found touching on this point is some vague manifestation of counsel made at the commencement of the hearing, and such manifestation does not, of course, constitute evidence of the facts now alleged in support of the plea of double jeopardy and lack of jurisdiction.

The crime committed is that of slight illegal detention under the third paragraph of article 268 of the Revised Penal Code, as amended by Republic Act No. 18, approved on September 25, 1946, it appearing that the defendants voluntarily released Juana Briones within three days from the commencement of her detention without having attained the purpose intended and before the institution of the criminal action against them. The penalty prescribed is prision mayor in its minimum and medium periods and a fine not exceeding P700. As the crime was committed with the aggravating circumstances of nocturnity and dwelling, not compensated by any mitigating circumstance, the said penalty should be imposed in its maximum period.

Wherefore, the defendants are declared guilty of slight illegal detention and, in accordance with the Indeterminate Sentence Law, sentenced each to a penalty of from 2 years, 4 months and 1 day of prision correccional to 8 years, 8 months and 1 day of prision mayor. They are furthermore sentenced each to pay a fine of P500. Modified accordingly, the sentenced appealed from is affirmed, with costs against the appellants.

Moran, C. J., Ozaeta, Paras, Feria, Bengzon, and Tuason, JJ., concur.

REYES, J.:

I hereby certify that Mr. Justice Pablo and Mr. Justice Perfecto voted in favor of this decision.

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