

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LICERIO (alias FELIX TOANQUIN) DEFENDANT AND APPELLANT.

G.R. No. L-41966. April 04, 1935

Ponente: HULL, J.

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HULL, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Abra, finding the appellant, Licerio (alias Felix Toanquin), guilty of the offense of rape and sentencing him to undergo imprisonment for an indeterminate period running from eight years and one day, prisión mayor, to seventeen years, four months and one day, reclusión temporal, with the accessories prescribed by law, and requiring him to indemnify the offended party in the amount of P500 in case she should have an offspring, and requiring him to pay the costs.

The acts which gave rise to this prosecution took place in the municipality of Tayum, Province of Abra, at about two o'clock in the afternoon of November 27, 1933. It appears that, while the injured girl, Felisa Keyes, was alone in her house, she heard the door creak. Getting up from the bed where she was then resting and crossing the living room to see what was the matter, she met the defendant, Felix Toanquin, already in the middle of the room. She inquired what he wanted, but in reply he held her by the arms and, covering her mouth with a hand, threw her down on the bed. He then placed himself on top of her and, by means of force, succeeded in having sexual intercourse with her. After this act was accomplished, the defendant hurriedly went away, leaving the girl weak and dizzy. When her uncle arrived shortly thereafter, he found her in bed, crying, and, asking her what was the matter, the girl told him that the appellant had ravished her. Thereupon he looked for her mother, Eleuteria Tadeo, who presently arrived and found the complainant still crying in bed, perspiring profusely and having hemorrhage. After Felisa Reyes had told her mother what had occurred, the latter sent for Dr. Gaspar Baula. But, in view of the fact that the doctor was then in another town, no physical examination was actually made until the next day, November 28, 1933.

The appellant admits having had sexual intercourse with the offended party on the occasion with which we are here concerned, and the only question presented in this appeal is whether or not it was accomplished through force and violence on the part of the appellant. Upon a careful examination of the proof, in connection with the assignments of error, we find that the judgment of conviction has been fully made out. The employment of force is established not only by the testimony of the injured girl but also by the signs of finger grips on the front part of her neck, on the arms and forearms, on her cheeks and around her mouth, as well as by the fact that the garments worn at the time were torn and heavily stained with blood.

The theory of the defense is that the appellant and the complainant had been in love with each other prior to November 27, 1933, and that he went to her house on the occasion in question at her invitation. The appellant would also have this court believe that he was at first reluctant to have carnal knowledge of her, but, after she had fondled his genital organ and raised her skirt, and as he was previously assured that he could do to her what he

wanted, he yielded to his passion.

We cannot give our adherence to this line of defense. Aside from the fact that Felisa Reyes denies having had any love affair with the appellant, it is highly improbable that she, a young country girl, who never had sexual relation prior to the occasion in question, would have invited him to her house, knowing fully well that he is a married man, and would have suggested that she would give up herself to him. It is likewise hard to believe that she would be so corrupt as to touch his private part in order to arouse his sexual desire. Furthermore, if it is true that the meeting of the appellant and the girl in the house of the latter was planned by her, it is indeed surprising why he should be hesitant in having intercourse with her and why it would be necessary for her to awaken his sexual excitement. If it is true, also, that they were sweethearts and he—in his own words—was still "un var6n vivo", it was unusual why he should have hesitated in conquering her then and there. Again, it is alleged that, before the appellant went to the house of the girl, the latter coughed and made a sign with her hand to the accused to come up to her house, and this was done by her while the appellant was conversing with Mariano Valladolid in front of appellant's house. If it is a fact that, as testified to by the appellant, there was a previous agreement for him to go to the house of the offended girl in the afternoon in question, it would certainly have been unnecessary for her to make the alleged signal, especially in the presence of another person.

It appears that the house of the offended girl is located in the center of the población of Tayum, and it is contended for the appellant that, if the girl had only made an outcry as a sign of resistance, the inmates of the neighboring houses, the nearest of which was about 12 or 13 meters away, would have been attracted to the occurrence. At first blush this contention seems plausible. Upon a close examination of the record, however, we find that at the time this offense was committed it was harvest season and most of the people in the locality were out in the fields and the children in school, with the result that the place was practically deserted. This might have been known to the appellant. The proof for the defense tends to show that on the occasion in question the wife of the appellant made a disturbance in the house of the girl, and yet no suggestion is made that the attention of any of the neighbors was attracted to it. This circumstance also confirms the probability that at the time referred to most of the people were away from their homes. Moreover, we are inclined to give credence to the testimony of the girl to the effect that she could not scream owing to the fact that her neck was under pressure of the hand of the appellant, if not all the time, at least for a length of time sufficient to weaken her and overcome the requisite resistance. We should not also lose sight of the fact that the appellant was the chief of police of the municipality and was of greater stature and size than the injured girl.

It being understood, therefore, that the judgment appealed from is modified in the sense that the requirement to indemnify the injured girl in the amount of P500 is made absolute, and not subject to the condition that it should be paid in case there should be an offspring, and that the appellant is also sentenced to support the offspring, should there be any, the same is affirmed, with costs against the appellant. So ordered.

Malcolm, Abad Santos, Vickers, and Diaz, JJ., concur.

Judgment modified.

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