

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO.BUENAFE Y CALUPAS, DEFENDANT AND APPELLANT.*G.R. No. L-8056. May 30, 1956*

Ponente: PARAS, C.J.

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The defendant-appellant, Francisco Buenafe y Calupas, was charged in the Court of First Instance of Manila with the crime of forcible abduction, in that "on or about the 7th day of December, 1953, in the City of Manila, Philippines, the said accused, with the use of a motor vehicle, did then and there' wilfully, unlawfully and feloniously with lewd designs, abduct the undersigned, a woman, by pushing her into a taxi at the corner of Algeciras, España, this City, and carrying her away against her will." After trial the court convicted him only of acts of lasciviousness, and sentenced him to 6 months and 1 day of prision correctional, with legal accessory penalties, and to pay the costs. From this judgment an appeal was taken directly to this Court, the appellant merely raising the legal contentions that the lower court erred in holding that the caresses of a lover are acts of lasciviousness and punishable under the Revised Penal Code, and in convicting him of acts of lasciviousness under the complaint for forcible abduction. We are therefore concluded by the following findings of fact contained in the appealed decision:

"According to the testimony of the offended party, while she was walking near the corner of Algeciras and España Streets, she saw the accused alight from a taxicab and then he approached, grabbed, her and lifted her into the vehicle. Inside, the accused embraced and kissed her and touched her private parts and while she was struggling against the accused to free herself, she succeeded in opening the door of the taxi and at the same time she leaped out and fell in a canal. The accused went after her but she managed to escape until she reached the house of Sims at No. 1103 Washintgon Street.

"From the evidence presented by the accused, it appears that he and the offended party, Dominga Reyes were sweethearts as shown by the letters sent by her to him marked Exhibits 2 to 13. Said letters show that she often asked for, and received money from the accused for her needs at school and for her personal use; that they used to go out together to dances and movie houses, and that they used to meet in the Science Building of the Far Eastern University.

"In a letter of the offended party to the accused dated December 2, 1953, marked, Exhibit 2, she asked him to be at their usual meeting place in the Science Building of the Far Eastern University the following Monday, or December 7, 1953. In that letter, she stated that she needed some money for Christmas and for her personal expenses. Accordingly, the accused met her at the Science Building and in the course of their conversation, Dominga told him that she needed PSO. The accused stated that he did not have money at that time but he would try to secure the needed amount and promised to give the money to her in the afternoon of that day, and for that purpose, they agreed to meet on Algeciras Street after lunch time. Accordingly, he arrived there in a taxicab and soon thereafter, the offended party appeared and boarded the vehicle. While they were passing along Espana Street, the offended party asked him for the money and he answered that he had only P10 at that time. The accused embraced and kissed her and took liberties with her person, and evidently because of her disappointment in not getting the amount she needed, she struggled against him and jumped from the vehicle.

She ran away followed by the accused until she reached said house of Sims where she asked for help.

"The facts above stated show that the offended party went voluntarily with the accused in the taxicab expecting to get some money from him as usual, but the accused instead of complying with his promise to give her the amount of P50 told her that he did not have the amount and started caressing her. She put up strong resistance, leaped from the taxicab and freed herself from the accused. The facts disclosed by the evidence fail to show that the accused is guilty of forcible abduction. At most the acts done by the accused constitute acts of lasciviousness. He took advantage of the occasion when Dominga was alone with him inside the taxicab and was tempted to take more than the usual liberties allowed a lover. If she were in her right mood, she would perhaps not have objected. But notwithstanding her objections he forced his attentions upon her until she ran away to escape from his unwelcome advances. The relation between the accused and the offended party is to be taken into consideration in the imposition of the penalty."

The appeal is well founded. Under Article 336 of the Revised Penal Code any act of lasciviousness committed upon a person of either sex, is punished by prision correctional if any of the circumstances mentioned in Article 335 is present, among which is the use of force and intimidation. In the case at bar, although the trial court concluded that the appellant embraced and kissed, and took liberties with the person of, the offended party against her strong resistance, it did not expressly find that said appellant was prompted by lust or lewd designs. Indeed, considering that the incident took place in a taxicab while passing along a public thoroughfare and at about noon time, it is difficult to believe that the appellant could have desired more than the ordinary outbursts of one in love. Even as regards the resistance put up by the offended party, the trial court observed that she struggled against appellant because of her disappointment in not receiving the P50 promised by him,—implying that she resisted not because she did not welcome appellant's caresses but because she expected him first to comply with his commitment. To sustain the charge of abusos deshonestos, something more must appear than that, with or without her consent, an ardent lover kissed and embraced for a moment a young woman of whom he was enamored, (*U. S. vs. Gomez*, 30 Phil., 22).

Wherefore, the appealed decision is reversed and the appellant acquitted with costs de oficio. So ordered.

Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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