

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAZARO EVANGELISTA AND ANDRES BANDILLO, DEFENDANTS. LAZARO EVANGELISTA, APPELLANT.

G.R. No. 10093. November 24, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

Said defendants were charged with the crime of rapto. The complaint alleged:

"On or about the 23d day of June, 1913, in the municipality of Santa Cruz, Province of Laguna, the accused, willfully, maliciously and criminally, availing themselves of the darkness of night, with abuse of confidence, abducted from her dwelling, with her consent, a young girl named Severina Flores, said girl being over 12 and under 18 years of age. Crime committed in violation of law, with the aggravating circumstances Nos. 10, 15, and 20, of article 10 of the Penal Code."

Upon said complaint, the defendants were duly arrested, arraigned, pleaded not guilty, and were tried. At the close of the trial the said Lazaro Evangelista was found guilty of the crime charged in the complaint and sentenced to be imprisoned for a period of 4 years and 2 months of prision correctional, with the accessory penalties provided for by the law. He was also sentenced to pay to the offended party, Severina Flores, the sum of P500 and in case of insolvency to suffer subsidiary imprisonment, and to pay one-half the costs.

The lower court found that the proof was not sufficient to show that the said Andres Bandillo was guilty of the crime charged in the complaint and absolved him from all liability thereunder, and discharged him from the custody of the law, with costs de oficio.

From that sentence the defendant Lazaro Evangelista appealed to this court and made several assignments of error. The only question presented by said assignments of error is whether or not, under the facts proved during the trial of the cause, the defendant and appellant is guilty of the crime charged.

The Attorney-General, in a carefully prepared brief, analyzed the evidence, pro and con, adduced during the trial of the cause and reached the conclusion that in his judgment the sentence of the lower court should be affirmed.

After a careful examination of the evidence brought to this court we have reached the conclusion that the facts found by the Honorable Isidro Paredes, in his decision, contain a clear and accurate resume of the proof adduced during the trial of the cause. Judge Paredes, in his sentence, found:

"In support of the charge herein filed, the prosecution adduced evidence from which the following facts appear: In or about the month of June, 1913, Severina Flores, a girl 15 years of age and a daughter of Lorenzo Flores, was living in custody and in the company of her grandmother's sister, Juana Flores, and in her house, situated in the municipality of Santa Cruz, Province of Laguna. About midnight of the said 23d of June, Juana Flores awoke and found that her grandniece Severina was missing; that the girl had disappeared in some unknown manner. At about the same hour, that is, at midnight, the witness Apolonio Flores, on leaving the corner of the lot on which his house stood, saw Severina Flores passing along the road in company with the

accused Lazaro Evangelists, and Andres Bandillo, and having asked them whither they were going they replied that they were going to the barrio of Gatic. But it turned out that the accused and the girl Severina, instead of going to Gatic, embarked in a banca which Andres Bandillo, a boatman, had already prepared by order of his coaccused, Lazaro Evangelists; traveling in the said small boat they succeeded in crossing Laguna de Bay to the municipality of Jalajala, Province of Rizal, where they stayed in a house for some time, after which they again embarked in another banca and went to the municipality of Binangonan, of the same Province of Rizal. During all of this time Severina's father and other relatives were engaged in an unsuccessful search to find her. In the month of October, Severina Flores appeared at the house of Pablo Guilatco, in Santa Cruz, Laguna, and after that it was rumored that she was married to a certain Enrique Rojas.

"As against the foregoing facts proved by the prosecution, the defense has attempted to show: that Severina Flores maintained amorous relations with Enrique Rojas long before the month of June, 1913; that at midnight of the 23d of June, Enrique Rojas abducted Severina from her grandmother's house where she was living, and took her with him to Jalajala, Province of Rizal, first traveling in the small banca belonging to Andres Bandillo, and afterwards in that of Patricio Barroso, they having transferred to the latter in the middle of the lake; that they lodged in Jalajala and after remaining there for some time went to Binangonan and, lastly, from Binangonan to Manila, where Enrique Rojas and Severina Flores contracted a religious marriage before a minister of the Philippine National Church, in Binondo; that, finally, the accused Lazaro Evangelista took no part whatever in the removal of Severina Flores from her house, nor in her elopement to the municipality of Binangonan and afterwards to Manila, for the purpose of getting married.

"But the court must accept as true the facts established by the prosecution, and reject as false and manufactured those the defense has tried to prove. The reasons which guided the court in forming his opinion on this point are the following: Enrique Rojas never paid court to Severina Flores, either before or after 23d of June, 1913, while on the other hand it was the accused Lazaro Evangelista who maintained amorous relations with the girl to the extent that Severina was removed from Evangelista's house where she was living, she being a niece of Evangelista's wife, to the house of her grandmother, whence later on she, was abducted. Certain acts of a suspicious nature on the part of Evangelista caused this removal to be made, aside from the fact that one day in the month of March, 1913, Evangelista and Severina, while lying down together and alone inside of a concealed shack in a barrio of Santa Cruz, were there surprised by the witness Gaudencio Flores, who later reported what he had seen to Severina's grandmother. Neither was it Enrique Rojas who abducted Severina from her home on the night in question, nor was it Rojas who escaped with her in the small banca and afterwards went to the municipalities of Jalajala and Binangonan, but according to impartial and creditable witnesses, it was the accused Evangelista who accompanied Severina that night, embarked with her in Andres Bandillo's small banca, and took her first to Jalajala and afterwards to Binangonan. Enrique Rojas did not take the slightest part in this flight and was never in the company of Evangelista and Severina Flores, for a moment. Evangelista and Severina traveled alone and always in each other's company, as though they were husband and wife. In the houses where they lodged they also slept together and treated one another as if they were truly married. In view of these facts, the claim that Enrique Rojas was the abductor, and not Evangelista, is utterly unsustainable.

"The evidence of the alleged marriage between Enrique Rojas and Severina Flores might carry some weight, if Rojas were herein charged with abduction, and if Lazaro Evangelista, instead of denying his part in the abduction, had admitted it. In that case, the abductor having married the abducted girl, it would be held that all criminal liability on the part of the abductor was extinguished; and this liability being extinguished, that of his accomplices Evangelista and Andres Bandillo would also have been extinguished. But Enrique Rojas not being accused, and Lazaro Evangelista denying, as he does, his share in the abduction, the foregoing defense of the alleged marriage is entirely superfluous in the present case. Such a marriage, if it had taken place, would only serve to prove to the court that before the abduction Rojas and Severina maintained amorous relations with each other and that these relations were legalized by the marriage after the abduction. But the court can not even believe this alleged marriage, for, according to the evidence, it is rather the accused Lazaro Evangelista

who is Severina's husband.

"The facts proved by the prosecution constitute the crime of abduction, provided for and punished by article 446 of the Penal Code. At the time of the commission of the crime, Severina Flores was a maiden 15 years of age. Her father, Lorenzo Fiores, so testified, and although when she testified in the habeas corpus proceedings and in this cause also she stated that she was of a different age, her testimony can not prevail over her father's. In fact all the knowledge a person has of his age is acquired from what he is told by his parents, and the remarks or statements of his parents in regard thereto is the best evidence. Severina Fiores was removed from the house where she was living by the accused inV the middle of the night of June 23, 1913. The fact of this removal is logically deduced from certain acts previously performed, and proved during the trial, to wit. On the night mentioned Lazaro Evangelists had contracted with Andres Bandillo for a small banca to carry him to Jalajala, That same night Evangelista, in company with Bandillo, was waiting for Severina to leave her house and when she left it they took her with them to the said banca. Prior to the date referred to, Evangelista and Severina maintained amorous relations, as aforesaid, and the sole person interested in taking Severina from her home was Evangelista. The fact then of Severina's leaving her house on the night in question must either be attributed to a series of strange happenings or it must be admitted that her departure was the result of an appointment, an inducement, or an invitation on the part of the accused Evangelista.

"The defense in his written brief cites for the court several decisions by the honorable Supreme Court of these Islands and by the supreme court of Spain, in which it is held that, in order that the crime of abduction with consent may be committed, it is necessary that there shall have been inducement, seduction, cajolery, or promises on the part of the abductor, and that when, instead of such acts, the initiative is taken by the abducted female, because she herself voluntarily and by an act of her own abandons her home to accompany her lover, then it is not a case of abduction, but simply one of elopement. The court has carefully examined these cases cited by the defense and finds a notable difference between them and the case at bar. In the present case there is no direct, but only indirect, evidence as to the manner and form in which Severina Flores left her home, while in the cases cited by the defense the evidence positively and explicitly shows that it was the abducted person who voluntarily left her home and went to that of her abductor. It is very just and natural that in these cases cited by the defense our courts should have acquitted the accused, because it was proven therein that the initiative in the departure from the paternal roof was taken solely and exclusively by her who was said to have been abducted, and in no manner by the accused; but in the case at bar there is no evidence to show that Severina Flores, of her own free will, left her grandmother's house to go to join her paramour, Lazaro Evangelista; and if there is no proof to this effect it is evident that the court cannot apply the rules laid down in the cases cited by the defense. There is no evidence that Severina Flores voluntarily abandoned her home, but there is, on the other hand, circumstantial evidence that such abandonment was the result of inducement or seduction on the part of the accused Lazaro Evangelista. Therefore the court is sure of its grounds in holding that Evangelista committed the crime defined and punished by article 446 of the Penal Code. According to all the proven facts in this case, no other person but the herein accused Lazaro Evangelista induced, or could have induced, Severina Flores to leave her home.

"The crime was committed at night, and, from all the circumstances of the case, nighttime was purposely Bought. Lazaro Evangelista is an educated person. He was a law student and is now a councilor of the municipality of Santa Cruz. Prior to the abduction, he kept Severina in his house as though she were his daughter on account of her being his wife's niece. Therefore, in the commission of the crime, the attendance of two aggravating circumstances must be taken into account, namely: Nocturnity and abuse of confidence. No mitigating circumstance is present."

The lower court found that there were two aggravating circumstances, nocturnity and abuse of confidence. There seems to be nothing in the record to justify the conclusion that there existed an abuse of confidence on the part of the defendant.

The foregoing facts, in our opinion, clearly show that the defendant was guilty of the crime charged in the complaint and fully justify the conclusions of the lower court, Therefore the sentence of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

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