

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTEBAN ASUNCION, DEFENDANT AND APPELLANT.*G. R. No. 10340. October 02, 1915*

Ponente: CARSON, J.

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The appellant in this case, Esteban Asuncion, was convicted in the Court of First Instance of the Province of Tarlac of the crime of abduction of a virgin over 14 years of age, executed against her will and with unchaste designs, and sentenced to suffer the penalty of seventeen years four months and one day of reclusion temporal.

No evidence was submitted by the defense and the conviction of the accused rested wholly on the testimony of the witnesses for the prosecution.

Obdulia Dulay, a girl over 14 years of age, testified that the defendant came to her father's house on the night of January 15, 1914, and taking her by the hand commanded her to follow him, at the same time threatening to kill her if she cried out; that upon going down out of the house another man, a companion of the defendant, who was waiting there, seized her by her other hand and thus aided the accused in taking her away from her home; that the accused had carnal relations with her that night; that early the next morning they went to an outlying barrio, where they stayed for about two weeks, living together as husband and wife; that thereafter they went to another barrio, where they remained some three weeks; and *that from there they went to still another barrio, where she remained with the accused for about two months and until she returned to her father's home.

Marciana Dulay, the 7-year-old sister of this witness, testified that she was in the house at the time when the accused called there and took her sister by the hand, ordering her to keep quiet and accompany him; and that she and her sister were alone in the house at that time. Sixto Olap, another witness for the prosecution, testified that he passed the girl in company with the two men on the night in question at about 7 o'clock and that noticing that the girl was crying, he asked them where they were going without receiving any satisfactory answer, whereupon he went about his business, making no protests and not attempting to interfere in the matter in any way.

The testimony of these witnesses, taken together with the other evidence in the record, leaves no room for doubt that the girl Obdulia Dulay left her father's house in company with the accused and thereafter lived with him and had carnal relations with him in various places for a period of more than two months. The only real question raised on this appeal is whether the girl accompanied the man of her own free will and accord, or whether she was induced to do so by the use of force and threats of violence. In her testimony she insisted that she never willingly consented to accompany the accused or maintain illicit relations with him and that she was induced to do so only by his exercise of physical force in taking her away from her home and his threats of injury to her person unless she maintained illicit relations with him. She even went so far as to say that she had been closely watched during the whole period she was living with the accused, and had never had an opportunity to escape from him and return to her father's home. We are inclined, however, to doubt the truth of the girl's statements in this regard. Her conduct, as disclosed by her evidence, raises at least a reasonable doubt as to the truth of her claims of the use of

force and threats by the accused. Her family and that of the accused had been on friendly if not intimate terms, and it seems strange that she would have permitted him to take her from her home without making some outcry; and that she would have met the witness whom the party passed on the road and who was evidently well known to her, without making some vigorous demand for assistance, if, in truth, she had just been abducted from her home by the use of force and violence. While the threats which she says the accused made against her life if she made any outcry might well have induced her to leave her house without any great show of resistance, it would seem hardly probable that such vague threats could have made her hold her peace when she passed an acquaintance on the road from whom she might reasonably expect assistance, or at least that he would call upon others to go to her rescue. The young sister, by whose evidence the prosecution undertook to corroborate her account of the circumstances under which she left her home, admitted that she had been coached as to the testimony she should give, and this fact, taken together with the fact that, due to her tender years, she was manifestly influenced in what she had to say by the suggestions of her sister and other members of her family, detracts not a little from the credibility of her statements. We are more particularly impressed, however, by the manifest falsity of the explanation of the abducted girl of the reasons for her continued residence with the accused. Her story that she was closely watched and detained against her will during the entire period of her absence from her home would appear to be at variance with the rest of her story as to the circumstances under which she lived with the accused, and in our opinion is manifestly untrue. She does not appear to have complained to anyone of her enforced detention, although there can be little doubt that she had many opportunities so to do, and she admitted that only at the suggestion of the defendant's brother did she finally return to her home. The girl did not claim that she made any request to be taken home, but said that at the suggestion, of the brother of the accused she went back to her home with him. The evidence does not disclose how far away she was living at that time from her home, but on the girl's own statement the return trip occupied not more than a day. There is no indication that any objection to her return was made by the accused, and there are many indications in the record which lead us to doubt the truth of her statement that she had been closely watched and forcibly detained during the entire period of her absence.

On the whole record we think that the evidence introduced by the prosecution does not establish beyond a reasonable doubt the charge that force or threats were used in the abduction of the girl; but we are satisfied beyond a reasonable doubt that she was abducted by the accused from her home with lewd designs and with her own assent and that he is therefore guilty of the offense defined and penalized in article 446 of the Penal Code.

The judgment entered in the court below convicting and sentencing the defendant of the crime of abduction of a woman executed against her will and with unchaste designs, as defined in article 445 of the Penal Code, should be reversed, and the accused should be convicted of the offense of abduction of a virgin executed with her assent, as defined and penalized in article 446 of the Code, and sentenced to suffer the penalty of two years and ten months of prison correctional, together with the accessory penalties prescribed by law; and, in accordance with the provisions of article 449 of that code, to endow the abducted girl, Obdulia Dulay, in the sum of P500, and to the maintenance of the fruits of their illicit relations, if there should be any, together with the costs of the proceedings in both instances. So ordered.

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

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