

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FLORENCIO GOMEZ, DEFENDANT AND APPELLANT.

G.R. No. 10341. March 03, 1915

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Tarlac convicting the appellant of the crime of abusos deshonestos as defined by article 439 of the Penal Code, and sentencing him to three years six months and twenty-one days of prision correccional, to the accessory penalties provided by law and to the payment of the costs.

The information charges the commission of the offense as follows: "That on or about May 5, 1914, in the municipality of Concepcion, Province of Tarlac, the said accused did forcibly embrace Maxima Mendoza, cover her with kisses, fondle her breasts, and also touched her in her genital organ."

The evidence of record establishes that the defendant, an unmarried man 18 years of age, and Maxima Mendoza, 16 years of age, were the principals in a love affair which did not meet with the approval of the girl's relatives. The girl herself testified that she had not responded to the defendant's attentions, though there are indications in the record that, while she did not want him as her accepted lover, she was not unwilling to receive attentions from him. Between 3 and 4 o'clock of the afternoon in question the defendant and the girl met, by accident or design, at the house of Nicolas Layoc in the barrio of Santa Rosa, municipality of Concepcion, Province of Tarlac, and after some conversation left the house together. The girl testified that upon reaching the foot of the steps leading down from the house to the street, the defendant forcibly embraced her and kissed her a number of times and took other unwarranted liberties with her person; that she cried out, whereupon the defendant released her and ran back into the house.

Without examining in detail the testimony of the girl relating to the specific acts of lewd and lascivious conduct with which the defendant is charged, we think it is sufficient to say that her statements in this regard are neither clear nor convincing; and an analysis of her testimony does not carry conviction as to its entire truth.

Eugenia Perez, the aunt of the girl, and her husband, Gabino Yamul, lived in a house about 20 meters from the house of Nicolas Layoc. The uncle testified that he and his wife were in their house on the afternoon in question when they heard the girl cry out; that they immediately ran to the window and saw the defendant embracing the girl; that they then ran down out of the house and that upon reaching the place where the girl was, the defendant had already run back into the house of Nicolas Layoc. This witness testified further, that when he ran to the window and saw the defendant embracing the girl he also saw him putting his hands on various parts of her body and generally taking unwarranted liberties with her person. Like the girl, he attempted to relate with minute detail just what the defendant was doing, but his testimony as to the specific acts of misconduct on the part of the defendant is not in perfect harmony with that of the girl. All that the uncle claims to have seen is what he was able to see when he first ran to the window, and since he stated that he was at the window only an instant of time,

having gone down immediately to the assistance of the girl, we think his attempt to testify with such detail is open to suspicion. From the testimony of the girl it seems clear that the accused let her go and went back into the house immediately after she cried out, if, in fact, she did cry out as she says she did.

The aunt, Eugenia Perez, was in a position to have seen as much as her husband; they were both attracted by hearing the girl cry out, and both ran to the window at the same time; yet she stated that she only saw the defendant embracing the girl; that she and her husband ran to the window and then immediately ran down out of the house; that her husband preceded her and that when they arrived where the girl was the defendant had already gone back into the house.

The testimony of these three witnesses is all that the record offers to support the charge of abusos deshonestos against the accused; only the girl and her uncle have testified to any specific acts of lasciviousness, and as they have involved themselves in some rather material contradictions we think their testimony cannot be accepted as conclusive beyond a reasonable doubt upon this point.

It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover. Whatever defendant's conduct may have been in this case, we are not prepared to say that the evidence establishes beyond a reasonable doubt that it was criminal. We think that at most, the evidence tends to prove that defendant embraced the girl and kissed her, and this alone is not sufficient to maintain a finding of the commission of abusos deshonestos.

The record shows that Juan Gomez, who appears to be the stepfather of the girl, was the teniente of the barrio in which he lived, and that he arrived at the house of Nicolas Layoc immediately following the acts complained of, arrested the defendant, and took him before the justice of the peace, where he was charged with the crime of attempted rape. A reference to the proceedings before the justice of the peace shows that Gabino Yamul and Eugenia Perez gave a somewhat different version of the affair, on that occasion, from that given in their testimony in the Court of First Instance. Their testimony before the justice of the peace tended to show that the crime of attempted rape had been committed.

In view of the fact that the record shows that there was objection on the part of the girl's relatives to the attentions which the accused was paying to her, and that in the justice of the peace court the defendant was charged and held upon a crime of attempted rape, we are convinced that there was an effort on the part of the girl's relatives to magnify the defendant's conduct into an offense out of all proportion to what actually took place. The incident occurred in front of the house at which the couple had been visiting, in full sight of any person passing on the street, and with an unobstructed view of the couple by anyone standing at the windows of the houses near by. While the accused may have attempted to steal a hasty kiss, it is unreasonable to charge that under such circumstances he attempted to commit either the crime of rape or abusos deshonestos. It is much more reasonable to believe that the girl's relatives, having seen the couple coming out of the house together, and hoping to put an end to their intimacy, trumped up first a charge of attempted rape, and failing in an attempt to sustain that charge, accused the defendant of the crime of abusos deshonestos in the hope of getting rid forever of him and his unwelcome attentions to the girl.

A careful examination of the record has not convinced us that the defendant was actuated by a lustful design or purpose, or that his conduct was lewd or lascivious. As we have said, it may be that he embraced the girl and kissed her, but this of itself would not bring the case within the provisions of article 439 of the Penal Code. The

evidence regarding the other alleged liberties he is charged with having taken with the girl is not sufficiently conclusive to warrant a finding that he did in fact take such liberties.

This evidence appears to be a part of a plan to magnify defendant's conduct into a crime.

There being a reasonable doubt as to his guilt, the appellant should be, and is hereby, acquitted of the crime with which he is charged, with the costs of both instances de officio. If in detention he will be set at liberty forthwith; and if at liberty on bail, his bond is hereby exonerated. So ordered.

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

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