

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICOLAS JAVIER AND MARIANO CAGUICLA, DEFENDANTS. MARIANO CAGUICLA, APPELLANT.*G. R. No. 10379. August 05, 1915*

Ponente: TORRES, J.

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This case has been brought here on an appeal filed by the defendant, Mariano Caguicla, from the judgment of September 24, 1914, whereby the Honorable Judge Vicente Jocson sentenced Nicolas Javier to the penalty of twelve years and one day of reclusion temporal, the accessories, indemnity in the form of a dowry of P500 to the injured girl, the obligation to recognize any offspring she might have and to contribute the necessary amount for its support, and payment of one-half of the costs; and Mariano Caguicla to the penalty of two years four months and one day of prision correctional, the accessories, and payment of the other half of the costs. From this judgment the said Caguicla alone has appealed, the other defendant, Nicolas Javier, not having done so.

On the morning of July 10, 1914, Barbara Saliva, 12 years of age, went into the house where Mariano Caguicla was living with his wife Alejandra Malasikik, to get a certain piece of cloth which was used in starching clothes, but as it was still in use at that time, she went away down the stairway. At that moment Mariano Caguicla, who was chopping wood underneath the house, called her to him to tell her something, but when she approached him he invited her toward some trees behind the house. She refused to follow him, whereupon he at once seized her hands, covered her mouth so that she could not cry out and dragged her toward the place behind the house where there were some trees. At the same time he shouted to Nicolas Javier, who lived next door, saying: "Nicolas, here she is!" Thereupon Javier appeared and seized her, conducting her by force further into the wood where, in spite of her opposition and resistance, her assailant Javier succeeded in lying with her, notwithstanding the cries she uttered, for Javier had to threaten her with a pocketknife and to twist her hair around one of his hands in order to throw her to the ground to commit the rape under consideration, and he did not turn her loose until he had consummated the act, despite the fact that the scene of the assault was approached by a girl, Laura Matute, about 10 years old, whom the victim told to summon a certain individual named Anoc immediately, and after the rape had been consummated the defendant Javier still kept hold of the injured girl's hand, but when the place was approached by Sergia Gonzaga, her cousin, the defendant Javier released her and immediately went away.

The injured girl immediately repaired to the house of the lieutenant of the barrio, Potenciano Manzanilla, to denounce the act, and when he had learned of the occurrence he visited the scene thereof, where he found branches of trees with their leaves torn off by someone and among the grass and leaves scattered about on the ground indications that somebody had lain on them.

On July 30, twenty days after the assault, the girl Barbara Saliva was examined by the physician Gaudencio Gonzalez, who averred that she had been raped while she was still a virgin, according to the marks and indications found on her genital organ; and further noted that the camisa and skirt which the injured girl had worn on that

occasion were torn and ragged as a result of the struggle with her assailant.

In view of the injured girl's statement, the lieutenant of the barrio proceeded to arrest not only the perpetrator of the rape, but also Mariano Caguicla, because it was he who had taken the girl to the spot where the trees grew, shouted to Nicolas Javier, and delivered her to him when he reached the place where they were.

As the defendant Nicolas Javier is now serving the sentence that was imposed upon him in the said judgment, from which he has not appealed, the sole object of this decision will be to determine whether or not Mariano Caguicla participated, and in what manner, in the perpetration of the crime of rape, and therefore the nature and extent of his responsibility and the penalty he has incurred.

The proven fact which was the ground for instituting the present case certainly constitutes the crime of rape, included in article 438 of the Penal Code, for Barbara Saliva, a girl of less than 12 years of age, was the victim of consummated rape, perpetrated by means of force and intimidation which Nicolas Javier employed in lying with her inside a wood to which she had been forcibly conducted by the other defendant Mariano Caguicla who held and detained her among some trees while shouting to the said Javier to whom he delivered her upon the latter reaching the place. Caguicla's conduct induces the belief that everything had been previously arranged by the two defendants in order that Javier might carry out his unchaste designs upon the said girl who as a resident of the place was known to them and to Caguicla's wife and must have sometimes visited the latter's house.

Despite the denial of the defendant-appellant Mariano Caguicla and his plea of not guilty, the case affords decisive and conclusive evidence of his participation in the commission of the crime, as asserted by the girl in her sworn testimony. The defendant Caguicla avers that he saw her about 7 of the morning of the occurrence, at a time when he was talking with his wife on the upper floor of his house and afterwards when he came down therefrom and went toward the east where the privy was, but he denied that he talked to her or held any conversation with her that morning. This declaration is contradicted by the injured girl who positively affirmed that the defendant Caguicla called her to him to tell her something when she was descending the stairway and upon her approach walked her toward the interior of a place where there were trees, and because she refused to follow him seized her and covered her mouth to prevent her from crying out and while holding her shouted to the said Nicolas Javier to whom, upon arrival, he delivered her, and then went away.

The incriminating testimony of the girl, who affirms that the defendant Caguicla caught her and conducted her forcibly to the place covered with trees so that Nicolas Javier was able to consummate the rape, sustained and corroborated as it is by serious and convincing circumstantial evidence derived from facts duly proven and not rebutted by any fact to the contrary, constitutes conclusive proof beyond any reasonable doubt of the guilt of the defendant Mariano Caguicla.

The crime of rape perpetrated by Javier upon the person of the Saliva girl is fully demonstrated in the case, for upon denouncing it to the authorities she made known and described the acts executed by Caguicla in order that said Javier might the more easily commit the crime without any hindrance, and so it is unquestionable that Caguicla participated in the perpetration of the crime in the manner described by the injured girl, in spite of his denial and his allegations, which were certainly not proven by the testimony of the witnesses he presented.

The defendant Mariano Caguicla cooperated in the perpetration of the crime of rape committed by Nicolas Javier by acts without which the crime could not have been consummated, since he prepared the way for the perpetration thereof, caught and held the victim, conducted her to a place apart among trees, called to his confederate, Nicolas Javier, with whom he must have had an agreement, delivered the victim to him, and then departed so that Javier might freely consummate the rape by lying with the girl Barbara Saliva, 12 years old, with violence and intimidation, as he did; and therefore the criminal responsibility incurred by the defendant Caguicla through his

cooperation in the per petration of the crime is that of principal along with his codefendant Javier; he cannot be classified as a mere accessory because the acts he executed are wholly included in the prescription of No. 3, article 13, of the Penal Code.

No mitigating or aggravating circumstance is to be found in the participation Caguicla took in the commission of the crime, wherefore the penalty fixed by the law must be imposed upon him in the medium degree.

For the foregoing reasons, whereby the errors assigned to the court by the counsel for the defense are refuted, the judgment appealed from must be set aside, and Mariano Caguicla sentenced, as we do sentence him, to the penalty of fourteen years eight months and one day of reclusion temporal, the accessories indicated in article 59 of the code, to the payment of a joint and several indemnity along with Nicolas Javier in the sum of P500 as imposed upon the latter in favor of the injured girl, payment of one-half of the costs in first instance, and all of the costs in this second instance. So ordered.

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

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