

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LUCAS DOROJA, DEFENDANT AND APPELLANT.

G. R. No. 10715. September 25, 1915

Ponente: TORRES, J.

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TORRES, J.:

This cause was instituted by an information filed by the offended person, Emilia Calagos, charging Lucas Doroja with the crime of rape. This classification was amended in the complaint by the provincial fiscal of Samar who assigned that of attempted rape, and on February 11 of the present year judgment was rendered whereby the defendant was sentenced to the penalty of four years two months and one day of prison correctional, to the accessory penalties, and to the payment of the costs. From this judgment the defendant appealed.

On August 23, 1914, Emilia Calagos, a married woman, remained until nighttime in the house of Isidoro Silicios, situated in the barrio of Burabud, distant about a kilometer and a half from the pueblo of Santa Margarita, Samar, busy, together with the wife of the owner of the house, in sewing on some clothes. For the purpose of returning to her house in the town, as she had no companion and it was 11 o'clock at night, she availed herself of the appearance in the vicinity of said house of the chief of police of the said pueblo, Lucas Doroja and of the policeman Ildefonso Caber, whom she begged to permit her to accompany them, since they were returning to the pueblo. She made this request on account of the great confidence she had in the defendant, he being her neighbor, living in a house in front of her own, and for the additional reason that she and the wife of the said Doroja were related. As soon as the defendant acceded to her request, Emilia Calagos left the house and went with them in the direction of the pueblo. On the way the policeman Ildefonso Caber left them.

While the defendant and the offended party were passing in front of the public school building, in a dark, isolated place, -the defendant, trembling, suddenly caught the woman by the hand, conducted her toward the said building, and in spite of her resistance succeeded in dragging her for some distance and then in laying her down on the ground when he got on top of her and hugged her tightly trying to overcome her resistance. But, notwithstanding that he covered her mouth, she succeeded in calling out for help, thereupon, feeling a relaxation of the defendant's efforts caused, perhaps, by his fear, she succeeded in gaining her feet and escaping from the hands of her aggressor, notwithstanding his having caught hold of her camisa to retain her, thereby tearing the said garment. During her struggle with the defendant she lost both her slippers, one of her earrings, her handkerchief, and the sum of P1, at the place of the attempted crime.

That same night, immediately after the occurrence, the offended person went to the municipal building; as no police were to be found there, she went to her house to call her mother and her brother and with them she went to the house of the municipal president to whom, after he had been awakened, she reported what had happened and the articles that she had lost. He thereupon advised her to lay the matter before the justice of the peace, but she told him that she did not wish to go to the justice of the peace because, on another occasion when she had a case before that official, she had not been given proper consideration. Then the municipal president told her to call the policeman Ildefonso Caber and, in the name of the president, to order him to accompany her. Although it cost

some time and trouble to awaken this policeman, he finally accompanied them to the place of the occurrence where the slippers, the earring, and the handkerchief which had been lost were found, but only one of the two half-peso coins. These articles, lost by the offended party during the assault made upon her and which were found by her and the policeman Ildefonso Caber at the place of its occurrence, were exhibited at the trial, as well as the torn camisa the aggrieved person was wearing at the time of the attempted rape.

The defendant in his sworn testimony stated that on the said night of August 23 he went to the barrio of Burabud to raid, as he did do, a monte game in the house of Isidoro Silicios; that several of the gamblers were there arrested, among them the complainant Emilia Calagos; that while the arrested persons were being conducted to the municipal building, Calagos begged him not to include her among the gamblers; that, though he did not accede to this, he accompanied the offended person, however, to her own house, on which occasion he went with the policeman Ildefonso Caber. This fact was corroborated by the latter who, in turn, testified that they did raid a gambling game that night in Silicios' house and that on returning to the town with the arrested persons and the chief of police, witness separated from them, although he afterwards stated that he accompanied them until the offended person Calagos entered her house in the town; that, on that same night, he did in fact also accompany the offended person and her relatives to look for the articles lost in front of the municipal school during the struggle which Emilia Calagos said she had had with the defendant upon his attempting to rape her; and that the hair of the offended party was not then loose and in disorder, nor was her camisa torn, contrary to the testimony of the municipal president, Anastacio P. Avinon, who stated under oath that when Emilia Calagos came to his house to complain of the acts performed by the defendant and to demand justice, he saw that her hair was down and disordered and her camisa torn.

From the facts above related it is concluded that the commission of the acts charged by the aggrieved party, Emilia Calagos, has been duly proven, acts which comprise the crime of attempted rape, defined in article 438, in connection with paragraph 3 of article 3 and article 66 of the Penal Code, inasmuch as the record shows it to have been fully proven that the defendant, on an occasion when he was in the company of the complainant who was going along with him alone late at night and in a dark place some distance from the town, dragged her out of the road, violently threw her on the ground, got on top of her, and tried to have sexual intercourse with her; that he did not succeed in his purpose, notwithstanding the efforts he exerted to that end and his attempt to cover his victim's mouth, owing to the tenacious and stubborn resistance of the aggrieved person, to the cries for help which she succeeded in making, which perhaps frightened the assailant, and to the woman's success, feeling the defendant's efforts to hold her relaxing, in succeeding in arising and eluding his grasp, though thereby her camisa was torn and some articles she was wearing were lost, those which were found in the same place by herself, her relatives, and the policeman Ildefonso Caber several hours after the occurrence.

The defendant pleaded not guilty and denied having committed the crime charged against him. He alleged that on the night in question the policeman Caber, the offended person and others arrested for gambling in the house of Isidoro Silicios went with him. This allegation, made for the purpose of weakening the charge against him, appears entirely unsupported by the evidence, since the witnesses who testified to the arrest of the gamblers as alleged by the defendant contradicted themselves and the defendant; their testimony, moreover, was invalidated by the owner of the house, Silicios, who stated that there was no gambling game going on in his house and that, when the defendant and the policeman Caber passed in front of his house, the former engaged in a conversation with witness, who was at the window; that the defendant did not enter witness' house; that on this occasion the offended person begged the defendant to permit her to accompany them in order that she might return to the town, as she had no companion. The defendant stated in his testimony that Silicios and his wife were away from the house during the raid, but some of his witnesses testified that Silicios was at that time asleep on a bench, while others, on the contrary, said that he was awake. It is certain that the owners of the house were not arrested as

gamblers; and although the policeman Caber, in his testimony, endeavored to favor the defendant by affirming that the said gambling raid was made in Silicios' house, nevertheless he had to admit that, as a matter of fact, by order of the municipal president, he had accompanied Emilia Calagos and some of her relatives at about 12 o'clock that night for the purpose of seeking the articles which she had lost in front of the school, and that, while they were in the place of the alleged crime, the aggrieved person told him that the defendant attempted to rape her there.

The foregoing evidences the defendant's guilt as the proved convicted perpetrator, beyond all reasonable doubt, of the crime of attempted rape, since it was satisfactorily proven at the trial that the defendant, taking advantage of the darkness of the night and the isolation of the spot where they had arrived on their way, dragged the offended person aside from the street, threw her to the ground and got on top of her for the purpose of having carnal intercourse with her, and if he did not consummate the crime it was due to the vigorous resistance of the aggrieved person and to her cries which frightened her aggressor, whereupon he slackened his efforts to detain her and she succeeded in arising and escaping. Without loss of time she immediately complained to the authorities, with her camisa torn and her hair in disorder, and she was thus seen by the municipal president. Therefore the defendant has incurred the penalty prescribed by the law for the crime he committed.

In the commission thereof, besides nocturnity, there also is to be considered the attendant aggravating circumstance No. 10 of article 10 of the Penal Code, since the defendant abused the confidence reposed in him by the aggrieved person who, a relative of his wife, he being a neighbor that lived opposite her house, trusted the defendant and wished to go in his company, on the night in question, for the purpose of returning home, believing that she would find in him help and protection, as she was alone and had no companion. This aggravating circumstance is not offset by any extenuating one, wherefore the penalty imposed upon the defendant in the maximum degree of the penalty provided by law is in accord with justice, and in view of the fact that the judgment appealed from is in accordance with the law and the merits of the case, the errors assigned thereto by defendant's counsel have been refuted by the reasons aforestated.

For all of the foregoing reasons the judgment appealed from should be affirmed, with the costs of this instance against the defendant. So ordered.

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

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