

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE CLARO, DEFENDANT AND APPELLANT.*G.R. No. 10819. December 04, 1915*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of the Province of Ilocos Norte convicting the accused of the crime of attempted rape under an information charging that, on or about the 15th of June, 1914, the accused, in an unfrequented place, by force and violence, attempted to have carnal relations with Joaquina Baldos, but did not perform all of the acts constituting the crime by reason of forces other than his own voluntary desistance. He was convicted by the trial court of the crime charged and sentenced to four years of presidio correccional, to the accessories provided by law, and to pay the costs of the trial.

This is one of the cases not infrequently seen in this jurisdiction where substantially every circumstance which ordinarily operates to deter a man from the commission of such an offense is found present and, at the same time, the overwhelming weight of the direct evidence supports the finding that the crime was actually committed.

It appears from the evidence of the prosecution that, about 8 o'clock of the morning of the 15th of June, 1914, Joaquina Baldos, accompanied by Cenonica Tredofia, a girl 12 years of age, was passing along a trail or path, returning home from the house of a relative where they had been on an errand. On the way they met the accused who after some conversation, seized Joaquina and sought to force her into the bushes near by, and, as she resisted, he drew his bolo and struck her a light blow. In the struggle which ensued she fell to the ground and the accused dropped his bolo, which the girl immediately seized. The accused succeeded, however, in taking it from her, but, in so doing, inflicted a wound on two fingers of her hand. She then cried for help, calling to her uncle, but the accused stopped her mouth with a pocket handkerchief. He thereupon attempted to have carnal relations with her, but she fought so vigorously against his efforts that she succeeded in holding him off until her uncle, who had been attracted by the cries of Cenonica, arrived. With his arrival, the accused took to flight.

The evidence introduced by the accused tends to show that he and Joaquina were lovers; that the parents of Joaquina, who objected to her marriage with him on account of his poverty, succeeded in separating them, and, inasmuch as there still remained an opportunity of seeing each other clandestinely, took the method of a false accusation to destroy every chance of a meeting and especially of a marriage between them; and he insists that the case made out against him by Joaquina and Cenonica and the other witnesses for the prosecution is a pure invention. He asserts in his testimony that, having met them in the path, he stopped with the sole purpose of speaking to the girl concerning their relations; that she willingly acceded to his desire to talk to her, but, as her companion, Cenonica, threatened to inform her parents of the fact that she was talking with the accused, she continued on her way without violence or opposition of any kind from him. According to his story, there occurred no altercation or struggle of any kind between them and no attempt on his part to detain or interfere with her against her will.

It is admitted that the place where the accused met Joaquina and her companion was a frequented place, within calling distance of a number of houses, one of them inhabited by the parents of the girl and several of them by her relatives; indeed, so close were the houses, that the ordinary cries of a person in distress would easily reach the ears of the occupants and bring almost immediate assistance.

The argument, therefore, on which the appellant insists most strongly is the unreasonableness of the claim that he attempted to rape a young woman not only in the presence of a girl, who could not only give the alarm but also testify directly against him, but also within speaking distance of the very place where the parents and relatives of the assaulted girl lived and who could come to her assistance almost instantly.

We have had several cases similar to this. In some of them the court has convicted, in others it has acquitted. The result in each case has depended on its own particular facts and circumstances.

In the case of *United States vs. Samonte* (20 Phil. Rep., 157), a case similar to this, the facts presented on the appeal were fully examined and held not sufficient to justify p. conviction. But that case had certain peculiarities of fact and circumstance not found in this. There we found that the testimony of the accused was supported and corroborated by the testimony of three other witnesses, while the evidence of some of the witnesses for the prosecution was subject to grave suspicion. Moreover, the court also found—"That the accused went to the house on the afternoon in question to deliver money to the stepfather of Epifania is undisputed. That he delivered the money to Epifania to be given by her to her stepfather is also undisputed. That he was in the house but a very short time is uncontradicted. That on leaving the house he borrowed a bolo from Epifania, that he leisurely and in his own time cut the bamboo which he needed to repair his house, that he then returned the bolo into the hands of Epifania, are facts which are admitted by all. These are events as they usually and naturally occur in the ordinary affairs of life when nothing eventful has happened and when no serious crime has been committed. It is entirely improbable that if the accused had just come from forcibly violating Epifania he would calmly borrow a bolo from her and leisurely cut bamboo at the very threshold of the hDUse where the violation had occurred, and would as calmly and quietly return the bolo into the hands of Epifania after the bamboo had been cut. It is highly improbable that a young lady who had just been criminally violated by brute force would still continue to carry out the ordinary relations of friendship with the very man who had been the cause of her degradation.

"The testimony of this witness demonstrates, then, that the relations sustained between Epifania and the accused after the alleged violation were those which would naturally be expected between persons who had nothing between them except friendly relations instead of those of violator and violated, and that the appearance and deportment of Epifania after the alleged violation were entirely different from those which would be naturally expected under the circumstances alleged by the prosecution. She not only swept the house in the ordinary manner and conducted herself as she ordinarily did, but she also called to her company another young lady, with whom she went to the river to wash clothes, exhibiting no unusual symptoms and showing no unusual treatment. It should be observed also that this witness testified that Matea Pacheco did not go to the house on that afternoon during the time when the accused was there. The testimony of this witness strongly corroborates the theory and story of the accused.

"It should not be forgotten that there was ill feeling existing between Matea Pacheco and the mother of the accused. That Matea Pacheco was at the time of the trial of this action, and had for some prior thereto been, an enemy of the mother of the accused is overwhelmingly established by the proofs."

In the case of *United States vs. Mendez* (19 Phil. Rep., 28), the court reversed the judgment of conviction. But here, again, we find conditions favorable to the accused which are not present in the case at bar. In that case the court found. "We are unable to accept as true their story that this accused, uninvited, entered their house as they allege, with the purpose and intent of forcibly violating one of the two sisters, whom he must have known were

sleeping in the same room, in the absence of proof that, aflame with passion and utterly regardless of consequences, he had resolved to accomplish his purpose despite the resistance of his victim, and ready if necessary to use such violence as he must have known his act would require in order to dispose of the assistance one sister would render the other, and which the outcries of both the sisters, when thus attacked, would inevitably bring from neighboring cottages. As he well knew, the slightest outcry from the nipa cottage where the incident occurred would have aroused the neighbors all around, and it would indeed have been a bold and reckless criminal who would deliberately enter it, and attempt by force to violate or wickedly assault one of two grown women sleeping in the same apartment, even if he were prepared to silence them by the use of such threats and violence as would be necessary to keep them quiet under such circumstances.

"There is nothing whatever in the story of the sisters which even suggests that this was the kind of a man who made the alleged assault upon their house; on the contrary, his conduct throughout the whole incident is wholly inconsistent with the idea that he came there prepared for any such desperate deed as he must have known to be involved in an attempt forcibly to violate either one of the women.

"We think his story of what occurred by far the more plausible one, accounting for its one inconsistency—the bringing of the policeman by the younger sister despite the fact the accused, as he alleges, had come to the house at her invitation—by treating it as but another instance where a woman has deserted and turned upon her lover, rather than face the consequences of an honest confession of her illicit relations with him"

In the same case the court further stated: "In this case the policeman who arrested the accused was not called to the stand, nor is there any explanation in the record for the failure of the prosecution to produce him—and yet it must have been apparent to the prosecuting officer, as well as to the trial court, that his evidence could hardly fail to have been of vital importance in any attempt to sift out the truth from the story told by the complaining witness and her sister. If he proved to be an intelligent and observant man, his testimony as to the conditions existing when he made the arrest, had he been called to the witness stand, could hardly have failed to shed a flood of light on the doubt upon which the judgment in this case turns; and in any event, the unexplained failure of the prosecution to put him on the stand, necessarily weakens the case made out by the prosecution."

In the case of *United States vs. Estacio* (18 Phil. Rep.. 432), the judgment of conviction was reversed. That case, however, like the two cases already mentioned, had its peculiar circumstances and conditions, lacking in the case before us, on which the judgment of reversal was based. The court there said: "This testimony of the defendant is corroborated in every essential detail by that of Crisela Agoncillo and Cirila Estacio who were in that immediate vicinity at the time of the occurrence complained of."

It was also found: "Isabel says that after the defendant made his escape she went to the shack which was only a few yards distant and assisted her sister in dividing the palay and that she was not examined by the doctor until seven days later. The complaint was not presented immediately. The defendant was at Isabel's house the next day and conversed with her. In the forenoon of the 29th of September, Isabel and the defendant were together for some time, walking and talking as lovers. They came together on the hill about 12 o'clock and it appears that while there they became very intimate, so much so that the defendant took hold of Isabel and in a friendly scuffle they fell to the ground."

Again, in *United States vs. Cruz* (18 Phil. Rep., 543), the judgment of conviction was reversed. Here, also, facts and circumstances were found which clearly distinguish it from the case now under consideration. In that case we held: "The testimony of this witness (the defendant) is corroborated in every essential detail by that of Victoriano Beltran."

The court also found that, on all the evidence, the theory of the defense was much the more satisfactory and that it was, in all probability, the correct one. Moreover, in that case the court said: "In the preliminary investigation

which followed, Domingo Montemayor, his daughter Maria, and Josefa Cruz were called and testified as witnesses for the prosecution. Maria, after being duly sworn, and on being asked by Pascual Lozano, who was representing the prosecution, what had occurred in her house on the afternoon of October 21, testified that when her father arrived he found her and the defendant alone, sitting together on a bench near the open window in the sola, and that the defendant did nothing wrong on that afternoon. When Maria began answering questions in this manner, her father, who was sitting by her side, said to her: 'Tell the truth.' The justice of the peace then threatened to send Domingo to jail if he again spoke to the witness. Maria then changed her answers and testified the same as she did in the Court of First Instance as to what occurred in the kitchen."

On the other hand, in the case of *United States vs Estrada* (24 Phil. Rep., 401), we held: "The inferences in favor of the accused to be drawn from the fact that the crime of attempted rape was committed in broad daylight, in a community that was thickly settled, near a public highway, and substantially in the presence of two other persons, may be met and overcome by the direct and positive testimony of unimpeachable witnesses. The mere unreasonableness founded upon the time and place of the commission of the crime must yield to the direct and positive testimony of credible witnesses."

In that case a judgment of conviction for attempted rape was affirmed, although, as is indicated by the above quotation from the headnotes, the crime was committed substantially in the presence of two other persons, in broad daylight, near a public highway, and in a thickly settled community. (*U. S. vs. Obregon*, 3 Phil. Rep., 320; *U. S. vs. De la Cruz*, 3 Phil. Rep., 337; *U. S. vs. Banzon*, 1 Phil. Rep., 435 f*U. S. vs. Guzman*, 4 Phil. Rep., 196; *U. S. vs. Yambao*, 4 Phil. Rep., 204; *U. S. vs. Luna*, 4 Phil. Rep., 269; *U. S. vs. Villarosa*, 4 Phil. Rep., 434; *U. S. vs. Rojo*, 10 Phil. Rep., 369; *U. S. vs. Soto*, 14 Phil. Rep., 384; *U. S. vs. Garcia*, 9 Phil. Rep., 434; *U. S. vs. Flores*, 6 Phil. Rep., 420.)

In the case at bar the testimony of the accused is not corroborated by that of any other witness; and there is nothing in the record which throws suspicion on that of the complainant and her companion. Their testimony is strongly supported by their subsequent conduct and there is nothing, apart from the locality in which the crime was committed, which tends to discredit their declarations. None of the facts and circumstances on which this court relied in reversing the judgments of conviction in the other cases are present in the case before us. Rather, it strikingly resembles, in all of its essential features, the case of *United States vs. Estrada*, above cited. There is, of course, a sharp conflict between the testimony of the accused and that of the complainant and her companion. Under such circumstances we will not interfere with the conclusions of a trial court concerning the credibility of witnesses, the court having seen them in the act of testifying and having had an opportunity to observe their manner and demeanor as witnesses, unless the record discloses that some fact or circumstance of weight or influence has been overlooked by the court or its significance misunderstood or facts or circumstances misapplied. In determining where the weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear on the trial. The court may also consider the number of the witnesses, though the preponderance is not necessarily with the greatest number. (Section 273, Code of Civil Procedure; *Gabriel and Juan vs. Bartolome*, 7 Phil. Rep., 699; *Hijos de I. de la Rama vs. Robles and Robles*, 8 Phil. Rep., 712; *Velasco vs. Masa*, 10 Phil. Rep., 279; *Go Tiam Ting vs. Di Ping Jo*, 11 Phil. Rep., 10; *Acufia Co Chongco vs. Dievas*, 12 Phil. Rep., 250; *Garcia vs. Montague*, 12 Phil. Rep., 480; *Arzadon vs. Arzadon*, 15 Phil. Rep., 77; *Sy Joe Lieng vs. Sy Quia, lti* Phil. Rep., 137; *Cacnio vs. Baens*, 5 Phil. Rep., 742; *U. S. vs. Albao*, 29 Phil. Rep., 86.)

The judgment of conviction is affirmed, with costs against the appellant. So ordered.

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

Judgment affirmed.

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