

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TORIBIO ANDAYA, DEFENDANT AND APPELLANT.*G.R. No. 11477. August 08, 1916*

Ponente: MORELAND, J.

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This is an appeal from a judgment rendered by the Court of First Instance of Tarlac convicting the accused of rape with minor injuries as defined in articles 438 and 418 of the Penal Code, and sentencing him to 17 years 4 months and one day of reclusion temporal, to the accessories provided in article 59, to indemnify the injured person in the sum of P500, to maintain the child if any there should be, and to pay the costs of the trial. There were no aggravating or extenuating circumstances except that of uninhabited place which was not taken into consideration by the court. The maximum penalty was imposed by virtue of the provisions of article 89 of the Penal Code which provides that, where one crime is a necessary means of committing another the accused shall be punished for only one of the offenses and that the most serious in its maximum degree. An appeal was taken by the accused.

The guilt of the appellant is not denied by counsel for the appellant. The only question raised relates to the penalty imposed by the trial court, counsel saying in his brief that "from the evidence presented on the trial, which is clearly stated in the decision of the court, counsel for the appellant agrees with the decision of the court, but must dissent with respect to the penalty imposed on the accused." Counsel then proceeds to assign a single error which is to the effect that the court violated the law in imposing the maximum penalty and in failing to consider in favor of the accused the extenuating circumstance provided for in article 11 of the Penal Code.

The guilt of the accused is established beyond all question. The child violated was about 12 years of age. Her testimony is direct and positive and so thoroughly sustained by the other evidence and the circumstances of the case that there is no room for doubt about the guilt of the accused. In committing the crime charged there resulted an injury to the genital organs of the little girl that required medical attention for about twenty days. The question is, therefore, whether the trial court was correct in applying article 89 of the Penal Code and imposing the maximum penalty. Did the acts of the accused constitute the commission of two crimes, namely, lesiones menos graves and rape? Or were the two crimes so closely related to each other, that of slight injuries so completely a part of the crime of rape that they may be considered one crime and punished as such? As we have already seen, the learned trial court found that the acts of the accused constituted two crimes, lesiones menos graves and rape, that of the laceration of the genital parts being necessary to the commission of the rape; and, in obedience to the provision of article 89 of the Penal Code which provides that, under such circumstances, the accused shall be punished for only one of the crimes and that the more severe in its maximum degree, imposed the maximum penalty. We are of the opinion that the trial court was correct as to the penalty. The supreme court of Spain has frequently held that acts such as those committed by the accused in this case constitute two separate and distinct crimes, the one being the necessary means of committing the other; and that the accused must be punished for the severer crime in its maximum degree (decision of the 23d of March, 1885; of the 29th of April, 1897; and of the 22d of February, 1902). The trial court therefore correctly imposed the maximum penalty.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.

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