

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LICERIO CASTEN, DEFENDANT AND APPELLANT.

G. R. No. 11488. August 19, 1916

Ponente: TRENT, J.

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TRENT, J.:

In this case the appellant, Licerio Casten, jr., was sentenced to two years, eleven months, and eleven days of prison correccional, to endow the offended party, Laura de Arruza, in the sum of P3,000, to maintain the offspring, if there be any, and to the payment of the costs of the cause for the crime of abduction.

It is now urged that the trial court erred (a) in finding that the offended party was a virgin; (b) in finding that the appellant did by cajoleries and promises induce the girl to abandon the college in which she was a boarding pupil; (c) in convicting the appellant of the crime charged, with the aggravating circumstance of nocturnity; and (d) in fixing the amount of the endowment at P3,000.

The facts are these: Laura de Arruza, who was less than 17 years of age at the time the acts complained of occurred, was placed in the College of San Jose de Jaro, conducted by the Sisters of Charity, in 1908 or 1909, as a boarding pupil. During the April, 1915, Carnival in Iloilo, the appellant's wife presented him to Laura. The women were intimate friends. The appellant and the girl soon became very fond of each other and met frequently by appointment on the seashore at late hours of the night. One night in the month of June, 1915, while they were out together, quite a rainstorm came up and they took shelter in the house of one Hodges, where the appellant finally persuaded the girl to have intercourse with him. They had frequent opportunities for further illicit relations during the remainder of the school vacation for that year. At the end of the vacation the girl returned to the college and resumed her studies. A short time thereafter she received a letter from the appellant, saying that his wife had learned of their relations and that out of jealousy she was going to the college and there publicly inform the sisters of the scandal which the girl had caused. In reply to this letter the girl informed the appellant of her fear of exposure, not only at the college but to her parents, and stated that she desired to leave the college and the city in order to avoid the danger of her conduct becoming known. The appellant then wrote the girl telling her that the steamship Hoiching would sail on the night of the 21st of September, 1915, touching at certain ports on the Island of Cebu. The girl replied, asking the appellant's assistance to get to the boat, but insisted that he should not accompany her or even go aboard the ship. It was finally arranged that the girl should leave the college at a certain hour on the night of the 21st of September for the purpose, as she thought, of going aboard the steamer, the appellant, according to the agreement, awaiting her a short distance from the college in a carromata. After she had entered the carromata, or calesa, the two proceeded to the barrio of La Paz and entered the house which had been previously rented by the appellant for that purpose and there lived as man and wife for some six days, where they were found by the chief of police, who was searching for the girl upon the request of her father. The appellant knew, when he advised the girl to leave on the steamer, that the vessel was not sailing on that night. He knew that it was in the dry dock undergoing repairs and that it could not sail for several days. The girl honestly believed that he intended to aid her in getting away from Iloilo, and did not know that he was deceiving her until they arrived at

the house in the barrio of La Paz. The girl's good faith with reference to the sailing of the steamer is manifested by the fact that on the afternoon of the day she left the college, she wrote and posted a farewell letter to her father. The appellant states that when the girl arrived at the place agreed upon, on the night that she escaped from the college and had entered the calesa, he was "disposed to offer her every manner of assistance and protection that she might need," knowing at the same time that he had told the girl that she was to leave on the steamer sailing that night and that he had already rented the house in La Paz to be occupied by them.

The foregoing facts show clearly and beyond question that the offended party was induced to abandon or leave the college, where she had been placed under the care and protection of the Sisters of Charity by her father, by the appellant through lying and false promises. He lied to her with reference to the sailing of the ship and made false promises to her with reference to aiding her to get away on that night. That he induced the girl, who was then under 17 years of age, to leave college in this manner for the sole purpose of having illicit relations with her, there can be no doubt. But it is contended, as we have indicated, that the girl was not a virgin at the time she was induced to leave the college.

Under article 446 of the Penal Code, as amended, for the punishment of whosoever abducts a virgin with lewd designs, the accused can be convicted only when the girl is chaste and pure, since the case is not within the article if she had already lost her virginity. The offended party Laura de Arruza, had, as we have stated, carnal intercourse with the appellant in June, 1915, and had frequent opportunities for further illicit relations with him before the 21st of September, 1915. Their intimate relations were not interrupted or seriously interfered with until the girl was found with the appellant in La Paz, where they were living together as man and wife. No one even doubts that the girl was absolutely chaste and pure in conduct and in principle up to the time that she had illicit intercourse with the appellant for the first time and that the appellant is the only person with whom she has ever had such relations. Must the question of the girl's virginity be determined as of the 21st of September when she was induced to abandon the college or may the appellant's whole course of conduct be considered as one continuous act and the girl's chastity be determined from this viewpoint?

Upon this point the supreme court of Spain, in its decision dated October 19, 1895, said:

"Considering that, pursuant to article 461 of the Penal Code, the crime of abduction of a virgin of less than 23 and over 12 years of age, is committed by a person who, with the girl's consent, removes her from her home, a liability incurred by the appellant, because, as found in the verdict of the jury, he removed the girl from her home * * * with her consent, and took her to a neighboring pueblo where he kept her in his power for four days; and

"Considering as not well founded the error assigned on appeal with respect to the application of article 461, it being claimed that the abducted girl was not a virgin as the verdict found that two days previously, said * * * her lover, had had carnal intercourse with her; because, in the first place, there was not enough interruption of continuity between the one act and the other to negative the object and purpose of the crime, and besides, because the word 'virgin' referred to in article 461 is not to be construed in such a material sense as to exclude the idea of the abduction of a virtuous woman of good reputation, etc."

And again, the same high court, in its decision of November 25, 1896, held:

"Considering that, with regard to the first assignment of error made in this appeal, and as held by this supreme court, the alleged violation of article 465 of the Penal Code of Cuba and Puerto Rico (article 461 of the Peninsular Code) founded on the fact of the abducted minor's not being a virgin for the reason that some time prior to the abduction, her lover, frustrating the vigilance of her parents, had the first carnal intercourse with her, cannot be held to be well founded, because the interruption of continuity between this fact and that of the abduction is not sufficient to negative the object and purpose of the crime, and because, furthermore, the

maidenhood to which said article refers is not to be understood in so material a sense as to exclude the idea of the abduction of a virtuous woman of good reputation (such as, according to the decision, the abducted minor Da. R. A. y V. was publicly reputed to be), who, in this case, is merely a victim of the wiles of the man with whom she maintains notorious unlawful relations, etc."

The essence of the offense of abduction is not the wrong done to the woman, but the outrage to the family and the alarm produced in it by the disappearance of one of its members. (U. S. vs. Alvarez, 1 Phil. Rep., 351; U. S. V8. Reyes, 20 Phil. Rep., 510; U. S. vs. Reyes, 28 Phil. Rep., 352.)

The above-cited decisions are sufficient to show the purposes and scope of article 446 of the Penal Code and to settle the question here under consideration.

The trial court did not err in finding that there was present in the commission of this crime the aggravating circumstance of nocturnity, for the reason that it clearly appears from the record that the defendant purposely selected the nighttime to abduct the offended girl.

We think an indemnity of P3,000 is excessive in the instant case. There are no special reasons why the girl should be allowed that amount. In United States vs. Reyes (20 Phil. Rep., 510), the lower court condemned the defendant to endow the injured party in the sum of P3,000. This court reduced the amount to P1,000. Following the rule therein laid down, we reduce the endowment in the case at bar to the same amount.

For the foregoing reasons, the judgment appealed from is affirmed, except that the amount of the endowment is fixed at P1,000, with costs against the appellant. So ordered.

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

Moreland, J., concurs in the result.

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