

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES TORICO, DEFENDANT AND APPELLANT.

G.R. No. 11915. November 29, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment convicting the appellant of the crime of rape committed on the person of Victoria Germanes, a girl 15 years of age, and sentencing him to fourteen years eight months and one day of reclusion temporal, and costs.

This is a very clear case on the evidence. The child was alone in the house when the appellant came. On entering he asked for something to eat and was given what fare the house afforded. After satisfying his hunger he paid the child some compliments and approached her. On seeing him approach she ran toward the kitchen; but the accused seized her, threw her to the floor and by force and violence overcame her resistance and succeeded in gaining his ends. By the time the criminal act was accomplished the mother of the child returned and saw the accused leave the house hurriedly. Hearing the cries of the child the mother hurried into the house and observed that the clothing of the child was torn and that there was blood and seminal fluid on the skirt. They immediately went to the village and made a complaint.

The claim of counsel for the appellants is that the girl consented to the carnal act. We think that this claim is completely destroyed, not only by the testimony of the girl herself, but by the circumstances of the case. The torn clothing, the blood, the seminal fluid on the skirt, the cries of the child, the hurried exit of the accused from the house, the immediate complaint to the authorities—all go to show that the testimony of the child is true. (U. S. vs. Reyes, 10 Phil. Rep., 84; U. S. vs. Villarosa, 4 Phil. Rep., 434.)

The appellant is a laborer, 26 years of age, while the child was only 15. It is apparent that he had sufficient strength to do with her as he pleased.

The trial court reduced the penalty to its medium degree. The court found present the aggravating circumstance of morada, that is, that the crime was committed in the dwelling house of the person injured, but compensated the effects of that circumstance with the extenuating circumstance found in article 11 of the Penal Code which provides that:

"The degree of instruction and education of the offender shall be taken into consideration by the courts for the purpose of mitigating or aggravating the penalties, according to the nature of the offense and the circumstances attending its commission."

The Attorney-General has asked us in his brief to modify the sentence and impose it in its maximum degree on the ground that, in crimes of this character, the extenuating circumstance of article 11 should not be applied. We have considered however that, as a general rule, the trial court can determine the application of article 11 with better results than we can. He has before him the accused; he is able to estimate his grade of intelligence, the instruction and opportunities he has had; he observes his appearance and demeanor and judges his tendencies and character.

We hesitate to reverse the trial court in this regard.

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

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

Torres, J., see dissenting opinion.

Johnson and Trent, JJ., concurs with J. Torres dissenting opinion.

DISSENTING OPINION

TORRES, J.:

According to the well-established rule frequently laid down by this court, the said article 11, as amended by Act No. 2142, cannot be applied in extenuation of a crime such as that charged against the defendant in the present case, and therefore that special circumstance should not have been taken into account for the purpose of offsetting the aggravating circumstance No. 20 of article 10 of the Code, on account of the crime of rape having been committed in the dwelling of the offended party. For this reason the judgment appealed from should be reversed, the adequate penalty in the maximum degree should be imposed upon the defendant as requested by the Attorney-General and the judgment should be reversed.

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