

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTIN HUERTAS, DEFENDANT AND APPELLANT.*G.R. No. 13866. December 20, 1918*

Ponente: TORRES, J.

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This cause was instituted by a complaint filed by the provincial fiscal in the Court of First Instance of Batangas, on March 19, 1917, whereby Martin Huertas was charged with the crime of rape, and, on November 27 of the same year, the defendant was sentenced to twelve years and one day of reclusion temporal, with an allowance of one-half of the time of imprisonment suffered during the pendency of the case, to the accessory penalties, to pay an indemnity in the form of dowry of P300 to the offended party, Rustica Hernandez, to recognize the offspring, should there be any, and in such a case to furnish P6 a month for the support of the child until it becomes of age, and to pay the costs. From this judgment the defendant appealed.

The following facts were duly proven at the trial: On the afternoon of August 13, 1916, while Rustica Hernandez, a girl of 17 years of age, was washing clothes in the Mahabangdahilic River, of the municipality of Lemery, as she was ordered so to do by her grandmother Ana Macatangay, the defendant went to her and, having learned that the girl was alone washing on the river bank, immediately said to her that he would satisfy his desires although she should resist. On hearing this statement the girl became very frightened and tried to escape by running up the river bank, but the defendant pursued her and threatened her with a penknife which he drew from his pocket. He soon succeeded in catching her and then carried her in his arms to a secluded place a short distance away where, in spite of her resistance and sobs, he stretched her out on the ground. During the struggle that ensued he succeeded in pinning one of the girl's arms under her body and, in order to overcome her strong resistance, raised up her right leg and placed it on one of his shoulders. In this situation, despite the girl's violent position, by which means she was subdued, he was able to consummate, and did consummate, the rape which he had intended to commit. Just at that moment the girl's grandmother Ana Macatangay went to the place, in search of her granddaughter, and on hearing the latter's sobs, approached the spot where Rustica Hernandez was, when she saw the defendant still mounted on top of her granddaughter, holding sexual intercourse with her in spite of the girl's resistance. As soon as the defendant heard the grandmother Macatangay's voice, he got up and ran away, pursued by the latter, while the girl returned home at once and immediately thereafter, accompanied by her relative Felisa, presented herself before the lieutenant of the barrio to complain of the crime committed against her; but as this officer stated to the offended party that the matter did not come within his jurisdiction, and as it was already night time, she, her companion Felisa and her grandmother Macatangay, which latter joined the two former on their departure from the barrio lieutenant's house, all returned to their respective homes, and, on the following day, went to the town to file complaint before the justice of the peace, in consequence whereof the latter ordered the girl to be examined by the physician, the president of the board of health of Lemery, who certified (record, p. 53) that the offended girl had bruises on the back of her left hand and on her upper lip; that her vaginal membrane had been recently perforated apparently by the insertion of the virile member, which tearing of said membrane was still fresh, although it was not bleeding; and that blood stains were found on the skirt which the girl was wearing

at the time she was examined. The physician who made the examination ratified the contents of the certificate above referred to, and stated besides that the bruises noted on the girl's lip and left hand must have been produced as results of the struggle had between her and her ravisher, and of the blows with the fist and the slaps she apparently received.

The testimony of the offended girl, of her grandmother Ana Macatangay and of her mother, Petronila Mendoza, corroborate the facts above related. The girl's grandmother testified that when she was at a distance of about ten brazas from her granddaughter and before she saw the latter under the defendant, she heard Rustica Hernandez sob and, on approaching the spot where the girl was, noticed that the latter was making movements of resistance to the unchaste act which the defendant was performing. The mother of the offended girl testified that when she, witness, learned of the occurrence she went to Ana Macatangay's house where she found her daughter crying, with her hair disheveled and her skirt soiled with earth and weeds of the field and spotted with blood.

The barrio lieutenant, Filomeno Zagala, corroborated the testimony previously given to the effect that on the afternoon of the day of the crime the offended girl and the woman Felisa presented themselves before him and reported to him what had occurred. He further testified that he noticed that the girl's hair was disheveled and soiled with earth, as was also her face and skirt, and that, after he had taken cognizance of the facts, he advised them to complain to the authorities of the pueblo.

The defendant, Martin Huertas, in his dissipation pleaded not guilty and in an affidavit stated that for about two years past he had been maintaining amorous relations with the aggrieved party, who had reciprocated his attentions; that on the date of the occurrence he, his sister Andrea and the girl Rustica Hernandez were in a house where a novenary was being held, and on returning he requested of the latter, his sweetheart, proof of their amorous relations; that the girl then told him that on the afternoon of that same day she would go to wash clothes in said river where he would find her; that when, a short while afterwards,, he went to the river bank indicated, he did in fact find her there engaged in the occupation mentioned; that upon his making a certain request to her, she replied that she placed herself at his disposal; that therefore they walked to another place quite a little distance away and secluded, and there had sexual intercourse; that the girl willingly consented to the defendant's lying with her, and that while he was so doing Ana Macatangay, the girl's grandmother, appeared on the spot and caught them in .the performance of the act of copulation; and that, on seeing the woman approach them, he ran away.

Maxima Vergara, one of the witnesses for the defense. testified that in a wood where she had tied a bull of hers she saw the defendant and the girl Rustica Hernandez sitting together and embracing each other, for which reason witness immediately left the place. Lucio Cabral, another witness for the defense, testified that on the afternoon of the occurrence he met the girl Rustica and Ana Macatangay as they were walking along the road, and that the latter was maltreating the former and urging her to complain of the crime, but that the girl refused to do so.

The foregoing facts certainly constitute the crime of rape, inasmuch as the defendant, by force and intimidation against the girl Rustica Hernandez' will and in spite of the tenacious resistance she opposed to the act of holding her fast and subdued, succeeded in lying with her, and succeeded in consummating the crime as the offended girl herself testified and as appears from the certificate of the physician who examined her and found in her genital organ sign of the copulative act having been performed with force and violence. Moreover, these facts are corroborated by the testimony of the witnesses who, a few moments after the occurrence, found the girl with her hair disheveled and her face and clothes soiled with earth, on account of the defendant having lain with her on the bare ground of the river bank, in which condition she was also seen by the barrio lieutenant before whom she presented herself a few moments after she was raped.

Aside from this circumstantial evidence derived from facts perfectly proven, there is in addition the testimony of

Ana Macatangay, who, on going to the river bank where the offended girl was engaged in washing clothes, surprised the defendant, whom she already knew, and recognized him while he was on top of her granddaughter in the act of lying with her in spite of the girl's resistance, wherefore, when the defendant ran away this witness pursued him, her indignity having been aroused by the unlawful act she had seen.

The offended girl denied the defendant's allegation that for the past two years he had had amorous relations with her, likewise the facts stated by the two witnesses for the defense, and also that she had given to the defendant the wearing apparel exhibited by the defense to prove the certainty of such relations, which clothes, she testified, had been stolen from her house at a time when the inmates thereof were absent. In default of proof to support the allegations made by the defendant and his counsel, the conclusion is reached that the crime of rape was committed and that the defendant did succeed in lying with the offended girl through means of intimidation, effected by showing her a pocketknife, with which he was provided, and by using brutal force, in that he caught her in his arms, stretched her out on the ground and consummated the coition in such a situation that the offended girl could not prevent it, although she opposed tenacious resistance. The struggle that took place during the act of the commission of the offense, appears fully proven by the injuries borne by the aggrieved party and by the further fact that when she presented herself before the barrio lieutenant her hair was disheveled and was, like her face and the skirt she wore, soiled with earth.

The crime is comprised, within article 438 of the Penal Code, and the defendant's guilt, as the sole perpetrator by direct participation, has been fully proven beyond all reasonable doubt.

No extenuating or aggravating circumstance attended the commission of the crime, inasmuch as there is no proof that the place where the criminal act was perpetrated was isolated and uninhabited; and it would not be proper to apply the special circumstance mentioned in article 11 of the Penal Code and in the Act which amended it, inasmuch as the defendant's lack of culture and education cannot serve as an extenuation for the application of the penalty fixed by law for the crime in question, and therefore such penalty should be applied in its medium degree.

For the foregoing reasons, and notwithstanding the allegations contained in the brief filed by the defendant's counsel, the judgment appealed from, which is in accord with the merits of the case, should be affirmed; provided, however, that the defendant shall be sentenced to the penalty of fourteen years, eight months and one day of reclusion temporal, and, with this modification, all the pronouncements contained in said judgment are affirmed.

The costs shall be assessed against the appellant. So ordered.

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

Street, J., dissented.

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