

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUSTAQUIO GAMILLA, DEFENDANT AND APPELLANT.

G.R. No. 13981. December 06, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

Said defendant was charged with the crime of rape. The complaint alleged:

"That on or about April 22, 1917, at about 6 o'clock in the afternoon, in the place known as Agupanga of the barrio of Catiningan, within the jurisdiction of the township of Pola, Province of Mindoro, P. I., the herein accused, having met in an uninhabited place Maria Mampusti, a young girl, 21 years of age, lame and one-handed, did, then and there, wilfully, unlawfully, and criminally seize her with the object of violating her, and, in effect, he did succeed in lying with her by means of force and intimidation. Act committed in violation of law."

Upon said complaint, defendant was arrested, arraigned, tried, found guilty and sentenced, by the Honorable Vicente Jocson, to be imprisoned for a period of twelve years and one day of reclusion temporal, with the accessory penalties of the law, (to endow the offended party in the sum of P300) ; to recognize the child if any should be born by virtue of the illicit relations, to support said child in the sum of P5 per month until it arrive at its majority, and to pay the costs. From that sentence the defendant ap pealed to this court. A question of fact only is presented by the appellant. A careful examination of the evidence shows that the following finding of facts made by Judge Jocson is sustained beyond a reasonable doubt:

"The evidence adduced by the prosecution has established the following facts: that in the afternoon of April 22, 1917, Maria Mampusti was ordered by her aunt Ramona Zuleta to go, together with Maxima Laylay, to the house of a certain Quicay in the barrio of Catiningan, Pola, Mindoro to ask for some buyo (betel-leaves, nut, and lime for chewing); that both the said girls, on their return home at dark, met, in the neighborhood of an abaca plantation, the accused who came from the cockpit and who had with him a game-cock; that upon approaching Maria Mampusti, the said accused let loose his roster on the ground and seized Maria Mampusti, throwing her easily on the ground; that then, the accused, despite the cries and resistance of Maria Mampusti, succeeded in violating her, thus consummating the lascivious act; that Maxima Laylay, on seeing the violence being committed by the accused, ran toward her house to call Ramona Zuleta; that, unfortunately, when the latter arrived at the place of the occurrence, the accused had already accomplished his savage purpose; was then at a certain distance from the offended girl; was running and being followed by the said Ramona Zuleta, who could not overtake him; that the offended girl and her aunt went to the councilor's and later to the town to present their complaint before the justice of the peace; that, unfortunately, when they reached the town, the said justice of the peace was not in the said town but in Pinamalayan, the latter township and Pola being combined for judicial purposes; that the said justice of the peace arrived some days afterwards; and that that was the time when the complaint was filed.

"The offended girl was examined by the health officer and, according to the certificate, Exhibit B, and the testimony of the said health officer before the court, her uterus was damaged and her hymen broken, the

wounds being recent in nature. The evidence of the prosecution as well as of the defense proves that Maria Mampusti is paralytic in half of her body and that her right hand is lame. Such being the case, she could only utilize her left arm for whatever resistance she could offer. The paralysis is such that, according to the witnesses of both parties, a slight push is more than sufficient to throw said Maria Mampusti to the ground.

"* * * * *

"Considering the evidence presented by both the prosecution and the defense, I believe that the testimony of the witnesses for the prosecution is accurate and sincere, because in my judgment the rape is fully proven by the health officer. The rape was easily consummated by the accused, because the offended girl is paralytic so that, as has been declared by the witnesses for the defense, with or without a slight push she can be thrown to the ground, and also because her right arm is lame—circumstances which made it impossible for Maria Mampusti to resist the force and cynical objects of the accused who accomplished the lascivious act with great facility.

"* * * * *

"The offended girl is a countrywoman as is also her aunt. They are entirely ignorant, and because of this circumstance it is not to be believed that they were capable of fabricating an accusation such as the present, because their sincerity is shown by the fact that they went to the authorities to complain against the acts committed by the accused and because the defloration of the offended party has been fully established by the examination had at the instance of the justice of the peace.

"The act complained of has been sufficiently proven beyond reasonable doubt, the author thereof being the herein accused Eustaquio Gamilla. This criminal act is comprised in, and penalized by, article 438 of the Penal Code, and, considering the accused's lack of instruction, the minimum penalty prescribed for such a crime should be imposed upon him."

It will be noted that the lower court gave the defendant the benefit of article 11. We have held in numerous decisions that article 11 should not be applied to the class of crimes with which the defendant is charged; that no one is so ignorant as not to know that the acts which the defendant committed were wrong and in violation of the law. (U. S. vs. Borjal, 9 Phil. Rep., 140; U. S. vs. Mercado and Rey, 13 Phil. Rep., 624; U. S. vs. Legaspi and Pulongbaret, 14 Phil. Rep., 38.)

There being neither aggravating nor extenuating circumstances the defendant should be punished in the medium grade of reclusion temporal, or for a period of fourteen years, eight months, and one day. Therefore, for the reasons above indicated, the sentence of the lower court is hereby modified. It is hereby ordered and decreed that the defendant be sentenced to be imprisoned for a period of fourteen years, eight months and one day of reclusion temporal, with the accessory penalties of the law, to endow the offended party in the sum of P300, to recognize the offspring if any should be born, and to support it in the amount of P5 a month until it arrives at its majority, and to pay the costs. So ordered.

Arellano, C. J., Torres, Street, Malcolm, and Avanceña, JJ., concur.

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