

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISABELO REYNALDO, DEFENDANT AND APPELLANT.*G.R. No. 14454. March 21, 1919*

Ponente: TORRES, J.

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About half-past six on Saturday afternoon, November 24, 1917, notwithstanding¹ that it was drizzling, Matea Bustillo, a girl 14 years of age, and her cousin Modesto Mariano, a child 7 years old, were returning to their house situated in Bilibid Viejo near the San Sebastian Church, after having carried the supper for Espiridion Bustillo, the father of the said Matea, who was working as a mechanic in the building of the International Cold Storage, situated on Echague Street and near the suspension bridge at Quiapo. On the way, the accused who was unknown to them detained them. He told them that he was a member of the secret service and asked them where they had stolen the piece of lumber which they were carrying, to which question they answered that the lumber was delivered to them by said Espiridion Bustillo for the purpose of carrying it home. Notwithstanding this answer, the accused advised the two children to follow him to the secret service quarters. For this reason, they passed over the suspension bridge and continued walking until they reached the botanical gardens where the said accused ordered them to leave in that place the piece of lumber. After walking some distance the accused ordered the two children to get into a rig into which he likewise did. The rig continued on its way under the orders of the accused and passed through streets and squares completely unknown to the children for which reason the said children began to weep and, when they reached an alley where there was a post with a light, the accused told the children to get out of the rig and pass through the said alley. When they reached its end they found that it was near the sea. This fact made the children more afraid and, because they did not know the place, they cried aloud. When they passed by a house that was well lighted, the accused told them that it was the secret service quarters to which they were going, but they continued walking and then met five individuals one of whom greeted the accused calling him Belo and asked him whence he had come, to which the accused answered in a low voice saying that he had come from a place nearby. Upon reaching a hut, the accused asked the children if they preferred to go to the quarters where there were five Americans who would one by one abuse the girl or to go to the said hut, the girl Matea giving herself up to him alone. To this, the girl answered that he could take them to the quarters. Then the accused placed the boy in a canoe which was in the sea, dragged the young girl and forced her to enter the hut, and, because the child Modesto tried to interfere, the accused maltreated the boy as also the girl whom he immediately threw on the floor of the hut, in spite of her resistance and cries; after insulting her, the accused lay with her by means of threats and the use of force.

After he had consummated the rape, the accused left, thus abandoning the said children, who, with their clothes wet, hungry, and completely deserted, roamed around at the late hours of that night, through the streets of the town of Parañaque to which they were taken; and then there again met the five individuals whom they saw a few hours before. These five men asked the children where they were from and why they had gone to that town. The children related what had occurred and when they later found out that the five men were policemen of the town, the said children lost their confidence in them as they became suspicious of them.

After the policemen had become aware of the attempt of which the girl was a victim, one of them telephoned to the house of Dr. Toribio Cordero to the end that the latter might communicate the incident to the parents of the said girl who were living in a house next to his.. This was done after the policeman had been assured by the said children that there was a telephone in the house of the said doctor. Later, the policeman conducted the said children to the place and the hut where the rape was committed upon, the person of the girl in order to ascertain what had occurred, and later to the municipal building of Paranaque, and, still later, conducted them to the General Hospital, in order that the girl Matea might undergo a physical examination, as her underskirt showed signs of bloodstains and as the children assured the policemen that the accused, who was completely unknown to them, was dressed with a silk coat and woolen pants and that the said girl knew his face very well; so that at the trial in court she recognized him as the author of the said acts.

While the children were in the municipal building of Parañaque, Eusebia Mariano, the aunt and step-mother of the offended girl, accompanied by another woman, appeared in the said town hall as a result of the telephone call she had received.

Manuel Pascual, sergeant of police of Paranaque, in his testimony, affirmed what has been stated by the offended girl, Matea Bustillo, saying that his subordinates, the policemen, who were with him that night, were Felix de Leon, Marcelo Cruz, Hermogenes Jose, and Flaviano Hilario; that they were going that night to surprise some gamblers in the place known as Baclaran, and walking along the sea they met the accused whom they previously recognized as the one who was going with the said children; that on their return, because they did not succeed in surprising the gamblers, they met the said two children in the street; that the children, upon being investigated, told the policemen what had happened to them; that after they had given the said children some bread as they were complaining of hunger, they took them to the place where the girl was raped, and in fact they found in that place impressions of the rubber shoes used by the accused on the ground and also on the floor of the small house where the crime was perpetrated; that, when they went to the house wherein the accused lived near that place, and while the accused was getting down from the house by order of the policemen, the children at once recognized him as the perpetrator of the deed; and that, for this reason, the accused together with the children were brought to the municipal building of the town.

The policeman, Felix de Leon, further said that, in order to ascertain the fact of the rape as asserted by the girl, which rape had caused much pain in her genital organ, they took the said girl to a canteen near by, where there was light; that there he touched the organ of the offended girl with his fingers and the result was that his fingers were impregnated with blood; and that, for this reason, they inquired the place where the offended children and their parents were living and as to whether there was a telephone in any of the houses in that place so that they might communicate the fact to the parents of the girl.

The accused did not testify in the case, but his counsel presented two witnesses who were drivers of vehicles. The first of these witnesses asserts that he was the driver of the vehicle in which the accused was riding when he returned home, on the night of the occurrence, to the place called Baclaran and that no other person came with the accused in that vehicle. The second witness declared that he was the driver of the vehicle carrying the two children whom he recognized at the trial and took them to the place called Patpat in the municipality of Pasay. This last witness appeared before the court to testify in the case solely at the instance of one Victoriano Somera.

It is to be noted that at the trial it was shown that the offended girl was sent to the General Hospital for examination but that, nevertheless, it was not shown at the said trial that there was any certificate showing the result of said examination, a certificate which would have corroborated, perhaps, the fact that the offended girl was really raped a few hours before, on that night, an offense which has been fully proven in the case.

There are three elements of the crime provided for and penalized in article 445 of the Penal Code, to wit: (1) the rape of a woman, whether unmarried, married, or a widow; (2) that the rape be done against her will; and (3) that the rape be accomplished with lewd designs.

The offended party, Matea Bustillo, a girl or minor of some 14 years of age, unmarried, and living in the house of her parents, was, on the night of November 24, 1917, detained and abducted through intimidation by the accused Isabelo Reynaldo who took her to a place where he proposed to execute upon the said girl his lewd designs. As she was intimidated, the girl Matea in company with her cousin, Modesto Mariano, a boy 7 years of age, could not put up any resistance when she was first taken on foot and later in a vehicle by the accused, as there was no necessity for the latter to employ force or violence inasmuch as intimidation proved sufficient in carrying out his criminal purpose.

The case treats of an unfortunate girl, undoubtedly without any education, belonging to a poor and ignorant family, as she is a daughter of a mere laborer. She was terrorized by the accused who made her believe that he was an agent of authority, so that she submitted herself to obey him without verifying the true motive of her detention and as to whether it was true that the individual who had kept her was in fact such agent, requiring the presentation to her of the special sign of which the said accused should be provided in order that he might, be recognized as such agent of authority. If the offended girl did not make any effort to free herself from the accused, but, on the contrary, yielded to him because she feared an agent of authority, much less could be expected of her companion, the child Modesto, also a minor, 7 years old.

When trick, falsehood, deceit, and fraud have been employed to overpower not a woman who, in physical strength and intelligence by reason of her advanced age, might have made a strong opposition and resistance, but a girl of some 14 years of age, uneducated and without a sufficient knowledge of things, and without a sufficient discretion and judgment to oppose the ulterior and wicked designs practiced upon her, it is undeniable that in the mind of the said girl the acts of the accused have produced consequences identical to those which would have been produced had the accused employed material force to carry and conduct her from Echague Street to the distant town of Paranaque.

It is evident and indubitable that the intimidation and fraud, practiced by the accused upon the persons of the children Matea and Modesto from the moment he detained them in Echague Street and carried them in a vehicle to the said town of Paranaque, restrained, destroyed, and overpowered absolutely the will of the said children in such a manner that the accused succeeded completely to subdue it, as if he had really used upon the said children physical force and violence.

Moreover, if by such methods constantly sustained through the intimidation practiced by the accused upon the offended children he succeeded in subduing their will especially that of the girl Matea without the necessity of employing upon them material violence so that he was enable to take them to Paranaque, it is also to be noted that, until they reached the place where the rape was consummated, the victim of the attempt did not in the least consent to such acts despite her fear for the accused, as shown by the fact that the girl Matea resisted and cried out when the accused, in order to lie with her, violently threw her on the floor of the small house to which he forcibly dragged her. The fear which the accused infused into the mind of the offended children is such that the latter did not reveal to the policemen of Paranaque what had occurred until after they were convinced that they were under the aid and protection of the said policemen.

From the facts just stated which have been fully proven by the testimony of the children so kidnapped, by that of the policemen who, a few moments after the consummation of the rape, learned of the occurrence and verified the truth of the lascivious attempt of which the offended girl was the victim, and also by a sufficient amount of

circumstantial evidence derived from facts duly proven, it is conclusively inferred that the crime of abduction was committed with lewd designs translated by its author into the very serious act of rape of the offended girl, it being sufficient that the abduction be committed through intimidation and fraud in order that the crime may be qualified as having been effected against the will, and without the consent or assent of the abducted party, so that, considering the said circumstances of fraud and intimidation and the presence or absence of will on the part of the victim, the word abduction is used in the information. If the abducted girl of 14 years of age, overcome with dread and fear, could not put up a material resistance to the sequestration and abduction executed by an adult person in the full vigor of manhood, the fact is that the offended girl and her boy companion had been weeping since their detention up to the time they were taken to the shore of Paraiiaque and that they protested and opposed in some way or other on becoming aware that the accused wished to lie violently with the girl, since they cried out, notwithstanding the fear they had, and the accused stopped their cries by maltreating them.

The foregoing facts and other data furnished by the record produced in the mind a full conviction of the certainty and truth of the criminal acts of which the offended girl was the victim, and of the wickedness and guilt of the accused who, in order to carry out his criminal intent, chose precisely a girl of 14 years with the object, undoubtedly, of being able to dominate her more easily than he could an older or stronger woman who might have put up against him a more serious and efficient resistance.

In the commission of the crime no aggravating or mitigating circumstance is to be considered. Hence, the penalty imposed upon the accused is in accordance with law.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, we are of the opinion that the said judgment should be affirmed as we hereby affirm the judgment of April 26, 1918, whereby the accused is sentenced to the penalty of fourteen years, eight months and one day of reclusión temporal, with the corresponding accessory penalties, to endow the offended girl in the sum of five hundred pesos (P500), and to recognize the offspring, should there be any. The costs shall be charged against the appellant. So ordered.

Arellano, C.J., Johnson, Araullo, Malcolm, Avanceña, and Moir, JJ., concur.

DISSENTING

STREET, J., with whom concurs CARSON, J.,

In the brief filed for the Government in this case by the Acting Attorney General of the Philippine Islands, it was respectfully submitted that the offense committed in this case was that of abduction effected with the consent of the injured girl, punishable under article 446 of the Penal Code, instead of abduction of a woman against her will, punishable under article 445 of the same Code, as estimated by the court. If this suggestion had been followed the penalty imposed would have ranged from one year, eight months and twenty-one days to two years, eleven months and ten days of prisión correccional. I think the recommendation thus made by the Acting Attorney-General is based upon a just and adequate conception of the case and should have been adopted. It is evident that, although the accused may have practiced deceit and obtained the consent of the offended girl to accompany him by fraud, with lascivious designs on his part, nevertheless he used no violence to compel her to go against her will; and in the end she yielded her consent to his embraces. In cases of this kind certain aspects of truth are sometimes discernible which a judge, out of consideration for the offended party, would prefer not to develop. This is a case which in my opinion should be passed upon with that natural insight which is born of common sense and common observation. If it had been a case of abduction without the consent of the girl, she undoubtedly would have made complaint to the squad of policemen whom they encountered in Parañaque before

reaching the hut where the designs of the accused were consummated.

Judgment affirmed.

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