

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRILO TUMBAGA, DEFENDANT AND APPELLANT.*G.R. No. 15520. January 26, 1920*

Ponente: TORRES, J.

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Upon an information filed by the provincial fiscal with the Court of the First Instance of Isabela accusing Cirilo Tumbaga of the crime of rape, the present cause was instituted and, on March 12, 1919, judgment was rendered therein condemning the accused to suffer fourteen years, eight months and one day of reclusion temporal with its accessories, to indemnify the offended party in the sum of P500, to recognize and support the offspring should there be any, inasmuch as on the date of the commission of the crime both the accused and the offended party were single, to deduct from the principal penalty the time of the preventive imprisonment and to pay the costs. From this judgment counsel for the accused appealed.

It appears that in the afternoon of October 17, 1918, Emeteria Francisco was invited by Lorenza Castaneda, a concubine of the accused Cirilo Tumbaga, to pound rice in her house, which Emeteria did; that after they had said their prayer in said house, Emeteria manifested her intention to go home in company with Teofilo Guieb, a 12-year old boy, who was expressly sent to said house by her aunt Tomasa Francisco (with whom said Emeteria was living), in order to call the latter; that when the offended party, Emeteria, was about to go, the mother of the accused offered to accompany her, but she told her that it was not necessary because she and the boy Teofilo could go home alone; that then the accused immediately offered to accompany them; that notwithstanding the refusal of Emeteria, who at once left the house with said boy going along a pathway, the accused followed behind them; that when they arrived at a place near the main road, about 80 meters from the house where Emeteria was living, the accused Tumbaga pushed away the boy Teofilo, insulting and telling him to walk in front of them, whereupon the boy fell headlong and cried out; that when the offended party tried to help her companion Teofilo, at the same time asking the accused why he had pushed away the boy, said accused also pushed her away with force, whereupon she fell on the ground; that the accused then took hold of both her hands and dragged her towards a grove of bamboo; that notwithstanding her opposition and her having cried out, calling for her aunt, the accused, by pressing her neck, stretched her out on the ground and, in spite of her resistance, succeeded in lying with her; that while in this position, her aunt Tomasa Francisco, arrived and appeared on the spot, but when she approached them the accused, who was over the offended girl, threatened Tomasa that if she would approach he would give her several blows with his bolo; that frightened by this threat, Tomasa took to flight; that after the criminal act was finished, the accused went away, leaving the offended girl, who immediately stood up and took the road towards her house; that on the road she met her aunt, Tomasa Francisco, whom she was calling mother and who was going to the place of the incident with a light. The offended party said that her clothes, her camisa and skirt she was wearing, were torn as a consequence of the acts of personal violence committed by the accused from the moment she was dragged to the grove of bamboo until he succeeded in his attempt and of the resistance she offered in defending herself from her offender.

The boy Teofilo Guieb affirms that when her mother, attracted by the cries of the offended party, went with him to the spot where she was, they found her stretched out on the ground and over her was the accused.

Tomasa Francisco said that the offended party is her niece and Teofilo Guieb' is a god-son in baptism of one of her brothers; that when she heard Teofilo's voice and that of the offended girl, she went down the house looking for them; that on the road she met the boy Teofilo who, when she asked him for Emeteria, replied that she was dragged by the accused towards a grove of bamboo, and thither they immediately proceeded; that before they could come near them, the accused, whom they saw over the offended party, warned her that if she would come near he would kill her; that, for this reason she went home and again came down with a light and that afterwards they reported the foregoing facts to the assistant *teniente del barrio*, the accused being the *teniente*.

The accused did not plead guilty and in his sworn testimony said that when the offended party, Emeteria, left his house on that night she told him to accompany her because she had to tell him something; that in fact when the witness was going with said offended party, the latter asked him about their marriage agreement, because it seems that the witness has already forgotten it; that notwithstanding that he did not reply that she had the fault, the offended party took out a razor from inside her *camisa* but the witness took said razor, whereupon the boy ran away and the offended party, Emeteria, began to cry out calling and asking her aunt for help because the witness was raping her; that then Ulpiano San Jose, who came from his house, appeared on the spot to inquire what was going on; and that at once the witness separated from the offended party and went home in company with San Jose. The accused, furthermore, alleged that the offended party was his mistress (*querida*) and that she told him that she knew she was being deceived by him for having married another woman. The accused admitted having succeeded in lying with her in the night in question but with her consent and without having employed force or violence, as he used to do whenever he wanted to lie with her. At the hearing of the case and in order to show that the accused had some acquaintances with the offended girl, he presented in evidence a knife, a handkerchief and a ring which he alleged she had given him since the month of August last (Exhibits 1, 2 and 3). Ulpiano San Jose affirmed the agreement of the accused and the woman to meet at the place in question, saying that when he came, upon hearing the screams of a woman, he found the accused grasping one of the offended party's hands which was holding a knife, and that after separating them, he invited the accused to go home. Domingo Camara affirms having seen said ring in the hand of the offended party since the month of July, 1918.

The offended party, Emeteria Francisco, flatly denied having been a mistress of the accused or having had, previously, sexual intercourse with him or with any other man, or having invited him in the night in question to accompany her and the boy Teofilo Guieb on their way home, or having reminded him on the way of any marriage promise, or having made use of a knife to assault him, or having seen Ulpiano San Jose in the night in question at the place of the incident, or having had in her possession the handkerchief and ring produced in evidence at the hearing of the case. Teofilo Guieb likewise denies having seen the witness San Jose at the place of the incident in the night in question as well as the knife Exhibit 3.

The foregoing facts duly proven in this case are clothed with the character of the crime of rape, mentioned and penalized in article 438 of the Penal Code, inasmuch as it appears that upon a pretext to accompany the offended party on her way home in the night aforementioned, the accused, in spite of her opposition, did in fact accompany her; that when she arrived near the terminal of the pathway where she was walking before reaching the main road, the accused pushed away the boy Teofilo in order that the latter should go head; and that, when the latter fell on the ground, the offended girl came to aid the boy and asked the accused why he acted in that manner; but the latter immediately pushed her away and, taking hold of her hands, dragged her toward a near-by grove of bamboo where he, through force and violence, succeeded in raping her notwithstanding her resistance and opposition and her cries for help calling her aunt, Tomasa Francisco. There is no doubt that the accused, a robust man, 32 years

old, could have overcome by force the offended party, a girl 16 years old, whose throat he was holding with his hands while she was lying on the ground. And it is not strange that the accused succeeded in his lewd and criminal designs notwithstanding her cries and efforts to resist and prevent similar illegal attempts. As a matter of fact the clothes of the offended party, which were presented in evidence at the hearing, were torn.

If it were true that the offended girl was an old mistress of his and that he used to lie with her with her consent whenever he wanted, as he did in the place aforementioned, near the groves of bamboo, it is strange that she would have cried out so as to be heard by her aunt Tomasa Francisco, who thereupon came to the place of the incident, and that in order to execute an act which the accused alleges he was wont to do, he would have been obliged to employ violence and to overcome the stubborn resistance of the offended girl—all of which go to show that, in spite of the unjustifiable allegations and futile attempt of the accused to justify his acts, the crime imputed to him is undoubtedly true and that he has perpetrated it against the will and in spite of the opposition of the offended girl. As a matter of fact, he had to threaten her aunt at the moment the latter approached and found him in the act of committing the crime with which he is charged.

Wherefore, the judgment appealed from is in accordance with the law and the merits of the case, and from the foregoing consideration, said judgment is affirmed, as we do hereby affirm it, with the costs against the appellant. So ordered.

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

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