

The People of the Philippine Islands, plaintiff and appellee, vs. Eustaquio Calalas ET al., defendants. Eustaquio Calalas, Victoriano Calalas, Emiliano Amban, Valentino Amban an...

G.R. No. 21059. January 21, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

The above-named defendants were accused in the justice of the peace court of the municipality of Murcia, Occidental Negros, of the crime of rapto con violation. A preliminary investigation was held, after which the justice of the peace sent the case to the Court of First Instance of the province in which the following information was filed against them:

"That on or about the evening of December 28, 1922, in the municipality of Murcia, Province of Occidental Negros, P. I., and within the jurisdiction of this court, the accused Eustaquio Calalas and Emiliano Amban, conspiring together and cooperating with each other, and each being armed with bolos and fan-palm canes, repaired to the place where the house of Victoriano Cordova is situated while the latter was absent therefrom, and on the occasion that his daughter, Rosario Cordova, was in the house alone with only a girl 4 years old, and once in the said place the accused, Eustaquio Calalas, went up into the house, the accused, Emiliano Amban, having been left under the house or so near thereto as to avoid any possible contingency; that the said accused, Eustaquio Calalas, once in the house, did willfully, unlawfully and criminally, and with lewd designs, and through violence and intimidation upon the person of Rosario Cordova, take the latter away from the said house and carry her to an uninhabited place, to wit, to Mount Cumalisquis, within the jurisdiction of said municipality of Murcia, in company with his coaccused, Emiliano Amban; that when said accused, Eustaquio Calalas and Emiliano Amban, were on the way, the accused, Valentino Amban, Cirilo Amban, Pedro Amban, and Victoriano Calalas, who knew of the abduction, met them and did willfully, unlawfully, and criminally accompany their coaccused, the aforesaid Eustaquio Calalas and Emiliano Amban, up to Mount Cumalisquis aforesaid, and that on reaching there, they left Rosario Cordova alone with the accused, Eustaquio Calalas, who, a few minutes thereafter, and through intimidation and threat against the person of his companion, the aforesaid Rosario Cordova, lay and had sexual intercourse with her."

When the case was called, all of the defendants appeared, except Pedro Amban, who escaped and was not arrested. The lower court found the defendants, Eustaquio Calalas, Emiliano Amban, Valentino Amban, Cirilo Amban, and Victoriano Calalas, guilty of the crime charged, under paragraph 1 of article 445 of the Penal Code, with the aggravating circumstances specified in paragraphs 9 and 15 of article 10, and sentenced each of them to seventeen years, four months, and one day of reclusion temporal, with the accessories of the law, and to pay one-sixth of the costs. The defendant, Eustaquio Calalas, was further sentenced to endow the offended party in the sum of P100 and to recognize and support the offspring, if any. All of them appeal, specifying the following assignments of error:

"I. The trial court erred in finding that there was conspiracy among the appellants herein.

"II. The trial court erred in appreciating the concurrence of the aggravating circumstances mentioned in paragraphs 15 and 9 of article 10 of the Penal Code, in the commission of the alleged crime.

"III. The trial court erred in declaring the appellants herein guilty of the crime charged beyond reasonable doubt."

JOHNS, J.:

The girl in question was 14 years of age, and at the inception of the crime was in her own home in the barrio of Cumalisquis, municipality of Murcia, Occidental Negros, with a child 4 years old. The house was situated in a somewhat isolated place, the nearest one to it being that of Hipolito Vargas, who is a cousin of the defendants Eustaquio Calalas and Victoriano Calalas, brothers, and it was at such a distance that the cries and screams of the girl could not be heard at the home of Vargas. On the afternoon in question, the girl's father and mother were away from home, having been invited by Victoriano Calalas to go to the forest to find materials with which to make sacks.

The trial court who saw and heard the witnesses testify believed the evidence for the prosecution, and found the defendants guilty of the crime charged.

The proof is conclusive that the defendant Eustaquio Calalas, armed with a bolo and a cane, went to the girl's house with the defendant Emiliano Amban, who was also armed with a bolo. After leaving Amban downstairs, Calalas went upstairs and caught the girl by the hand and said: "Will you come or not? If you are coming, come on." After dragging her downstairs, he left her in the hands of his companion, and returned to the house to get her clothes. Upon coming back they both carried her away, holding her by each arm, during which time Calalas intimidated her with his bolo. When they were about one kilometer from the house, at the suggestion of Calalas, the defendants separated, Emiliano Amban going away. Immediately after he left, Eustaquio Calalas, through force and violence, threw the girl on the ground, gagged her mouth with a handkerchief, and had sexual intercourse with her. In her efforts to resist, the girl's underwear was torn and stained with mud. The place in which this occurred was an open field in which the two of them passed the night, and were furnished with rice by the above named Victoriano Calalas. On the following morning they were joined by the defendants, Emiliano Amban, Valentino Amban, Cirilo Amban, and Pedro Amban, and together they took the girl against her will to Mount Sibalo, where they left her alone with Eustaquio Calalas, saying that on the next day they would return and conduct them to a place called Bug-as. At Sibalo Eustaquio Calalas again had sexual intercourse with the girl against her will. About noon of that day they were found by the officers and all of the defendants, except Pedro Amban, were placed under arrest.

It will be noted that the information charges that the defendants, Eustaquio Calalas and Emiliano Amban, conspiring and confederating together, alone went to the house of the girl and took her away. It is also true that after they had gone about one kilometer, Emiliano Amban went away, and left Eustaquio Calalas alone with the girl. The information also alleges that when Eustaquio Calalas and Emiliano Amban "were on the way, the accused, Valentino Amban, Cirilo Amban, Pedro Amban, and Victoriano Calalas, who knew of the abduction, met them and did willfully, unlawfully, and criminally accompany their co-accused, the aforesaid Eustaquio Calalas and Emiliano Amban, up to Mount Cumalisquis aforesaid, and that on reaching there, they left Rosario Cordova alone with the accused Eustaquio Calalas."

The proof is conclusive that Eustaquio Calalas and the girl spent the night together and alone, and that the defendants above named did not join them until the next morning. In other words, the above named defendants took no active part in the abduction until the next morning after Eustaquio Calalas and the girl had spent the night

together and alone.

As we analyze the evidence, the proof is conclusive that the defendants, Eustaquio Calalas and Emiliano Amban, conspiring and acting together, used force and violence in taking the girl away from her home, and are guilty of the crime charged, and as to them, the judgment of the lower court is affirmed. As to the remaining appellants, the evidence tends to show that their actions and conduct and relation to the crime were more in the nature of accomplices than as principals.

Article 13 of the Penal Code defines principals as follows:

"1. Those who take a direct part in the commission of the act;

"2. Those who directly force or induce others to commit it;

"3. Those who cooperate in the commission of the act by another act without which it would not have been accomplished."

The proof shows that the defendants in question were not principals within either one of the provisions of article 13.

Article 14 provides:

"Accomplices are those persons who, not being included in article thirteen, cooperate in the execution of the act by previous or simultaneous acts."

The evidence shows that, through a simultaneous act, those defendants did "cooperate in the execution of the act." That is to say, after the girl was taken from her house and into the rice field where she spent the night, they joined Eustaquio Calalas and aided and assisted him in taking the girl to Mount Sibalao. That was a continuation and a part of the crime itself, and to that extent they did "cooperate in the execution of the act." The same thing is true as to the defendant Victoriano Calalas.

A detailed statement of the evidence would not serve any useful purpose. Suffice it to say that the defendants in question are not guilty as principals, but that the proof is conclusive that they are guilty as accomplices, and should be punished as such.

Article 67 of the Penal Code says:

"The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony."

Under article 91, the penalty of an accessory for the crime ranges from six years and one day to twelve years. For the reasons above stated, as to the defendants, Valentino Amban, Cirilo Amban, and Victoriano Calalas, the judgment of the lower court will be modified, and, in lieu thereof, each of them is hereby sentenced to eight years and one day of prision mayor, and in all other respects the judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

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