

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN CARIASO, DEFENDANT AND APPELLANT.

G.R. No. 22631. November 29, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The complaint which initiated these proceedings is as follows:

"That on or about January 16, 1924, and in the municipal district of Siraway of the Province of Zamboanga, Philippine Islands, the said accused who was then and there a teacher in the public school named 'Siokon Settlement Farm School' and as such in charge of the education and instruction of the Mora Ubbang, 11 years of age, voluntarily, illegally and criminally lay with said Ubbang girl against her will. Contrary to law and within the jurisdiction of this court."

After trial, the Court of First Instance of Zamboanga found the accused guilty of the crime of rape and sentenced him to seventeen years and four months reclusion temporal, to endow the offended party in the sum of P00, to recognize and support the offspring, if any, and to pay the costs.

The accused appeals from this judgment and makes two assignments of error committed by the trial court: (1) In giving weight to the testimony of the alleged offended party and in not taking into consideration that of the five witnesses for the defense; and (2) in not acquitting him and ordering his release.

After examining the evidence we find it proven, beyond a reasonable doubt, that the accused had carnal relations with the offended party on the occasion referred to in the complaint.

It has not been sufficiently proved that the offended party at that time was less than 12 years of age, nor that the act consummated was against her will. And, giving the accused the benefit of the reasonable doubt which we entertain on these two points, there are no grounds for declaring him guilty of the crime of rape.

He, however, according to the allegations of the complaint, was then "a teacher in the public school named 'Siokon Settlement Farm School/ and as such was in charge of the education and instruction of the Mora Ubbang;" and said accused, according to the testimony of Cristino Buendia, a witness for the defense, "was in charge of the field work of the school and, at the same time, taught the second grade of said school" (p. 40, s. t. n.). And, according to the offended party's testimony, at that time she was a pupil of the third grade in said school and was working in the field known as the school garden (p. 6, Ibid).

Although the accused was not the teacher of the third grade class which the offended party attended and which the trial court referred to in remarking that he "was not, however, in charge of the class which the offended party attended on the day in question," nevertheless, he was in charge of the education of the offended party in agricultural matters, because he was in charge of the field work of the school, according to the witness for the defense, Cristino Buendia.

And we hold that this relation of the accused to the offended party is sufficient to make the seduction, which we

understand was voluntary, punishable under the provisions of article 443 of the Penal Code. The term "teacher," employed in this article, includes not only teachers who give academic instruction, but also those of trade schools. (Decision of the Supreme Court of Spain of December 15, 1883; vide 3 Viada, *Codigo Penal*, pp. 136, 137.)

Under the terms of the complaint and upon the facts proved, the accused may and must be held guilty of the crime defined and penalized in said article 443 of the Penal Code.

Therefore, the judgment appealed from finding the appellant guilty of the crime of rape is reversed and he is found guilty of the crime of qualified seduction as denned and punished in the first paragraph of article 443 of the Penal Code, and he is sentenced to one year, eight months and twenty-one days prision correctional, to the accessories provided in article 61 of the Penal Code, to endow the offended party in the sum of P300, to recognize and support the offspring, if any, and in case of insolvency of the endowment and support of the offspring, to suffer subsidiary imprisonment not to exceed one-third of the principal penalty here imposed, with the costs of both instances against the appellant. So ordered.

Street, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

DISSENTING:

MALCOLM, J.,

There are two courses, and two courses only, for the court to follow in the decision of this case on appeal. The first course is to accept the findings of fact as made by Judge Horrilleno and the testimony of the aggrieved party, and to hold the accused, a public school teacher, guilty of the detestable crime of rape committed on the person of a Mora girl 11 years of age. The remaining course is not to accept the findings of the trial Judge and not to believe the story told on the witness stand by the girl, and then to acquit the accused. But when the court tries to compromise on questions of law and of fact, when it tries to pick out points here and there in the testimony of the girl and believe them, while paying no attention to other points and facts, just as reasonable, and when it convicts the accused of another crime by building up a case on a series of presumptions, it follows a nearly impossible course of procedure.

The testimony of the girl, practically uncorroborated in any respect, was to the effect that she was raped by the accused, about 9 o'clock in the morning, in a spot but a short distance from the school by his use of force and intimidation. She, and likewise her father, also said that her age was 11 years. The court considers that she is telling the truth when she states that she was raped, but considers that she is not telling the truth when she states that the act was committed with force or intimidation, and when she states that she is under 12 years of age. Against her testimony stands the testimony of all the teachers of the school, who stated positively that at the time when the crime was alleged to have been committed, the accused was in the company of the supervising teacher and the girl was in the schoolhouse. The doctor who examined her gave as his opinion that she had not been raped, although admitting that the physical examination, disclosed two lacerations and a rupture of the hymen.

In order to convict the accused of a violation of article 443 of the Penal Code, it is necessary to find that the girl is over 12 and under 18 years of age, and there is not a scintilla of evidence to this effect in the record. It is next incumbent upon the court to find that the accused is a teacher who had charge of the education of the girl seduced. As a matter of fact, the accused was neither the principal of the school nor the teacher of the class in which the girl was enrolled. On this point the trial judge made the following finding:

"Alegase en la querella que el acusado era el encargado de la education e instruction de la of endida al tiempo de la comision del delito, pero las pruebas demuestran que si bien el acusado era uno de los maestros de la

escuela publica de Siokon no era, sin embargo, el encargado de la clase a que la ofendida asistia en el dia de autos."

It is my opinion and I have read all of the evidence carefully, that the accused has not been proved guilty beyond a reasonable doubt either of the crime of rape or of the crime of seduction. Indeed, the method followed by the members of the court in arriving at a decision discloses this same doubt in their minds, if they would only be consistent enough to give it expression.

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