

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CORNELIO TISBE AND FRANCISCO PANDIÑO, DEFENDANTS AND APPELLANTS.

G.R. No. 23180. September 23, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The defendants in this case were tried jointly with Julio Montecer, Esteban Austria and Victoria Perez for the crime of abduction, committed, according to the information, as follows:

"That on or about the night of November 19, 1923, in the barrio of Bana, municipality of Tiaong, Province of Tayabas, Philippine Islands, the above named accused, conspiring together and assisting one another and with lewd designs, did willfully, unlawfully and criminally and without justifiable motive, ascend and enter the dwelling of one Rafael Alcazar, and through force, violence or intimidation upon persons, robbed his daughter named Alberta Alcazar, a girl 17 years old, taking her from her home and carrying her to a forest, with grave alarm of her parents and other relatives, and once in the said forest, the herein accused, conspiring together and helping one another and with abuse of superior strength and through force, violence and intimidation, compelled the said Alberta Alcazar to have carnal knowledge with one of the defendants, Cornelio Tisbe, as said Cornelio Tisbe did in fact and with the help of his four accused willfully, unlawfully, and criminally throw to the ground and succeed to lie several times with the said youth Alberta Alcazar against her will and without her consent.

"Contrary to law."

After proper trial, the lower court rendered a separate judgment, acquitting the defendants Julio Montecer, Esteban Austria and Victoria Perez on the ground that the evidence of the prosecution did not show beyond doubt the guilt of the defendants Julio Montecer and Victoria Perez, and as to Esteban Austria there was no proof that the latter has taken part in the crime.

Subsequently, to wit, on August 25, 1924, the same court rendered another judgment against the appellants, finding them guilty of the crime of abduction and sentencing them to fourteen years, eight months and one day of reclusion temporal and to the accessories prescribed by the law, and further sentencing Cornelio Tisbe to acknowledge the offspring, should there be any, and to endow the offended party in the sum of P500, and each to pay one-fifth of the costs.

His Honor, the trial judge who tried this case, says in the judgment appealed from the following:

"After a careful analysis of all the evidence introduced by both parties, the court finds that Alberta Alcazar was abducted against her will by the defendant Cornelio Tisbe, the latter being accompanied by Francisco Pandiño. It cannot be explained if Alberta Alcazar had voluntarily escaped with the defendant in order to get married before the justice of the peace of the municipality of Rizal, Laguna, why she should have denied before said officer that she knew how to sign.

"It may be argued, however, that the testimony of the mother is not entitled to any credit, as the court in the former decision said that the latter's testimony must be taken with much caution. It is true that in its judgment of acquittal regarding the other defendants, the court, in discussing the testimony given by the mother of the offended party in that judgment, said that the latter's testimony must be taken with caution, because it had noted that said testimony was quite exaggerated.

"Even eliminating the testimony of the mother, the prosecution has other evidence, namely, the testimony of the offended party, which shows that she was abducted against her will; it is not usual that a woman, who has voluntarily eloped with her abductor and married afterwards, should deny the fact and complain that she was abducted against her will."

We have read the evidence introduced in this case, and agree with the finding of the lower court that the testimony of the mother of the offended party must be taken with caution because there is much exaggeration in it. But if the testimony of the mother is stricken out, we doubt very much that the sole testimony of the offended party in the instant case is sufficient to justify the judgment against the appellants. The testimony of the defendant Tisbe that he and the supposed offended girl had decided to elope on the night in question in view of the objection of the mother to his proposal of marriage was not contradicted by the offended party, notwithstanding that she was presented as witness in rebuttal. It is an admitted fact that she was living then in the house of Don Luis Umali in the populated center of Tiaong, and yet on the night in question she went to the house of her mother in the barrio of Bana of said municipality. And what a coincidence! It was on that night when she was abducted against her will, according to the prosecution. The testimony of the defendant Tisbe as to how they took a carromata to go to the municipality of Rizal, Province of Laguna, was not contradicted either by the offended party.

Tisbe has testified having had carnal relations with the offended party before the night in question, as a result of his amorous relations with her, but the offended party did not contradict this testimony in the rebuttal.

The appellant Tisbe testified having taken the offended girl to the presence of the justice of the peace of Rizal to marry her; and the offended girl limits herself to saying that she did not know that marriage, that she was not aware being before a justice of the peace, and that she impressed her finger mark on the blank certificate of marriage, because she was compelled to do so by that old man (referring to the justice of the peace); but the justice of the peace testified that he asked the contracting parties if they voluntarily wanted to get married, and the offended girl gave her consent voluntarily. If the offended party had not previously agreed with the defendant Tisbe to celebrate that marriage; or if it were true that she was taken against her will, why did she not present a complaint against that act to the justice of the peace? For aught that appears in the record, we see no reason for rejecting the testimony of the justice of the peace of Rizal. It is said that under the threats of her abductor, the offended girl was not free to give her consent to the celebration of the marriage; but the fact that she did not make any protest whatever when she had every opportunity to do so before the justice of the peace of Rizal, supports the contention of the appellant Tisbe.

The defense set up by the defendant Tisbe consists chiefly in that the celebration of the marriage between the offended party and the defendant Tisbe having been proven after the commission of the abduction in question, all criminal responsibility must be held extinguished in accordance with Act No. 1773. In our opinion if there was any abduction in the instant case the appellant Tisbe must be given the benefit of the provision of section 2 of Act No. 1773.

As to the appellant Francisco Pandiño, suffice it to cite the doctrine laid down by this court in the case of *United States vs. Poquis* (14 Phil., 261). In that case the defendants were prosecuted for the crime of abduction for having seized and taken away by force a young girl by the name of E against her will and with unchaste designs. All were found guilty with the exception of R who was acquitted for having subsequently contracted marriage with the

victim of the abduction, that is, E. It was held that said marriage, according to section 2 of Act No. 1773, was a bar to the prosecution of the other defendants for the crime charged in the information.

The marriage shown by Exhibit 1 of the defense not having been declared void and illegal by the trial court, application must be made here of section 2 of Act No. 1773, and for that reason the appellants Cornelio Tisbe and Francisco Pandiño must be, as are hereby, acquitted with the costs de officio. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur

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