

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CATALINO OSCAR, DEFENDANT AND APPELLANT.

G.R. No. 24055. December 28, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant was charged in the Court of First Instance of Abra of the crime of rape under the following information:

"That on or about the 28th day of October, 1923, in the municipality of Lagangilang, Province of Abra, Philippine Islands, the said accused by means of force did then and there willfully, unlawfully and feloniously lie and had carnal knowledge with Marta Trondillo, a girl eight years of age, against her will and in spite of her resistance, while she was asleep in the house of her uncle Tomas Cada."

The trial court found the defendant guilty of the crime of frustrated rape without any qualifying circumstance and sentenced him to eight years and one day of presidio mayor with the accessory penalties and to pay the costs. From this sentence the defendant appeals.

The evidence leaves no doubt whatever as to the defendant's guilt. His testimony that he merely introduced his finger into the vagina of the offended party, in a fit of anger, because her uncle, Tomas Cada, failed to furnish him a girl with whom he could have sexual intercourse, is under the circumstances absurd and deserves no credence.

The court below found that the crime was frustrated, and not consummated, on the ground that the evidence did not clearly show that the defendant's genital organ was introduced to its full length into that of the offended party, and that there were no signs of emission of semen. This conclusion is erroneous.

"Perfect penetration is not essential. Any penetration of the female body by the male organ is sufficient." (People vs. Rivers, 147 Mich., 643.)

"Entry of the labia or lips of the female organ, merely, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction." (Kenney vs. State, 65 L. R. A., 316; Rodgers vs. State, 30 Tex. App., 510; Brauer vs. State, 25 Wis., 413.)

Stewart, in his work on Legal Medicine, citing Taylor vs. State (111 Ind., 279), and People vs. Crowley (102 N. Y., 234), says at page 137: "And it is undoubtedly the law that penetration even to the least extent will be sufficient to establish the crime, and this may even be inferred from the circumstances of the case."

In the present case, the physician, who examined the offended party shortly after the commission of the crime, testifies that the hymen was lacerated and that there was coagulated blood, though he found no semen. This shows sufficiently that the crime was consummated, and the sentence of the court below must be modified accordingly.

We therefore find the defendant-appellant guilty of the consummated crime of rape and sentence him to suffer fourteen years, eight months and one day of reclusion temporal, with the accessory penalties prescribed by law, to

endow the offended party in the sum of P500, and to pay the costs. So ordered.

Avanceña, C. J., Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

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