

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GERUNDIO AMERELA, DEFENDANT AND APPELLANT.

G.R. No. 24839. January 15, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

The defendant was charged in the Court of First Instance of Iloilo with the crime of abduction alleged to have been committed as follows:

"That on or about July 17, 1925, in the municipality of Tigbauan, Province of Iloilo, Philippine Islands, the above-named accused did intentionally, maliciously and criminally, and with lewd designs, abduct Magdalena Kahipe, a maiden over 12 but under 18 years of age, and take her to the municipality of Pavia where the defendant had carnal knowledge with her.

"Contrary to law."

He plead not guilty, and as a result of the trial was convicted and sentenced to fourteen years, eight months and one day of reclusion temporal, to endow the offended party in the sum of P500, with the accessory penalties, to recognize the offspring, if any, and to pay the costs.

On appeal, he contends that the lower court erred in sentencing him under the provisions of article 445 of the Penal Code, and that he should have been sentenced under article 446, or to one year, eight months and twenty-one days of prision correccional.

JOHNS, J.:

The Attorney-General admits that this point is well taken. It will be noted that the information alleges that the maiden is over 12 but under 18 years of age, and that it does not allege that the abduction was made or that the carnal knowledge was had without her consent. Without such an allegation, where the information alleges that the girl is over 12 but under 18 years of age, it must legally be assumed that both the abduction and the carnal knowledge were with her consent.

Following the recommendation of the Attorney-General, the sentence of the lower court will be modified and reduced to one year, eight months and twenty-one days of prision correccional, and in all other respects affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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