

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MATIAS EBOL, DEFENDANT AND APPELLANT.*G.R. No. 24857. January 23, 1926*

Ponente: AVANCEÑA, C.J.

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About the month of July, 1925, the offended party, Rafaela M. Cruz, lived with her husband and two children, aged 8 and 4 years, respectively, in their house in the barrio of San Roque of the municipality of Zamboanga. On the afternoon of the 6th day of that month the complaining witness was alone in her house with her two children, as her husband, who had gone to town, did not come home that afternoon. At about half-past six the defendant, Matias Ebol, uncle of the offended party, went to the house carrying some fishes which he said, as was the fact, were sent to her by her husband. The offended party took the fishes and cooked them and then invited the accused to take supper with her, which invitation he accepted. After the supper it seemed as though it was going to rain and the accused, fearing that the rain might overtake him on the way, asked the offended party to allow him to pass the night in her house to which she consented. The accused slept in the parlor and the offended party in the room accompanied by her two children. Between the two compartments there was a door that was kept open most of the time. At about 4 o'clock in the morning the complaining witness woke up, feeling that a man, who was the defendant, was on top of her attempting to have carnal knowledge with her. The offended party did all she could to avoid the defendant's evil purpose but the latter overcame all her resistance and succeeded in having carnal intercourse with her. When the defendant left the house at dawn, the offended party immediately repaired to her mother's house in another barrio, where her aunt Encarnacion Aguilar lived, in order to tell them what had happened to her. When she arrived at her mother's house and after relating the outrage just committed upon her, Encarnacion Aguilar accompanied her to the town to look for the husband of the complaining witness, and when they found him, she told him all that had happened to her.

That same morning when the defendant saw the complaining witness and Encarnacion Aguilar in the town, he expressed his resentment to the former for having informed her husband of the matter, telling her that he did it during a nightmare and prayed Encarnacion to intercede between him and the husband of the offended party to avoid a heavy punishment. On the afternoon of that same day, July 7, the defendant was in the house of Macario Bonifacio and told the latter that he had "forced" the offended party and mentioned the fact that he had no other alternative than to plead guilty and asked him to look after his children. These facts appear from the testimony of the complaining witness, Encarnacion Aguilar and Macario Bonifacio. Encarnacion Aguilar is a sister of the accused and Macario Bonifacio is his nephew.

About 10 o'clock in the same morning the offended party was examined by Doctor Rodriguez who found within her vagina positive existence of spermatozoa. The offended party stated that she had not had carnal intercourse with her husband since the 3d of that month.

The accused having been charged with the crime of rape, he was found guilty and there being present the aggravating circumstance of nocturnity he was sentenced to seventeen years, four months and one day of

reclusion temporal and to pay the costs.

The defendant's guilt is clearly proven. His sole defense was his own testimony denying the charge. His counsel in this instance states that his guilt has been proven beyond a reasonable doubt and only urges that the aggravating circumstance of nocturnity should not be taken into consideration as was done by the trial court. The Attorney-General, on the other hand, contends that the aggravating circumstance of the crime having been committed in the dwelling of the offended party must be considered in the imposition of the penalty. We are of the opinion that at least the crime was committed with abuse of confidence taking into consideration the relationship between the offended party and the accused and the fact that the latter asked for shelter in her house that night. At any rate the concurrence of this circumstance justifies the imposition of the penalty in its maximum degree.

The judgment appealed from is affirmed with costs against the appellant. So ordered.

Johnson, Street, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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