

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ELIGIO AMANTE, PEDRO AMANTE, VICENTE SANCHEZ AND FRANCISCO SANCHEZ, DEFENDANTS AND APPELLANTS.

G. R. No. 25604. December 06, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Eligio Amante, Francisco Sanchez, Vicente Sanchez and Pedro Amante from a judgment of the Court of First Instance of Camarines Sur, convicting them of the crime of abduction with consent, with rape, and sentencing the first three to seventeen years, four months and one day reclusion temporal, and the last named, on account of being under 18 years of age, to twelve years prision mayor, with the accessories of the law, and all of them, jointly and severally, to indemnify the offended party Patrocinio Botardo in the sum of P500, and each to pay one-fourth of the costs of the action.

In support of their appeal, the appellants Vicente and Francisco Sanchez assign the following errors alleged to have been committed by the lower court in its judgment, to wit: (1) The lower court erred in not giving the accused Vicente and Francisco Sanchez the benefit of reasonable doubt, in view of the contradictory testimony of the witnesses for the prosecution; (2) the lower court erred in holding that the relations, which, according to the prosecution existed between the offended party Patrocinio Botardo and the accused, were against the will of the former and were brought about by the use of force.

The accused Pedro Amante and Eligio Amante assign the following alleged errors as committed by the lower court in its judgment, to wit: (1) In not acquitting the accused Pedro and Eligio Amante for reasonable doubt; (2) in convicting said accused Pedro and Eligio Amante of the crime of abduction with rape.

The following facts were proven beyond a reasonable doubt at the trial of the case:

Mariquita Motos, mother of Jose Sanchez, uncle of the accused Vicente Sanchez, at that time, was erecting a house in the municipality of Baao, Province of Camarines Sur, under the supervision of head carpenter Julio Amante, and the herein accused Eligio Amante, his brother, and Pedro Amante, his son, as carpenters. All of them were residents of the municipality of Ligao, but during the course of construction of the house they lived in Mariquita Motos' house. The other accused Francisco Sanchez is also Vicente Sanchez's uncle.

Patrocinio Botardo, a young girl 15 years of age and a pupil in the fourth grade of the public school of Baao, lived alone with her mother, Martiniana Botardo, in said municipality. On an afternoon early in the month of July, while Patrocinio Botardo was going to the market with her mother, she met Vicente Sanchez who was taking a walk in company with Pedro Amante, and taking advantage of the opportunity, Vicente Sanchez introduced Pedro Amante to the girl. Pedro Amante began to visit Patrocinio Botardo at her house. After two or three visits, Pedro Amante, who had also attended the public school of his town, began to make love to the girl and proposed

marriage to her. Patrocinio Botardo told Pedro Amante that she could not accept his proposal unless he first asked her mother and because she was still going to school. On the the afternoon of July 8, 1925, Pedro Amante and Vicente Sanchez together called upon Patrocinio Botardo at her home, Vicente Sanchez tried to persuade her to marry Pedro Amante, saying that he was a good man; but she insisted in her refusal, because Pedro Amante had not as yet spoken to her mother. On July 22, 1925, Vicente Sanchez and Pedro Amante called on her again and spoke to her mother. They afterwards spoke to the girl alone and tried to persuade her to accept the proposal of marriage. That night the mother and daughter did not sleep in their house but in the house of the former's cousin in order to keep her company. During their absence, Vicente Sanchez entered Patrocinio Botardo's house and took her clothes from her trunk. The following day, before sunrise, Martiniana Botardo left for Iriga to sell fish. Patrocinio Botardo had asked her mother's permission to go to her aunt Simeona's house to iron some clothes. Before leaving, Martiniana Botardo told her daughter to return to their house after ironing the clothes, but not if it was too late so she would not take cold. At 7 o'clock that morning Patrocinio Botardo left her house and went to the market, and from there she went to her aunt Simeona's house. Before arriving at her aunt's house she met the accused Vicente Sanchez and Eligio Amante, who persuaded her to follow them by train from the station at Baao to the municipality of Ligao, Province of Albay, in order to marry Pedro Amante. As she was already predisposed to marry Pedro Amante, she agreed and they went to the railroad station at Baao. Upon arriving there, Vicente Sanchez and Eligio Amante said to her: "We should first go to the chapel, lest your mother might find you here," referring to the San Juan's Chapel. The offended party at first hesitated, but Vicente Sanchez said to her: "Let us take the train at San Juan, because my fiancee Pascuala is there." Upon arriving at San Juan, where they said they would take the truck, Vicente Sanchez and Eligio Amante took her to the house of one Josef a Sto. Domingo, and upon arriving there, Vicente Sanchez said: "We had better go along the road for Pascuala and Pedro Amante ought to be there" They immediately went downstairs and followed a long path, bordered by tall weeds, in the direction of a coconut grove. Upon arriving at a certain place, Vicente Sanchez said to them: "Let us go back because Pascuala and Pedro are not there." They did so, and upon arriving at Josefa's house, Vicente Sanchez left them saying: "I am going to town for a moment, you wait here with Eligio Amante." Just as Vicente Sanchez had left to buy something to eat, Francisco Sanchez arrived. Eligio Amante then said: "Let us go to the coconut grove because Vicente, Pedro and Pascuala ought to be there now." Francisco Sanchez agreed saying: "Let us go now to the road because they might be waiting for us." As Patrocinio Botardo refused to go with them, Eligio Amante said to her: "As you will not come with us, I will tie you with a 'panela' (rope)." Patrocinio Botardo then remarked: "Am I a carabao that you need to tie me?;" and Eligio Amante replied: "Certainly, if you do not want to Come with us I will tie you with this rope. When a young woman elopes she has an earnest desire to carry it to a finish." Francisco Sanchez and Eligio Amante told her afterward that somebody had told them that Vicente was waiting for them on the road. Whereupon she consented to go, and they left the house. Upon seeing that they were going to a forest where there was no road, Josefa Sto. Domingo said to them: "That is not the way to the road." Patrocinio Botardo repeated the same remark, but Eligio Amante insisted, saying: "This is the way to the road." When they were a good distance from the house, Vicente Sanchez left them saying: "You go ahead, I will meet you on the road." While Eligio Amante and Patrocinio Botardo were alone, the former insisted upon taking the latter to an Indian almond tree (talisyay). Patrocinio Botardo wanted to take the way that led to the road, but Eligio Amante took hold of her hands and wanted to take her to a bamboo grove. She refused to go with him and said: "What shall we do there?" and Eligio Amante replied: "Why won't you go with me?, why won't you obey me? Obey me because it will only take a few minutes." As she resisted, he took hold of her hands and feet, threw her on the ground, and tried to violate her. She stood up, but he again took hold of her hands and feet and threw her on the ground; and as she was down, he held and mounted her. The girl succeeded in getting up again, but she could not stand and dropped down. Eligio Amante then lay down beside her, but she stood up for the third time. For the fourth time, he threw her on the ground and held her hands. Weakened by exhaustion, Patrocinio Botardo

tried to shout, but could not do so, because Eligio Amante covered her mouth with a handkerchief. Having completely overpowered her, he raised her dress and succeeded in violating her. It was then about 8 o'clock in the morning. After having sexually abused her, Eligio Amante invited her to stand up and leave the place with him. They had not gone very far when Francisco Sanchez appeared, and addressing Eligio Amante, said: "Eligio, first go and buy tuba, for I want a drink of tuba very much." When Eligio Amante had left, Patrocinio Botardo said to Francisco Sanchez: "Your companion wanted to violate me;" and Francisco said: "Why did you not shout," and she replied that she could not because Eligio Amante covered her mouth with a handkerchief. A little later, Eligio Amante returned and said "There is no tuba, I was unable to buy it." He then turned and walked toward a coconut grove. Francisco Sanchez, who remained alone with the girl, wanted to take his turn and violate her, but as she resisted, he said to Eligio Amante: "She refuses." Whereupon Eligio Amante pinned her to an inclined coconut tree and held her by the feet, while Francisco Sanchez held her by the hands and threatened her with a knife, saying: "If you do not consent, I will stab you with this knife." At the same time, Eligio Amante raised her dress, and Francisco Sanchez, after slapping her face, caught her around the neck. Francisco Sanchez was thin and weak, but with the aid of Eligio Amante, he succeeded in violating the girl, who was greatly weakened by the resistance which she offered against the two satyrs. After violating the girl, Francisco Sanchez and Eligio Amante left her alone, and immediately thereafter Pedro Amante and Vicente Sanchez appeared. Upon seeing them, the girl wanted to flee, but Vicente Sanchez said to her: "Now that we are here, will you go?" and she replied: "Naturally, because Francisco Sanchez and his companion wanted to violate me." Exhausted and weakened she sat on the trunk of a guava tree, when Pedro Amante and Vicente Sanchez approached her, the latter saying: "Please me also, now that Francisco and Eligio have already abused you." "I do not want to," she replied. Vicente Sanchez then said: "Why not?, I have helped you so that your mother might not overtake you!" As the girl refused to consent to their lewd desires, Vicente Sanchez and Pedro Amante took hold of her hands, and she said: "Why do you hold me, you are like dogs." The girl had not as yet recovered her strength, and it was an easy matter for Vicente Sanchez and Pedro Amante to throw her on the ground, which they covered with their shirts. She wanted to shout, but Vicente Sanchez covered her mouth with a handkerchief and violated her, while Pedro Amante held her feet and looked on. When Vicente Sanchez had satisfied his passion, Pedro Amante took his turn, notwithstanding her protest and remarks, telling him that the actions of his companions were more than those of animals. Pedro Amante took hold of her hands, and succeeded in violating her. After the consummation of the carnal act, Pedro Amante helped the girl to stand up and to walk until they arrived near Josefa Sto. Domingo's house, where he left her, Vicente Sanchez then said; "You wait here, I will see if Pedro is in Josefa Sto. Domingo's house," promising to return for her. As she thought that it was probably about 11 o'clock and Vicente Sanchez has not yet arrived, she went alone to Josefa Sto. Domingo's house and inquired for Vicente Sanchez. The former replied that he had already gone. After a short while Vicente Sanchez and Pedro Amante arrived. She asked the former: "Why did you leave me?, you promised to return for me." He then replied: "I merely went to get your dress and Eligio Amante's shirt." Pedro Amante gave her his shirts and told her that he would go to the house where Vicente Sanchez stayed and get her clothes. When Vicente Sanchez and Pedro Amante had left, Patrocinio Botardo asked Josefa Sto. Domingo to let her lie down for a short time because she felt very weak. Josefa Sto. Domingo asked her: "Why are you so weak?" and she replied: "Because those four men violated me." Josefa Sto. Domingo gave her a mat and a blanket upon which she lay down, while the former prepared the food. Patrocinio Botardo fell asleep and Josefa Sto. Domingo awakened her to eat. While she was eating, Pedro Amante arrived with her clothes, and told her that she should go on ahead to the municipality of Oas, Province of Albay, and wait for him there. She asked Pedro Amante: "Why won't you go with me, after taking me away from home, now you want to leave me alone?" After eating, Pedro Amante said to her: "You dress because I have to take an auto," and he gave her P0.75 to pay her fare from Baao to Oas, telling her that he could not go with her because he already found work, but that he would go to Ligao the following Saturday to get her and marry her. After having waited

together on the road for some time at about 2 o'clock in the afternoon a truck for Oas came along and she took it. Upon arriving at Oas, the girl went to her aunt Florencia Angelo's house where she stopped to wait for Pedro Amante. She remained in Oas for about three weeks, but Pedro Amante did not appear, and she did not want to return to Baao because she was ashamed of what had happened to her. After three weeks her mother, Martiniana Botardo, came to get her, but she did not want to go with her mother saying that she was ashamed because Pedro and Eligio Amante, and Vicente and Francisco Sanchez had violated her. Martiniana Botardo then returned to Baao to tell Juan Botardo, her brother, what had happened, who went back to Oas with her to get the girl. When all of them had returned to Baao, Juan Botardo filed a complaint against Pedro Amante, Eligio Amante, Vicente Sanchez, Francisco Sanchez and Norberto Iballa, husband of Josefa Sto. Domingo.

When the girl left the house with Pedro Amante, Josefa Sto. Domingo saw that the blanket which she had used was stained with blood, which could not be removed by the first washing.

Upon examination of Patrocinio Botardo by Dr, Bienvenido P. Caro on August 12, 1926, he found the girl's hymen ruptured and a large amount of a mucouslike secretion in the vaginal canal due to a slight inflammation of the vagina, which might have been caused by a sexual intercourse.

The defense of the accused consists of a general denial and an alibi. Vicente Sanchez claims that on July 21, 1925, he went to Naga, a distance of 30 kilometers from Baao, to order a silk shirt from his old sewing woman Esperanza Margallo, living in his aunt Pilar Sanchez' house until the following day, when he returned to Baao, arriving there at 3 o'clock in the afternoon. The accused Francisco Sanchez attempted to prove that on July 15, 1925, at the request of his sister Pilar, he went to Naga to supervise the repairs on her house and did not return to Baao until the 4th of the following August. The accused Pedro and Eligio Amante tried to prove that during the day in question, they were working on the construction of Mariquita Motos' house in Baao, and that they had not left the place.

Josefa Sto. Domingo, testifying as a witness for the defense, denied having seen any of the accused in, or in front of, her house, and said that Patrocinio Botardo had been in her house accompanied by two unknown men different from the accused. She also stated that what she had testified to in the preliminary investigation was taught her by Juan Botardo, who told her that if she did not testify as he wanted her to, her husband would not be excluded from the complaint and would not be released.

Juan Botardo, on cross-examination, denied having induced Josefa Sto. Domingo to testify against the accused and said that he included Josefa Sto. Domingo's husband in the complaint because he believed him to be in connivance with the accused.

The defense points out several contradictions in the testimony of the witnesses for the prosecution. A careful examination of said contradictions shows that far from destroying the probative force of said testimony they strengthen the same, inasmuch as it will be seen therefrom that neither could there have been a conspiracy nor a preconceived plan as to what they were to testify to. Considering the varied points of view of persons and their perceptive ability, it is but natural that they should differ in the narration of their observations. It is psychologically impossible that they should agree in all details. Hence, when the testimony of two witnesses agrees even in its minutest details, it ceases to be an accurate statement of the subjective truth.

There is no question that Patrocinio Botardo was taken from her home and brought to Josefa Sto. Domingo's house. Neither is there any question that she was taken from Josefa Sto. Domingo's house to a coconut grove where she was outraged. The only question to determine is whether or not she was outraged by two unknown persons or by the four herein accused, one after the other. The offended party is a young girl fifteen years of age against whom there cannot be the least doubt as to her chastity and honor. Like all maidens of her race, the loss of

her virginity made her so ashamed that at first she did not want to return to her town where two of those who had outraged her lived. A girl who has hardly begun to know the ways of the world, and who has such a high and delicate regard for purity, is not capable of fabricating such a bestial and shameful act of which she was a victim; her own sentiment of purity would rebel against such an idea, inasmuch as she would be exposed to the scorn and disrespect of honest people. This is shown by the fact that she was ashamed to tell even those who had violated her that she had been violated, and in accusing those who first had sexual intercourse with her, she only said to those who succeeded them that they wanted to violate her.

Her attitude in having confidence in Pedro Amante's promise after she had been violated by him and the other accused, would seem to belie her testimony on the alleged outrage which she had suffered at the hands of the accused, but if the position in which she found herself and the loss of what all reputable women consider as their most precious possession are taken into consideration, it is not strange that in order to save herself from dishonor she should still continue believing him, as a drowning man who clings to the smallest floating object to save himself from drowning.

Taking into consideration all the evidence for the prosecution and the circumstances of the case not overthrown by the weak—not to say improbable—proof of the alibi of the accused, the mind is forced to rest on the conviction that the offended girl has told the whole truth. This is not the first case in the annals of the courts of justice of the Philippines when inhuman and depraved men have taken advantage of the weakness of a poor innocent girl, and have successively satiated on a single occasion, their bestial lust.

For the foregoing considerations, we are of the opinion that the evidence presented at the trial proves beyond a reasonable doubt the guilt of each and everyone of the accused of the complex crime charged, and finding no error in the judgment appealed from, the same is affirmed in all its parts, with costs against the appellants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

ROMUALDEZ, J., with whom concurs AVANCEÑA, C. J., dissenting :

The evidence of the prosecution does not convince me beyond a reasonable doubt that the defendants are guilty of rape. I think they are guilty only of abduction with consent.

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