

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TEODORO LUCHICO, DEFENDANT AND APPELLANT.

G. R. No. 26170. December 06, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Teodoro Luchico appeals to this court from the judgment of the Court of First Instance of Rizal, convicting him of the crime of rape, and sentencing him, without taking into consideration any circumstance modifying his criminal liability, to suffer fourteen years, eight months and one day reclusion temporal, with the accessories of the law, and to pay the costs.

In support of his appeal the appellant assigns the following supposed errors as committed by the trial court in its judgment, to wit: (1) The trial court erred in giving more weight to the testimony of the witnesses for the prosecution than that given by the accused and appellant and the other witnesses for the defense; (2) the lower court erred in finding the herein accused and appellant guilty beyond a reasonable doubt of the crime of rape.

The prosecution attempted to prove the following facts:

That at about 6 o'clock in the evening of March 3, 1923, the offended party, Inocencia Salva, a girl of 13 years of age, being in the kitchen of the house of the herein accused, Teodoro Luchico, as a servant of the latter, preparing a decoction of senna leaves, her master approached her and said: "Inocencia, do not make an outcry when I am in the place where you are lying down;" "Why?" asked the girl, and the accused replied: "Because I love you very much." "That cannot be," answered Inocencia "because I look upon you as my father while I am here," The accused then caught her by the face and imprinted a kiss upon her left cheek. Inocencia Salva ran to the parlor, secured a pen-knife and opened it. Upon seeing the knife in her hand, the accused snatched it and went into the room where his wife, Catalina de Jesus, was. The offended party went downstairs pursued by the accused. Upon reaching the municipal president's pharmacy, she saw Benito Bugnay seated at the gate of a house and addressing him, inquired: "Listen, will you permit me to step in here for a moment?" "Why, are you tired?" asked the man. "Because Teodoro Luchico has pursued me," replied the girl. The man further asked her: "And now what do you want?" and the girl replied: "I want to go to the municipal building to make a complaint against Teodoro Luchico for what he did to me." "You need not do anything more," answered the man, "the president is over there on the opposite side and you can go over there and present your complaint." She then went to the pharmacy, which was on the opposite side, and there she met the accused Teodoro Luchico who called to her: "Come here I want to treat your wounded hand." She replied: "I don't want you to treat it; first of all I want to complain of what you did to me" While she was telling the president what had occurred, the accused interrupted and said: "Do not believe that, my friend, because she is very young and had been ill with typhoid fever." The municipal president paid no attention to her and after having applied some medicine to her wound, said to her: "You can go home." The accused told the girl to come along with him and upon replying that she would not, he said, to her: "If you don't go with me I will break your feet," and taking hold of her right arm, led her towards his house. Upon passing by a place where the houses are somewhat distant and upon reaching a "camanchile" tree, he threw her to the ground,

caught hold of her knees, covered her mouth and mounted her, and taking out his genital organ, wet it with saliva and introduce it, with difficulty and great suffering of the girl, into her private parts, and although, on account of the pain, she attempted to call for help, she could not do so because her mouth was covered by the accused. After consummating the carnal act the accused picked the girl up in his arms and carried her to Placida Javier's house, which was close by. This happened at about 7 o'clock at night, and although it was moonlight the place was dark as there was a pathway shaded by many trees. Upon arriving at Placida Javier's house, the accused sent her niece Maria to his house to get a chemise for Inocencia because the one she was wearing was soiled with blood which oozed from the girl's genital organ as a result of the rape. After the accused had changed her dress, he took the stained one. Upon orders from the accused the girl went from Placida Javier's house to the house of Isidro Luchico, the accused's brother, where she spent the night. At dawn on the following day Inocencia Salva made an effort to reach the accused's house under the pretext that she was going to mass. Instead of going to mass she went to the house of the ex-municipal president, Mr. Arsenio Roldan, to present her complaint as the present municipal president would not listen to her. After hearing her story, Mr. Arsenio Roldan sent her to the house of Lieutenant Selga of the Constabulary in Caloocan. When Lieutenant Selga arrived at the barracks in the afternoon of the same day, which was Sunday, he accompanied her to the accused's house where she secured her blood-stained dress and torn chemise from underneath an aparador.

On the morning of March 5, 1923, Dr. Emiliano Panis of the Constabulary made a physical examination of the girl and found an inflammation or congestion of the small and large lips of the genital organ, an irritation of the vaginal canal with small hemorrhages under the mucose membrane and inflammation, pus and a bloody excretion of a foul odor, and a disappearance of the hymen. The inflammation or congestion was due to the introduction of a hard body out of proportion with the girl's vaginal cavity, which produced a traumatism in the vaginal canal. Dr. Emiliano Panis also found a small wound about 2 or 3 inches long on the thumb of her left hand and another superficial wound on the left leg.

The defense attempted to prove that the offended party, Inocencia Salva, had been ill with typhoid fever before she entered the services of Teodoro Luchico in January, 1923, being brought by Natalia de Jesus for whom she had been working before; and as a result of said illness the girl's hair was short and she at times would cry without any cause and would wander about; that in February of the same year, the girl had some difficulty in micturating; that Dr. Lucio Santos was consulted and he advised the use of a catheter in order to facilitate the expulsion of the urine, ordering the nurse, who was attending the accused's wife, to look after her, and who applied a rubber catheter once, and at another time a metal catheter; that on March 3, 1923, Inocencia Salva spoke to the herein accused and his wife Catalina de Jesus asking permission to work in a candy factory in the same municipality in company with some other women; that as she was not permitted to leave, she became angry and said she would go to another house so that she might go with her companion; that Catalina de Jesus then told her to wait until the following day inasmuch as she wanted to communicate with Natalia de Jesus in Manila to find out who would be responsible for her debt; that on the afternoon of the same day Inocencia Salva said that she had found another employer and that she wanted to go to the latter's house and requested that they say nothing; to Natalia de Jesus; that Catalina de Jesus replied that she had to inform the said Natalia de Jesus; that from then on the girl was angry and asked for her penknife which was in the possession of her employers; that the accused handed her the penknife; that while talking with some people who were visiting him, Teodoro Luchico heard some children, who were in the yard, say that Inocencia Salva's hand was bleeding; that he asked her how she had wounded her hand and she replied: "If you advise Manila before I leave, I prefer to die;" that after saying this the girl ran downstairs with the open penknife in her hand; that while Teodoro Luchico was holding his little baby in his arms he requested some of his visitors to pursue the girl; that not having overtaken her, his wife told him to leave the baby, go to the municipal president and ask the police to catch her; that it was then between 5 and 6 o'clock in the

afternoon, and at the moment when the accused was leaving the president's pharmacy with a policeman, he saw Inocencia Salva running and pointed her out to the president, saying: "There is the girl whom I intended to ask the police to catch." The municipal president said to him: "You had better call her; let us see if the girl will come;" that the accused did so and when the girl approached they saw that the front of her dress was stained with blood; that the accused ordered the persons who were there to search her in order to see if she still carried the penknife; the girl replied that that wasn't necessary because she had lost it while running; that when the girl said she had a wound in her thumb, the accused asked the municipal president, who was a physician, to treat it; that she did not want to let him treat it, saying that she wanted to die; as the municipal president was very busy, he told the accused that he might take the girl, who was disposed to go with him; that while on the road to his house, she asked permission of the accused to look for her penknife and handkerchief which contained some money; that upon arriving near Placida Javier's house she complained of pain in her wound and the accused took her to said house where they bathed it in sublimate and water; that between 6 and 7 o'clock in the evening the accused and the offended party left Placida Javier's house and returned to the said accused's house, passing through a vegetable garden; that when they arrived at the accused's house the mother of the latter told her that she should eat supper and sleep in the house of her other son named Isidro Luchico, for fear that the accused's wife might suffer a relapse; that at midnight Isidro Luchico went to the accused's house to tell him that the girl had disappeared; that the girl returned to the house very early the following morning to change her dress and said that she would go to mass; that she afterwards appeared accompanied by Lieut. Selga and a sergeant of the Constabulary; that after the investigation of the accused the Constabulary officers left taking the girl with them, and in a few days presented a complaint against him for rape; that on April 6, 1923, while the accused was going on board a banca to return to his house he saw the girl, who called to him; that he then brought the banca to the river bank and asked her what she wanted; that she replied that she tried to find him the day before in order to ask him to accompany her to the house of the justice of the peace, as she wished to withdraw her complaint; that the accused asked her why and she answered that the complaint did not state the truth and that one Bartolome Sianjo had induced her to present it; that Bartolome Sianjo was angry with the accused because the latter, with other associates, had filed a complaint with a petition for an attachment against him; that Attorney Roldan also was angry with the accused on account of politics; that when they reached the house of the justice of the peace the girl said that she wanted to be at peace with her master and for that reason she wished to withdraw her complaint; that the girl was later operated upon in the General Hospital for bladder trouble; that when she had already been discharged, they transferred her to San Lazaro Hospital, because she was suffering from constitutional hysteria, making her very impressionable and forgetful and in a mental state bordering on insanity.

The accused, testifying as a witness in his own behalf, denied everything that the offended party had testified to against him.

The offended party, upon cross-examination by the attorney for the defense, testified that she had not been induced by anyone to present the complaint against the accused; that on April 6, 1923, the accused arrived in a banca at Jose Dimla's house where she lived, and said: "Inocencia, the judge orders me to take you to him, because he wishes to know if you are agreeable to the arrangement," that she replied; "I cannot go with you because my master Jose is not here;" that the accused then took hold of her hand and pushed her and she fell on the floor near the wall; that she wept and intended to scream, but the accused said to her; "Don't scream, because if you do I will kill you; if you attempt to scream, this will be your last day;" that he afterwards took hold of her hand and carried her by force to his banca where he made her lie down, covering her with a basket which he carried; that when they reached the house of the justice of the peace, Teodoro Luchico said to him: "Your Honor, Inocencia is agreeable to the withdrawal of the complaint;" that the justice of the peace asked her: "What do you say Inocencia, are you agreeable to the withdrawal of the complaint?" that she answered in the negative.

The result of the physical examination to which the offended party submitted two days after the outrage, which gave rise to the complaint presented to Lieutenant Selga of the Constabulary against the herein accused, leaves no room for doubt that she had been raped.

As will be seen, the evidence of the defense tends to establish the theory that Inocencia Salva being impressionable due to suffering from constitutional hysteria, his enemies took advantage of the trouble she had with her former masters and used her as an instrument for their revenge, and to that end induced her to file a complaint against the herein accused in order that she might be able to leave their services without having to pay her debt.

While the evidence of the prosecution leaves much to be desired and certain testimony of the witnesses for the defense has not been contradicted, yet with all the evidence of the defense it has not been able to destroy the probatory value of the testimony of the offended party, corroborated by her physical examination. Admitting for the moment— although it was denied by the offended party—that Bartolome Sianjo and Attorney Arsenio Roldan did induce her to present the complaint against the accused, it is not possible to believe that they would go to the extreme of advising her to irritate her genital organ until it bled to give her the appearance of having been raped. It has not been proven that at the time of presenting her complaint to Lieutenant Selga of the Constabulary, which was the day after the outrage, any abnormal mental symptoms were noticed. While eminent medical criminologists have verified from experience that some hysterics, tormented by the genital instinct, have filed false accusations for crimes against chastity, yet, not a single case has been found in which the hysteric accuser has gone to the extreme of causing herself traumatism and injuries in the sexual organ in order to lend the appearance of truth to her false accusation.

In view of the above, we think that, the evidence of the prosecution has established beyond a reasonable doubt the guilt of the accused.

The Attorney-General is of the opinion that in imposing the penalty the aggravating circumstances of nocturnity and abuse of confidence should be taken into consideration.

The crime of rape committed by the accused upon the offended party was the result of a succession of acts which took place within the period of two hours, commencing at 5 o'clock in the afternoon and ending at 7 o'clock in the evening, without a moment's interruption in which it can be said that nighttime, being the most favorable occasion for committing the crime, occurred to the accused. In order that the aggravating circumstance of nocturnity may be taken into consideration, it is necessary that the same be sought and that it be taken advantage of, which does not appear to be clearly proven in the present case.

In order to take into consideration the aggravating circumstance of abuse of confidence, it is essential that the confidence be a means of facilitating the commission of a crime, the culprit taking advantage of the offended party's belief that the former would not abuse said confidence. When the accused raped the offended party she had already lost confidence in him from the moment that he took the liberty of making an indecent proposal to her and of offending her with a kiss, which compelled her to arm herself with a penknife; and in the present case it cannot be said that the fact of the accused being the offended party's master facilitated the attainment of his lustful purpose.

The crime of rape committed by the accused carries with it the obligations to indemnify the offended party when the latter is a widow or single, to acknowledge the offspring if the character of its origin does not prevent it and to support the same. In the present case, it is only necessary to sentence the accused, by way of indemnity to endow the offended party, she being single. He cannot be ordered to support and acknowledge the offspring which she might have, because it has been proven that she did not conceive, and even though she might have conceived, the

character of its origin would have prevented it on account of the accused being married.

In view of the foregoing and with the sole modification that the accused is further sentenced to endow the offended party in the sum of P500, the judgment appealed from is affirmed, with the costs against the appellant, So ordered.

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

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