

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LAZARO RABADAN AND CRISTOBAL OLAYBAR, DEFENDANTS AND APPELLANTS.

G.R. No. 27856. December 16, 1927

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of Misamis finding both of the defendants guilty of the crime of abduction with attempted rape and sentencing each of them to suffer twelve years and one day of reclusion temporal with the proportional part of the costs.

It appears from the evidence for the prosecution that the offended party, Damiana Baillo, a married woman, was employed as a seamstress in the tailor shop of one Bataforra in the town of Cagayan, Province of Misamis. In the latter part of July, 1925, she took a month's vacation, during which time she stayed at her home in the barrio of Macabalan, Cagayan. At the end of her vacation, on August 21, she hired the defendant Cristobal Olaybar to take her and her sewing machine in his automobile from Macabalan to Bataforra's shop, and about 3 o'clock in the afternoon she left with him for the poblacion of the town of Cagayan. Her cousin Agapito Galgo went with them but some distance from Macabalan, Olaybar ordered him to get out of the automobile. Agapito did so and Olaybar continued the journey with the automobile but after having gone some distance, his coaccused Rabadan was seen running towards the car and Olaybar stopped and took him aboard. The offended party asked Olaybar why he took Rabadan along after having refused Agapito that privilege, but she received no answer.

After arriving in the poblacion, Damiana asked Olaybar to take her directly to Bataforra's tailor shop but he disregarded her request and went in the opposite direction. She then tried to get out of the automobile but Olaybar increased the speed so as to make it impracticable for her to escape. He thereupon left the poblacion for the barrio of Carmen and paid no attention to the cries and tears of the woman.

Arriving at a place called "Patag sa Bagaas," Olaybar left the main road and drove the car towards an uninhabited place some distance from the road. Arriving there he descended from the automobile, leaving the offended party alone with Rabadan who then took off his coat, exposed his private parts, and seating himself at the side of Damiana, embraced her, touched her breasts, and endeavored to have sexual intercourse with her. After a violent struggle, the offended party succeeded in getting out of the car and attempted to run away but Rabadan pursued her. She then took hold of one of the posts of a barbed wire fence and by clinging to the post, she successfully resisted the efforts of Rabadan to throw her down. During the struggle, she was able to give Rabadan a vigorous kick in the lower part of the abdomen, which apparently caused him to desist from further efforts. Olaybar appeared on the scene shortly afterwards and all three of them then returned to Cagayan, the offended party standing on the running board as she feared to enter the car.

The evidence for the defense is to the effect that Rabadan had been in amorous relations with Damiana while she was employed in the tailor shop, but that when she found that he was a married man and also had another

mistress, she became hostile to him; that in entering the car, he had no intention of violating the offended party but only desired to talk to her and explain his situation; and that he did not assault her in any manner but only defended himself against her attacks on him.

Upon a careful examination of the record, we have no doubt whatever that the defendant Rabadan is guilty of the crime of attempted rape and as Olaybar cooperated in the commission of the crime by acts without which it would not have been accomplished, he must also be held guilty as a principal in the perpetration of the offense. But it is very doubtful whether the defendants, upon the facts stated, can be convicted of abduction. Viada in commenting on article 460 of the Spanish Penal Code, corresponding to article 445 of the Philippine Penal Code, says:

"Se entiende por rapto el robo que se hace de una mujer, sacandola de su casa o del lugar en que se encuentre para llevarla a otro, con el fin de casarse el raptor con ella, o de corromperla (libidinis causa)." (3 Viada, 143.)

Escriche gives a similar definition (4 Escriche, 793; See also U. S. vs. Javate, 4 Phil., 465; U. S. vs. Garcia, 30 Phil., 74).

In the present case, the offended party left her home voluntarily and without any persuasion on the part of the defendants and they eventually brought her to her destination on the same day. The fact that the defendants temporarily carried her beyond her destination against her will can therefore only be considered as a part of the preparation for the attempted rape and cannot be regarded as a separate offense.

The judgment appealed from is hereby modified by finding both of the defendants guilty as principals of the crime of attempted rape only and sentencing each of them to suffer six years of prision correccional, with accessory penalties prescribed by law, and each of them to pay one-half of the costs of both instances. So ordered.

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

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