

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AMANDO DAYO, DEFENDANT AND APPELLANT.*G.R. No. 27859. December 01, 1927*

Ponente: AVANCEÑA, C.J.

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On the night of July 18, 1925, while Lamberta Valdehuesa, sleeping by the side of her 13-year old son, Higino Sabido, in the municipality of Salay, Province of Misamis, was awakened by the feeling of a certain weight upon her and discovered that a man was having carnal knowledge of her. She gave him a push in an attempt to extricate herself from him and at the same time screamed. Later on she recognized the accused Amando Dayo as the man, who threatened to kill her with a revolver which he carried with him, if she made an outcry, whereupon Lamberta fainted. The boy Higino Sabido, who had also awaked, seeing the accused mounted on his mother, tried to awaken her, touching her, but she did not wake up or answer him. The accused kept on lying with Lamberta and after having consummated his purpose, he left but not before having threatened to kill the boy Higino with his revolver if the latter spoke of it to his father.

That night Bruno Sabido, Lamberta's husband, was absent from home and the accused knew this, because on the afternoon of the same day he had gone to the house on the pretext of seeing Bruno to speak to him, as he stated, of the "Spartan" society of which Bruno and the accused were the organizers. That afternoon while the accused was in the house on the aforementioned pretext, and while speaking with Lamberta, he suddenly kissed her, whereupon Lamberta took him to task, telling him that he had thus taken liberties with her because her husband was away.

When Lamberta came to she noticed that her chemise was raised and that her private parts were smeared with semen. She wept as soon as she became aware of what had happened and did not sleep until her husband returned the following day, when she immediately told him of it. Bruno lost no time but went in search of a lawyer to make the proper complaint. A complaint was filed against the accused charging him with the crime of rape; he was convicted by the trial court and sentenced to twelve years and 1 day reclusion temporal, with the accessories of the law, and the costs of the action. The accused appeals from this judgment.

The facts hereinbefore set forth appear from the testimony of Lamberta Valdehuesa and her son Higino Sabido, whose testimony we find sufficient to establish said facts beyond the slightest shadow of a doubt. The mere fact that Lamberta was by the side of her son Higino Sabido when the accused, taking advantage of the fact that she was asleep, had carnal knowledge of her, does not render the fact improbable. After the accused had made up his mind to commit the crime, he was unable to bring about all the conditions for its consummation. He might have thought that if he commenced the act, which Lamberta's sleep enabled him to do, she would in the end consent to the intercourse, and this consideration might have led him to commit the crime, notwithstanding that the boy was by her side. On the other hand, in our opinion the circumstances of the case exclude the supposition that the act was agreed to by and between the accused and Lamberta; for were it so, Lamberta should, undoubtedly, have arranged it differently as, for example, in another house, or not having her son Higino by her side. Moreover,

when the accused, taking advantage of the fact that the offended party was asleep, entered upon the commission of the act, the crime of rape had already been consummated, and the offended party's final consent, after she realized the outrage perpetrated against her, even supposing there was such consent, is not of the character to exclude the concept of the crime of rape, but a mere resignation in the face of an outrage already perpetrated, as is shown by the offended party's conduct afterwards in telling her husband of it as soon as he arrived home.

The appellant pleads an alibi. He tried to prove that on that night he was at a ball given in the municipal government building and that he did not leave until 2 o'clock the following morning, going straight home. Taking into account the fact that the building where the ball was given was not far from the offended party's house, it is not impossible, nor improbable, that the accused left the building where the ball was being held, for a time long enough to commit the crime. Although Raymundo Gora, one of the witnesses for the defense, claims that at no time did the accused leave the building of the ball, yet, considering the exaggerations which may be noticed in his declarations, we cannot give credence to his testimony.

As the crime was committed at night and in the offended party's home, which circumstances increase the accused's liability, the Attorney-General is fully justified in recommending the imposition of the penalty in its maximum degree.

The appellant is hereby sentenced to seventeen years, four months and one day reclusion temporal, and the judgment appealed from is affirmed in all other respects, with the costs against the appellant.

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

OSTRAND, J. dissenting:

The evidence does not convince me of the defendant's guilt and I therefore dissent.

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