

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLE, VS. FELIPE SANTIAGO, DEFENDANT AND APPELLANT.*G.R. No. 27972. October 31, 1927*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Nueva Ecija, finding the appellant, Felipe Santiago, guilty of the offense of rape and sentencing him to undergo imprisonment for fourteen years, eight months and one day, reclusion temporal, with the accessories prescribed by law, requiring him to endow the offended party, Felicita Masilang, in the amount of P500, without subsidiary imprisonment in case of insolvency, requiring him also to recognize and maintain, at P15 per month, the offspring, if there should be any, as a consequence of the rape, and requiring him further to pay the costs.

The deceased wife of the appellant was the aunt of Felicita Masilang, aged 18, who was the injured girl in this case. She is therefore appellant's niece by marriage, and she calls him uncle. Both are residents of the municipality of Gapan, in the Province of Nueva Ecija. On November 23, 1926, the appellant asked Felicita, who was then about 18 years of age, to accompany him across the river on some errand. The girl agreed and they went over the river, together into the municipality of San Leonardo. After crossing the river, the appellant conducted the girl to a place about twenty paces from the highway where tall grass and other growth hid them from public view. In this spot the appellant manifested a desire to have sexual intercourse with the girl, but she refused to give her consent, and he finally, notwithstanding her resistance, accomplished his purpose by force and against her will.

After the deed had been done the appellant conducted the girl to the house of his uncle, Agaton Santiago, who lived not far away. They arrived here about 11 a. m., and remained for several hours. In the course of the afternoon Agaton Santiago brought in a protestant minister who went through the ceremony of marrying the couple. After this was over the appellant gave the girl a few pesos and sent her home. Her father happened to be away that night, but upon his return the next day, she told him what had happened, and this prosecution for rape was started.

The trial court found that the offense of rape had been committed, as above stated, and that the marriage ceremony was a mere ruse by which the appellant hoped to escape from the criminal consequences of his act. We concur in this view of the case. The manner in which the appellant dealt with the girl after the marriage, as well as before, shows that he had no bona fide intention of making her his wife, and the ceremony cannot be considered binding on her because of duress. The marriage was therefore void for lack of essential consent, and it supplies no impediment to the prosecution of the wrongdoer.

The Attorney-General suggests that, in fixing the penalty, it would be proper to take into account the aggravating circumstance that the offense was committed in an uninhabited place. But the evidence fails to show beyond a reasonable doubt that the crime was committed en despoblado. The incident occurred only a few paces from the Manila North Road, and it appears that there was an unoccupied house nearby to which the girl was taken and

where food was procured from Florentina Cuizon who lived not far away. It is the constant doctrine of the court that an aggravating circumstance must be as clearly proved as any other element of the crime (U. S. vs. Binayoh, 35 Phil., 23, 31; Albert, Law on Crimes, pp. 88-89); and we cannot feel certain, upon the proof before us, that the place of the commission of this offense was remote enough from habitation or possible aid to make appropriate the estimation of the aggravating circumstance referred to.

The judgment appealed from is in accordance with law, and will be affirmed. So ordered, with costs against the appellant.

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

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