

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FERNANDO FAUSTO, DEFENDANT AND APPELLANT.*G.R. No. 29191. August 14, 1928*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of Nueva Ecija, finding the appellant, Fernando Fausto, guilty of the offense of forcible abduction with rape, and sentencing him to undergo imprisonment for eighteen years and four months, reclusion temporal, with the accessory penalties prescribed by law, requiring him also to endow the injured party, Silveria Somera, in the amount of P500, as well as to pay the costs of prosecution.

The accused, Fernando Fausto, of the age of about 31 years, is a married man and, prior to August 2, 1927, was living with his family in Santo Domingo, Nueva Ecija. The supposed injured woman, Silveria Somera, at the time of the act which gave rise to this prosecution, was the wife of Proceso Labayan, although at the time of the trial she gave her age as only 15 years. For a period of some two months anterior to the date stated she and her husband had been living with the family of Fernando Fausto; but shortly prior to said date she and her husband had left, owing apparently to the fact that Fernando Fausto's wife had discovered or suspected that improper relations existed between her husband and Silveria.

From the home of Fausto, the young couple went to live in the home of her father, Esteban Somera. On the morning of the date mentioned Silveria, with a number of other companions, went to work in the palay field of a neighbor. On the same day Fernando Fausto was at work on the land of another neighbor in a different barrio. At about noon Silveria left the field where she was at work, informing her companions that she had a headache and was going home. Silveria says that after she had left the palay field she met on the way home Fernando Fausto who took her aside to a secret place and violated her. He then conducted her to a camarin near the place of Tomas de la Cruz, in the barrio of Escolastica, where he kept her jailed for about four days. During this time, she says, Fausto was accustomed to go away during the day, but he returned at night and repeated the act of intercourse with her. She also states that during all this time she had nothing either to eat or drink, but, strange to say, she says that she felt no unpleasant symptoms as a result of her abstinence. After this experience Fausto took her late one evening to the home of one "Ambo" in Sicsican. This individual is identified in the record as one Pablo de los Santos. In the home of this man and his wife Silveria remained for another period of about three days. Finally, taking advantage of Fausto's absence on a trip to Quezon, Silveria says she managed to escape, going to the home of her neighbor Marceliho Corpus. Upon arriving at this place Silveria told Corpus that Fausto had raped her, and Corpus replied by asking her if it had not been done by her consent. She insisted, however, that the acts complained of had been done by force and against her will. At the request of Silveria, Corpus then went for her father, and complaint was promptly made to the prosecuting officer.

The accused admits that on the day stated he took Silveria Somera to the home of Tomas de la Cruz and stayed with her there for a few days, afterwards going to the home of Pablo de los Santos, of Sicsican, from whence he

dispatched her home in a carromata. He claims that the adventure was the result of mutual agreement and that in the acts complained of he did no violence to her will or person.

Reflection upon the story told by this woman reveals more than one reason for doubting its veracity, and there is one fact which in our opinion completely impeaches her claim that she was a non-consenting party to her abduction. We note that she exaggerates the time during which she is supposed to have been kept in the camarín and at the home of De los Santos. But there were at least four or five days between the time when she disappeared and the date of her return. During this interval it is incredible that she should not have found an opportunity to escape if she had so desired. But the point of most significance is that when she disappeared she had with her a small bundle of female attire. The fact that she had these clothes is undeniable and indeed admitted. But in order to evade the inference to be drawn from this fact, she asserted that Fausto brought these clothes from his house and had the bundle with him when he first joined her. Upon this it may be observed that if the appellant were a rapist, as is charged, it was a strange act of prevision on his part to supply himself with a bundle of clothes for a woman. We prefer to believe that the clothes were provided by Silveria herself, pursuant to a plan formed between her and the accused before the day in question, and probably, as the accused himself stated, about two days before the elopement. It is a safe guess that, after leaving the field where she had been at work on August 2, Silveria went to get her clothes and later in the evening was joined by Fausto.

The testimony of apparently disinterested witnesses, examined for the defense, tends to corroborate this conclusion. In this connection we note that Marcelino Paulino says that about luncheon time on the day in question Silveria Somera bought food at his tienda and later appeared and brought cigarettes. Pablo de los Santos (not Pablo de los Santos of Sicsican), a resident of Santo Rosario, says that on the evening referred to he met Fernando Fausto and Silveria Somera in a field in Santo Rosario and that Silveria was carrying a bundle. He says that she then exhibited a contented bearing and showed no symptom of distress. Upon his asking them whither they were bound, he says he received the vague answer "Over there." Pablo de los Santos, of Sicsican, says that Silveria brought a parcel of clothes to his house and during her stay appeared entirely normal. To our mind the conclusion is irresistible that Silveria was a consenting party in this alleged abduction. No prosecution can therefore be predicated upon the incident. The act complained of was not against her will, and hence there can be no conviction under article 445 of the Penal Code. Furthermore, as Silveria was a married woman and not a virgin, the offense of abduction with consent (under article 446 of the Penal Code) could not be committed.

On more than one occasion in the past this court has had occasion to point out that, in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of most value in judging matters of this kind. In the case now before us the two concerned in this elopement were married to other persons; and if Silveria Somera had admitted her own guilty participation in the adventure, she would have been liable for prosecution for adultery, to say nothing of her instinctive desire to shield herself from scorn and perhaps punishment at the hands of husband or father. These considerations supplied powerful motives for her to put the blame entirely on the appellant.

Before closing we may observe that after the judgment of conviction had been rendered in the court below the attorney for the appellant made a motion for a new trial, and in connection therewith submitted certain affidavits tending to show that illicit relations had existed between the appellant and Silveria Somera during the time that she lived in his house and that her story about her being kept for four days in a camarín against her will was false. We have not found it necessary, however, to pass upon the motion for a new trial and will only say that the affidavits referred to are of a character calculated to open the mind of any attentive reader to the probability that

the conviction was a mistake.

From what has been said it results that the judgment must be reversed, and the appellant will be absolved from the complaint, with costs of both instances de oficio. So ordered.

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

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