

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TELESFORO APIADO, DEFENDANT AND APPELLANT.

G.R. No. 31075. August 12, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was sentenced to sixteen years reclusion temporal with the accessories of law, by the Court of First Instance of Nueva Ecija for the crime of rape with slight physical injuries; to endow the offended party, Pantaleona Nool, in the sum of P200, without subsidiary imprisonment in case of insolvency, considering the gravity of the principal penalty; to support the offspring if any, and to pay the costs; ordering that in serving the sentence, one-half the time during which the defendant has been confined preventively shall be deducted therefrom.

From this sentence, the defendant appealed.

The fact which the trial court found in its judgment, and which this court finds as clearly proved in the proceedings, is, briefly, that the defendant violated the offended party, aged fifteen, against her will and through violence and intimidation on the night of the incident, which act produced slight physical injuries which were cured in five days without medical assistance, and without preventing her from following her customary occupation; the injuries referred to consisting in the inflammation of the upper lips of the girl's genital organ, a part of her vagina, and the rupture of the hymen.

No modifying circumstance was present in the commission of the crime.

Counsel for the defendant in this instance, after examining the record and conferring with the defendant, states that he finds no sufficient ground for an assignment of error, and limits himself to a petition that the penalty imposed be reduced to fourteen years, eight months and one day reclusion temporal, in view of the defendant's lack of education.

The Attorney-General agrees with the qualification of the crime charged and with the penalty of reclusion temporal in its medium degree, there being no modifying circumstance in the commission of the crime of rape, but he recommends that, in addition to the penalty for the crime of rape in accordance with article 438 of the Penal Code, the penalty of arresto for not less than five and not more than fifteen days and censure, be imposed upon the defendant, in accordance with article 588 of said Code.

It is a well-established doctrine of law, according to both the jurisprudence of the Supreme Court of Spain and that of this court that, when in the commission of the crime of rape, there should result homicide, or serious or less serious physical injuries, pursuant to the provisions of article 89 of the Penal Code the penalty corresponding to the more serious crime shall be imposed on the offender in its maximum degree. (Decisions of the Supreme Court of Spain of March 23, 1885, February 18, 1889, March 31, 1891, April 29, 1897, and February 22, 1902; and U. S. vs. Andaya, 34 Phil., 690.) However, said article of the Penal Code is not applicable to the case at bar, of rape

with slight physical injuries, for this legal provision must be strictly interpreted. It is clear that when a person is found guilty of two or more felonies or misdemeanors, all the penalties corresponding to the several violations of law should be imposed, the same to be simultaneously served, if possible, according to the nature and effects of such penalties (article 87, Penal Code). But in this case, taking into account the nature of the injuries caused to the girl's genital organ by the violence with which the act was consummated, which injuries were constituting the misdemeanor of slight physical injuries are a necessary consequence of the rape, we believe the facts so obviously inherent in the rape, that no additional penalty for such misdemeanor should be imposed upon the defendant.

Wherefore, the sentence appealed from, being in conformity with law, must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Johnson, Street, Johns, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

AVANCEÑA, C. J.:

I think he should also be sentenced for slight physical injuries.

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