

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELICISIMO BUSTOS, FELINO REYES AND LEOPOLDO DIZON, DEFENDANTS AND APPELLANTS.

G.R. No. 32563. September 06, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

As to the defendant, Leopoldo Dizon, the Attorney-General states that the testimony is not sufficient to sustain his conviction, and all members of the court agree that he should be acquitted. As to the defendants, Felicisimo Bustos and Felino Reyes, all agree that the girl was taken from her place of business by them with force and violence, and the dividing line is whether or not she was taken with a lewd and lascivious design.

By occupation the girl was a pharmacist and a graduate of the University of the Philippines, and had charge of a drug store in the lower part of the house which was her home in Concepcion, Tarlac. While the girl was washing her face in her home, Daniel Lacson, who was the houseboy, after opening the drug store, notified the girl that there was a medical prescription to be filled. They both went downstairs to the drug store where they met the defendant Reyes standing near the door, who asked the girl where her father had gone, stating that he had seen him in a car with some other persons. Suddenly the defendant Bustos, who was a doctor by profession, came by the left door of the drug store and told the girl that he wanted to bid her good-bye, because he was leaving as he could not do much in his profession in that town, and also that she would soon be married, in response to which the girl extended her hand to the doctor who, without any warning, grabbed and lifted the girl, who shouted and struggled to free herself, by reason of which they both fell twice on the cement floor. The girl was again lifted up and dragged by the doctor to the automobile which was then parked in front of the drug store with the defendant, Leopoldo Dizon, as chauffeur. Inside the car the girl tried to throw herself out of the other side of the car, but was grabbed and held by the defendant Reyes, who was then in the auto. As a result of the struggle for some time, the girl was hanging on the left side of the car which was then running at good speed. All of this time the girl was calling "Mother, mother," until she was finally pulled into the car by the defendants Reyes and Bustos and placed between them.

Domingo Basilio, whose house was only about 20 meters from that of the girl's upon hearing her screams, looked out of the window and saw her hanging on the left side of the auto, and shouted: "Stop them," and got into his own car and pursued the defendants.

Ricardo Puno, a butcher, also heard the screams of the girl and went out running to stop the car, but it had already passed.

The evidence of the girl also shows that after she was in the auto between Reyes and Bustos, she continued to struggle. So as not to arouse the suspicion or curiosity of the people, a handkerchief was tied around her head which was covered with a hat. The struggle between them continued until Bustos asked the defendant Reyes where they would take her, whether to Pangasinan or some other place, to which Reyes replied that they had

better take her to Pangasinan. Upon hearing this statement, the girl conceived the idea of feigning consent, on condition that they

would take her to Macabebe and not to any other place, with the hope that her relatives and other townmates, who might pursue, could more easily find her, upon the theory that they would first search for them in the home town of the defendants. She also testified that on their way to Macabebe, the defendant Bustos once in a while kissed and embraced her, and often attempted to take hold of her body, to which she never consented, but which in her then situation she could not resist. It also appears that her garments, Exhibits C-1 and C-2, were torn, and all but one of the eyelets of her chemise were torn away, and Dr. Marcelo Agana, who examined the girl, found seven injuries on her person, as evidenced by his medical certificate Exhibit A.

Such is the evidence for the prosecution.

It also appears that the girl was engaged to be married to another, and that the defendant Bustos knew that she had signed an application for the marriage, and that the marriage had once been proclaimed in the Catholic church of Concepcion. The defendant Bustos also knew or should have known that he could not marry the girl, because of the present legal requirements which provide that a marriage cannot be contracted without at least ten days' publication. Even so the defense would have the court believe that the girl went with them of her own volition, and that the intentions of Doctor Bustos were honorable, and that no force or violence was used, and that he took the girl without any lewd or lascivious design. In other words, that the evidence of the girl as to the abduction is false and was manufactured to convict the defendants.

In cases of this nature much depends upon the appearance of the girl and her manner and conduct on the witness stand, and it appears that she was a pharmacist and had charge of a small drug store, and that she was a graduate of the University of the Philippines, and must have been of mature mind and of fairly good intellect.

In their exhaustive brief, the defendants have much to say about the fact that in the end the girl was taken to their home, and that she appeared good-natured and happy, as a result of the abduction, and that Doctor Bustos introduced her to his own family as his future wife. But the evidence also shows that when the girl was requested to sign a contract of marriage with the doctor, she refused to do so, and that upon the arrival of her family, her friends and the officers; when she was free to act and speak, she vigorously claimed and asserted that she had been abducted.

The defense would also have us believe that the girl was of easy virtue, and that for some little time previous the doctor had access to her room where he had sexual intercourse With her about three nights in a week. Yet he now contends that his intention was to marry the girl, and that is why he took her to his own home in Macabebe. Upon that point his evidence is incredible, and the least said about it the better.

In the final analysis, the real question is, first, whether or not the defendants took the girl away from her place of business with force and violence, and, second, if so, whether or not at the time they took her away, they had a lewd and lascivious design on her person.

As stated, we all agree that the girl was taken with force and violence, and the very fact that the doctor knew that the girl was soon to be married to another of her own choice, and knowing that he went upon the witness stand and blackened her character and sought to ruin her reputation for chastity, which is very dear to every woman, is strong evidence that he is a man of a lewd and lascivious mind, and that he has no regard for the character of any woman.

Again, the abduction took place at Tarlac, after which at the suggestion of the defendant Reyes, they started to go to Pangasinan, but after arriving at Gerona, the girl, overhearing their conversation and realizing that, if she were

taken to Pangasinan, she would be far away from her own folks, who would not be able to find her, feigned consent and suggested that they go to the defendant Bustos' home in Macabebe which they did. It is very apparent from the route of travel that the original intention of the defendants was to take her to Pangasinan, and that they went as far as Gerona and then took the road that connects Tarlac with Nueva Ecija, through Pura and Guimba, and down to Cabanatuan, and followed the road to Pampanga, through Gapan, San Isidro, Cabiao, and Arayat, and thence to Macabebe, which appears from the map to be a very circuitous route. It shows that the direct and much shorter route to Macabebe from Tarlac would be direct to Angeles, through San Fernando to Macabebe. But the actual route taken by the defendants strongly corroborates the testimony of the girl that the original intention was to take her to Pangasinan where they started to go, to which she vigorously objected and finally consented to go to Macabebe, to which the defendants agreed. It appears from the map that Pangasinan is almost due north of Tarlac, and that Macabebe is almost due south, and yet the defendants went north as far as Gerona in the direction of Pangasinan, from; which they took a circuitous route and went south to Macabebe.

The abduction was well planned and took place early in the morning while the father of the girl was away, and she was alone with the 12-year-old houseboy.

The record is conclusive that after she was forced into the auto, and it was in motion, the girl commenced to scream and cried: "Mother, mother," in such a loud voice as to arouse the anger of Domingo Basilio who at once took his own car and notified the father of the girl, and that Ricardo Puno also heard her screams. It further appears that while the car was running at a good speed, the girl made an effort to get out of the car, and was pulled back and prevented from doing so by the defendant Reyes. The fact that after the girl was put in the car she began to scream and cried: "Mother, mother," and that after the car was in good motion, at the risk of her life, she attempted to get out is conclusive evidence that she was not a party to the scheme, and that the abduction was with force and violence.

As stated, the defendant Bustos was a young doctor, and the girl a pharmacist who had charge of a drug store. In the very nature of things, they became more or less acquainted, and there are some letters in evidence which the girl admits that she wrote to the doctor. But, with one exception, there is nothing of any value or importance in them, and as to the exception the girl stoutly maintains that she never wrote the letter.

In the final analysis, the guilt or innocence of the defendants must be decided upon the manner of taking and the purpose and intent which the defendants had at the time they seized the girl and took her away, and the fact that after the crime was complete, the girl may have feigned consent or did not continue to offer any resistance, would not be a defense to the commission of the completed crime. It is needless to say, that the court does not believe the incredible and inconsistent theory of the defense. In the final analysis, this case must stand or fall upon the testimony of the girl at the time of the abduction with its corroborating links.

In a well written opinion the lower court made a detailed analysis of the evidence, and its findings as to the guilt of the defendants, Felicisimo Bustos and Felino Reyes, are well sustained, and show beyond a reasonable doubt that the original abduction was with force and violence and a lewd and lascivious design, from which it follows that as to those defendants, the judgment of the lower court is in all things and respects affirmed, with one-half of the costs against each of them, and that the defendant, Leopoldo Dizon, is acquitted, with costs de oficio. So ordered.

Avanceña, C. J., Villnor, Ostrand and Villa-Real, JJ., concur.

Malcolm, J., with whom concur

DISSENTING

Sreet and Romualdez, JJ., in part:

The charge of which, the accused were convicted in this case was that of abduction. The necessary elements in this crime are (1) that the abduction be against the will of the woman, and (2) that the abduction be with lewd designs. As to the first element, that the offended party was forcibly abducted was proved by (1) her own declarations and the declarations of eyewitnesses, (2) the testimony of the chauffeur of the automobile, (3) the manner in which the young lady was dressed, which was not that of one in the expectation of participating in an elopement, and (4) the bruises received by the offended party during the scuffle in the drug store while she was resisting the attempt to take her away in an automobile. As to the second element, that the abduction was effected with unchaste designs was not proved because of (1) the testimony of the chauffeur who said that during the trip from Concepcion to Macabebe, the occupants of the automobile were "gay" and "laughing," (2) the lack of intention of the accused to conceal the offended party's whereabouts by taking her to some isolated place, but instead transporting her to the home of the grandmother of Doctor Bustos where many members of his family gathered, and (3) the effort made by doctor Bustos and one of his uncles to have the lady in the case sign an application for a marriage license. With the first element present, and with the second element not present, the crime is not that of abduction, but that of illegal detention.

In the case of *People vs. Crisostomo* ([1923], 46 Phil., 775), the criminal charge was, as here, for abduction, but the accused were convicted of the crime of illegal detention. It was there held that, where the female, as well as the male, were of age to marry, and that was the purpose of the accused in abducting the woman, unchaste designs are not present. That case is on all fours With the case at bar, and should be followed.

The only participation in this crime attributed to the chauffeur Leopoldo Pizon is the fact that he drove the automobile used in taking away the offended party. That circumstance alone is not sufficient to convict him as an accomplice by cooperation in the execution of the criminal act. Accordingly, the recommendation of the Attorney-General of acquittal for this accused should be confirmed.

The insinuations made by counsel for the accused that the judge acting in an ad interim capacity may have taken an undue interest in making certain that a conviction was had because his appointment as Auxiliary Judge of First Instance was then pending in the Senate, are not in good taste. That Judge De Leon gave close attention to this case is true, but it was merely the close attention which is to be expected from every conscientious judge of First Instance.

In consonance with the foregoing, our vote is to affirm the judgment as to Felicisamo Bustos and Felino Reyes, except that instead of convicting them of the crime of abduction and sentencing each of them therefor to imprisonment for fourteen years, eight months, and one day, they should be found guilty of the crime of illegal detention, and each of them sentenced therefor to imprisonment for eight years and one day. Leopoldo Dizon should be absolved from the crime charged. To this extent we dissent from We decision of the majority.

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