

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEON NARVASA AND MAOARIO ESTACIO, DEFENDANTS AND APPELLANTS.

G. R. No. 3460. August 22, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of attempted abduction, committed as follows:

"That the said accused, on the night of the day of the 9th of October, 1905, in the barrio of Sagudnabaley of the pueblo of San Fabian, Province of Pangasinan, attempted to abduct Juana Baltazar, against her will y con myras deshonestas, Leon Narvasa taking hold of her hand for the purpose of taking her away, which he was unable to do by reason of the resistance which the same Juana Baltazar made, and for the reason that Victoriano Baltazar then and there arrived upon the scene, acts which constitute the crime of attempted abduction, defined and punished in article 445, in its relation with paragraph 3 [of article 3] of the Penal Code, against the provisions of the law."

To this complaint the attorney for the defendants filed a demurrer, alleging that the facts stated in the complaint did not constitute a crime under the laws of the Philippine Islands. The record does not disclose that the question raised in the demurrer was ever decided by the lower court.

After hearing the evidence adduced during the trial, the lower court found that the defendants were guilty of the crime charged in the complaint, and taking into consideration the aggravating circumstance of nocturnity, without any extenuating circumstances, giving the defendants the benefit of article 11 of the Penal Code, sentenced the said defendants each to be imprisoned for a term of two years four months and one day and to pay the costs. Macario Estacio having been a prisoner in the provincial jail of the Province of Pangasinan for some time, the lower court ordered that he be allowed one-half of such imprisonment. From this sentence the defendants appealed to this court.

The lower court in its decision made the following finding of facts:

"There is no reasonable doubt in the court's mind that the two defendants went to the house on the night in question for the purpose and with the unchaste design, as alleged in said complaint, of abducting the said Juana Baltazar, and the facts as disclosed by the evidence show that there could not have been any other design or purpose on their part in going there and they offer no other reason for going and being there except the incredible 'fish story' which they set up as the reason why they were there."

The testimony of Juana Baltazar shows the following facts:

That she. was a widow, 17 years of age, and lived with her father in the pueblo of San Fabian in the Province of Pangasinan; that on the night of the 9th of October, 1905, the defendants came to the house where she was living; that Leon Narvasa took hold of her and told her to get her bundle and to come away with him to another house; that she objected; that Macario Estacio during this time was standing in the door of the house; that she

cried out; that her brother Victoriano heard her cry and immediately called to her mother and inquired what was the trouble; that thereupon when the defendants heard the voice of her brother downstairs they immediately escaped; that she had not known the defendants prior to that time; that there were with her in the house at the time the defendants entered, her brother Jose", her mother, who was in another part of the house, and her sister-in-law; that her brother Jose, who was about 13 years old, and her sister-in-law were in that part of the house with her when the defendants entered.

This testimony of Juana Baltazar was substantially corroborated by the testimony of her brother Jose and by Jacinta Almonte, her sister-in-law, who was about 16 years of age.

The fact that the defendants had been in the house of Juana Baltazar is also verified by the testimony of her father and brother, Bartolome and Victoriano Baltazar, who returned to their home while the defendants were in the house and saw them escaping.

Leon Narvasa testified on his own behalf and admitted that he had been in the house of Juana at the time mentioned in the complaint, but that he was there for the purpose of buying dried fish; that he did not enter the house of Juana but remained at the foot of the stairs and that Macario Estacio alone went into the house for the purpose of buying the fish. The evidence shows that Leon Narvasa was a corporal of police in the said pueblo of San Fabian.

The lower court gave the defendants the benefit of the provisions of article 11 of the Penal Code. We do not believe that it was the intention to have article 11 apply to Filipinos sufficiently intelligent to be selected as policemen, and especially those who have been recognized as having sufficient intelligence to act as a corporal of police. The evidence discloses no good reason why this article should be applied to the defendant Macario Estacio.

We find from the evidence, therefore, that the defendants are guilty of the crime of attempted abduction, executed in the manner and form as described in said complaint; that there existed the aggravating circumstances of nocturnity and morada, without any extenuating circumstances. The defendants then must be punished in the maximum degree of prision correccional, under article 445 of the Penal Code, in its relation with article 66 of said code.

Therefore it is the judgment of this court that the sentence of the lower court be modified and that the defendants be imprisoned for a period of four years two months and one day of prision correccional, and to suffer the accessory penalties provided for in article 61 of the Penal Code, and each to pay one-half the costs.

The record discloses the fact that Macario Estacio has been detained as a prisoner during the pendency of this action; therefore, in accordance with the provisions of article 93 of the provisional law one-half of such imprisonment shall be deducted from the above period of imprisonment. So ordered.

Arellano,C.J., Torres, Willard, and Tracey, JJ., concur.

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