

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ELIGIO C. GARCIA, DEFENDANT AND APPELLANT.*G.R. No. 3570. December 23, 1907*

Ponente: TORRES, J.

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TORRES, J.:

Late at night on the 4th of May, 1906, Maria Amparo, a married woman, whose husband was absent at the time, being asleep in company with her mother-in-law, Maria Manalo, in her own house, situated in the barrio of Tibag, municipality of Calapan, Island of Mindoro, was suddenly awakened by feeling that an individual had stretched himself over her; she then cried out for the mother-in-law, saying that there was somebody in the house, and at the same time caught her assailant by the hair, and after having managed in some way to raise herself up, the assailant made efforts to throw her down, but owing to her cries and the noise of the struggle, the mother-in-law awoke, and, striking a match, at once recognized the accused as the man who was trying to outrage Maria Amparo. The mother-in-law caught him by the coat in order to separate him from the assaulted person; he then went toward the door of the house dragging along Maria Manalo, whom he pushed and threw to the floor; the latter, however, managed to get up and going downstairs pursued the accused, though she failed to overtake him. She at once reported the affair to the lieutenant of the barrio, who called at the house of the offended parties and found that the accused had left his hat on the mat (petate) on which the rape was attempted; said hat was offered as evidence at the trial in the court of the justice of the peace.

A complaint was filed by the provincial fiscal on the 12th of September, 1906, and proceedings having been instituted by reason thereof, the judge, in view of the result, sentenced Eligio Cruz Garcia to the penalty of six months and one day of prison correccional, and to pay the costs; from said decision counsel for the accused appealed.

The facts stated and proven in this cause constitute the crime of attempted rape, defined and punished under article 438 in connection with article 3, paragraph 3, and article 66 of the Penal Code, inasmuch as the accused, without being in any way connected with Maria Amparo, a married woman, entered her house at a late hour of night at a time when her husband was absent, and forcibly tried to outrage her while asleep, against her will, using violence on her person; and notwithstanding the resistance made by the woman and in spite of her cries to her mother-in-law, who was asleep at a short distance from her in the same house, refused to abandon his criminal purpose. It is an unquestionable fact that the accused was stretched over the offended woman and that when the latter managed to raise herself, the accused endeavored to throw her down, and that from the beginning when she woke up she noticed that her skirt had been raised to the knee; it can not be denied that the accused had begun the commission of his criminal intent to forcibly outrage the offended party, and if he did not perform all of the acts necessary to consummate the crime it was owing to the stubborn resistance offered by the woman and to assistance rendered by her mother-in-law, Maria Manalo.

The accused pleaded not guilty, but notwithstanding his denial and allegations and the evidence offered by the defense, the case furnishes full and complete proof of his guilt as the convicted principal in the crime herein.

The statements of the offended woman, Maria Amparo, and of her mother-in-law, Maria Manalo, who was an eyewitness of the affair, both women having thoroughly recognized the accused by the light of a match struck by the last-named woman when she awoke, besides the fact that Eligio Cruz Garcia was previously known to them as a resident of the place, are confirmed by the next-door neighbor, Mariano Madrigal, who, upon being awakened by the cries coming from the house of the offended party, opened his window and looked out and shortly thereafter saw the accused, whom he then recognized, going out, running without his hat and pursued for some distance by Maria Manalo.

It further appears in the case, according to the testimony of Maria Manalo, that the father of the accused, Leonardo Cruz Garcia, approached her, asking her pardon for what had taken place and offering to pay for all damages caused, and that the accused, according to the testimony of the offended woman, as stated in page 97 of the record, in the presence of the provincial fiscal and of the copyist, Juan Gozar, asked her to pardon him for the offense he had committed; such pardon asked by him is a further proof of his guilt. The court ordered this statement read into the record in spite of the opposition and exception of the counsel for the accused.

The evidence adduced by the defense could in no manner counteract the satisfactory result of that offered by the prosecution because notwithstanding the alibi attempted by the accused, the fact that both he and his father did not recognize the hat left behind when running away on the night in question, and the affirmation of two individuals, Pedro Mercado and Martin Membrot, who it is said were on duty patrolling the town on that night, to the effect that they questioned the women as to who was the man that committed the act, and that their reply was that they failed to recognize him; his culpability appears to have been well established inasmuch as said alibi can not destroy the testimony of the offended woman and her mother-in-law, corroborated by Mariano Madrigal, who also saw the accused leaving the house in question, running without a hat because he had left it behind in the house; the hat was immediately offered as evidence in the court of the justice of the peace when information of the fact was filed, and in the light of what is affirmed by the offended parties it is not possible to admit the statements of the two policemen, and Avith more reason if what was declared by Eliseo Paras, that the two said individuals, Mercado and Meinbrot, were not detailed to do duty on the night in question, is taken into account.

In the commission of the crime the aggravating circumstance of the attempted rape having been performed at a late hour and in the darkness of night must be considered, and also that the house of the offended woman was entered in order to carry it out; which effects are compensated by the special circumstance established as a mitigating one by article 11; therefore, the penalty of prision correccional should be imposed in its medium degree.

By virtue of the foregoing considerations, it is our opinion that the judgment appealed from should be affirmed, provided, however, that the accused shall be sentenced to the penalty of three years of prision correccional, to suffer the accessory penalties of article 61, and to pay the costs of both instances. So ordered.

Arellano, G. J., Mapa, Johnson, Willard, and Tracey, JJ., concur.

DISSENTING

CARSON, J.:

After careful examination of the testimony of record, I think that there is reasonable doubt as to the identity of the accused with the person who entered the house of the complaining witness at the time when the alleged attempt to commit rape is said to have taken place; and I am convinced that, whoever that person was, such person did not in fact make the attempt as alleged.

The identification of the accused as the person who was in the house on the night in question rests:

First, on the testimony of the complaining witness and her mother-in-law, who alleged that they recognized him by the light of a match;

Second, on the testimony of a neighbor, Mariano Madrigal, who states that he recognized the accused by the light of the moon as the person who ran away from the house of the complaining witness just after the alleged attempt was committed;

Third, on the fact that a hat, alleged to be the hat of the accused, was found on the floor of the house of the complaining witness after the occurrence.

Two witnesses, who appeared to be the only wholly disinterested witnesses who testified in the case, swore that on the night in question they were acting as police or watchmen; that, attracted by the noise, they went to the house of the complaining witness immediately after the alleged attempt; and that the complaining witness and her mother-in-law told them that they did not recognize the man who had been in the house and could not say who he was. The testimony of the neighbor, Mariano Madrigal, that he recognized the accused by the light of the moon as he ran away from the house, is put in doubt by an examination of the calendar, which shows that at the hour of the night when it is alleged the attempt was committed the moon, still in its first quarter, must have been so low in the heavens as to render it highly improbable that it would furnish sufficient light to enable this witness to identify the person he claims to have seen running away from the house. There is not one scintilla of evidence of record that the hat which was found on the floor of the house after the occurrence was the hat of the accused, but there are positive and uncontradicted declarations of the father and brother of the accused to the fact that the hat was not his property and that he had never worn it.

Thus it appears that the positive evidence of the prosecution identifying the accused as the person who was in the house when the alleged attempt was committed rests on an unsatisfactory and most untrustworthy foundation; on the other hand, the defense established an alibi, which the prosecution wholly failed to break down on cross-examination. It is true that the proof of this alibi rests on the testimony of the relations and friends of the accused, but, as a rule, the only witnesses who can be relied upon to testify as to one's whereabouts at an hour when people usually are at home and in bed are one's relations and friends who live in the same dwelling house; and no evidence was introduced by the prosecution to contradict or to cast doubt upon the statements of the witnesses for the defense.

But, even if the evidence identifying the accused as the person who entered the house were sufficient, there would still be a grave doubt as to his guilt of the crime with which he is charged. I do not question the fact that some unknown man was in the house on the night in question, but that this person was there with the attempt to commit rape and did in fact attempt to commit rape is not established beyond a reasonable doubt.

In the light of all the circumstances attendant upon the presence of the unknown man in the house of the complaining witness, I am disposed to think that there are grounds for suspecting that such person entered the house with the consent and connivance of the complaining witness; that when her mother-in-law was awakened, the unknown was compelled to take to flight; that the complaining witness thereupon charged him with an attempted rape in order to clear herself of the charge of having invited him to her arms; and that later, when the disturbance created by the incident had created a scandal, and suspicion was rightly or wrongly turned upon the accused, the complaining witness either could not, would not, or dared not retract the false charge of attempted rape, the first lie begetting the others necessary for its support. If this hypothesis, which is inconsistent with the guilt of the accused, is not proven, beyond a reasonable doubt, to be inconsistent with the facts, as proven, the accused should be acquitted.

On the testimony of the complaining witness herself, she first knew of the presence of the accused when she found herself in his embrace. The house was but a small, one-room shack, and it does not appear how he could have forced his entrance without awakening either of the women who were sleeping there. She further states that she struggled for some little time with the accused in an effort to get up, but was forced back upon the floor; that these movements did not awaken her mother-in-law, who was lying by her side; but that, when she again struggled to get up, her mother-in-law was awakened and struck a match, whereupon the accused immediately fled from the house, pursued by the mother-in-law. It is strange indeed that her first cries when she found herself attacked in the dead of the night by an unknown man did not immediately awaken the sleeper who was lying at her side, and I am strongly disposed to believe that such would have been the case if she had not been expecting him just where she found him.

I do not believe that any person who knew the house and the people living there, as did the accused, could hope to force his way into the house, and violate one of the inmates against her will and without her consent, without awakening the inmate sleeping in the same room and without awakening the neighbors living in nipa shacks a few yards away. It is almost incredible that anyone (but a desperate criminal, intent on accomplishing his purpose, if need be, under threats of bodily injury, or with violence against all who might interfere) would attempt to commit rape under such circumstances.

It appears that the accused is little more than a schoolboy ; that the person who entered the house did not utter a threat; that he used no force or violence which should intimidate either of the women; that he was not armed, or at least that he did not have any weapon in his hand or exposed to view; and that, immediately when the second woman in the house was awakened, he took to flight.

Under these circumstances, I can not believe that we are justified in declaring, beyond a reasonable doubt, that his object or expectation in entering was to violate the complaining witness against her will and without her consent; Whether the true fact be, as I believe, that he entered the house with the consent and by the invitation of the complaining witness, or whether he entered without her knowledge in the hope that afterwards he could induce her to consent to his advances, a conviction for the crime of attempted rape can not be sustained unless the court is satisfied, beyond a reasonable doubt, that the accused was the person who entered the house, and that it was his intention to force the complaining witness to accede to his wishes by the use of force or violence or by threats and intimidation. I do not think that the evidence of record sustains such a finding.

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