

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO MANABA, DEFENDANT AND APPELLANT.

G.R. No. 38725. October 31, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of Judge Eulalio Garcia in the Court of First Instance of Oriental Negros in criminal case No. 1827 dated November 15, 1932, finding the defendant guilty of rape and sentencing him to suffer seventeen years and four months of reclusion temporal, and the accessory penalties of the law, to indemnify the offended party, Celestina Adapon, in the amount of P500, to maintain the offspring, if any, at P5 a month until said offspring should become of age, and to pay the costs.

The defendant appealed to this court, and his attorney de oficio now makes the following assignments of error:

- "1. El Juzgado a quo erro al no estimar en favor del acusado apelante la defensa de double jeopardy o legal jeopardy que ha interpuesto.
- "2. El Juzgado a quo erro al no declarar insuficientes las pruebas de identificacion del acusado apelante.
- "3. El Juzgado a quo tambien erro al pasar por alto las incoherencias de los testigos de la acusacion y al no declarar que no se ha establecido fuera de toda duda la responsabilidad del apelante.
- "4. El Juzgado a quo erro al condenar al acusado apelante por el delito de violacion y al no acceder a su mocion de nueva vista."

It appears that on May 10, 1932, the chief of police of Dumaguete subscribed and swore to a criminal complaint wherein he charged Pedro Manaba with the crime of rape, committed on the person of Celestina Adapon. This complaint was filed with the justice of the peace of Dumaguete on June 1, 1932, and in due course the case reached the Court of First Instance. The accused was tried and convicted, but on motion of the attorney for the defendant the judgment was set aside and the case dismissed on the ground that the court had no jurisdiction over the person of the defendant or the subject matter of the action, because the complaint had not been filed by the offended party, but by the chief of police (criminal case No. 1801).

On August 17, 1932, the offended girl subscribed and swore to a complaint charging the defendant with the crime of rape. This complaint was filed in the Court of First Instance (criminal case No. 1827), but was referred to the justice of the peace of Dumaguete for preliminary investigation. The defendant waived his right to the preliminary investigation, but asked for the dismissal of the complaint on the ground that he had previously been placed in jeopardy for the same offense. This motion was denied by the justice of the peace, and the case was remanded to the Court of First Instance, where the provincial fiscal in an information charged the defendant with having committed the crime of rape as follows:

"Que en o hacia la noche del dia 9 de mayo de 1932, en el Municipio de Dumaguete, Provincia de Negros Oriental, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado. el referido acusado Pedro Manaba,

aprovechandose de la oscuridad de la noche y mediante fuerza, violencia e intimidacion, voluntaria, ilegal y criminalmente yacio y tuvo acceso carnal con una niña llamada Celestina Adapon, contra la voluntad de esta. El acusado Pedro Manaba ya ha sido convicto por Juzgado competente y en sentencia firme por este mismo delito de violacion.

"Hecho cometido con infraccion de la ley."

The defendant renewed his motion for dismissal in the case on the ground of double jeopardy, but his motion was denied; and upon the termination of the trial the defendant was found guilty and sentenced as hereinabove stated.

Whether the defendant was placed in jeopardy for the second time or not when he was tried in the present case depends on whether or not he was tried on a valid complaint in the first case. The offense in question was committed on May 9, 1932, or subsequent to the date when the Revised Penal Code became effective.

The third paragraph of article 344 of the Revised Penal Code, which relates to the prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness reads as follows:

"The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be."

The Spanish text of this paragraph is as follows:

"Tampoco puede procederse por causa de estupro, rapto, violacion o abusos deshonestos, sino en virtud de denuncia de la parte agraviada, o de sus padres, o abuelos o tutor, ni despues de haberse otorgado al ofensor, perdon expreso por dichas partes, segun los casos."

It will be observed that the Spanish equivalent of the word "filed" is not found in the Spanish text, which is controlling, as it was the Spanish text of the Revised Penal Code that was approved by the Legislature.

The first complaint filed against the defendant was signed and sworn to by the chief of police of Dumaguete. As it was not the complaint of the offended party, it was not a valid complaint in accordance with the law. The judgment of the court was therefore void for lack of jurisdiction over the subject matter, and the defendant was never in jeopardy.

It might be observed in this connection that the judgment was set aside and the case dismissed on the motion of defendant's attorney, who subsequently set up the plea of double jeopardy in the present case.

The other assignments of error relate to the sufficiency of the evidence, which in our opinion fully sustains the findings of the trial judge.

The recommendation of the Solicitor-General is erroneous in several respects, chiefly due to the fact that it is based on the decision of July 30, 1932 that was set aside, and not on the decision now under consideration. The accused should not be ordered to acknowledge the offspring, if should there be any, because the record shows that the accused is a married man.

It appears that the lower court should have taken into consideration the aggravating circumstance of nocturnity. The defendant is therefore sentenced to suffer seventeen years, four months, and one day of reclusion temporal, to indemnify the offended party, Celestina Adapon, in the sum of P500, and to support the offspring, if any. As thus modified, the decision appealed from is affirmed, with the costs of both instances against the appellant.

Street, Abad Santos, Imperial, and Butte, JJ., concur.

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