

## THE UNITED STATES ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN SALUD, DEFENDANT AND APPELLANT.

*G.R. No. 3937. February 24, 1908*

Ponente: TORRES, J.

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### TORRES, J.:

In or about the middle of September, 1903, Juan Salud began to make love to his second cousin Maria Ona Licarte, a young girl under 23 years of age. He lived for some time in the house of the girl's parents in the pueblo of Tanauan, and subsequently the girl went to live in the house of the father of the accused in San Juan de Bocboc, having removed thereto in order to practice her profession as school-teacher. They (the accused and the girl) also lived together in a house in Lipa where they had gone to pursue their studies at the normal school. An intimacy sprung up between them, and young Maria was seduced by the promises of marriage made by the accused, who thereby repeatedly accomplished his desires, particularly at the time when the injured party was living in the house of the defendant's father, in the pueblo of San Juan de Uocboc. The result of these intimate relations was that Maria became pregnant and gave birth to a child that was afterwards christened under the name of Siniplicio Ona; after this, however, the accused refused to fulfill his repeated promises of marriage, given not only to the injured girl but also to her mother and to one of her aunts.

For the above reason a complaint was filed with the Court of First Instance. Proceedings were instituted and judgment was rendered on the 6th of March, 1907, sentencing Juan Salud to the penalty of four months of arresto mayor, to suffer the accessory penalties, to indemnify the injured party in the sum of P2,000, to recognize his offspring, to pay the sum of P20, monthly, for the subsistence of his said son until he should attain his majority, to be paid to the mother of the child, and also to pay the costs. From this judgment the accused has appealed.

The facts above stated, which were duly proven in this case, constitute the crime of estupro (seduction), defined and punished under article 443 of the Penal Code, the third paragraph of which provides:

"Seduction when committed with fraud by any other person on a woman over 12 years of age but under 23, shall be punished with the penalty of arresto mayor."

The record of the case clearly shows, that by means of a promise of marriage, Maria Ona Licarte, a young woman under 23 years of age, allowed herself to be seduced, and acceded to the repeated requests of the accused and permitted him to lie with her, which he did several times; that in consequence of such intimacy the young woman Licarte became pregnant and gave birth to a child, and the accused afterwards refused to fulfill the promise of marriage repeatedly made to her, both before and after committing the unlawful acts, which promise had also been given to the mother and to Maria Ona Lardizabal, an aunt of the injured party.

The promise of marriage given by an unmarried man to a young woman, also unmarried, and willfully disregarded—that is, without the intervention of any just cause to prevent the marriage—constitutes the deceit referred to in article 458 of the Penal Code of Spain, equivalent to article 443 of the Philippine Code. Such is the doctrine established by the courts in their decisions, among others in those of October 14, 1871, December 2,

1873, and October 7, 1874.

In response to the charges of deceit and seduction under promises of marriage the accused in his defense denied all the charges, and in order to prove that they were not true he offered as witnesses his father and his stepmother, both of whose declarations, disconnected and incongruous, are nullified by the testimony of the injured woman and her witnesses from which it conclusively appears that the accused is guilty of the crime and responsible for its consequences.

The fact that the accused and the young woman seduced lived for months, or during a great many days, in the same house in Tanauan, San Juan de Bocboc, and Lipa, gave opportunity for the intimacy that sprung up between them, the man causing the girl to believe that after some time they would be wedded; so much so that, in response to a remark made by the mother, the girl replied that by reason of her love affairs with the accused her future was assured; undoubtedly trusting to the deceitful promises given by the defendant, a distant relative of hers, it is easily understood how she consented to be seduced by her lover who, willfully failing to comply with the promise so persistently given, has shown that he only made the same with the wicked purpose of committing an unlawful act.

In the commission of the crime no aggravating or mitigating circumstance is present; therefore, the penalty should be applied in its medium degree. The accused has further incurred the accessory penalties of article 449, because the record shows that he was the author of the pregnancy of the injured woman, and that consequently he is the father of the child to which she gave birth.

For the foregoing reasons, and accepting the conclusion upon which the judgment appealed from is based, all of which is in accordance with law and the merits, it is our opinion that the judgment should be affirmed with the costs of this instance against the defendant, provided, however, that the indemnity payable to Maria Ona Licarte shall be reduced to P1,000, and the monthly allowance to 15, which the accused shall pay to the mother for the subsistence of his child until the latter shall attain his majority. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ. concur.

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