

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ARSENIO DE LA CRUZ, DEFENDANT AND APPELLANT.

G. R. No. 39881. February 20, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

The appellant was convicted by the Court of First Instance of Pampanga of the crime of rape upon the following information:

"Que en o hacia el 2 de febrero de 1933, en el Municipio de Arayat, Provincia de Pampanga, Islas Filipinas, el referido acusado, Arsenio de la Cruz, por medio de engano, fuerza, amenaza e intimidacion, voluntaria, ilegal y criminalmente, yacio con Emiliana Balatbat contra su voluntad. Hecho cometido contra la ley y con las circunstancias agravantes de nocturnidad, despoblado y premeditacion." Upon conviction he was sentenced to seventeen years, four months and one day of reclusion temporal.

We have carefully examined all the evidence in this case but we do not deem it necessary to restate it at length. We cannot find that the accused exercised over the offended party, a girl sixteen years of age, such continuous intimidation, even during many hours of separation and absence, and with many opportunities of escape and calls for assistance, as the prosecution has tried to prove in this case. The offended girl may be ignorant, as argued by the Solicitor-General, but she is not an idiot. No rational person, who can testify so intelligently as Emiliana Balatbat, even under cross-examination, would long remain under the fear that the accused could strike her dead by raising his hand. Nor can we believe that a virtuous girl who valued her honor would not have challenged him to try his alleged miraculous power. The defendant denied that he ever made any claim to supernatural power and there is no evidence in the record that anybody ever heard him make such a claim except Emiliana Balatbat and Filomena Mano, who both charge him with the crime of rape. We are not convinced beyond reasonable doubt by the evidence in this case that the consent of the offended party was entirely lacking.

While we have arrived at the conclusion that the judgment of guilt under this information must be reversed, we are inclined to believe that a prosecution under article 343 of the Revised Penal Code for rapto con anuencia might have prospered. Without, however, prejudging in the slightest degree that question, we direct that the defendant be not discharged (see section 37 of the Code of Criminal Procedure) but that he be held for trial upon an information charging a crime under article 343 aforesaid; provided that such information be filed within ten days from and after a copy of this decision is served upon the SolicitorGeneral, failing which it is ordered that the accused be discharged from further custody.

Judgment reversed with costs de oficio.

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

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