

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PASCUAL DULAY, DEFENDANT AND APPELLANT.*G.R. No. 4026. March 07, 1908*

Ponente: TORRES, J.

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In the month of May, 1904, Pascual Dulay, of about 23 years of age, began courting Gregoria Pimentel, a girl of 1C, residing in the pueblo of Aringay, San Fernando, La Union. Their relations became every day more intimate, on account of the promises of marriage made by the accused Dulay, and the girl was seduced. The defendant accomplished his desire for the first time on a certain night in the latter part of December, 1905. The act was repeated on various occasions from that time until the 28th of April of the following year. On the 29th of the latter month, the accused, besides the promise previously given to the injured girl, informed her parents of his intention to marry her, and following the advice of the parents the marriage was postponed until the time when the accused was to complete his studies. However, in the month of June following, in view of the fact that his fiancée was pregnant, the defendant disregarded his promise of marriage and denied being the author of the girl's pregnancy. The latter positively asserted that she never had sexual intercourse with any other man, and that during his courtship he sent to her several letters, cards, photographs of himself, handkerchiefs, and a ring, all of which were exhibited at the trial and recognized by him. He confessed that he had maintained friendly relations with her, but denied that he had ever had any sexual intercourse with her, or that he was the father of the child born on the 20th of October, 1906, which was produced at the trial.

Among the letters exhibited, written in the dialect of the province, one appears at folio 44 of the record, the English translation of which taken from the Spanish translation is as follows:

"GOYANG:

"I can not stand my heart's grief because if I could help it I would not part from you; but, what can I do? I must leave for important reasons; however, although I am going away, some one will make arrangements for my return in the month of June; may Heaven grant this. Oh! my Gregoria, I feel uneasy; I don't know what to do; you do as I have told you to do; do it because I think it is more advisable that you should tell the old man (grandfather) the sin we have committed in the eyes of God, for if somebody else does it, or, if you wait until he notices the consequences thereof, it will be worse for you. Do it, do not fail to comply with what I am asking of you so that the old man may not become too angry.

"Do go and hear mass to-morrow, and I will wait for you because I have a very important thing to ask you to do; hear mass without fail so that you may know what you ought to do; I will do the same so that our intentions may not have bad results.

"Your brother [among Ilocanos, this word is used when the parties are very intimate, or when they are lovers],

"PASCUAL."

The above facts are duly proven in this case, and constitute the crime of estupro (seduction), defined and punished

by article 443, paragraph 3 of the Penal Code, inasmuch as, by reason of the intimate relations between the accused and the injured party, the latter was seduced by his repeated promises of marriage, and she permitted him to have with her on various occasions from the latter part of December, 1905, to the last days of April, 1906; in consequence of these acts the girl became pregnant and gave birth to a child on the 20th of October following. Without any just reason the accused has refused to comply with the promise of marriage made to Gregoria Pimentel; therefore, it is clear that he acted deceitfully when making the promise solely with the unlawful purpose of inducing her to yield to his desire, and upon pretext of her pregnancy he wrote to her parents stating that he declined to carry out his promise of marriage.

A promise of marriage given to a woman over 12 and under 23 years of age, with the evil intent of committing an unlawful act and voluntarily abandoned without just cause, constitutes the deceit referred to in article 458 of the Code of Spain, equivalent to article 443 of that of the Philippines, according to the doctrine established by the supreme court of Spain, among other decisions in that of October 7, 1804.

The culpability of the accused as the only author of the crime can not be denied, inasmuch as he acknowledged that he had maintained intimate relations with the aforementioned Gregoria Pimentel from May, 1904, to the same month in 1906. No evidence is offered that would even indicate that the girl had maintained any such relations with any man other than the accused, and in view of her affirmation that Pascual Dulay was the only man who did lie with her on the several occasions, beginning with a certain night in December, 1905, and that the accused was the father of the child to which she gave birth on the 20th of October, 1906, it is unquestionable that the accused is responsible for the crime and that he has incurred the penalty that the law imposes, because he managed to have intercourse with the injured girl on several occasions by means of deceit and committed the seduction under promise of marriage.

The translation of the letter without date, hereinbefore inserted, shows that the accused addressed it to the injured girl while he was still in the pueblo of Aringay, and before coming to this city; that he wrote the same after he had had sexual intercourse with the girl, and at a time when he was aware that she had conceived and was pregnant; it was for this reason that he compelled her to inform her father of the offense that they had committed.

The defendant alleges that from the latter part of December, 1905, to the 25th of April, 1906, he had not returned to his pueblo where the injured girl resided, and that as her confinement only took place on the 20th of October of the latter year and the first carnal intercourse, according to her own statement, took place upon one of the last days of December, 1905, it thereby appears that the pregnancy of the injured party lasted about two hundred and ninety-eight days at least; that is, more than nine months. But by such data it is not shown that the accused is not the author of the pregnancy of the girl, who states positively that from December, 1905, to April, 1906, the accused repeatedly had sexual intercourse with her.

If the ordinary average duration of the pregnancy of women is nine months and some days, a tardy birth is not an impossibility or an unusual event, and neither is it impossible or unusual to have a delayed or retarded conception, one of the inexplicable mysteries of nature, since the opinions of physicians upon the matter are conflicting; for this reason the Penal Code, by article 476, imposes punishment upon a widow who marries before three hundred and one days have elapsed from the death of her husband, a prohibition which is in accordance with other legal provisions, and which is intended to prevent confusion in connection with filiation and paternity, inasmuch as the widow might have conceived and become pregnant by her late husband. So that the law when fixing the said three hundred and one days, admits the possibility that a woman may be in pregnancy for more than nine months, and that the birth of a child taking place nine months after it was conceived is not an impossibility.

In the commission of the crime in question no aggravating nor mitigating circumstance is present; therefore, the

judgment appealed from is in accordance with the law.

For the foregoing reasons, it is our opinion that the judgment appealed from, dated the 7th of March, 1907, sentencing Pascual Dulay to the penalty of four months of arresto mayor, to recognize and maintain the offspring, to indemnify the injured party, Gregoria Pimentel, in the sum of P1,000 and, in case of insolvency, to suffer subsidiary imprisonment which shall not exceed one-third of the principal penalty, and to pay the costs, should be affirmed with the costs against the appellant; provided, however, that the amount to be paid to the injured party for the subsistence of her child until the same shall reach his majority, shall be P15 monthly. So ordered.

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

Willard and Carson, JJ.,

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