

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. MARIANO FORMENTO ET AL., DEFENDANTS.
MARIANO FORMENTO, APPELLANT.**

G. R. No. 41532. August 29, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

The defendant Mariano Formento appealed from the trial court's judgment sentencing him to an indeterminate penalty of from seven years of prision mayor to fourteen years, eight months and one day of reclusion temporal, to indemnify the offended party Buena Aviles in the sum of P200, to support the offspring, should any be born of her, and to pay one-half of the costs.

In his brief, the appellant assigns the following three alleged errors as committed by the trial court, to wit:

"1. The lower court erred in not dismissing the complaint for lack of jurisdiction, it appearing that the complaint was not instituted and filed by the proper parties enumerated in article 344 of the Revised Penal Code.

"2. The lower court erred in holding that there was proven the elements of abduction with rape and in not taking into account Exhibit 1 of the defense.

"3. The lower court erred in convicting the accused, Mariano Formento."

With respect to the first assignment of error, it may be said that the evidence shows that on December 7, 1933, Pia Aviles filed in the justice of the peace court of Unisan, Tayabas, a complaint which reads as follows:

"The undersigned Pia Aviles accuses Mariano Formento, Casimiro Formento and Godofredo Ruiz of the crime of forcible abduction of Buena Aviles and under oath states the following:

"That the undersigned is the guardian and aunt of the minor Buena Aviles who is an orphan and 14 years of age;

"That on the 20th day of November, 1933, here in the municipality of Unisan, Province of Tayabas, and within the jurisdiction of this court, the accused Mariano Formento, in connivance and with the understanding of the other accused Casimiro Formento and Godofredo Ruiz, this latter being brother-in-law of Casimiro, did then and there willfully and criminally, by force and intimidation, and with lewd designs, carry and take the minor Buena Aviles from our home where she is living under the care of the undersigned.

"Committed contrary to law.

"(Sgd.) PIA AVILES

"Witnesses:

"LEONCIO BUENDIA, Unisan, Tayabas.

"ANCIETA MAGNO, Unisan, Tayabas.

"BUENA AVILES, Unisan, Tayabas.

"ANTONIO AVILES, Unisan, Tayabas.

"Corp. SIMON MACEREN, P. C, Gumaca, Tayabas.

"Prvt. CRISOGONO ABELLANO, Gumaca, Tayabas.

"Subscribed and sworn to before me this December 7, 1933.

"(Sgd.)

CENON L. ARCAYA

"Justice of the Peace

"(Exhibit A)"

After the necessary prelfminary investigation had been conducted, the case was forwarded to the Court of First Instance of the said province and the acting fiscal thereof, on the strength of the amended complaint of Pia Aviles (Exhibit A), filed the information which reads as follows:

"The undersigned provincial fiscal, upon an original complaint filed by the guardian of the offended party, accuses Mariano Formento and Casimiro Formento of the crime of forcible abduction defined and penalized in article 342 of the Revised Penal Code, committed as follows:

"That on or about November 20,1933, in the municipality of Unisan, Province of Tayabas, P. I., and within the jurisdiction of this court, the said accused Mariano Formento and Casimiro Formento, conspiring and confederating together, willfully, unlawfully and feloniously, by means of force, violence and intimidation, and with lewd designs, abducted one Buena Aviles of 13 years of age, single, by taking and carrying her away with them from her dwelling against her consent.

"Contrary to law.

"Lucena, Tayabas, P. I., December 29, 1933.

"(Sgd.) ENGRACION FABRE

"Acting Provincial Fiscal"

As may be noted from the complaint above quoted the complainant stated under oath that in addition to being the aunt of the offended party Buena Aviles, she was also her guardian. When she testified in the lower court, she was not asked by the provincial fiscal nor by the attorney for the defendant-appellant, much less by counsel for the latter's co-defendant Casimiro Formento, who is his brother, in what respect was she the offended party's guardian, whether she was a de facto guardian because she was her aunt and took care of her since she became an orphan by the death of her parents, or she was a judicial guardian appointed by a competent court for that purpose, fully in accordance with the provisions of section 551 of the Code of Civil Procedure. Such being the case, it would seem arbitrary to hold or even assume that the complainant was not, or in fact she is not the guardian of the

offended party, merely because she failed to present documentary evidence to prove that fact. This is all the more true because before as well as during the trial, counsel for the appellant did not even attempt to prove that she had not been duly appointed as such guardian. This court is of the opinion that the complainant's affirmation made in a solemn manner, that is, under oath, that she was the offended party's guardian, was sufficient to confer upon the justice of the peace, before whom she filed her complaint, authority to conduct the necessary preliminary investigation and also to confer upon the lower court authority to decide the case on its merits after the same was forwarded to it.

Article 344 of the Revised Penal Code prescribes no special form of establishing the relation between the complainant and the minor who is the victim of any of the offenses therein enumerated, nor does it require that such relation, in the case of a guardian and ward, be necessarily proved by means of a judicial decree or order. Therefore, when a person affirms under oath that he is the guardian of a minor, and this is not denied, as in the case of the herein complainant, his affirmation under such circumstances constitutes sufficient evidence that he is in fact the guardian in the legal sense. The complainant in fact complied with the requirements of the law, by stating under oath that she was the guardian of the offended party. It is therefore clear that the first assignment of error attributed to the trial court is unfounded.

As to the last two errors, the evidence shows that after the appellant, who is a married man, had, early on the morning of November 20, 1933, secured the consent of said Buena Aviles who was then only 13 years of age, he carried her away from the center of the poblacion of Unisan, where they both resided, to the Panaon railroad station, whence they later proceeded to Aloneros where they took a banca for the barrio of Mangayao of the municipality of Guinayangan, which is more than 67 kilometers from Unisan. On the road to the Panaon station, the appellant had carnal intercourse with the said girl. While the two were in Guinayangan, the said appellant, with the help of his brother Casimiro Formento, who had joined them in Aloneros, acting ahead of developments, conceived the excuse or rather the defense that the said Buena Aviles was not abducted by anybody but she, of her own free will, left the house of her aunt and guardian Pia Aviles in order to join her supposed sweetheart Godofredo Ruiz, another minor of 17 years of age, who is furthermore a brother-in-law of said Casimiro Formento. In passing it should also be stated that Godofredo Ruiz was also charged in this case but after the trial he was acquitted by the court a quo.

The prosecution tried to prove that on the date and place above stated, Buena Aviles was abducted against her will by the appellant, but the same evidence presented by it shows that the abduction was committed with the said girl's consent. If it were true that she and her sister Antonia had been threatened with death by the appellant, the most natural thing to happen, after the threat had ceased, would have been for the said sister to immediately disclose said fact to her aunt Pia Aviles and reveal furthermore that the offended party had been carried away forcibly by the appellant. Nothing of the kind, however, took place, for which reason Pia Aviles, instead of reporting the matter to the authorities, went asking for information regarding the whereabouts of her niece at the houses of their relatives in Pitogo and Macalelon.

The contention that Godofredo Ruiz and the offended party were sweethearts is not supported by the evidence and is not convincing. The offended party did not even know the said youth and if she endured the farce of feigning love for him, by kissing him in the presence of a constabulary soldier, it was because she had been instructed to do so under threat of maltreatment if she did not.

The testimony of Dr. G. Santos Cuyugan, who examined the offended party some weeks after the abduction, confirms the latter's testimony that on the occasion referred to by her the appellant actually had carnal knowledge of her. According to the said doctor, the signs found by him on the body of the said offended party indicate that she had carnal knowledge of a man on or about the date of her abduction.

For all the foregoing, the judgment appealed from is hereby modified by sentencing the appellant to an indeterminate penalty of from one year to two years, eleven months and ten days of prison correccional, to indemnify the minor Buena Aviles in the sum of P500, with the corresponding subsidiary imprisonment in case of insolvency, to support the offspring, should any be born of the said minor, but not to acknowledge the same, being prevented from so doing by the nature of its origin, and to pay the costs of this instance plus one-half of the costs in the lower court. So ordered.

Street, Abad Santos, Hull, and Vickers, JJ., concur.

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