

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. OSO (MANDAYA), DEFENDANT AND APPELLANT.

G.R. No. 42571. October 10, 1935

Ponente: RECTO, J.

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RECTO, J.:

Charges having been filed in the Court of First Instance of Davao against Oso (Mandaya) for the complex crime of forcible abduction with rape, judgment has been rendered sentencing the accused to an indeterminate penalty of from twelve years of prision mayor, as minimum, to twenty years of reclusion temporal, as maximum, with the accessory penalties and the costs. From this judgment the defendant appealed.

The facts of the case, as disclosed by the "evidence, are:

At twilight on November 25, 1932, while Sovida, a Mandaya, married to Masumbid, of the same tribe, was drawing water from a well in an uninhabited place at a certain distance from her house in Cabaihan, within the municipality of Manay, Province of Davao, she was seized by Oso, another Mandaya. Attracted by her cries her brother Dumaguiong, who happened to be in her house, came to her rescue; but Oso, upon seeing him, leveled his lance and, threatening to kill him, warned him not to approach, whereupon Dumaguiong desisted from his purpose to free Sovida whom Oso later forcibly took, thru woodlands, to his house in Bohanginan within the same municipality, arriving there at about midnight. Oso whose caveman instincts did not appear to have been subdued or moderated by instruction, having received none, and who lacks the most elementary notions and scruples of morality and decency ordinarily found among individuals belonging even to communities less impervious to the cares and influence of civilization, ordered his wife and children to leave the house, that he might spend the night with Sovida and cohabit with her, which he did against her will.

In the meantime, Dumaguiong went in search of Masumbid, who was then away, to inform him of what had happened to Sovida. They thought of pursuing Oso to free Sovida, but partly because their courage failed them and partly because it was already dark, they decided to wait for the next day when they set forth for Oso's house. Oso saw them approaching, and stationing himself at the stairs, lance in hand, warned Sovida's husband and her brother to desist from taking her away from him because they would lose their lives in such an attempt. Scared, Masumbid and Dumaguiong resolved to leave to the authorities the task of freeing Sovida which seemed to surpass the strength of their arms and their valor. They therefore left the place and went to the house of Malinas, the barrio lieutenant, who, likewise intimidated by Oso, refused to intervene in the case, sending the complainants to councillor Tomambing. The latter, "considering the case serious", took the same attitude and advised them to see the municipal president who immediately ordered a policeman to bring forth Oso and Sovida. Oso attempted to resist the policeman but finally surrendered. Sovida returned to her home. She had been in Oso's power for seven days during which her abductor, through intimidation, cohabited with her several times

The corresponding information was filed in the justice of the peace court of Manay on December 8, 1932, upon Sovida's affidavit corroborated by that of Dumaguiong. A few days after Oso's arrest he escaped from jail and was

not apprehended until October 16th of the following year. On the 18th of said month Sovida filed a new complaint (Exhibit D) whereupon legal proceedings followed resulting in Oso's conviction and sentence in the Court of First Instance.

The court is of the opinion that the errors assigned by the appellant's counsel de oficio as regards the manner the trial judge weighed the evidence and appreciated the facts, do not exist in the appealed decision. Against the testimony of Sovida, Dumaguiong, yMasumbid, barrio lieutenant Malinas and councillor Tomambing, the essential points of which are corroborated, we only have that of Oso and his brother Buagnot. The theory of the defense, based on the testimony of Oso and Buagnot, which deserves no credit from this court, is that Sovida, maltreated by her husband, took refuge in the house of the accused insisting on becoming Oso's wife and that during her stay in Oso's house, the latter never cohabited with her. Oso's wife would have been a competent witness to corroborate Oso's testimony and to refute Sovida's but she was not called upon to testify and this omission is in no way explained. No disinterested witness appeared or was presented to establish the facts on which the appellant bases the theory of his defense, and, inasmuch as the conclusions of the lower court relative to the facts involved in the suit are correct and no law or rule of evidence was infringed nor any essential right of the accused disregarded thereby, this court is bound to sustain them as a basis in determining the nature of the crime to be penalized in this case.

There is no doubt that the facts considered as proven by the lower court and this court constitute the complex crime of forcible abduction with rape. It appears, however, that Sovida's complaint upon which this case was formally instituted in the justice of the peace court of Manay, alleges facts which, while sufficient to constitute the crime of forcible abduction, are not sufficient to determine the crime of rape. In fact, the mere allegation that the accused cohabited with the complainant, without her consent, does not concretely describe the crime of rape in any of its forms which, according to article 335 of the Revised Penal Code, are: the use of force or intimidation; that the woman is deprived of reason or otherwise unconscious; or that the victim is under twelve years of age, even though neither of the circumstances above-mentioned is present. Every accused has the right to be duly informed of the nature of the accusation and this legal requisite has not been complied with in this case. It is true that in the information later filed by the fiscal, when the case was forwarded to the Court of First Instance for trial on the merits, an attempt was made to correct this defect by supplying the omission of the allegations of the original complaint, but it is also true that the allegation omitted is jurisdictional in character, the crime involved being one which cannot be prosecuted de oficio, and the omission thereof, is fatal and cannot be corrected in the latter stages of the proceeding (article 344, Revised Penal Code, which has substituted section 1 of Act No. 1773; U. S. vs. Gomez and Coronel, 12 Phil., 279; U. S. vs. Ortiz and Regalado, 19 Phil., 174; U. S. vs. Narvas, 14 Phil., 410; U. S. vs. Asuncion, 22 Phil., 358). The appellant should not therefore be convicted of the complex crime of forcible abduction with rape, but only of forcible abduction. Not finding any merit in the other assignments of error relied upon by the counsel de oficio in his brief, we hold that the appellant is guilty of the crime of forcible abduction, with the aggravating circumstance of having been committed in an uninhabited place compensated by the lack of instruction of the accused, and sentence him to the penalty of from eight years of prision mayor, as minimum, to fourteen years, eight months and one day of reclusion temporal as maximum, with the accessory penalties of the law, and the costs.

Avanceña, C.J., Abad Santos, Vickers, and Diaz, JJ., concur.

Judgment modified.

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