

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FAUSTINO FRANCISCO, DEFENDANT AND APPELLANT.

G.R. No. 42652. February 25, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant appeals from a decision of the Court of First Instance of Batangas, finding him guilty of rape and condemning him to suffer an indeterminate sentence of not less than ten years and one day of prision mayor and not more than seventeen years, four months, and one day of reclusion temporal, to indemnify the offended party in the sum of P500, and to pay the costs.

Appellant's attorney makes the following assignments of error:

"I. El Juez a quo erro al hallar al acusado culpable del delito imputado en la querella, esto es, que el acusado yacio con Teodora de Llamas en los dias 24 y 28 de abril de 1934, mediante fuerza e intimidacion.

"II. El Juez a quo erro al condenar al acusado, a sufrir una pena no menor de 10 aios y un cKa de prision mayor, ni mayor de 17 aios, 4 meses y un dia de reclusion temporal, con las accesorias de ley, y a pagar las costas."

It is first contended that the complaint in this case was not filed by a person authorized to file it in accordance with article 344 of the Revised Penal Code, because according to the jurat of the justice of the peace of Balayan attached to the complaint it was signed and sworn to before him by Teodoro de Llamas. The offended girl, Teodora de Llamas, a minor, testified, however, that she is the daughter of Doroteo de Llamas, and the justice of the peace testified that the complaint was signed by Doroteo de Llamas. It clearly appears therefore that the complaint was signed by the offended party's father, and that his name is erroneously stated in the certificate of the justice of the peace as Teodoro instead of Doroteo.

It appears from the evidence that Teodora de Llamas was only thirteen at the time of the trial on September 17, 1934. She was living with her father and stepmother, Maria Francisco. The latter is the sister of the accused. The evidence shows that on April 24, 1934, the defendant entered the house of Teodora de Llamas when she was alone and by means of force and threats succeeded in having carnal intercourse with her, and then ran away. Teodora de Llamas told her stepmother, who was the first to return, that she had been raped¹ by the defendant. She did not tell her father what had occurred, because her stepmother advised her not to do so, saying that the defendant would her. It was not until July when her father noticed that she was pregnant that she revealed to him what had taken place on April 24th.

The story of the offended girl is corroborated by the testimony of Prudencio Ilagan, who said that about the end of April he saw the defendant, with a knife in his hand, holding Teodora de Llamas in her house; that she was struggling to free herself, and was shouting "Let go of me"; "let go of me".

Marciano Atienza, the justice of the peace of Balayan, testified that when the accused was arraigned he translated the complaint into Tagalog and read it to him, and the defendant said that he was guilty. The justice of the peace then prepared a document setting forth the facts as to the arraignment, which was signed by him and the accused.

The accused admits having had carnal intercourse with the offended girl on the day in question, but claims that it was with her consent. He denies having used any force or made any threats, and says that the carnal intercourse was the result of their mutual agreement. He further states that he is a married man with four children; that the offended girl knows his wife, and that he is the brother of the offended girl's stepmother.

The only other witness for the defense was a cochero, who testified that he saw the accused and the offended party talking with each other three or four times in the offended party's house. The testimony of the defendant, which is very brief, is so inherently improbable that it raises no doubt whatever in our minds as to the truth of the offended girl's story.

The decision of the lower court is in accordance with the evidence and the law, except that the defendant must also be sentenced to support the offspring, if any, and with this modification the judgment appealed from is affirmed, with the costs against the appellant.

Avanceña, C.J., Street, Abad Santos, and Hull, JJ., concur.

Judgment modified.

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