

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE D. ZENAROSA ET AL., DEFENDANTS. JOSE D. ZENAROSA, FELIPE JARAPA, CANUTO NOCHJE, AND PEDRO MALIGAYA, APPELL...

G.R. No. 42937. November 07, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

After the preliminary investigation in the justice of the peace court of Indan, Camarines Norte, pursuant to a verified complaint filed by Coleta Mago, the offended party, Jose D. Zenarosa, Felipe Jarapa, Canuto Noche, Modesto Albona, and Pedro Maligaya were charged in the Court of First Instance of said province with the crime of forcible abduction committed as follows: "Que en o hacia las 2 de la madrugada del dia 27 de julio de 1933, en el Municipio de Indan, Provincia de Camarines Norte, Islas Filipinas, los arriba referidos acusados voluntaria, criminal y maliciosamente, confabulandose y cooperandose entre si, mediante fuerza y violencia, subieron y entraron en la casa residencia de una tal Pilar Asis, en el mencionado Municipio de Indan, y dentro de dicha casa y contra la voluntad de los esposos Nicasio Sendon y Coleta Mago, la arrastraron a esta y la llevaron fuera del poder de su citado esposo en un barrio lejano de su residencia, con 'miras deshonestas.'"

The complaint was provisionally dismissed as to Modesto Albona because of his illness at the time of the trial. The other defendants were tried on their plea of not guilty.

When the prosecution rested, the defendants Felipe Jarapa, Canuto Noche, and Pedro Maligaya moved through their attorneys that the case be dismissed as to them for lack of identification, and when their motion was overruled they waived their right to present any evidence and submitted the case. Evidence was then presented on behalf of the defendant Jose D. Zenarosa. The offended party was called in rebutal.

The trial judge, after reviewing at length the evidence for the prosecution and the defense, made the following findings of facts:

"After an examination of the evidence for the prosecution in this case, the court is convinced beyond a reasonable doubt that the accused Felipe Jarapa, Canuto Noche, Pedro Maligaya and Jose D. Zenarosa have been duly identified by the witnesses for the prosecution as the same persons who went up into the house of Pilar Asis situated in the municipality of Indan, Camarines Norte, in the early morning of July 27, 1933; that said accused, conspiring together, and helping one another, by means of force and violence, entered said house and by means of force dragged Coleta Mago out of the house, carried her to the landing, and thence to a banca on board of which they sailed for about three hours until they arrived at the house of the accused Jose D. Zenarosa in the barrio of Aguitit of the same municipality of Indan; the evidence also shows that the accused Zenarosa, while the party was in the banca, sat behind Coleta Mago, holding her by the shoulders and kissing her continually, and once they reached his house in Aguitit, the doors and the windows were closed and the accused Zenarosa, intent on having sexual intercourse with her, threw her down, embraced and kissed her, but failed to carry out his sexual desires due to the strong resistance of Coleta Mago and the timely arrival of her

mother," Maria Jerez, whereupon she was able to get up with her mother's assistance, the windows were opened and Coleta Mago jumped through one of them and ran directly towards the river to commit suicide in sheer desperation.

"The evidence also shows beyond any doubt that later Coleta Mago and her mother went to Domingo Sadia's house, which is located on land owned by the accused Jose Zenarosa, said Domingo Sadia being a tenant of Zenarosa; and that upon their arrival the accused Zenarosa sent for a typewriter, prepared a document, now Exhibit 2, and through force and threats compelled Coleta Mago and her mother Maria Jerez to sign said document, which reads as follows:

"We, Maria Jerez, Vda. de Mago, and Coleta Mago y Jerez, with full knowledge of the premises freely and spontaneously state the following:

"That on July 26, 1933, at about 11 o'clock in the morning, the municipal treasurer, Mr. Severino Villespin, accompanied by the justice of the peace, Mr. Esteban Cuano, and the municipal secretary, Mr. Marcos Bake, went to the house of Dona Pilar Asis, Vda. de Obusan, where Maria Jerez, Vda. de Mago, and Coleta Mago y Jerez were stopping.

"That when said officials arrived at said hour and day, the marriage papers, license to contract marriage, application for marriage, petition to celebrate the marriage in the house of Dona Pilar Asis, Vda. de Obusan, and the consent of Maria Jerez to the marriage of her daughter Coleta Mago were already prepared, without the knowledge or consent of the said Maria Jerez, Vda. de Mago, and Coleta Mago y Jerez.

"That when Maria Jerez and Coleta Mago y Jerez, signed said documents theretofore prepared, without a full realization of our acts because we were overcome with fear and the threats to cause said Coleta Mago y Jerez to disappear if we did not give our consent to the celebration of the marriage between the bridegroom, Nicasio Sendon, and Coleta Mago y Jerez.

"That affiant Coleta Mago y Jerez has never had any affection for said bridegroom Nicasio Sendon, but, on the contrary, has always felt a strong antipathy toward him. At the time of the celebration of her marriage she never felt any inclination to accept said Nicasio Sendon as her husband, neither did she have any intention, much less inclination, to accept him as such at any other time.

"That the best proof that I have never felt any affection for said Nicasio Sendon, much less any inclination to accept him as my husband, is that I have never permitted him to touch even a hair of my head from the time our marriage was celebrated until that hour when I willingly and voluntarily left to go with the man whom I love with all my heart, and that hour was about 11 o'clock at night of the same day, July 26, 1933.

"In witness whereof, we have hereunto signed this statement under oath according to law this 27th day of July, 1933, in the municipality of Indan, Camarines Norte.'

"This document, Exhibit 2, tends to corroborate the testimony of the accused Zenarosa that his purpose in carrying away Coleta Mago in the early morning of July 27, 1933, was to save her from the situation in which she was placed by her uncles who were trying to force her to marry Nicasio Sendon; but the evidence shows, beyond doubt, that when Maria Jerez and Coleta Mago signed, they did so through threats and fear, without knowing the contents of the document Exhibit 2, and if they hastened to sign, their object was that Zenarosa might free them to return to the poblacion of Indan.

"The testimony of the witnesses for the prosecution with respect to Exhibit 2 deserves more credit than that of the accused Zenarosa and his witnesses.

"There can be no dispute that the three elements of abduction are present in the case at bar. The abduction defined by the Code is shown by the force employed by the accused in carrying away the offended person, who at that time was peacefully resting at her husband's side, immediately after their marriage, in the house of Pilar

Asis situated in the municipality of Indan, Camarines Norte, and in dragging Coleta Mago down from said house to be thereafter carried on the shoulders of the accused Canuto Noche and taken to the landing for the purpose of placing her in a banca. In order to establish the presence of lewd designs on the part of the accused it is not indispensable that the abducted person should have been the victim of criminal illicit relations. In the present case an effort has been made to conceal the lewd designs on the part of Jose D. Zenarosa. Among the circumstances tending to show his lewd designs, may be mentioned the taking away of the girl at night time from the house where she was resting peacefully, force and threats having been used to overcome her resistance; the fact that the accused Zenarosa kissed her while they were in the banca on their way to Aguitit, and the fact that upon their arrival at the house of the accused in Aguitit he threw her down and raised her skirt in order to have sexual intercourse with her, and the further fact that the accused Zenarosa told her to forget her husband and to consider him as her true husband, and also the fact that the accused Zenarosa, being a married man, had been courting her to the extent of rendering services such as hulling rice and fetching water before the abduction took place."

Finding the defendants Jose D. Zenarosa, Felipe Jarapa, Canuto Noche, and Pedro Maligaya guilty of forcible abduction, and appreciating the aggravating circumstance of nocturnity because it was clear that they had chosen the nighttime to facilitate the commission of the crime, the lower court sentenced said defendants to suffer an indeterminate sentence from twelve years and one day to seventeen years and four months of reclusion temporal, and to pay the costs.

In support of their appeal defendants' attorneys allege that the lower court erred:

"(1) In the narration of the facts established by the evidence of both the prosecution and the defense.

"(2) In declaring that the accused Jose D. Zenarosa, Felipe Jarapa, Canuto Noche and Pedro Maligaya, conspiring together and cooperating mutually by means of force and violence entered the house of Pilar Asis and forcibly carried, away Coleta Mago with lewd designs.

"(3) In declaring that Coleta Mago jumped through the window of the house of the accused Zenarosa in Aguitit, and ran towards the river to commit suicide because of desperation.

"(4) In finding that Exhibit 2 of the defense was signed by Coleta Mago and her mother Maria Jerez under threat and fear without knowing the contents thereof and in not giving due weight and consideration to the document.

" (5) In giving credence only to the evidence of the prosecution and in not considering the inconsistencies and the inherent improbability of the prosecution's theory.

"(6) In convicting the accused on the uncorroborated testimony of the complainant relating to essential elements of the offense when other witnesses and evidence were at their disposal to prove the points in dispute.

"(7) In not giving any weight and credence to the evidence of the defense.

"(8) In deciding that the accused Felipe Jarapa, Canuto Noche and Pedro Maligaya were properly identified by the witnesses of the prosecution.

"(9) In ruling that the accused were not deprived of a constitutional right in the preliminary investigation and that there was a preliminary investigation in accordance with law.

"(10) In finding the defendants guilty beyond a reasonable doubt of the commission of the offense charged and in sentencing them to an indeterminate term of 12 years and 1 day to 17 years and 4 months of reclusion temporal"

The first eight errors assigned relate to the sufficiency of the evidence to sustain the trial judge's findings of fact.

The record shows that Jose D. Zenarosa, a lawyer and a married man, was infatuated with Coleta Mago, a barrio peasant girl, and desired to make her his querida. She repelled his advances. That was in May, 1933. At that time Coleta Mago was already engaged to Nicasio Sendon, and two months later Nicasio Sendon and Coleta Mago were married by the justice of the peace of Indan in the house of Pilar Asis in the poblacion of that municipality. The marriage was celebrated at eleven o'clock in the morning of July 26th. The municipal treasurer and the municipal secretary of Indan and various other persons were present. The bride and the bridegroom remained in the house of Pilar Asis, and were sleeping in the same bed that night when Jose D. Zenarosa arrived about one or two o'clock with a party of men, including the other appellants, and carried off the offended party by force. When Jose D. Zenarosa and his party forced their way into the house, Canuto Noche caught Nicasio Sendon by the neck and held him, and when he tried to free himself Jose Quintela held his arms. Coleta Mago ran into the kitchen and hid under a filter. Zenarosa, aided by Noche and Maligaya, searched the house for her, and when they found her Zenarosa and his companions dragged her out of the house in spite of her resistance and the help of her mother. Coleta Mago cried to her mother for help, and the latter held on to the clothes of Zenarosa until Maligaya pulled her away. Canuto Noche put the offended woman over his shoulder and carried her off. The facts as to what followed are stated in the quotation from the decision, and need not be repeated. It should be added, however, that when Nicasio Sendon was released by Quintela and Jarapa after Coleta Mago had been carried off he ran after them, but was unable to overtake them. He then went to the house of Zenarosa, but finding it closed he returned to the house of Pilar Asis, where he found the chief of police, Braulio Zenarosa. Sendon asked him for help, but the chief of police said he could not do anything because Jose Zenarosa had a shotgun. Sendon looked for his wife and her abductors in the poblacion, but not finding them he went to see the fiscal, and after being investigated he sought the aid of the Constabulary that same day. Sendon learned from his brother-in-law, Eufemio Mago, that Zenarosa had taken Coleta Mago to the barrio of Aguitit, and accompanied by sergeant Navales and two soldiers he set out for Aguitit. They arrived there about seven o'clock in the evening of July 27th. Eufemio Mago, who had reached Aguitit that morning, had taken his mother and sister to the house of Domingo Sadia. They returned to the poblacion the next morning, and Coleta Mago immediately took steps to file the complaint in this case.

The contention of the defense that Coleta Mago was in love with Jose D. Zenarosa and was forced by some of her uncles to marry Nicasio Sendon against her will is not sustained by the evidence. Likewise unproved is the contention that Jose D. Zenarosa took Coleta Mago away in pursuance of an agreement with her and her mother.

As to the alleged amorous relations between Jose D. Zenarosa and Coleta Mago, the testimony of the witnesses for the defense impresses us as being a tissue of falsehoods. One of these witnesses would have us believe that Zenarosa, although married, a lawyer, and a man of local prominence, served in the house of this peasant girl, performing menial tasks, as if he were engaged to marry her. Another of these witnesses testified that prior to that time Coleta Mago was already the querida of Zenarosa, and that they had spent the night together in the country house of the witness while he and his family were absent. Coleta Mago on the other hand denied that she had ever had amorous relations with Zenarosa, and maintained in a straightforward and convincing manner that she married Nicasio Sendon because she loved him and that she married him of her own free will. The only element of truth in the contention as to these alleged amorous relations is the fact that Zenarosa, who was not living with his wife, took a fancy to Coleta Mago and sent her presents through a go-between, who kept the presents for herself, and the fact that about two months before Coleta Mago was married Zenarosa went to her house to make advances to her. She refused to have anything to do with him, not only because she was already engaged to marry Nicasio Sendon, but also because she knew Zenarosa was a married man and was keeping as a querida one of her aunts, by whom she had three children.

The testimony of Zenarosa that he intervened at the request of Coleta Mago and her mother to save the girl from being forced into a marriage against her will, and that he did not know she was already married when he took her

away from the house of Pilar Asis, and that she went with him voluntarily is unbelievable. It is belied not only by the convincing testimony of Coleta Mago but also by the testimony of Coleta Mago's mother and Pilar Asis in the preliminary investigation, which was introduced into evidence by the attorneys for Zenarosa. Furthermore the marriage was celebrated at eleven o'clock in the morning in the house of Pilar Asis in the poblacion of Indan by the justice of the peace of that municipality. Two municipal officials and other persons were present. Under the circumstances we cannot believe that Zenarosa was unaware of the fact that Coleta Mago was already married when he took her away from the house of Pilar Asis. News travels fast in a small town like Indan. Moreover two of Zenarosa's shenchmen, Pedro Maligaya and Modesto Albona, were present at the marriage. If the contention of Zenarosa be true, there must have been a conspiracy to conceal from him the fact that Coleta Mago was already married. It is suggested that since the marriage was performed by the justice of the peace and not by a priest, it was not regarded as a valid marriage. That suggestion seems to us too far fetched to deserve serious consideration, but if it were true that Coleta Mago and her mother and Pedro Maligaya and Modesto Albona entertained any such belief, that fact affords no explanation as to why they should fail to tell Zenarosa of the ceremony performed by the justice of the peace that morning in the house of Pilar Asis.

The document, Exhibit 2, needs no refutation. It is nothing more than an attempt of Zenarosa to fabricate evidence in his behalf, but it proved to be a boomerang, and was damaging only to its author. We wish to say at this point that we are not favorably impressed with the testimony of sergeant Navales. The record tends to show that he disregarded his instructions and played into the hands of Zenarosa. Flattered by the familiar way in which Zenarosa treated him, Navales regarded Zenarosa as a hero, and congratulated him on being able to carry off a woman on the day of her marriage. Under these circumstances it is not strange that Coleta Mago should have no faith in Navales.

There is nothing in appellants' brief respecting the first eight assignments that calls for any special notice.

The record does not explain why the fiscal failed to present Maria Jerez and Pilar Asis as witnesses. The effect of this omission was largely offset, however, by the introduction by the defense of a summary of their testimony in the preliminary investigation.

In support of the contention that Coleta Mago was forced to marry Nicasio Sendon and that she went with Zenarosa voluntarily, it is urged that she and Sendon have never lived together as husband and wife. That contention is not sustained by the evidence. It is true that in the affidavit, Exhibit 2, she is supposed to have said she never allowed Sendon to touch a hair of her head, but, as we have seen, that was Zenarosa speaking. The evidence shows that she and her husband were sleeping in the same bed when Zenarosa came to carry her off by force, and we may assume that they continued to live together as husband and wife, but whether they did or not is immaterial in the decision of this case.

Under the ninth assignment of error it is urged that the defendants were deprived of a constitutional right because the justice of the peace of Indan refused to give each of them a separate preliminary investigation. They asked the justice of the peace for separate "trials" on the ground that their interests were incompatible.

Section 33 of General Orders, No. 58 reads as follows:

"When two or more defendants are jointly charged with a felony, any one of the defendants demanding it must be tried separately." It gives each defendant the right to demand a separate trial, not a separate preliminary investigation. The cases cited in appellants' brief have no bearing on this question. At the trial the defendants did not ask to be tried separately.

The maximum of the sentence imposed by the lower court must be increased by one day. As to the minimum sentence to be served by the appellants, we think it should be reduced from twelve years and one day of reclusion

temporal to eight years of prision mayor, the penalty next lower. The appellants are therefore condemned to suffer an indeterminate sentence ranging from eight years of prision mayor to seventeen years, four months, and one day of reclusion temporal. As thus modified, the decision appealed from is affirmed, with the costs against the appellants.

Avanceña, C.J., Villa-Real, Hull, Imperial, Butte, Diaz, and Recto, JJ., concur.

CONCURRING
MALCOLM, J.,

I concur In my opinion the guilt of the accused has been proved beyond a reasonable doubt.

DISSENTING
ABAD SANTOS, J.,

I am unable to join in the decision of the majority of the court. I believe that the guilt of the appellants has not been proved beyond a reasonable doubt.

Appellants have been convicted chiefly upon the testimony of Coleta Mago, a young woman who, it seems, was not so innocent and unsophisticated as the decision of the majority would make her appear. The testimony of this witness is, to my mind, so exaggerated and inconsistent that it cannot serve as the basis for sentencing the appellants, four of them, to long terms in the penitentiary. Her testimony impresses me that it was dictated less by fact than by her desire to maneuver out of a difficult situation.

The testimony of the appellant, Jose D. Zenarosa, that Coleta Mago went with him voluntarily on the night in question, in pursuance of a previous understanding had between Zenarosa, on the one side, and Coleta Mago and her mother, on the other, is, I think, supported by the preponderance of evidence in this case. On the other hand, if the theory of the prosecution as to the circumstances in which Coleta Mago was abducted were true, it is strange that the prosecution could not have presented more than three witnesses, two of whom, Coleta Mago and her husband Nicasio Sendon, were naturally interested in the outcome of this case. According, to the theory of the prosecution, both Pilar Asis, the owner of the house which was supposed to have been forcibly entered by the appellants, and Maria Jerez, the mother of Coleta Mago, were very important witnesses to the alleged crime, and yet no satisfactory explanation was given for the failure of the prosecution to call them to the witness stand. In contrast to this conduct of the prosecution, the defense presented no less than nine witnesses, one of whom, Agripina de Mago, was the aunt of Coleta; another, Sixto Mago, her uncle; and still another, Bernardo Mago, her cousin. All these witnesses corroborated the testimony of Zenarosa to the effect that Coleta Mago went with him voluntarily, and there is nothing in the record to show why they should have testified falsely. Another important witness for the defense was Tomas Navales, the Constabulary sergeant who was ordered to investigate the alleged abduction. Navales testified that he went to the barrio of Aguitit for the purpose of making an investigation, and met Coleta and her mother in front of the house of one Domingo Sadia; that, in answer to his inquiries, Coleta stated that she was brought to the barrio by Zenarosa; and that neither Coleta nor her mother complained against Zenarosa. Navales also testified that he took the statement of Coleta in writing. The document containing Coleta's statement was not presented by the prosecution, and when the defense tried to secure it for the purpose of introducing the same in evidence, it was alleged that the document was lost. This, in my opinion, is rather a significant fact.

The majority decision makes light of the testimony of Navales, saying: "We wish to say at this point that we are

not favorably impressed with the testimony of sergeant Navales. The record tends to show that he disregarded his instructions and played into the hands of Zenarosa. Flattered by the familiar way in which Zenarosa treated him, Navales regarded Zenarosa as a hero, and congratulated him on being able to carry off a woman on the day of her marriage. Under these circumstances it is not strange that Coleta Mago should have no faith in Navales." This passage in the decision of the majority is based mainly on the testimony of Coleta.

The majority decision seems to be predicated on the assumption that Coleta had the monopoly of truth and veracity, and that all the witnesses for the defense—including sergeant Navales who appears to have been an impartial witness and whose testimony, if untrue, could have been impeached not only by Coleta but also by her mother,—have committed perjury. Such an assumption is, in my opinion, not justified by the record of the case. As a matter of fact, Coleta's testimony had been seriously impeached not only by the appellant Zenarosa, but by the other witnesses for the defense, some of whom, as already indicated, were her own relatives. As between Coleta and sergeant Navales, it seems to me that there is more reason to suspect the former's motives. Having been caught in a situation where she could not escape blame and perhaps criminal prosecution unless she turned against Zenarosa, Coleta chose to follow the line of least resistance by testifying against Zenarosa.

Under ordinary circumstances, the testimony of the complaining witness may be sufficient to sustain a judgment of conviction for the crime of abduction, but under the circumstances of the present case—where the testimony of the complaining witness suffers from serious contradictions and exaggerations, and her credibility was seriously impeached; where the liberty of four individuals is vitally at stake, because a judgment of conviction would mean for them long terms in penal servitude,—it was, I think, the duty of the prosecution to present the two important witnesses to the alleged crime, Maria Jerez and Pilar Asis; and its failure to do so is fatal to its case, and entitles the appellants to a judgment of acquittal at least on the ground of reasonable doubt.

My conclusion is that the judgment appealed from should be reversed and the appellants acquitted with costs de oficio.

GODDARD, J.:

I concur in this dissenting opinion of Justice Abad Santos.

Judgement modified.

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