

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FILEMON MIRASOL, DEFENDANT AND APPELLANT.*G.R. No. 43103. September 23, 1935*

Ponente: RECTO, J.

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Upon a complaint filed by Modesta Gelvezon, this prosecution for rape was begun in the Court of First Instance of Occidental Negros against Filemon Mirasol. The judgment rendered therein, from which this appeal was taken, is merely for an attempt to commit said crime. On the date of the alleged commission of the crime, both the complaining witness and the accused were residents of the barrio of Palaka of the municipality of Valladolid; the former was a widow, thirty-six years of age, and the latter was twenty-four, having been married two years before to Marciana Mirasol who, in the opinion of the judge who tried this case in the Court of First Instance, was still in her teens, "younger and better-looking than the offended party".

Modesta lived with her daughter, Rosalina Gasendo, 14 years of age, in her house in said barrio. She claims that between 1 and 2 o'clock on the morning of the day in question, she was awakened when she felt that a man was trying to lie with her. She stood up, lighted a match, and saw that the audacious man who attempted against her honor was Filemon Mirasol. She shouted for help and upbraided the accused as the latter fled by jumping through the window, but nobody came to her aid and she only succeeded in awaking Rosalina. On the following day, she informed her mother of the incident and two days later she appeared before the chief of police of Valladolid to report the matter. The chief of police sent for the accused who, according to Modesta, then knelt before her pleading for her forgiveness.

The complainant's testimony is not corroborated because the testimony of her daughter Rosalina, during the trial wherein she named Filemon Mirasol as the person whom she saw jump through the window of their house on the night in question, cannot be considered as corroboration, inasmuch as in a former affidavit (Exhibit 3 of the defense) she stated that she had not recognized him and she had to ask her mother who he was, it not appearing of record that the latter told her on that occasion the name of the accused. It should be borne in mind that prior to the date in question, Rosalina already knew the accused inasmuch as the latter not only frequented the complainant's house but Rosalina also used to go to his. If it is true that Rosalina failed to recognize at that very time the person who, after attempting to rape her mother, fled by jumping thru the window of their house on the night in question, the doubt thereby created in the mind as to whether said individual was the accused, far from vanishing, is augmented by her subsequent testimony, which conflicts with her former affidavit, that she had at that moment recognized him to be Filemon Mirasol "by the back of his neck" the peculiarity of which does not appear of record, and "for being thin", a physical condition which the accused shares with a considerable number of Filipinos.

The chief of police of Valladolid contradicts the testimony of the complainant, her daughter, and their relative Purification Flores at the trial, that on a certain occasion the accused knelt before the complainant in the presence of said chief of police to plead for forgiveness for the fault he had committed. This testimony of the chief of

police deserved no credit from the lower court for the sole reason that the alleged plea for forgiveness appears in the affidavits of said three witnesses, which were typewritten by him. The judge deemed that if the fact in question were not true the chief of police would not have stated it in said affidavits. We are of the opinion that the meaning of these documents has not been correctly construed. We have examined them and it is not stated therein that the scene of the plea for forgiveness took place in the presence of the chief of police.

The appellant categorically denies having committed the criminal act with which he is charged. As stated at the beginning, on the day of the alleged crime only two years elapsed since the appellant had married his wife whom the trial judge considers younger and better-looking than the complainant¹. He was inspector of a transportation company and had lost his first child only a few days before. Under such circumstances and taking into consideration the probable state of mind of the accused, we doubt that he committed the act imputed to him by the complainant. He must have been a very wicked man when, with a young and beautiful wife, dejected as he should feel by reason of his child's recent death, and tired as he should be from the day's toil, he would still have the nerve to trespass on another's dwelling at midnight for the purpose of satiating his lust, not in the arms of a young and beautiful lover but by raping a widow 36 years old. Accepting the theory of the prosecution and granting that the accused left his house that night, goaded by an indomitable lust which he could not gratify with his own wife, it would be inexplicable why he had to set his eyes precisely on the complainant and not on Rosalina who, by reason of her youth and virginity, should excel her mother in point of exciting the lust of a human beast, a category within which the prosecution has placed the appellant. It is true that the Government's theory does not transcend the limits of possibility but in examining the facts of cases submitted to us for determination, we should be guided in our judgment by the ordinary course of nature and habits of life, in the absence of strong reasons prompting us to act otherwise (section 334, No. 26, Code of Civil Procedure).

The defense ascribes the filing of this complaint to motives of resentment and revenge. The appellant claims that prior to his marriage to his present wife, Modesta was his sweetheart and although he had already discontinued his illicit relations with her, he used to give her money from time to time, and ceased to do so only from the time his wife discovered this fact sometime prior to the alleged commission of the crime charged. Inasmuch as the testimony of the accused on this point lacks corroboration and is denied by the complaining witness, we shall refrain from making a pronouncement thereon. Furthermore, we see no necessity of doing so inasmuch as the evidence for the prosecution does not satisfy the court as to the certainty of the act for which it is sought to make the appellant liable. Leaving aside the inherent improbability that the defendant could have committed the crime under the circumstances above stated,¹ we are of the opinion that there exist serious and irreconcilable contradictions between the testimony of the complaining witness and that of Rosalina, the principal and most important of which is that relative to the nature of the relations which mother and daughter had with the accused. Asked about said point, the complainant denied not only having been the latter's sweetheart but also having had dealings with him or having ever spoken to him, adding that she did not know him nor was she interested in knowing him. However, Rosalina, refuting her mother, affirmed that they knew the accused and had friendly intercourse with him because he used to go to their house and Rosalina to his. Furthermore, the complaining witness contradicted herself—and this contradiction has been pointed out by the lower court—by stating in her affidavit (Exhibit B) that the act committed by the accused consisted only in attempting to introduce his genital organ into hers, while, at the trial she testified that there had been partial penetration. In view of such testimony in connection with other proven facts of record, the guilt of the accused cannot be considered as established beyond reasonable doubt. As the Lord Chancellor, expressing the unanimous opinion of the House of Lords, has recently said in his speech before said House upon pronouncing judgment acquitting Reginald Woolmington who was charged with having killed his wife:

"Throughout the web of the English criminal law, one golden thread is always to be seen—that it is the duty of

the prosecution to prove the prisoner's guilt * * *. If at the end of the case there is a reasonable doubt, the prosecution has not made out the case, and the prisoner is entitled to acquittal."

It should be borne in mind that a charge for attempted rape is among those which may be concocted with great ease since the offended party, in bringing it, does not run the risk of losing her reputation but, on the contrary, she surrounds herself with a certain halo of heroism for having been able courageously to defend the integrity of her good name and the bulwark of her honor from the assaults of the human beast.

Wherefore, the appealed judgment is reversed and the appellant is acquitted of the charge, with costs de oficio.

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

Judgment reversed and defendant acquitted.

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