

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND AP-
PELLEE, VS. MELECIO TORRES ET AL., DEFENDANTS. MELECIO
TORRES, FIDEL GERVASIO, NICOLAS CHAVEZ, ENGRACIO VARONA
AND MACARI...**

G. R. No. 43406. January 30, 1936

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The appellants, Melecio Torres, Fidel Gervasio, Nicolas Chavez, Engracio Varona, and Macario Garillo, were charged in the Court of First Instance of Cavite with the crime of forcible abduction with physical injuries. After due trial, they were found guilty; and Melecio Torres, as the principal culprit, was sentenced to suffer not less than eight years of prisidn mayor and not more than twelve-years and one day of recltision temporal, while Fidel Gervasio, Nicolas Chavez, Engracio Varona and Macario Garillo, were each sentenced to suffer not less than six years and one day and not more than ten years and one day of prision mayor. In assessing the penalty to be imposed, the court took into consideration the aggravating circumstances that the crime was committed in the nighttime and by a band.

The facts which led to the filing of the information against the appellants are fully set forth in the decision of the trial court, and it would be a work of supererogation to repeat them here.

Most of the errors assigned both in the brief filed for the appellant Nicolas Chavez and in that for the other appellants, relate to the correctness of the findings of fact made by the trial court. It is contended that "the court a quo erred in not finding it as a fact that the accused Melecio Torres had amorous relations with the alleged offended party, Dalisay Bonifacio, previous to the 8th of November, 1934." It is also contended that "the court a quo erred in not finding it as a fact that the accused Melecio Torres and the complainant Dalisay Bonifacio, on November.6, 1934, agreed to elope on the 8th of November, 1934, and consequently, that what happened was in reality a fake abduction." No evidence was adduced in support of these contentions except the testimony of Melecio Torres himself, the truth of which was challenged by Dalisay Bonifacio when she was called to the witness-stand. Dalisay Bonifacio, denied having sustained amorous relations with Melecio Torres. She also denied having agreed to elope with him. The circumstances under which the girl was carried away by Melecio Torres and his co-accused were such as to preclude the conclusion that it was done with her consent. If there was really an agreement between Melecio Torres and Dalisay Bonifacio to elope, it is inconceivable why they did not select a more auspicious occasion to carry out their plan. It is likewise inconceivable why Melecio Torres had to secure the assistance of four other men.

Torres' co-accused were sufficiently identified by the witnesses for the prosecution, and their participation in the commission of the crime was duly established. The testimony of these witnesses is clear and convincing, while the witnesses for the defense have incurred in serious contradictions. No motive whatever was shown on the part of the prosecution witnesses that might have induced them to testify falsely, while the evidence for the defense

comes mostly from interested sources.

Counsel for the appellant Nicolas Chavez contend that the lower court erred in not granting the latter a separate trial. The record shows that the application for a separate trial was made after two witnesses for the prosecution had already testified. The application came too late; it should have been made before the commencement of the trial. (U. S. vs. Morales, 8 Phil., 300.)

That there was conspiracy to abduct Dalisay Bonifacio and that Nicolas Chavez not only had knowledge of, but took part in the conspiracy, the evidence leaves no room for a reasonable doubt. We find no merit in the contention that Nicolas Chavez had no knowledge of the unchaste designs of Melecio Torres.

One of the points stressed by counsel for appellant Melecio Torres and others relates to the testimony of Drs. Pablo Anzures, Pedro Matias, and Sancho Rillo concerning the virginity of the complaining witness. Apart from the fact that the virginity of the offended woman is not an essential element of the crime of forcible abduction, medical authorities are by no means agreed that a woman is not a virgin merely because the hymen is not present. It is claimed by some authorities, upon the basis of clinical observations, that the hymen is not always present even in a state of undoubted virginity; that sometimes it is torn away in childhood due to various causes. We are not inclined to consider the virginity of the complaining witness as a determining factor in this case.

The crime committed by the appellants is that defined in article 342 of the Revised Penal Code and penalized with reclusion temporal. In fixing the penalty two aggravating circumstances should be taken into consideration: Namely, (1) that the crime was committed in the nighttime, and (2) by a band. In the absence of any mitigating circumstance, the penalty prescribed should be imposed in its maximum period, or from seventeen years, four months and one day to twenty years of reclusion temporal. Pursuant to the provisions of the Indeterminate Sentence Law, Melecio Torres is hereby sentenced to suffer not less than eight years of prision mayor and not more than seventeen years, four months and one day of reclusion temporal. Fidel Gervasio, Nicolas Chavez, Engracio Varona, and Macario Garillo, are each sentenced to suffer not less than six years and one day of prision mayor, and not more than seventeen years, four months and one day of reclusion temporal.

Modified as above indicated, the judgment is affirmed with costs against the appellants. So ordered.

Hull, Vickers, Diaz, and Recto, JJ., concur.

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