

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCOS ROJO, DEFENDANT AND APPELLANT.

G.R. No. 4341. March 12, 1908

Ponente: CARSON, J.

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CARSON, J.:

Appellant was convicted of the crime of attempted rape and sentenced to prison correccional for two years four months and one day, together with accessory penalties prescribed in such cases.

It was conclusively proven at the trial that on the morning of the 8th day of November, 1906, the accused seized the complaining witness, a girl of 15 years of age, by the hand, dragged her against her will into a canebrake at the side of the road, threw her violently to the ground and attempted to violate her, threatening her with a dagger if she refused to accede to his carnal desires or made an outcry.

Due to the resistance offered by the girl the accused failed to accomplish his design, and ran away on the approach of her mother, attracted by the girl's cries for assistance.

Counsel for the appellant seems to think that upon the evidence as submitted the court should either acquit the accused or find him guilty of the consummated crime.

The information upon which the accused was tried is as follows :

"The undersigned accuses Marcos Rojo of the crime of attempted rape, defined and punished by article 438 in relation with article 3 of the Penal Code, committed as follows:

"That the said Marcos Rojo, on or about the 8th day of November, 1906, in the place called Kalasin, San Vicente, Vigan, Ilocos Sur, intentionally, unlawfully, and criminally, by means of force and intimidation, attempted to lie with Angela Purugganan, a girl of 15 years of age, by means of acts which directly tended to accomplish his purpose, which he endeavored to execute by exterior acts, and, if he did not succeed, it was due to causes independent of his will. All contrary to law."

It will be seen that the consummated crime is not charged in this information, nor do the facts set out therein constitute the consummated crime. Upon such information the trial court had no jurisdiction to convict the accused of the consummated crime, not charged in the complaint, and this even were it true that the record conclusively disclosed the fact that the consummated crime had been committed.

That the accused was guilty of an "attempt" was proven beyond a reasonable doubt, and we find no error in the proceedings prejudicial to the rights of the accused. The judgment of conviction and sentence of the trial court are therefore affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ.,

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