

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE CABALLERO, DEFENDANT AND APPELLANT.

G.R. No. 43436. August 31, 1935

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appealed judgment sentences the appellant for the crime of rape to the penalty of from eight years and one day of prision mayor, as minimum, to fourteen years, eight months and one day of reclusion temporal, as maximum.

About the 9th of February, 1935, Isabel Magbanua celebrated her birthday in her house within the Hacienda Socorro in the municipality of Baeolod, Occidental Negros. Her niece, Consorcía Gonzaga, and the latter's husband, Francisco Vecinan, were present to help her attend to the party. When the party was over at about 1 o'clock in the morning, and the guests were already retiring, the appellant who was one of them asked permission of Vecinan to sleep in the house, stating that it was already too late for him to return to his. As the house had only one room, everybody slept therein, Consorcía, her aunt and two girls on one mat, and Vecinan and the appellant on another. The two girls were between Consorcía and her aunt, and the appellant on Vecinan's side towards the wall, so that Consorcía and the appellant were on the opposite ends of the room. When all were already asleep, Consorcía awoke and noticed that a man was on top of her, having carnal intercourse with her. Thinking that this man was her husband, Consorcía did nothing to oppose the act until it was consummated. Having noticed, however, that the man trembled, a thing which her husband never did, she thought that he might be another and she touched his body. Having observed that the shirtsleeves of the man on top of her were long while those of her husband were short, and convinced that the man who had carnal intercourse with her was another, she called her husband. As the latter would not wake up, she arose, struck a match and caught hold of the man with her, who proved to be the appellant. When she had succeeded in waking up her husband, she informed him of what had happened and her husband assaulted with his fists the appellant who was asking to be excused for what he had done. When Consorcía's aunt awoke, she also insulted the appellant and later went to report the outrage to the person in charge of the hacienda, named Manuel Cuison. When Manuel Cuison arrived at the house, he asked the appellant what had happened but the latter refused to answer him, whereupon he took the appellant to the municipal building and placed him at the disposal of the authorities.

The appellant, testifying in his favor, denied the facts stated by the witnesses for the prosecution and alleged in his defense that on the night in question he and Consorcía's husband had been playing monte and as he had won in the game and later refused to continue playing, he was manhandled, Consorcía's husband assaulting him with his fists. This defense of the appellant has not been supported by any evidence and his own attorney in this instance does not consider it as having been established.

It appears from the evidence that when Consorcía, the offended party, awoke, the appellant had already introduced his organ into her genitals and in fact he was already having sexual intercourse with her. We mention this fact on account of a certain doubt arising from the offended party's testimony during the direct examination

relative to this detail, but in the attempt of the attorney for the defense to clarify this point during his cross-examination, the offended party categorically affirmed that she had been unaware when the appellant introduced his organ into hers. Furthermore, it so appears affirmatively in the affidavit (Exhibit 1) made by the offended party before the justice of the peace of Bacolod, which is attached to the record as evidence for the defense. According to said document, when the offended party awoke, the crime of rape committed by the appellant was already consummated, having had carnal knowledge with the offended party while she was unconscious for being asleep. The offended party's consent to the act was subsequent thereto and it was given on the belief that the man lying with her was her own husband. It is evident that the offended party would not have consented to the act, had she known that the man with her was not her husband, as she in fact expressed her unwillingness to said act as soon as she discovered that the man whom she thought to be her husband was the appellant.

In view of these considerations the appealed judgment is affirmed, with costs to the appellant. So ordered.

Abad Santos, Hull, Viekers, and Recto, JJ., concur.

Judgment affirmed.

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