

UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL CABRERA, DEFENDANT AND APPELLANT.

G.R. No. 4353. March 07, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

RAPE; AGGRAVATING CIRCUMSTANCES.—From the Court of First Instance of Bataan. The accused was convicted of ravishing a child and was sentenced to imprisonment for twenty years. Counsel for Government suggested that, as the age of the victim was considered as an element of the offense, it could not be again applied as an aggravating circumstance. Held, That, in view of the fact that the lower court did not take into consideration the aggravating circumstance of abuse of confidence, the court did not consider it necessary to adopt the suggestion for the purpose of reducing the penalty. Judgment affirmed.

Per Tracey, J.

For appellant: Ambrosio Santos.

For appellee: Attorney-General Araneta.

DECISION

This is a conviction for rape upon a child three years old. The details of the crime which are fully proved need not be related. The alibi set up by the defendant was not sustained by the testimony of any one of the persons whom he claimed to have met away from the place of the crime, and his excuse of previous improper relations with the child's mother does not lessen the heinousness of the offense.

The trial court imposed the sentence of twenty years of reclusion temporal, taking into consideration as an aggravating circumstance the age of the injured child. The Attorney-General correctly says the this was an error inasmuch as the incident of age already formed and inherent part of the crime under Article 78 of the Penal Code, and it cannot therefore serve to increase the penalty fixed by that Article. We do not, however, feel compelled to accede to his suggestion that the punishment be reduced inasmuch as we apply the 10th subdivision of Article 10 of the Penal Code considering abuse of confidence as an aggravation of this crime.

The judgment of the Court of First Instance is affirmed with costs of this instance.

Arellano, C.J., Torres, Mapa, Johnson, Carson and Willard, JJ., concur.

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