

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DANIEL LOPEZ, DEFENDANT AND APPELLANT.*G.R. No. 5217. December 13, 1909*

Ponente: ELLIOTT, J.

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On the complaint of Venancia Peralta the defendant, Daniel Lopez, was charged with the crime of estupro, found guilty, and sentenced to one month and one day of arresto mayor, to indemnify Venancia Peralta in the sum of P500, and to recognize the offspring of his relations with the said Venancia Peralta, and to support the child by paying P10 per month to her mother until the child's majority, and to pay the costs of this prosecution.

It appears from the evidence that for a number of years prior to 1904, Venancia Peralta lived in the house of her grandfather, Benedicto Lopez, where also lived the defendant Daniel Lopez, the adopted son of Benedicto Lopez. In the spring of that year she went to live with her mother, where she was frequently visited by the defendant. Some time in the early part of 1904 the defendant promised to marry the girl, and thereafter had sexual intercourse with her, as the result of which she became pregnant and gave birth to a female child. After the pregnancy of the girl, and after the birth of the child, the defendant in the presence of witnesses promised to marry the girl after he had completed his studies.

The defendant denied that he had ever had sexual intercourse with the girl, or ever promised to marry her, and offered evidence tending to show that she had maintained improper relations with other men. The evidence is amply sufficient to sustain the findings of the trial court that the defendant is the father of the child, and that the seduction of the girl was effected under a promise of marriage. The only serious question presented is whether the circumstances are such as to justify a finding that the seduction was effected with fraud or deceit. When we consider the relation in which these parties had been living in the house of Benedicto Lopez, to whom the girl was related, and who was the adopted father of the defendant, the evident serious nature of the promise to marry, as shown by the testimony of the girl, and the subsequent conduct of the defendant, it is apparent that under the authorities the court properly found that the deceit which is an essential element of the crime of estupro was present. (*Ballester vs. Legaspi*, 5 Phil. Rep., 722.)

As there were neither aggravating nor extenuating circumstances present, the penalty required is arresto mayor in the medium decree, for which the imprisonment may not be less than two months and one day. The sentence is therefore modified, and the defendant found guilty of estupro as charged, and sentenced to two months and one day of arresto mayor, to indemnify Venancia Peralta in the sum of P500, to recognize the little girl born to Venancia Peralta in February, 1905, as his child, and to support the said child by paying P10 per month to her mother until the child's majority, and to pay the costs of this prosecution. As so modified, the sentence and judgment is affirmed.

So ordered.

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

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