

THE UNITED STATES, PLAINTIFF AND APPELLEE VS. PRUDENCIO SOTO, DEFENDANT AND APPELLANT.

G.R. No. 5424. October 27, 1909

Ponente: TORRES, J.

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TORRES, J.:

On the night of the 20th of August, 1906, Prudencio Soto went next door to the house of Saturnino Nicanor, their houses being situated in the town of Zaragoza, Nueva Ecija, and requested the latter to permit his daughter Clara Nicanor, 16 years of age, to sleep in his house in order to accompany his wife who was ill, while he, Soto, spent the night away from home in a gambling house; Saturnino complied with Soto's request and allowed his daughter to go to his neighbor's house to stay with the latter's wife.

Late that night the girl Clara woke up and asked Soto's wife to strike a light but the latter did not answer; thereupon Soto approached the girl, embraced her, and tried to raise her skirt and, as she had gotten up and was sitting on the bed endeavored to pull her down onto the floor; and as, in spite of her resistance and opposition, her aggressor persisted in his endeavor to lie with her and would not let her go, she cried out for help, whereupon Prudencio released her. Then the girl, as soon as she managed to find a box of matches, struck a light and from the sala of the house where she had been lying with the sick woman, saw her aggressor in the adjoining room in his undershirt. He, acknowledging his guilt, begged her to pardon him; but the injured girl after saying to the sick woman, the wife of the accused, who asked her what had happened, "so this is the way you reward me for keeping you company," left the house, and weeping and with tumbled hair went to her own house where she informed her father of what had occurred. The latter at once went to the house of the aggressor who, however, was no longer there. Finding only the wife of the accused he inquired after her husband, to which she replied that he had just left. Next morning the girl appeared before the justice of the peace court and complained of the act committed by the accused.

As a result of the preliminary investigation a complaint was filed by the provincial fiscal on the 29th of September, 1908, charging Prudencio with the crime of attempted rape, and the corresponding proceedings having been instituted, the trial court, as a result thereof, entered judgment on the 9th of January, 1909, sentencing the accused to the penalty of four years two months and one day of prision correccional, to suffer the accessory penalties and to pay the costs; from said judgment the accused has appealed.

From the facts above stated it is deduced that the crime of attempted rape was actually committed on the person of Clara Nicanor, a girl about 16 years of age, late at night, and at the time when the said girl, with her father's permission, was in the house of the accused, by request of the latter that she stay with his wife who was sick, as he had to be away from his house on the night in question.

There is an attempt when the guilty person makes a beginning in the commission of a crime directly by overt acts, and does not perform all of the acts of execution which should constitute the crime by reason of some cause or accident other than his own voluntary desistance. (Art. 3, par. 3, Penal Code.)

According to the evidence in the case, Prudencio Soto, after pretending to be absent from his house on the night of the 20th of August, 1908, approached the injured girl, and taking advantage of the opportunity while she was sleeping close to and at the feet of his sick wife, embraced her and tried to lift up her skirt, endeavoring, when he noticed that she had arisen and was sitting on the bed for the purpose of opposing his intent, to lay her on the floor; as the culprit persisted in his intent to lie with her and refused to let her go, the injured girl cried out for help. When the girl managed to strike a light and recognized her aggressor, the latter, who was in his undershirt, ran into an adjoining room, and acknowledging his guilt, prayed the girl to pardon him, but she left the house and returned to her home for the purpose of informing her father of what had occurred. The accused also left his house, so that when Saturnino Nicanor called there in order to find out what had taken place the wife of the accused told him that her husband had just left.

The crime prosecuted herein is defined and punished by article 438 in connection with articles 3 and 66 of the Penal Code.

The accused denied the charge and pleaded not guilty, but notwithstanding his exculpatory allegations and the affirmative testimony of the two witnesses offered by him in alibi, satisfactory and conclusive evidence establishes the actual commission of the crime and the guilt of its proven author, inasmuch as there is no reason for doubting the incriminating statements of the injured girl as confirmed by her father. The latter testified that his daughter, Clara Nicanor, appeared at his house late that night weeping and with her hair dishevelled, and that when he called at the house of the accused in order to find out what had occurred, the latter's wife informed him that her husband, Soto, had just left the house. This corroborates the charge and proves that as a matter of fact the accused had been in his house for the purpose of committing the would-be rape in question, and that when the injured girl left, he was still in the house.

The presentation by the defense of the document marked "A" does not constitute evidence of the innocence of the accused, or of the falsity of the charge, inasmuch as the injured girl signed the said document without a perfect knowledge of its contents, and without the assistance of her father; she was a minor, and simply adopted the suggestions of the municipal president of the town of whose services the accused perhaps availed himself in order to escape prosecution.

On the other hand the crime is already provided for in Act No. 1773, which provides that crimes which, according to the Penal Code, are of a private character shall be prosecuted de oficio and that the pardon of the aggrieved person shall not extinguish the liability of the guilty one except by subsequent marriage, which in the present case, can not be accomplished because the culprit is a married man.

In the commission of the crime herein the presence of aggravating circumstance 10 of article 10 of the Penal Code must be considered for the reason that Prudencio Soto abused the confidence that Saturnino Nicanor had in him when he permitted his daughter, the aggrieved girl, to sleep that night in the house of the accused in order to bear his sick wife company; this aggravating circumstance is not counterbalanced in its effects by any mitigating one, for which reason the adequate penalty of prison correctional should be applied in its maximum degree.

In view of the foregoing it is our opinion that the judgment appealed from should be affirmed, provided, however, that the culprit shall be sentenced to suffer the accessory penalties of article 61, and to pay the costs of this instance. So ordered.

Arellano, C. J., Johnson, Carson, and Morelland, JJ., concur.

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