

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. D.B. JEFFREY, DEFENDANT AND APPELLANT.*G.R. No. 5597. March 05, 1910*

Ponente: TORRES, J.

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On the evening of March 1, 1909, while Teodorica Saguinsin was in a Chinese shop situated in Guadalupe, municipality of San Pedro Macati, Rizal Province, a man named D. B. Jeffrey appeared therein, and, without any apparent reason whatever, struck the woman three times on the hip with a bottle that he was carrying, in consequence of which the woman fell to the ground with an abundant hemorrhage from the womb; she was immediately taken to her home in a carretela, and being three months pregnant she had a miscarriage on the following day, according to the examination made by the president of the municipal board of health. The woman was ill and unable to attend to her usual duties for forty-five days.

Therefore a complaint was filed by the provincial fiscal with the Court of First Instance of said province on the 5th of June, 1909, charging D. B. Jeffrey with the crime of lesiones menos graves, whereupon these proceedings were instituted. The trial court sentenced the accused, on the 19th of August, 1909, to the penalty of forty-five days of arresto mayor, to pay a fine of 325 pesetas, to indemnify the injured woman in the sum of P50, and, in case of insolvency in the payment of the fine and the indemnity, to suffer the corresponding subsidiary imprisonment, not, however, to exceed one-third of the main penalty, and to pay the costs. From this judgment defendant's counsel has appealed.

From the facts above related it is clearly shown that the crime of abortion, defined and punished by article 411 of the Penal Code, has been committed, inasmuch as, in consequence of the maltreatment received, on the evening of March 1, 1900, by Teodorica Saguinsin, a married woman who for three months had been pregnant, she fell to the ground, and had a severe hemorrhage and, being unable to return to her home, was taken there in a vehicle, with the assistance of Basilisa Pascual, who witnessed the occurrence. On the following day she had a miscarriage, as certified by the president of the municipal board of health of the town of San Pedro Macati who made an examination of and attended the victim of the maltreatment.

The defendant pleaded not guilty and denied the charge made in the case, although he admitted that on the night in question he had a dispute with the injured woman because he collided with her on the road, and he then simply gave her a little push with the index finger of the right hand in the back of her body, but without illtreating her, even though he carried a bottle at the time. The foregoing statements to a certain extent confirm the charge that the woman was maltreated or struck three times upon the hips by the accused with the bottle that he was carrying, which fact is corroborated by the testimony of the witnesses. The testimony of the military surgeon, Raymond F. Metcalf, who, seven days thereafter, examined the injured woman and stated that he did not discover upon her body any signs of abortion, has not affected the preponderance of the evidence offered by the prosecution, inasmuch as, after the lapse of seven days, the miscarriage having occurred the day following the night when the woman was brutally struck upon the hips with a bottle, it is not strange that he did not find any traces of the

hemorrhage or of the miscarriage, as seen by the physician who examined and attended the maltreated woman and certified to the fact of the abortion.

Even though it was not the criminal intent of the defendant to cause the abortion, the fact that, without any apparent reason whatever, he maltreated Teodorica Saguinsin, presumably not knowing that she was pregnant, as author of the abuse which caused the miscarriage, he is liable not only for such maltreatment but also for the consequences thereof, to wit, for the abortion; and it was also proven that on the said occasion the defendant was drunk, which circumstance explains how he came to strike the woman with a bottle without any known motive. It does not appear that he is an habitual drunkard. The penalty of prision correccional as fixed by the aforesaid article should be imposed upon him in the minimum degree, owing to presence of circumstance 6 of article 9 of the Penal Code, there being no aggravating circumstance to counteract its effect.

With respect to the question as to whether or not D. B. Jeffrey, having been accused of the crime of lesiones menos graves, can be lawfully sentenced for the crime of abortion, one which is distinct from that of lesiones, it is proper to consider that the complaint filed by the fiscal reads:

"The undersigned fiscal of the Province of Rizal, P. I., hereby charges D. B. Jeffrey with the crime of lesiones menos graves committed as follows: In that on the 1st day of March, 1909, in the municipality of San Pedro Macati, Province of Rizal, P. I., the said D. B. Jeffrey, the accused herein, wilfully, unlawfully, and feloniously assaulted Teodorica Saguinsin, maltreating and striking her about the hips which resulted in a serious hemorrhage followed by a miscarriage; the patient required medical attendance for more than eight days, and was unable to work for an equal period of time. All contrary to law."

The accused, attended by counsel, appeared before the Court of First Instance of Rizal, and the foregoing complaint was read to him and translated into English by the clerk of the court. Upon being asked by the court to plead thereto, he pleaded not guilty.

Hence, when the defendant was informed of the complaint, he at once understood that, although he was charged with the crime of lesiones menos graves, the charge also included the fact that he had maltreated Teodorica Saguinsin, striking her about the hips, in consequence of which she had a hemorrhage which was followed by a miscarriage; the woman was confined and disabled for work during eight days and was attended by a physician. Not a single fact constituting the crime of lesiones is alleged in the complaint, and there can be no question that, because of the translation into English, the accused must have heard and known that the charge against him was that he had struck and maltreated the injured woman who, as a result of his unlawful act, suffered an abundant hemorrhage and a subsequent miscarriage. For this reason, when the defendant denied the charge and plead not guilty, he defended himself against the charge which consisted in that, in consequence of, having struck her with a bottle, he caused the abortion; and, inasmuch as the maltreatment and the miscarriage that followed in consequence thereof have been proved, it is perfectly just and legal that the penalty to be applied shall be that fixed by the law for the crime shown by the evidence and which the accused actually committed.

For the reasons above set forth, and holding that the crime committed is that of abortion and not that of lesiones, it is our opinion that the judgment appealed from should be set aside, and that the accused should be and he is hereby sentenced to the penalty of eight months of prision correccional, to indemnify the injured woman in the sum of P50, with subsidiary imprisonment in case of insolvency, and to pay the costs of both instances. So ordered.

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

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