

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FLORENCIO TACUBANZA, DEFENDANT AND APPELLANT.

G.R. No. 6369. February 24, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Tarlac, convicting the appellant of the crime of attempted rape and sentencing him to two years and five months of prision correccional, accessories and costs.

The learned trial court found proved the following facts:

"That on the 10th of January, 1909, at about 10 o'clock in the morning, the complainant, Nieves Espinosa, left her house to get some water, carefully locking the door; that on her return, accompanied by a little boy seven years of age, she found the door unfastened and the accused within; that he instantly seized, embraced and kissed her, throwing her to the floor and attempting to ravish her by force; that he was prevented from accomplishing his purpose by the arrival of succor called to the spot by her cries and those of the little boy; that one Sotera Baltazar who heard the cries, hurried at once to the house and saw the accused leap from the house by means of the bataan and run away; that the father of the complainant, Joaquin Espinosa, and one Ponciano Mallari, who were fishing in the river at the rear of the house, also hurried to her assistance, attracted by the cries of the little boy; that Joaquin Espinosa saw the accused when he leaped from the house and fled; that these facts were placed immediately before the authorities; that there had been no trouble or ill feeling between the parties or their families prior to the time of the assault."

The prosecution presented, in support of its charge against the accused, the complainant and her father. There was presented in evidence a torn camiseta, alleged to have been worn by the complainant at the time of the assault and to have been torn by the accused in his efforts to ravish her.

It should be observed (a) that the crime is alleged to have been committed on Sunday and in the middle of the day; (b) that the accused is alleged to have attempted the violation of the complainant in the presence of a little boy seven years of age; (c) that the house wherein the assault is alleged to have been made is situated in a locality where there were other habitations, being only about forty yards from the house of Sotera Baltazar, who, it is alleged, came instantly at the call of the complainant; (d) that the father and a companion were fishing within forty yards of the house at the time and that, it is asserted by the prosecution, there were a number of other people in close proximity; that they were attracted by the cries of the child and not of the complainant.

It should be particularly noted (e) that although it is alleged that two disinterested witnesses, namely, Sotera Baltazar and Ponciano Mallari, saw the accused leap from the house and flee, they have not been presented as witnesses for the prosecution; and that the little boy, although presented by the prosecution as a witness against the accused, was not permitted to testify for the reason that, in the judgment of the court, he did not display sufficient intelligence to make him a competent witness.

It thus appears that the only evidence against the accused is that produced by the complainant and her father. While evidence of this character would generally be sufficient, everything else being equal, nevertheless, under the circumstances of this particular case, we do not regard the case made by it as satisfactory. The failure of the prosecution to present the two disinterested witnesses above- mentioned seriously weakens its case against the accused. The prosecution asserts that it caused subpoenas to be issued for the witnesses in question and that they could not be found. There are found in the record simply two subpoenas, one directed to Ponciano Mallari, dated August 10, 1909, and another to Sotera Baltazar, date the 16th of the same month and year. The trial began on the fifth day of March preceding, at which time the prosecution put in its proofs and closed its case without ever having issued a subpoena for the two witnesses referred to. Nothing more seems to have been done with the case until the 20th of August, 1909, when the accused began his defence. It was just prior to this date that the two subpoenas above-mentioned were issued. As to these, the record does not disclose when they were delivered to the sheriff for service or what effort, if any, he made to find the witnesses; nor does it appear that other or further effort was made at any time.

We do not believe the evidence warrants the conviction of the accused. (U. S. vs. Obregon, 3 Phil. Rep., 320; U. S. vs. Flores, 6 Phil. Rep., 420.)

The judgment of conviction is reversed and the accused is ordered forthwith discharged from custody by virtue thereof. Costs de oficio.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

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