

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS CRUZ, DEFENDANT AND APPELLANT.*G.R. No. 6409. March 10, 1911*

Ponente: TRENT, J.

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The defendant and appellant having been sentenced by the Court of First Instance of the Province of Pangasinan to two years four months and one day of prision correccional, to the corresponding accessory penalties, to the payment of the costs, for the crime of attempted rape, he appealed to this court.

For several months prior to October, 1909, the defendant, Tomas Cruz, had been teaching school within the jurisdiction of the town of Santa Barbara, Province of Pangasinan, and living with one Domingo Montemayor, a relative of his. On returning to the house of Montemayor between 5 and 6 o'clock on the afternoon of October 21, the defendant found Montemayor's daughter, Maria, who was about 20 years of age and single, alone in the house. Shortly thereafter Maria's father arrived, and on his entering the house and finding the two young people alone, trouble ensued, resulting in the defendant being compelled to leave on that same afternoon or evening. As to the cause of the trouble the witnesses do not agree. It is impossible to reconcile their testimony so as to admit of each swearing the truth.

Maria testified that when Tomas Cruz returned on that afternoon she was alone and in the kitchen; that he entered the kitchen where she was, closed the door, approached her, and began making indecent proposals; that on her rejecting his proposals, he caught her by the hands, threw her down upon the floor, placed himself on top of her, and was proceeding to rape her; that she screamed, calling for help, and that just at that moment her father and aunt arrived, pushed open the door, entered and caught the defendant in the act of attempting to forcibly have carnal intercourse with her.

Domingo Montemayor and Josefa Cruz, father and aunt of Maria, corroborate the testimony of Maria as to what the defendant was doing when they arrived.

The defendant testified that on his entering the house at that time he found Maria alone and in the sala; that after conversing with her a few moments they took a seat together on a bench by an open window; that within a short time Maria's father arrived and began doing something in the yard; that while Domingo was still in the yard one Victoriano Beltran arrived, and after the two men talked for a few moments together, Domingo invited Beltran into the house; that on entering Domingo asked his daughter Maria where her mother was, and on receiving the reply that she had gone to the sementera he became very angry and abused the girl for being so intimate with him (the defendant) when they were alone in the house and that as a result of this trouble he was driven from the house by Domingo. The testimony of this witness is corroborated in every essential detail by that of Victoriano Beltran.

On the following day, October 22, Domingo Montemayor filed a complaint in the justice of the peace court, charging the defendant with the crime of attempted rape. In the preliminary investigation which followed, Domingo Montemayor, his daughter Maria, and Josefa Cruz were called and testified as witnesses for the

prosecution. Maria, after being duly sworn, and on being asked by Pascual Lozano, who was representing the prosecution, what had occurred in her house on the afternoon of October 21, testified that when her father arrived he found her and the defendant alone, sitting together on a bench near the open window in the sala, and that the defendant did nothing wrong on that afternoon. When Maria began answering questions in this manner, her father, who was sitting by her side, said to her: "Tell the truth." The justice of the peace then threatened to send Domingo to jail if he again spoke to the witness. Maria then changed her answers and testified the same as she did in the Court of First Instance as to what occurred in the kitchen. The answer to the first question given by Josefa Cruz, as to what was going on in Domingo's house when she arrived, was the same as Maria's first answer; but she also changed and stated that she saw the defendant trying to rape Maria in the kitchen. These facts have been clearly established by the testimony of the justice of the peace and Lozano. Domingo Montemayor swore positively on the trial of this case in the Court of First Instance that he did not speak to his daughter while she was testifying in the justice of the peace court; and that the justice of the peace did not threaten to send him to jail. Whereas, as a matter of fact, this did occur in that preliminary investigation as testified to by the justice of the peace and Lozano.

This crime, according to the prosecution, occurred in the daytime, in the house of the offended party, surrounded by other houses and in easy hearing distance. The house of Josefa, Maria's aunt, was only about 8 brazas away. Men ordinarily do not commit, or attempt to commit, rape under such circumstances. We are satisfied that the theory of the defense is the correct one. When Montemayor arrived and found the two young people alone in the sala he began abusing them and compelled the defendant to leave his house. Maria herself desired to tell the truth about what occurred when she was testifying in the justice of the peace court and began doing so, but changed no doubt on account of fear of her father.

The judgment appealed from is, therefore, reversed and the defendant acquitted, with costs de oficio.

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

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