

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FILEMON MENDEZ, DEFENDANT AND APPELLANT.

G.R. No. 6483. March 11, 1911

Ponente: CARSON, J.

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CARSON, J.:

The accused in this case was charged with the crime of tentativa de violacion (attempted rape), and convicted in the court below of the crime of abusos deshonestos (abuse of chastity).

The story of the complaining witness and her sister, on which alone the prosecution relies and on which the trial judge based his judgment of conviction, is substantially; as follows: That Bonifacia Lomio, a married woman, was asleep in the single sleeping room in her house, together with her sister Marcelina, a grown Woman, and her infant children; that Bonifacia suddenly awoke to find herself in the arms of the accused, who had gained entrance to the house by climbing through a window; that while taking indecent liberties with her person, he endeavored to force her; that in the struggle which ensued, the assaulted woman cried aloud for aid, and awakened her sister Marcelina, who lit the lamp and the struggle still continuing, went to the assistance of her sister, and helped her to free herself from her assailant; that Marcelina, at the request of her sister, then went for the aid of the police; and that when she returned with a policeman, they found the accused still seated in the room begging the forgiveness of Bonifacia for what he had done.

The accused admitted that he had climbed into the house of the complaining witness through a window and was found in the sleeping room at the time indicated by her; but insisted that he had done so at the invitation of her unmarried sister, Marcelina, with whom at that time and for some months prior thereto he had had amorous relations; that on that occasion, as on other similar occasions, he spent some time with Marcelina; that, unfortunately for him, the noise of their conversation awakened the older sister, who made an outcry and began abusing the younger sister for her misconduct; that a dispute arose between himself and Bonifacia, who ordered her younger sister to go out and fetch the police; that feeling himself guiltless of any crime, other than that of his clandestine relations with the younger sister, he made no attempt to escape; that when the policeman arrived he was arrested on the false complaint of the older sister that he had attempted to rape her.

Both the sisters denied any acquaintance with the accused, and only under strict cross-examination did they reluctantly admit that he lived in the same village with them, in the house just opposite their own, where they kept a small store, and that they knew him by sight; though they insisted that they never had spoken to him before the night in question.

The accused called several witnesses who testified to the friendly relations between the younger sister and himself for several months prior to the night in question, and one of these witnesses corroborated his testimony as to his entry at night, through the window of the house where the sisters, lived, on more than one occasion prior to his arrest. The testimony of these witnesses, however, is not very satisfactory, and were the story told by the sisters a consistent and satisfactory one, would not be sufficient to overcome their testimony.

We are unable to accept as true their story that this accused, uninvited, entered their house as they allege, with the purpose and intent of forcibly violating one of the two sisters, whom he must have known were sleeping in the same room, in the absence of proof that, aflame with passion and utterly regardless of consequences, he had resolved to accomplish his purpose despite the resistance of his victim, and ready if necessary to use such violence as he must have known his act would require in order to dispose of the assistance one sister would render the other, and which the outcries of both the sisters, when thus attacked, would inevitably bring from neighboring cottages. As he well knew, the slightest outcry from the nipa cottage where the incident occurred would have aroused the neighbors all around, and it would indeed have been a bold and reckless criminal who would deliberately enter it, and attempt by force to violate or wickedly assault one of two grown women sleeping in the same apartment, even if he were prepared to silence them by the use of such threats and violence as would be necessary to keep them quiet under such circumstances.

There is nothing whatever in the story of the sisters which even suggests that this was the kind of a man who made the alleged assault upon their house; on the contrary, his conduct throughout the whole incident is wholly inconsistent with the idea that he came there prepared for any such desperate deed as he must have known to have been involved in an attempt forcibly to violate either one of the women.

We think his story of what occurred by far the more plausible one, accounting for its one inconsistency - the bringing of the policeman by the younger sister despite the fact the accused, as he alleges, had come to the house at her invitation - by treating it as but another instance where a woman has deserted and turned upon her lover, rather than face the consequences of an honest confession of her illicit relations with him.

Giving the accused the benefit of the doubt to which he is entitled, we are forced to conclude that the sisters have not told the whole truth as to what occurred, and that whatever did occur which resulted in the calling of the policeman and the arrest of the accused, it was not an attempt on his part to forcibly violate the complaining witness as charged in the complaint, or to "lewdly offend" her by laying violent and indecent hands upon her (abusos deshonestos) as found by the trial judge.

Before dismissing this case we think it proper to direct the attention of the prosecuting officers and the trial court to the vital importance, especially in cases such as this, of producing all the witnesses whose testimony there is sound reason to believe may be of value in developing the truth of the matters under investigation, or of satisfactorily accounting for the failure to produce them, either by a showing of inability to secure their presence at the trial, or of known hostility and the fact that it is expected that they will be called for the defense, or the like. In this case the policeman who arrested the accused was not called to the stand, nor is there any explanation in the record for the failure of the prosecution to produce him - and yet it must have been apparent to the prosecuting officer, as well as to the trial court, that his evidence could hardly fail to have been of vital importance in any attempt to sift out the truth from the story told by the complaining witness and her sister. If he proved to be an intelligent and observant man, his testimony as to the conditions existing when he made the arrest, had he been called to the witness stand, could hardly have failed to shed a flood of light on the doubt upon which the judgment in this case turns; and in any event, the unexplained failure of the prosecution to put him on the stand, necessarily weakens the case made out by the prosecution.

The judgment of conviction and the sentence based thereon must be reversed, and the accused acquitted of the crime of which he is charged, with the costs of both instances de oficio.

If he is in detention he will be discharged forthwith, and if he is at liberty on bail his bond will be canceled and his bondsmen exonerated.

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

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