

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO BANILA, RUFINO MARASIGAN, AND FAUSTO BALTONADO, DEFENDANTS AND APPELLANTS.

G.R. No. 6624. March 20, 1911

Ponente: TRENT, J.

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TRENT, J.:

The defendants and appellants were each sentenced by the Court of First Instance of the Province of Tayabas, Hon. Mariano Cui presiding, for the crime of rapto, to .seventeen years, four months, and one day of reclusion temporal, to the corresponding accessory penalties, to jointly and severally indemnify the offended party in the sum of P500, and to pay an equal proportion of the costs of the cause.

On the afternoon of June 19, 1910, a large banca, or sailboat, the property of one Pedro Elmido, and manned by various persons, among: whom were the defendants Rufino Marasigan and Pedro Banila, anchored near the beach within the jurisdiction of the town of Sariaya, Province of Tayabas. After having discharged its cargo, and taken aboard the cargo for the return trip, its owner, Pedro Elmido, thinking it time to sail, asked Rufino Marasigan, who was the piloto of the boat, if he were not going to give the order to sail. Rufino replied that it would be better to wait until night for the wind to change from the land. He Also stated that he and his companions were waiting for a married couple who were going to take passage that night. He then disembarked and went in the direction of the town. Shortly thereafter he returned, bringing with him a trunk, petate, and a bolo and placed them aboard.

On that same night, Sunday the 19th of June, 1910, four men went to the casita which was inhabited by the offended party, Crisanta Tisico, a young single girl about twelve years of age, her brother Fortunato, and her grandmother, Juana Onlayao, who was about sixty years of age. This small house was situated in the barrio of Castañas, town of Sariaya. These men having awakened the old lady, Juana, she ordered her grandson, Fortunato, to go out and learn what the people who were calling desired. On going outside of the house, Fortunato recognized the defendants Benito Mañibo (who was sentenced and did not appeal), Fausto Baltonado, and Pedro Banila, and asked them what they desired. They replied by asking Fortunato who were in the house. After having been informed that there wasn't anybody in the house except himself, his small sister, and his grandmother, they caught hold of his arms, struck and kicked him, and then carried him about ten meters from the house and tied him up to a tree, threatening him with death if he screamed. While the young boy was being tied Benito Mañibo and Fausto Baltonado entered the house and began striking the old lady Juana with the flat side of their bolos. Pedro then caught Crisanta by her knees while she was sleeping and started to raise her up. Crisanta awoke and resisted Pedro, striking him with her hand. Pedro then started to drag her from the house and she caught hold of her grandmother and when she did this Fausto struck her across the wrist with the flat side of his bolo. Then Pedro dragged her out and turned her over to Benito Mañibo. Benito then carried her along, being followed by Pedro, and after having gone some few yards from the house they forced her to go along by pulling her by the hands. The little girl attempted to scream but was prevented from doing so by Benito placing his hand over her mouth. Benito and Pedro took the girl to the beach and placed her aboard the sailboat. Within a very few minutes Rufino and

Fausto arrived and went aboard. The boat was then put under way for Lobo, Batangas. Immediately after these four men left the house, which was about twelve o'clock at night, Juana Onlayao went to the house of the lieutenant of the barrio and reported this occurrence and exhibited the bruises or contusions which had been inflicted upon her at that time. She insisted on following these parties with the hope of obtaining the release of her grandchild, but on account of her age and the condition of her eyes she was unable to make the trip that night.

When the boat was out at sea on that Sunday night, the defendant Pedro began threatening the little girl, Crisanta, saying that if she did not agree to marry Benito Mañibo, or live with him as his concubine, she would be thrown into the sea. When the banca arrived at a place called Laiya, it was anchored to permit Fausto Baltonado and his wife to disembark. After this was done the trip was continued to Lobo. After leaving Laiya and before reaching Lobo the little girl discovered that the defendants had taken her tampipi which contained her clothes and a part of her brother's clothes, and also the sum of P10 in cash. This tampipi was later recovered, together with the clothing, but the P10 were never returned. Before reaching Lobo the owner of the boat, Pedro Elmido, became suspicious that the little girl was being abducted, he having heard the defendants threatening her, and immediately on arrival in Lobo he reported the matter to the lieutenant of the barrio, and the lieutenant reported to the municipal president, and an investigation was started which resulted in the arrest of these defendants. The little girl was finally returned to her home after seventeen days.

The facts above stated constitute the crime of abduction, as defined and punished by article 445 of the Penal Code, which article reads as follows:

"The abduction of a woman, executed against her will and with unchaste designs, shall be punished with the penalty of reclusion temporal."

To constitute the crime of abduction it is necessary to establish two essential elements: First, the act must be committed by force or violence; and, second, it must be done with unchaste designs (*miras deshonestas*). As to the first, the above facts show clearly that the little girl was taken from her home by means of force and violence. The defendants did not only strike the offended party with the flat side of their bolos, but also struck the old lady Juana and the young man Fortunato. The latter they tied to a coconut tree nearby for the purpose, no doubt, of preventing him from interfering in any manner with the abduction of his sister. The fact that Benito Manibo and his companions were trying to force the little girl to marry Benito, or live with him as his concubine, shows clearly that the intention of the defendants in abducting the girl was to force her to have illicit intercourse with Benito. Benito was a married man and well knew that he could not marry this little girl.

The defense attempted to establish, by the testimony of the defendants Benito and Rufino, that the taking of the young girl was done by Benito alone and with not only her consent but also that of her brother and grandmother. This defense has entirely failed. The testimony of the witnesses for the defense has not overcome the direct and positive testimony of the offended girl, which is corroborated by her brother and grandmother, and also by the owner of the boat. The latter testified that the four defendants returned to the boat about twelve o'clock on that Sunday night, bringing with them this little girl. The little girl specifically and definitely identified all of these defendants as having taken a direct part in forcibly taking her from her home.

In the commission of this crime there were present the generic aggravating circumstances of nocturnity and the commission of the acts in the house of the offended party, inasmuch as it has been shown that the defendants took advantage of the darkness of the night and the late hour to commit this brutal act. No extenuating circumstances were present.

The judgment appealed from being strictly in accordance with the law and the merits of the case, the same is hereby affirmed: Provided, however, That the appellants be also condemned to return to the offended family the

P10 appropriated by them. Costs will be taxes against the appellants. So ordered.

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

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