

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROQUE FLORES, DEFENDANT AND APPELLANT.*G.R. No. 6727. January 02, 1912*

Ponente: CARSON, J.

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The information in this case charges the defendant with the crime of rape committed upon one Rosa Gabasa, a child under 12 years of age. It appears from the evidence that the child was 8 years of age and lived with her mother, Irene Filipino, in one of the outlying barrios of the city of Iloilo. The defendant, who was 23 years old, was a water carrier from whom the mother of the girl was accustomed to buy water. On the morning of September 22, 1910, according to his daily custom he delivered water at her home. He remained there some little time according to the testimony of the mother, who said that he had been there about an hour before she went to the market leaving the defendant and her daughter in the house alone. According to the testimony of the child, Rosa Gabasa, the defendant made indecent proposals to her after the mother left the house, and afterwards he laid her down upon the floor, where he held her and accomplished his desire. The child did not report these facts to her mother when she returned, but two days later the mother noticed that there was something wrong with the girl, and after making an examination of her private parts discovered a swollen and unnatural condition. The child then told her mother that the defendant had held her on the floor and had had sexual intercourse with her. Doctor Mapa, a physician, was called in and made a more detailed examination. He testified that the exterior parts of the female organs were badly swollen, that the membrane of the vaginal duct was lacerated, and that the child was suffering from the disease of gonorrhea. The defendant was arrested, and upon being stripped by the chief of police he was found to be infected with that disease; he was also examined by Doctor Mapa who testified that he had a chronic case of gonorrhea. The defendant himself admitted that he had the disease and had been troubled with it for a number of years. He did not deny that he was at the house on the morning during which the crime is charged to have been committed; but he denied all the facts which tend to connect him directly with the crime of rape. The record discloses a number of inconsistencies and contradictions in his statements which cast a cloud of doubt and suspicion upon all his testimony. The testimony of the witnesses for the Government is not wholly free from criticism, but we think that the inconsistencies and minor contradictions therein, to which our attention is directed by counsel, are not vital to the issues involved and do not substantially weaken the case as made out by the prosecution.

There can be no doubt from the record before us that the child had been the subject of some man's brutal passion; the lacerated and swollen condition of her vaginal duct and the adjacent exterior parts are proof conclusive upon this point. The further fact that she was suffering from a venereal disease of the same character as that with which the defendant was afflicted, in some sort corroborates the story of the crime as detailed by the injured child, Rosa Gabasa. We are convinced beyond a reasonable doubt that the record fully establishes the guilt of the accused, and we find no error in the proceedings prejudicial to the rights of the appellant.

We find no error in the fact that the court below applied the penalty provided in such cases in its maximum

degree. No less penalty would fit the brutal and abominable crime with which appellant was convicted. The trial judge considered the abuse of confidence as an aggravating circumstance attendant on the commission of the crime. The man was a water carrier and as such had access to the house; he frequently remained for a friendly chat after delivering his water. On the morning in question he was left in the house with the child while the mother went to market. The trial judge was of opinion that these facts are sufficient to support a finding that the commission of the crime was marked with the aggravating circumstance of abuse of confidence as defined in the code. This view is vigorously combatted, but we do not deem it necessary to consider or decide the nice questions involved, because there can be no doubt that the crime was committed "in the house of the offended party," and this fact unquestionably constitutes the aggravating circumstance defined in subsection 20 of article 10 of the Penal Code, and justifies and requires the imposition of the penalty in its maximum degree, there being no extenuating circumstances to modify or qualify the commission of the crime. (U. S. vs. Cruz, 1 Phil. Rep., 734.)

The judgment of conviction and the sentence of twenty years reclusion temporal with the accessory penalties imposed by the trial court should be and are hereby affirmed, with the costs of this instance against the appellant.

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

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