

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO REYES, DEFENDANT AND APPELLANT.*G.R. No. 6758. November 27, 1911*

Ponente: TORRES, J.

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This is an appeal by the defendant from a judgment of conviction rendered in this cause by the Honorable Judge Simplicio del Rosario.

At dusk on the evening of June 26, 1910, Lorenza Cornejo, a girl of about 15 years of age, unmarried, left her house, situated in the pueblo of Pasay, Province of Rizal, to return some flags which she had borrowed, and while returning home was approached by Francisco Reyes, who for some time past had been courting her, making her promises of marriage, and who had arranged with her to accompany him to this city for the purpose of getting married. On meeting, as aforesaid, Reyes insisted on Lorenza's going away with him, and accordingly advised her to go alone to the street-car station, saying that he would follow her, so that no one might see them traveling together; but from the street named Daan-bago they went along together to the street-car station where they took a car for this city and went to the house of Jose Torno, situated on Calle Cervantes, and there they remained and lived together conjugally for more than fifteen days, until they were found by the girl's mother, Cirila Escobar, and a policeman. It is to be noted that, during the time Reyes and Lorenza stayed in Calle Cervantes, the former had carnal intercourse with the latter about ten times; that, whenever the abducted girl demanded of her abductor that he fulfill his promise of marriage, he would reply that his mother was looking for some influential person who might speak to Lorenza's mother; and that the girl afterwards learned from her own mother that the defendant was married, wherefore she denounced the facts to the authorities.

The provincial fiscal, therefore, in view of the preliminary examination made by the justice of the peace court of Pasay, filed an information in the Court of First Instance of the province, charging Francisco Reyes with the crime of abduction, and the court, after due consideration of the proofs and other evidence, rendered judgment, on January 9 of this year, sentencing the defendant to the penalty of two years eleven months and ten days of prison correccional, to pay an indemnity of P3,000 to the offended party, Lorenza Cornejo, and, in case of insolvency, to the corresponding subsidiary imprisonment, in conformity with article 50, rule 1, of the Penal Code, to pay the costs, and to suffer the other penalties specified in the said judgment.

From the facts aforerelated, duly proved in this cause, it is concluded that the crime of abduction was committed against the person of a maiden of over 12 and under 23 years of age, with her consent and with unchaste designs, a crime provided for and punished by article 446 of the Penal Code. This conclusion follows from the evidence which clearly proves that Francisco Reyes, from the month of February, 1910, used to visit frequently at the house of Cirila Escobar, situated in the pueblo of Pasay, to court the latter's daughter, Lorenza Cornejo, and, by means of cajolery and promises of marriage, succeeded in seducing the young girl, who, induced by the defendant, left her mother's house to return a borrowed article, and, following her abductor's instructions, went alone toward the street-car station in that pueblo; when she arrived at the new highway she was joined by the defendant and

together they boarded a street car bound for this city and lodged at the house of Jose Torno, situated on Calle Cervantes, now Rizal Avenue, where they were caught together by the girl's mother and a policeman, between 11 and 12 o'clock of the night of the 20th of the following month of July, when they were sitting together on a bed in a room of the house; Reyes was wearing a Chinese camisa, and the girl a chemisette tucked under her skirt, as testified by Cirila Escobar, the mother of the abducted girl, who had been looking for her daughter from the night of June 26, 1910, the date of her disappearance, and who for that purpose came daily to this city, seeking in the suburbs, and even in the pueblo of Malabon, information of the girl's whereabouts, until at last, accompanied by a policeman from Pasay, she succeeded in finding her daughter and the defendant in the aforementioned house of Jose Torno, on Calle Cervantes.

The departure of the abducted girl from the place of her residence and her ride to this city in a street car, accompanied by her abductor, the defendant Reyes, is proved by the testimony of Telesforo Pestanas, who saw them going along the street together toward the street-car station, and also by the testimony of Miguela de Guzman, who saw the girl that same evening going toward the street-car station in the company of a man whom the witness did not know. The policeman, Eugenio Wenceslao, corroborated the testimony of Cirila Escobar, whom he accompanied when they surprised Lorenza Cornejo and her abductor Reyes in a room of Jose Torno's house on Calle Cervantes and found them then and there sitting together on a bed, dressed in their underclothes. The owners of the house, Jose Torno and Aurelia Ligdao, corroborated the testimony given relative to the stay in their house of the abductor and the abducted, as well as to the fact that the two latter were caught therein by a policeman and the offended girl's mother.

Although the abducted girl was not forcibly removed from the house by her abductor on the evening of the said 26th of June, yet it is unquestionable that she, through cajolery, left her mother's house, by prearrangement with the defendant and at his bidding, inasmuch as he awaited her on the road and they came together to this city and hid themselves from that time to the 20th of July following when they were caught together in the house where they were lodging. It is therefore beyond all doubt that the defendant, Reyes, took with him the girl Lorenza Cornejo, with unchaste designs and under a false promise of marriage, made deceitfully and in bad faith, since, as he was married, he knew that he could not possibly marry the abducted girl.

The crime of abduction, with unchaste designs and the consent of the abducted, was consummated, because the girl left her mother's house, gave herself up to her abductor and lived with him conjugally until they were arrested in the house where, according to the testimony of the abducted girl, the defendant had carnal intercourse with her no less than ten times; therefore, it is undeniable that the abduction was committed in the manner aforestated.

In a decision of November 30, 1875, the supreme court of Spain, in the matter of the application, in an analogous case, of the provisions of article 461 of the Penal Code of that country, identical to those of article 446 of the code in force in these Islands, established the following principle:

"The purpose of the law is not to punish the wrong done to the girl, provided that she consents thereto, but to prescribe punishment for the disgrace to her family and the alarm caused therein by the disappearance of one who is, by her age and sex, susceptible to cajolery and deceit. The place being immaterial, no mention is made of it in the Penal Code."

The same principle is laid down in the decisions of October 29, 1895, and March 31, 1896.

Notwithstanding, then, that Lorenza Cornejo was not forcibly taken from her mother's house, yet the crime of abduction was committed, for it is not necessary that it should have been perpetrated in that manner, it being sufficient that the girl should have left, as she did, removing herself from her mother's custody and yielding to the cajolery, inducement, and promises of her abductor, who took her away with unchaste designs.

The defendant denied the charge and pleaded not guilty, but notwithstanding the allegations made in his defense and the testimony of the witnesses presented in his behalf, the record shows decisive and conclusive proof of his guilt, beyond all reasonable doubt, as the sole convicted perpetrator by direct participation of the abduction under prosecution; this is shown by the statements of two witnesses who saw the abducted girl walk away from the town where her mother's house is situated and in which she was living on the afternoon of June 26, 1910, accompanied by her abductor, the defendant, and go in the direction of the street-car station; it is also shown by the corroborative testimony of the abducted girl's mother, who set out to look for her daughter, from early in the evening of the said date, in various parts of this city and of the Province of Rizal, until at last she found the abductor and the abducted together sitting on a bed in a room of Torno's house; this testimony was also corroborated by the policeman Eugenio Wenceslao who accompanied the mother, and all of this testimony was likewise corroborated by the owners of the house, Jose Torno and Aurelia Ligdao; these two witnesses, however, in affirming the facts above related, gave certain reasons therefor which the court upon very good grounds, deemed unworthy of belief. The averment by Marcelino de la Virgen can not be held to have been proven, which was to the effect that the mother of the abducted girl charged him to tell the defendant that he should give her P2,000, else he would be prosecuted. This statement is unsupported by proof and was denied by Cirila Escobar, the mother of the offended party, who added that it was the witness Virgen who used to accompany the defendant to her house and also deceived her by assuring her that Francisco Reyes was a bachelor.

The readiness with which the girl Lorenza Cornejo, obeying the instructions of her abductor and his mother, testified against her own interests and those of her mother, affords a criterion whereby to gauge the readiness with which she allowed herself to be seduced by her abductor under the promise of marriage, which could not be fulfilled because the defendant was then a married man.

In the commission of the crime there is no attendant extenuating or aggravating circumstance to consider; so the judgment of the lower court, the grounds in support of which we accept, is in accordance with the law and the merits of the case.

Therefore we are of opinion that the judgment of conviction appealed from should be and is hereby affirmed; provided, however, that the defendant, Francisco Reyes, shall be sentenced to the penalty of one year eight months and twenty-one days of prision correccional, to the accessories of article 61, to pay an indemnity of P1,000 to the offended party, Lorenza Cornejo, and, in case of insolvency, to the corresponding subsidiary imprisonment, which shall not exceed one-third of the principal penalty, to support the offspring, should there be any, and to pay the costs. So ordered.

Mapa, Johnson, Carson, and Trent, JJ., concur.

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