

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL JAVIER AND RAYMUNDA DE LA CRUZ, DEFENDANTS AND APPELLANTS.

G.R. No. 6881. October 12, 1911

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal from the sentence imposed upon the two defendants by the Hon. Simplicio del Rosario.

On the evening of July 2, 1910, Rosario Aquino, an unmarried girl about 15 years of age, was carried away from Fort McKinley by Valentin Nuñez and taken, according to her, to the house of Manuel Javier and Raymunda de la Cruz, where he succeeded in lying with her. He then left her on the pretext that he would go to the office of the president or the justice of the peace so that they might be married, but as he did not return for more than an hour, the girl left the house, because she had learned from some unknown parties that women who remained therein became bad. She boarded a street car to return to this city, but the car was stopped by four municipal policemen, who told her that their sergeant wanted to talk with her. But instead of taking her to the town hall they conducted her to the house of the defendants, where, upon her arrival, Brigido Francisco, one of the four policemen, talked with the occupants of the house, and immediately the woman Raymunda de la Cruz invited the girl to come inside the house and took her into one of the rooms. Said house-holders picked up the petate or mat on which they had been lying and carried it into the kitchen, then spread another mat in the room, and the policeman Francisco entered and succeeded in lying with the girl twice in spite of her resistance. On the afternoon of the next day Rosario Aquino left said house and went to another, where she was later found by her guardian, Patricio Espiritu, who reported the matter to the authorities.

Accordingly, an information was presented in the Court of First Instance of Rizal by the provincial fiscal charging the said Manuel Javier and Raymunda de la Cruz with corruption of minors. The case came to trial and the court rendered judgment therein on December 26, 1910, sentencing the defendants to two years of prison correctional, with the accessories, each to pay half of the costs. From this judgment they appealed.

Article 444 of the Penal Code prescribes:

"Whosoever shall habitually, or, taking advantage of his authority or of another's trust, promote or facilitate the prostitution or corruption of minors to satisfy the lusts of another, shall be punished with the penalty of prison correccional in its minimum and medium degrees, and temporary absolute disqualification if he were an authority."

From the foregoing article it appears that the practice or repetition of the acts of promoting or facilitating prostitution is the first and most general condition required by the penal law to establish the commission of the crime provided for and penalized in said article.

So, the execution of a single act of facilitating the prostitution of a minor, by placing her at another's disposal for

immoral purposes, does not legally constitute the said crime, unless it was done with abuse of authority or abuse of trust on the part of the person who promotes or facilitates the commission of such immoral act, in which two cases the execution of a single act is alone sufficient to make its perpetrator liable under said article.

It is impossible to determine exactly, from the conflicting and at times contradictory statements of the offended party, Rosario Aquino, whether the house to which she was conducted by Valentin Nuñez on that night of the second of July and which she later left, is the same as that to which she was again conducted by Brigido Francisco, who slept with her therein; in order to establish the guilt of the defendants as corruptors it is indispensable that complete proof appear in the case, not only of the presence and stay of said girl in the defendants' house for immoral purposes but also of similar acts repeated in said house in such a manner that it may be affirmed that the alleged perpetrators made a practice of such repulsive crime. The case affords no evidence that such conduct was habitual with the defendants, for an immoral act committed in their house and with their consent by a third person does not constitute habit or repetition of such acts on their part.

Neither does the case reveal that there was, on the part of said defendants, any abuse of authority, or any abuse of trust that the girl or her guardian might have reposed in them, for it does not appear that the offended girl and the defendants had been previously acquainted. Had there been abuse of trust, one single act executed to facilitate the prostitution or corruption of said minor would have been sufficient to establish the existence of the crime and the guilt of the defendants, according to the principle laid down by the supreme court of Spain in connection with article 459 of the Penal Code of that country, which is identical with 444 of the Code in force in these Islands, in its judgment of May 8, 1888.

For these reasons, and as the facts in the case at bar do not constitute a crime, we believe that the judgment should be reversed and Manuel Javier and Raymunda de la Cruz acquitted, with the costs in both instances de oficio. So ordered.

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

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