

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MIGUEL ESTRADA, DEFENDANT AND APPELLANT.

G.R. No. 8091. March 06, 1913

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PER CURIAM:

This is a prosecution for frustrated rape. The court found the accused guilty of attempted rape committed without either aggravating or extenuating circumstances and sentenced him to two years four months and one day of prison correccional with the accessories provided by law and the payment of the costs.

The evidence of the prosecution establishes that on Sunday, the 28th of August, 1910, Teodorica Jarantilla, a young girl 14 years of age, was in company with her mother at their tienda in a cockpit in the municipality of Bay, Province of Laguna, where she had been during the forenoon; that between the hours of 12 and 2 in the afternoon she went to her house for her midday meal; that after having eaten, in company with her sister, Eulogia Jarantilla, she started to return to the tienda where her mother still was; that just at that moment a neighbor, Juana Geirosa, called to her to go to her house and get a camisa which Juana had made for her; that Teodorica replied that she would go and get it later, but as Juana urged her strongly, pretending that she and her husband had to go away, Teodorica believed that it was necessary to go to Juana's house for the purpose indicated by Juana; that on arriving at the house Teodorica found Juana and her husband, Julian Tarrega, eating their midday meal in the lower part of the house; that upon the request of Juana, Teodorica went into the house to get the camisa, which according to Juana would be found on a lancape; that as she was attempting to leave the house the accused came from one of the interior rooms, seized her by the hand, turned her around and grasped her from the rear; that thereupon a struggle ensued between the two; that while she was struggling to loosen herself from the grasp of the accused she cried to him asking why he was treating her thus; that he thereupon answered that if she did not yield herself to his desires and purposes (naming: them) he would kill her and would then himself become a bandit; that Teodorica refused to accede to his requests, whereupon the accused lifted up her clothes and sought to throw her to the floor, but she succeeded in grasping a bamboo post which was near by, thus preventing herself from being thrown while she held her skirts between her legs; that during this time she was crying for help and although the accused pinched her throat in order to prevent her using her voice, her sister, Eulogia, who by means of signs and gesticulations, was called by Marcela Espinosa and her son, Demetrio, heard Teodorica's cries for help and immediately ran to the place, finding the accused still embracing Teodorica; that the accused observing the presence of Eulogia let loose of Teodorica and started to run; that as a result of the struggle Teodorica's camisa was badly torn.

These facts were found established by the court who tried the cause. The evidence of the prosecution, however, is vigorously attacked by counsel for the appellant. The first error assigned, under cover of which the attack begins, is to the effect that, "the court erred in finding that Exhibit' No. 9 was void, having been obtained from Jarantilla by misrepresentation and fraud." To understand the nature of this assignment of error it is necessary to know that Florentino Jarantilla, who figures in Exhibit No. 9, is the father of Teodorica and is the person who made the complaint against the accused upon which this prosecution proceeds. Exhibit No. 9 is an affidavit which Jarantilla is alleged to have made before the justice of the peace who had before him the preliminary investigation of the

crime which the accused is alleged to have committed, in which Jarantilla states that he has no evidence and can procure no evidence against the accused relative to the crime of frustrated violation and asks for a dismissal of the action against the accused for that reason. Upon this affidavit the justice of the peace dismissed the proceedings and discharged the accused; whereupon the case was taken up by the provincial fiscal and the information filed in the Court of First Instance.

Jarantilla asserts that the affidavit in question was obtained from him by false representation and deceit. He claims that he was asked to go to the house of the justice of the peace before whom the preliminary investigation against the accused in this case was pending relative to an adjournment of a case pending before the same justice of the peace in which Jarantilla was accused of the crime of threatening the life of Juana Geirosa and Julian Tarrega. He says that, upon arriving at the house of the justice of the peace, he was informed that in order to obtain an adjournment of his case it would be necessary for him to sign a paper to that effect. A paper was thereupon written out in Spanish and he signed the same without, as he claims, knowing its contents, he being unable to read the Spanish language and the document having been interpreted to him in such a manner as completely to deceive him as to its real contents. Upon these facts the learned trial court found that Jarantilla's signature to the instrument in question had been obtained by false representations and decided that it was therefore of no significance in the present case.

Jarantilla's statements' relative to the manner in which said document was obtained are vigorously denied by the persons interested and their testimony directly contradicts such allegations. The court below, who had the opportunity to observe the witnesses while they were testifying and their manner and conduct during the course of the trial, found in favor of Jarantilla, thereby in effect manifesting his disbelief in the testimony presented by such witnesses. After a thorough examination of this case we do not feel justified in disturbing this conclusion. It does not appear that any material fact or circumstance was overlooked by the trial court in arriving at the conclusion which he reached.

The second error assigned is to the effect that "the court erred in finding that the acts proved on the trial constitute the crime of attempted rape." In the case of the United States vs. Banzon we held in substance that, "where it appears that the accused seized the complaining witness and attempted to throw her upon the ground under circumstances showing a purpose to forcibly ravish her, but desists upon the approach of persons attracted by the woman's screams, the offense is attempted rape." (U. S. vs. Banzon, 1 Phil. Rep., 435.) That case has been followed many times by this court. The facts proved in the case at bar bring it clearly within that case as well as within the definition of the Penal Code which says that, "there is an attempt when the offender commences the commission of the felony directly by overt acts and does not perform all of the acts of execution which constitute the felony by reason of some cause or accident other than his own voluntary desistance."

We appreciate to the full the very strong and able argument made by counsel for the appellant relative to the unreasonableness of the claim that the accused attempted to violate Teodorica in broad daylight, in a community that was thickly settled and near a public highway and substantially in the presence of Julian Tarrega and Juana Geirosa, his wife. It is the one very strong circumstance in favor of the accused. As against it, however, we have the direct evidence of Teodorica herself, of her sister and a number of other witnesses. The commission of the crime at the place, at the time, and in the manner charged is not impossible and, although the charge that it was so committed may be unreasonable, still such unreasonableness may be overcome by the direct and positive testimony of unimpeachable witnesses. From the evidence before him the learned trial court found that the witnesses for the prosecution were telling the truth in their relation of the story of the case and that the facts occurred substantially as they stated them. We have held on many occasions that "this court will not interfere with the intelligent conclusion of a trial court concerning the credibility of witnesses, the court having seen the

witnesses in the act of testifying and having carefully observed their manner and demeanor as witnesses, unless the record discloses that some fact or circumstance of weight and influence has either been overlooked by the court or has been misapprehended or misinterpreted." (U. S. vs. Ambrosio, 17 Phil. Rep., 295.)

It is true that on several occasions this court has held the testimony in cases of this character insufficient to justify the conviction of the accused and has reversed the judgment of conviction. In each of these cases, however, there were, independent of the direct testimony of the witnesses for the prosecution and independent of the place where the crime was alleged to have been committed, facts and circumstances of weight and influence which went directly to the credibility of the witnesses and which had been overlooked by the trial court in his appreciation of their testimony. In the case at bar we find nothing which goes directly to the credibility of the witnesses for the prosecution apart from the fact of the time and place of the commission of the crime. No prior or subsequent acts or conduct on their part have been shown which in any way militate against the credibility of those witnesses. The mere unreasonableness founded upon the time and place of the commission of the crime must yield to the direct and positive testimony of credible witnesses whom the court has seen and whose declarations he believes.

Concluding the discussion of this phase of the case we cannot do better than present the ideas which were dominant in the mind of the trial court when considering this very subject. He said:

"At first sight the existence of this crime appears unreasonable as well as imaginary. The place of its commission is one of the most central places in the municipality of Bay, in a house which is not far from that of the complaining witness, and is not very far from the public market and from the cockpit, in both of which places ordinarily are found many people and especially so on the day in question, which was market day. This house with many others form a row of houses upon one side of the street while upon the other side is another similar row of houses. The hour is just after midday; the occasion a lunch being taken by the two occupants of the house. In spite of this, however, upon examination of all the facts and circumstances which surround the crime, the character and conduct of the accused, his influence and his power in the village as justice of the peace and the conditions in which the persons who lived in the house at the time the crime was committed found themselves, the conclusion follows that the crime was in fact committed in the manner established by the evidence of the prosecution. There could not have been as much travel in the street upon which the house in which the crime was committed fronted as there was in Calle Real, from which it branches. The municipality of Bay is one of the fourth class and therefore of small population. On Sunday, which was the day on which the crime was committed, there could not have been much traffic. It was not the hour in which ordinarily people gather at the market, while the cockpit was at a considerable distance. Even in populous cities, for example, in Manila, during the hour indicated, the travel in the streets is notably diminished, if it does not cease entirely. The stores below and in front of the houses are also closed. Estrada, one of the residents of this village since his birth, knew these conditions and knew at the same time that Teodorica and her parents were in the cockpit. He took advantage of the hour and of the occasion in which Teodorica, coming home for her luncheon, would be separated from her parents. The window of the house in which the crime was committed which opens upon the street was closed, while the dining room is in the lower part of the house at the side of the steps by which the upper story is reached. The presence of Julian and of his wife, Juana, was of no significance; these were his dependents and accomplices; the matter was previously arranged between them and instead of interfering with him he counted upon their aid and protection. This explains why Juana, in spite of being at table, left her seat and went to call Teodorica, using as a pretext therefor the camisa which she was making for her; and this explains also why Julian and Juana in spite of the fact that they were present did nothing in order to prevent the commission of the crime. It results, then, that the house in question as the place selected by Estrada to sacrifice the honor of Teodorica was most secure; that the occasion was also the most propitious for the realization of his immoral purposes, and that the presence of other persons, they being his dependents and accomplices, assured rather than interfered with the commission of the crime."

Referring to the influence which the accused exercised over Julian Tarrega and his wife, Juana Geirosa, as partial

explanation of why the accused committed the crime substantially in their presence, the trial court said:

"Neither can the testimony of the mother of the accused destroy the force of the testimony of Julian Tarrega and Juana Geirosa. Tarrega and Geirosa, laborer and dressmaker, respectively, prior to the commission of the crime lived in a small house situated in one of the streets of the municipality of Bay. From what has been said above it will be remembered that this poor couple were dependents of Estrada and his accomplices in the commission of the crime charged. It must now be said that immediately after the commission of the crime Estrada required these two to leave their house and to live in his. To accomplish this he used his sister, Basilia Pacheco, who frightened them by telling them that they were accused of crime before the acting justice of the peace. The couple lived in Estrada's house for about two months and Estrada, under the pretext of protecting them, held them prisoners without permitting them to leave the house. It was at that time also when Estrada, aided by his acting justice of the peace, Ijares, by means of force and threats, obtained from the couple affidavits in his favor which he now pretends to use in his defense, his object being without doubt to be sure that nobody would be able to get anything from these persons relative to the crime. Estrada later sent Julian and Juana to Tansa, a small village in the municipality of Cavite, and there they were guarded and watched by Basilia Pacheco, sister of Estrada. Later they escaped, and from that moment dates the persecution to which Estrada subjected them. In spite of their having been placed under the protection of the fiscal in Laguna and later of their lawyer, Sr. Cruz Herrera, in Manila, they were later charged with adultery before Estrada as justice of the peace and he required of them an excessive bail, evidently for the purpose of depriving them of their liberty. Finally Estrada and his mother, who were the sureties given by Julian and Juana upon the charge of being accomplices of Estrada in the crime of attempted rape, withdrew the bond, leaving them exposed to the imprisonment which they thereafter suffered, they being arrested by reason of the withdrawal of the bail bond. The testimony of these persons is that which Estrada and his mother seek to overthrow; but the court finds no reason whatever to believe the mother of the accused rather than Julian and his wife. To do so would be equivalent to putting Estrada's case in the hands of his own mother for decision, which would naturally result in the acquittal of her son."

The facts and circumstances presented in these quotations are founded, generally speaking, on clear evidence of the prosecution and furnish sufficient corroboration of the direct testimony of the witnesses for the prosecution to destroy the contention of the defense based upon the unreasonableness of the claim that a man of Estrada's intelligence would commit a crime under the circumstances charged in the information.

The fourth error assigned (the third being discussed in connection with the fifth and sixth) is to the effect that "the court erred in finding that the mother of the accused was not a competent witness simply on account of the fact that she was the mother of the accused."

In reference to this error it should be noted that the mother was permitted to testify and her evidence appears in the record in this case. All that the trial court did was to refuse to give it weight in connection with the defense. While this may possibly be regarded as error it is not a prejudicial error unless the evidence of the mother was of such a nature that, taken in connection with the other testimony of the defense, it would have a very important, if not decisive, bearing. In other words, such error cannot be ground for reversal unless it really prejudiced the substantial rights of the accused. The testimony given by the mother while material and competent was rather cumulative than otherwise and would not have seriously influenced the general result if the court had considered it in the same way in which he considered the other testimony for the defense. The legal situation, then, is not the same as if the court had refused to permit the mother to testify. That would have been clear error and might have been reversible, depending upon all the facts and circumstances presented by the record. The fact, however, that she did testify and that her testimony was considered by the court to the extent of his refusing to believe it as true presents the case in a light which shows that the action of the court does not merit the criticism made by the defense.

The third, fifth and sixth errors, considered together by the appellant, are respectively that "the court erred in giving preponderance to the evidence of the prosecution over that of the defense;" that "the court erred in finding the accused guilty of the crime of frustrated rape;" and that "the court erred in not acquitting the accused."

Under this group of alleged errors counsel for the appellant very thoroughly discusses the whole evidence in the case, pointing out what he claims to be serious contradictions on the part of the principal witness of the prosecution, and calling attention to the inconsistencies and weaknesses in general of the evidence of the prosecution. He dwells at length upon the lack of evidence corroborating the testimony of Teodorica, citing the doctrine that an accused may not be convicted of rape upon the uncorroborated testimony of the female alleged to have been violated. In connection with the various points raised and arguments made by counsel under this group of alleged errors the trial court said:

"The testimony of Teodorica Jarantilla is corroborated in every part by the testimony of the other witnesses of the prosecution. Eulogia Jarantilla says that at midday of the day in question, after having lunched with her Sister, the latter left the house to return to the cockpit; that a few moments later Eulogia was called by her neighbors, an old lady called Marcela and her son, who asked her where Teodorica was, and hardly had she answered this question when she heard the cries of her sister, whereupon she went to Juana's house, opened the door and entered; that she found Miguel Estrada embracing Teodorica; that when Estrada noticed her presence he loosed Teodorica and left the house, passing out by way of the bataan. Eulogia also says that on seeing what had happened to her sister she complained to the owners of the house asking them, among other things, why they had permitted this to be done to her sister. Eulogia recognized Exhibit A as the same camisa which her sister wore at the time and which had been torn in the struggle, and finally stated that they returned to their house for the purpose of permitting Teodorica to arrange her hair and to get a pañolon with which to cover up her torn camisa. Marcela Espinosa, another witness for the prosecution, testified that while in her house she heard sounds in the interior of the house of her neighbor, Juana Geirosa, similar to those which would be made by persons fighting; that a few moments afterward Juana came and told Marcela what had happened, saying to her, 'What am I going to do, because the justice of the peace, Miguel Estrada, is in my house violating Teodorica;' that then the witness went to Juana's house and opening the dindin a little ways saw that Miguel had hold of Teodorica and that she had seized hold of one of the posts of the wall. Pedro Dilla, another witness for the prosecution, also a neighbor living very near the house where the crime was committed, says that while he was lying down in his tienda to rest he heard sounds which were caused by a quarrel or a fight which was taking place in Juana's house; that because of this noise he saw Marcela and her son, Demetrio, call to a woman who afterwards turned out to be Eulogia Jarantilla, whom after she had entered Juana's house he heard complaining or finding fault, and finally, the noise having ceased, he saw Miguel Estrada come from the house by the rear.

"Such is the direct evidence of the prosecution. Besides this there exists in the record other evidence which demonstrates indirectly the commission of the crime and the guilt of the accused. Said indirect proofs are: First, the accused, Miguel Estrada, about the month of January or February, 1911, that is to say, while this cause was pending in the Court of First Instance, induced Nicasio Villegas, a resident of the municipality of Los Baños, to make use of his friendship with Sr. Cruz Herrera, then attorney for the complaining witness in this case, and write him a letter asking him to interest himself in Estrada's favor, and that he should say that he was an uncle of Estrada, although in reality he was not, and that he should induce the said lawyer to approach Teodorica's father for the purpose of securing a settlement of the case. Estrada later, in company with Villegas, went to the office of lawyer Herrera in Manila and there the accused personally asked if the case could not be settled. In the second place, the accused, Estrada, about the month of January or February, 1911, repeatedly sought to induce his neighbor and then friend, Francisco L. Cruz, president of Bay, as said president, to influence the mind of Florentino Jarantilla, a member of the municipal council, to the end that a settlement of the rape case be obtained; and Estrada not being able to obtain the assistance asked for threatened Francisco L. Cruz, saying, 'If you do not settle this case I will do everything in my power to get you in jail,' he referring by

these words to the complaints which later were the cause of an administrative investigation against said president of the village and four councilmen, one of whom was Florentino Jarantilla; and, third, the said Estrada, making use of his lawyer, Soriano, and of other persons who aided him, took advantage of the ignorance of Florentino Jarantilla, inducing him to sign a motion which they represented to him to be a petition for the adjournment of a criminal case in which he was defendant, when in reality and in truth said motion was one for the dismissal of the case against Estrada upon the ground that the affiant had no proofs to sustain his accusation, but later this stratagem of the accused will be again referred to. For the present it is sufficient to say that the prosecution has justified by abundant proof, direct as well as indirect, the commission of the crime and the guilt of the accused."

In another place in the opinion the trial court says, referring to the testimony of the accused in which he gives his version of the alleged occurrence:

"Estrada's foregoing explanation is false in every particular. Julian and Juana say that they did not invite Estrada to eat in their house on that day; that Estrada came to the house alone and was not accompanied by Lucio Lanet; and finally that Eulogia Jarantilla, although enraged at all of them for what had happened to her sister, did not strike her with her slippers or address to her the words which Estrada attributes to her. The words referred to could not have been used by Eulogia, they referring to the alleged love relations between Estrada and Teodorica, for the reason that, according to Estrada himself, such relations were not known to Eulogia nor to her parents at that time, and especially as he did not, according to his own contention, speak of his relations with Teodorica in the presence of the members of her family. * * * Relative to his relations with Teodorica, Estrada not only asserts that his love for her was returned by Teodorica, but that he had declared such love and had been accepted, and he makes reference to certain facts which indicate that Teodorica was his concubine. The scene in the river Sabang where, according to Estrada's story, he washed her hair and she washed his in the presence of Eulogia Jarantilla and of an old woman is imaginary and false. The card which Estrada says he received from Teodorica through a confidant of his is in reality a card manufactured by Estrada with Teodorica's name printed upon it and is not her card; she herself says that it was not and that she had never had a card and had never written the words that appear on said card. The measure which Estrada says was the size of one of Teodorica's feet, taken by her herself and delivered to him in order that he might buy her some shoes in Manila, of itself proves the falsity of Estrada's excuses. He himself presented such measure as evidence, but when it was placed upon Teodorica's foot it was found to be several inches, too large. Estrada speaks of a suit of woman's clothes (camisa, pañuelo, and skirt) which he said he had ordered made as a present for Teodorica for her to wear on his birthday, and presented in evidence as an exhibit a camisa which he said was furnished by Teodorica herself to serve as a pattern or model for the making of the wearing apparel referred to; but it was found on trying on the camisa that it was very much too small for Teodorica and therefore could not have served as a pattern. This camisa, then, proves once more the artifices to which Estrada resorted in order to defend himself at all hazards. Relative to the two love letters which he says he received from Teodorica and which he kept in his possession, it may be said that such letters never existed and were never written by Teodorica to Estrada. It is strange that Estrada's wife, having discovered and torn up said letters, did not also discover the card above referred to and tear it up as well as the letters, or that she did not discover Teodorica's camisa, which at the same time defendant claims was in his possession. It is impossible to believe the story relative to the amorous relations to which Estrada alludes. He is a widower and married a second time, with five children, with whom Teodorica has been acquainted since she was very young. She herself was at the time engaged to Tranquilino Arieta, a young student about to conclude his course in pharmacy, to whom she had been promised in marriage by her parents. She was on the eve of being married to him and the marriage waited only upon the termination of his course in college. In spite of all this Estrada tries to make us believe that Teodorica Jarantilla is his querida. In the opinion of the court Estrada in arriving at this point in his allegations no longer seeks to defend himself, but feeling himself overwhelmed by the wave of evidence of the prosecution appears to say to himself: 'Inasmuch as I am to fall anyway I am going to call her my querida in order that the reputation of this woman shall fall forever with me to the ground.'"

Referring to the contradictions which the appellant attempts to point out in the testimony given by Teodorica in the preliminary investigation before the justice of the peace and that given on the trial in the Court of First Instance, the trial court says:

"The testimony of Ijares, in which he asserts that in the preliminary investigation Teodorica Jarantilla testified that she had been scolded and beaten by her sister Eulogia, is denied by Teodorica upon the one hand and upon the other we already know what kind of a witness Ijares is, but we will add the following: Ijares, according to Pantua, did not take notes of the testimony in the preliminary investigation. Ijares did not know how to write out correctly in Spanish the declarations of the witnesses and much less to make extracts from them. In this case the said Ijares upon the plea that he preferred his own dialect refused to testify in Spanish, and for that reason the fiscal required him to write in the exhibit the declaration he had made. From the time the fiscal began his cross-examination Ijares began to have a severe attack of coughing so persistent that he could hardly be understood even in his own language. This very exhibit demonstrates that Ijares could not have been the author of a report or extract of the declarations taken in the preliminary investigation, which are now sought to be used as evidence to convict Teodorica of having previously made contradictory statements."

We are satisfied from a careful examination of the evidence and of the record that the facts stated by the trial court in the quotations just made are in the main supported by the evidence of the prosecution and the conclusions which he draws from such facts are in general justified. Much can be said on behalf of the defense, as the case was fiercely fought and the defense prepared with care and patience.

On this appeal the defense has been again prepared with skill and argued with ability. Nevertheless, upon the whole case we are constrained to the conclusion that the defendant has been proved guilty of the crime of attempted rape beyond reasonable doubt and that the judgment and sentence against him should be affirmed.

The judgment is affirmed, with costs. So ordered.

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

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