

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE TANDIANA, DEFENDANT AND APPELLANT.

G.R. No. 8174. August 12, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of rapto. The complaint alleged:

"That on or about May 16, 1912, in the city of Manila, Philippine Islands, the said Jose Tandiana did willfully, unlawfully, and criminally, and with uncheste designs, abduct with her own consent one Antonia Silvestre, a girl over 12 and under 23 years of age; in violation of law."

After hearing the evidence, the Honorable A. S. Crossfield, judge, found the defendant guilty of the crime charged in the complaint and on account of the fact that he was but 16 years of age, ordered that he should be confined on the Lolomboy estate for one year eight months and twenty-one days, or until a new order of the court should be made. From that sentence the defendant appealed to this court.

A question of fact only is presented by the appellant. The appellant alleges that the proof adduced during the trial of the cause in the lower court was not sufficient to show that he was guilty of the crime charged, beyond a reasonable doubt.

The proof shows that the defendant was less than 16 years of age; that the offended party, Antonia Silvestre, was less than 17 years of age; that at the solicitation of the defendant Antonia Silvestre, at or about 7 o'clock on the evening of the 16th of May, 1912, left her mother's house without the knowledge of her mother; that she went to a side street near the place where they lived where the defendant was waiting in a carromata; that the defendant took the said Antonia Silvestre in a carromata which he had rented, to a place which he stated was the house of a minister, and then said to Antonia that they could not be married because they were too young; that the defendant immediately thereafter took the said Antonia Silvestre to the house of one Justa Arran, in the District of Tayuman, and kept her there for several days, during which time he had illicit relations with her, under a promise that he would later marry her.

It seems clear from the record that Antonia Silvestre left her home without the knowledge of her parents and consented to the said illicit relations by virtue of the promise of marriage made to her by the defendant. The defendant attempted to prove that he had been abducted by the said Antonia Silvestre; that he went with her, after she had escaped from her home, without the knowledge of her parents, to the house of Justa Arran, and there had illicit relations with her at her request. The lower court did not believe the contention of the defendant, and there is nothing in the record to justify this court in changing the findings of fact of the lower court.

The proof shows that the said Antonia Silvestre was abducted with her consent. The defendant should, therefore, be punished in accordance with article 446 of the Penal Code. In view, however, of the fact that he was over 15 years of age and less than 18 years of age, the penalty to be imposed under said article, in relation with paragraph 2 of article 85, must be *arresto mayor*.

It will be remembered that the lower court sentenced the defendant to be confined at Lolomboy farm, for a period of one year eight months and twenty-one days, or until a further order of the court. Said imprisonment was imposed by the lower court in accordance with the provisions of Act No. 1438. Section 1 of said Act provides that:

"Whenever any male minor between the ages of eight and sixteen or any female between the ages of eight and eighteen shall be found guilty by any court of competent jurisdiction of an offense not punishable by life imprisonment or death, the court, instead of directing the confinement of such minor in any public prison or jail, may, in its discretion, suspend judgment and commit such minor to the custody of any orphan asylum, reform school, charitable society, or society for the prevention of cruelty to children, or to any other charitable or educational institution having for its purpose the care, betterment, reform, or education of minors until such minor shall have reached his, majority, or for such less period as to the court may seem proper, * * *."

It will be noted that the period of confinement in such institution is within the discretion of the court, limited only by the period of time between the age of the defendant and his year of majority. The penalty imposed by the lower court is entirely within the provisions of the law and we find no reason for changing the same. Therefore the sentence of the lower court is hereby affirmed with costs.

Arellano, C. J., Torres, Carson, Moreland, and Trent, JJ., concur.

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