

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS TRIA, DEFENDANT AND APPELLANT.

G.R. No. 8285. August 15, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of estupro. After the presentation of the complaint, he was arrested, duly arraigned, found guilty, and sentenced by the Honorable Percy M. Moir, judge, to be imprisoned for a period of one year eight months and twenty-one days of prision correccional, to indemnify the offended party, Fermina Ani, in the sum of P500, with subsidiary imprisonment in case of insolvency, to recognize the offspring as the result of the illicit relations, and to support the same and to pay a pension of P10 per month to the offended party, Fermina Ani, until said offspring shall reach its majority, and to pay the costs.

From that sentence the defendant appealed and in this court made the following assignments of error:

- "I. In holding that the accused had carnal knowledge of Fermina Ani.
- "II. In classifying as domestic the seduction prosecuted in this case.
- "III. In holding that deceit was used in the alleged commission of the act under prosecution,
- "IV. In rendering a judgment of conviction in the present case.
- "V. In fixing the indemnity at P500 for the party said to be offended.
- "VI. In applying paragraph 1 of article 443 of the Penal Code to the facts in this case."

We believe that the first, third, and fourth assignments of error may be discussed together. These assignments of error all relate to the sufficiency of the evidence adduced during the trial of the case to show that the defendant was guilty of the crime charged. An examination of the proof shows beyond a reasonable doubt that the defendant in the month of July, 1911, in the municipality of Nueva Caceres, Province of Ambos Camarines, by means of deceit and promises of marriage, did have illicit relations with the said Fermina Ani, a virgin of 17 years of age; that from the result of said illicit relations a child was born to the said Fermina Ani on the 21st of May, 1912. We deem it unnecessary to quote in detail the testimony supporting said fact.

Under the fifth assignment of error, the appellant contends that the court erred in allowing the sum of P500 as indemnity to Fermina Ani, the offended party. The lower court evidently took into consideration the social station of the offended party in the community in fixing the said amount of indemnity. An examination of the record by us fails to show any reason whatever for reducing the said indemnity allowed by the lower court.

The second and sixth assignments of error, we think, may also be considered together. They each relate to the qualification of the crime. The first paragraph of article 443 of the Penal Code provides that:

"The seduction of a virgin over twelve and under twenty-three years of age, committed by any person in public

authority, priest, servant, domestic, guardian, teacher, or any person who in any capacity shall have charge of the education of the woman seduced, or shall have her under his care, shall be punished by prision correccional in its minimum and medium degrees."

It will be noted that this paragraph fixes the penalty imposed upon certain individuals or class of individuals mentioned therein, while the third paragraph of said article (443) provides that:

"Any other person who by means of deceit shall accomplish the seduction of a woman over twelve and under twenty-three years of age shall suffer the penalty of *arresto mayor*."

The appellant makes the contention that unless the complaint charges that the crime has been committed by the person or class of persons mentioned in said paragraph 1, that the penalty provided for by said section (*prision correccional*) cannot be imposed; that is to say, if the complaint does not specifically charge, for example, that the defendant was a domestic, guardian, teacher, etc., that the penalty must be imposed which is provided for "any other person," as found in paragraph 3 of article 443. We believe that the contention of the appellant is tenable. The punishment provided for in paragraph 1 applies only to particular persons or class of persons, and in order to apply said penalty the complaint should be so drawn as to show that the crime was committed by said person or class of persons mentioned therein. While the crime mentioned in paragraphs 1 and 3 is the same, the punishment is different, depending upon the status which the defendant has. In order, therefore, that the defendant in a criminal case for seduction may be punished under paragraph 1 of article 443, the complaint must show that he belongs to the class of persons mentioned therein. The fact that the person charged belongs to the class of persons mentioned in the first paragraph of article 443 is a necessary element in the description of the crime punished under said paragraph. The complaint in the present case made no reference to the fact that the defendant was a domestic, etc., The proof does show that the defendant lived in the house of the family of the offended party at the time of the commission of the crime. The lower court found that he was a domestic and quoted decisions of the supreme court of Spain in support of his conclusions. Courts cannot, however, increase the grade of a crime in the absence of declarations in the complaint simply because the proofs show that a higher crime has been committed. For example, while homicide and assassination belong to the same class of crimes, nevertheless, if the complaint charges homicide only, the courts cannot convict the defendant of the crime of assassination simply because the proof adduced during the trial of the cause shows facts which would justify the qualification of the crime as that of assassination—the higher offense.

For all of the foregoing reasons, we find that the crime committed by the defendant, considering the allegations of the complaint, was the crime described in paragraph 3 of article 443, and not the crime described in paragraph 1 of said article. Therefore the sentence of imprisonment imposed by the lower court must be modified. There were neither aggravating nor extenuating circumstances connected with the commission of the crime. The imprisonment must therefore be in the medium degree of *arresto mayor*. It is therefore ordered that the defendant and appellant be sentenced to be imprisoned for a period of four months, to indemnify the offended party, Fermina Ani, in the sum of P500, with subsidiary imprisonment in case of insolvency, to recognize the offspring resulting from said illicit relations, to support the same, to pay a pension of P10 per month to the said offended party until said offspring shall reach the age of majority, and to pay the costs.

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

CONCURRING**MORELAND, J.,**

I am in complete accord with the decision and opinion in this case. I have to say only that the principles laid down therein are in no sense in conflict with the prior decisions of this court holding that the designation or characterization of the crime by the prosecuting officer in the denunciatory part of the information does not necessarily govern as to the crime with which the accused is charged. The crime charged is that described by the fact set forth in the body of the information. (U. S. vs. Lim San, 17 Phil. Rep., 273; U. S. vs. Ibañez, 19 Phil. Rep., 463; U. S. vs. Jeffrey, 15 Phil. Rep., 391.) If the crime charged by the facts is not the same as that characterized by the prosecuting officer in the denunciatory part of the information, the facts stated in the body of the information will govern; and if the facts there stated are sustained by the evidence in the case, the accused may be convicted of the crime described by those facts although it may be of a higher grade than the crime named by the prosecuting officer in the denunciatory part of the information. (Id.)

Under this rule it is especially necessary that the information contain every fact necessary to qualify the particular crime sought to be charged.

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