

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CORNELIO FLORES, DEFENDANT AND APPELLANT.

G.R. No. 9014. December 11, 1913

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was found guilty in the court below of the crime of rape (violacion) as defined and penalized in article 438 of the Penal Code, and was sentenced to twelve years and one day of reclusion temporal together with the accessory penalties prescribed by law. The complaining witness, Teresa Albarda, a young married woman 18 years of age, charged that the accused came to her house about noon on February 6, 1913, during the absence of her husband, and then and there violated her by means of force and threats.

The accused admitted that he visited the complaining witness on that occasion, but denied that he had raped her or made use of force, or violence, or threats of any kind against her. Upon a review of all the evidence we are well satisfied that if the accused did in fact have carnal communication with the woman on that occasion, which is not improbable, it was with her consent; and we are convinced that the evidence of record fails utterly to establish the charge that he committed the abominable crime with which he was charged and of which he was convicted.

The material part of the woman's testimony was as follows:

"Q. What happened?—A. On that day the accused came up into my house and caught me by the hand and the neck and threw himself upon me in such a way that I couldn't move and committed a brutal act upon me.

"Q. What brutal act was that? Be a little more explicit.—A. He had carnal communication with me.

"Q. Did any one come in there during or after that act?—A. Yes, sir.

"Q. What is his name?—A. Catalino, whose surname I don't know."

The story told by the woman on the witness stand sets out only the barest outlines of the alleged assault, and falls far short of furnishing the detailed account of the commission of the crime charged by her which might reasonably be expected from a woman testifying as to an incident every detail of which must have been indelibly impressed upon her mind. Under cross-examination she admitted that she made no outcry of any kind, but explained that this was due to the fact that the assailant caught her by the throat with his hands in such a way that it was impossible for her to cry aloud; and upon being further pressed for an explanation of her failure to call for assistance, she said, apparently as an afterthought, that she was afraid to do so because he carried a bolo, and with it threatened her life.

It appears that in the preliminary examination held before the justice of the peace she stated that the accused entered the house through a window while she was asleep, and that she awakened to find the accused in the act of violating her. She said nothing whatever of all this at the trial in the Court of First Instance, although it would naturally be expected that if the accused had in fact entered the house while she was asleep and if the first warning

she had of his intent was to find him in the act of violating her, she could hardly fail to have recalled those facts when testifying at the trial in the court below. She admitted under cross-examination that she had known the accused since childhood, and that he frequently visited at her house, stopping there on his way to and from his work; and in view of these admissions as to her acquaintance with the accused and his frequent visits at her house, we find it difficult to understand why the accused found it necessary to enter her house by the window instead of by the door, for it appears that his visit was made at or about midday; and if in fact he did enter by the window, we find it still more difficult to understand why the witness omitted all reference to that fact and to the fact that she was asleep when he began his assault upon her, when she testified in the Court of First Instance.

The only other material witness called by the prosecution was the man Catalino Agtienza, who found the accused together with the complaining witness at or about the time when the crime was alleged to have been committed. This man testified that he is the nearest neighbor to the complaining witness and that about noon on the day in question he went to her house and found her seated in the sala in front of the accused, who was holding her hands; that she was crying, and that the accused appeared to be upset and vexed about something. The material part of his testimony was as follows:

"I found Teresa seated in the sala and Cornelio, the accused, holding her by the hands, and she was weeping. I asked Cornelio, 'Why have you done this? Don't you know that we are neighbors here and ought to treat one another as brothers?' Then Cornelio said to me, 'Go away from here, we'll have a talk later..' He said this to me in a bullying tone, so I went away."

The witness upon being asked why he had gone to the house of the complaining witness, replied: "Because her husband had charged me to go and see her now and then, as we are neighbors."

Further on in his testimony we find the following:

"Q. Did you see the accused again that day?—A. No, sir.

"Q. Wasn't the accused in your house after the thing happened?—A. We saw each other at other times, but it was in my house. He came to my house and asked me to do him the favor of not divulging or saying anything about what I had seen in that house.

"Q. How long a time elapsed after you saw Cornelio until he came to your house?—A. A little over an hour."

Under cross-examination this witness admitted that when he saw the couple the accused was properly clothed, and it is very evident from his testimony that he saw no indication whatever of a struggle or of anything which would justify the belief that the accused by force or threats of violence had just raped the woman. When asked if the accused was armed with a bolo he said that he did not see one, and certain it is that if the accused carried a bolo on that occasion the attention of this witness was not directed to it. Both this witness and the woman herself admitted that although he was her nearest neighbor and although under the theory of the prosecution the accused had just raped the woman before he came up to the house, she made no complaint to him as to the conduct of the accused and so far as the evidence shows did not even speak to him. This witness further admitted under cross-examination that he made no attempt to interfere with the couple or to call the neighbors to assist him in doing so, and it would appear that all he did was to report the circumstances under which he found the couple together to the husband upon his return from his work.

Manifestly the statements of this witness in no wise tend to corroborate the testimony of the complaining witness, except in so far as she states that the accused was in the house together with her at the time when the witness came there, and this the accused does not deny. On the contrary, his testimony strongly tends to put in doubt the charge of the woman that the accused had committed rape upon her, for in the absence of some satisfactory

explanation of their conduct, it is impossible to believe that under all the circumstances the woman would have made no complaint or outcry when her nearest neighbor appeared upon the scene just after the commission of the alleged rape, or that he would have made no attempt to interfere or to call for help had there been anything in the appearance of the couple to cause him to suspect that a crime of violence had just been committed upon the woman.

We think that the explanation given by the witness for his visit to the house on that occasion offers the key to the whole situation. He said that he went there because the woman's husband had asked him to keep an eye upon her and to go over to the house every now and then to see her during his absence. These instructions, taken together with the woman's admissions as to the frequent visits to her house by the accused suggest the possibility that the husband was jealous of her and of, her relations with the accused; that the woman having been caught by her neighbor in a compromising position with the accused, sought to escape all blame by denying that the accused was there with her consent; and that in order to give verisimilitude to her claims of innocence she charged him with the crime set out in the information.

An attempt was made in the court below to corroborate the testimony of the complaining witness by the testimony of the clerk of the Court of First Instance as to an alleged confession made by the accused. The clerk was called to the witness stand and stated that while the accused was confined in the provincial jail he visited him for the purpose of securing the names of the witnesses he wished to have called for the defense, and that the accused then told him that he had no witnesses and that he was going to plead guilty. The details of the alleged confession are very meager, and it is manifest that except by way of categorical answers to the questions of the clerk the accused had very little to say. According to the clerk he was rather indifferent, and substantially admitted that the charge against him was true. The substance of the testimony of the clerk is to be found in the following questions and answers contained in his evidence:

"Q. So the accused admitted to you that he had lain with that woman?—A. Yes, sir.

"Q. But did he also tell you that he had employed force?—A. No, sir."

From this excerpt from the testimony it will be seen that the accused by no means admitted to the clerk that he had raped the woman, but only that he had lain with her. The meager statements attributed to the accused by the clerk cannot be accepted as a confession on his part that he was guilty of the crime set out in the information, that is to say, of having violated her with force and threats. As we said at the outset, while it is possible and not improbable that the accused cohabited with the woman unlawfully at the time and place set out in the information, we think that the weight of the evidence shows that if he did so it was with her consent, and an admission by him that he was guilty of having improper relations with her cannot be treated as an admission of his guilt of the crime of rape.

The evidence as to the guilt of the accused of the crime with which he was charged consists wholly and exclusively of the testimony of the complaining witness, and while we have frequently held that the uncorroborated testimony of the offended party in cases of this kind may be sufficient under certain circumstances to warrant a conviction, yet from the very nature of the charge and the ease with which it may be made and the difficulty which surrounds the accused in disproving it where the point at issue is as to whether the cohabitation was had with or without the use of force or threats, it is imperative that such testimony should be scrutinized with the greatest caution. In all such cases the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge. Indeed it may well be doubted whether a conviction of the offense of rape should ever be sustained upon the uncorroborated testimony of the woman unless the court is satisfied beyond a reasonable doubt that her conduct at the time when the alleged rape

was committed and immediately thereafter was such as might be reasonably expected from her under all the circumstances of the case. Blackstone (2 Chitty's Blackstone, p. 165) quotes with approval a learned English judge (1 Hoi. P. C, 635) as follows:

"It is true that rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent."

Then after relating two very extraordinary cases of malicious prosecution for this crime that had happened within his own observation, the quotation concludes thus:

"I mention these instances, that we may be the more cautious upon trials of offenses of this nature, wherein the court and jury may with so much ease be imposed upon, without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are overhastily carried on to the conviction of the person accused thereof, by the confident testimony of sometimes false and malicious witnesses."

In the case of United States vs. De Dios (8 Phil. Rep., 279), we quoted with approval from two learned commentators on the Penal Code as follows:

"The crime of rape is not to be presumed; consent and not physical force is the common origin of acts between man and woman. Strong evidence and indications of great weight will alone support such a presumption." (Pacheco, vol. 3, p. 126, par. 4.)

"Should the records disclose that some hesitation was shown by the woman or that she contributed in some way to the realization of the act, this will perhaps constitute an offense very different from that of rape." (Viada, vol. 3, p. 119.)

The trial judge in this case, who saw and heard the witnesses testify, believed the testimony of the complaining witness, and we might, perhaps, hesitate to disturb his findings but for the fact that his opinion clearly shows that he was not impressed with inherent inconsistency between the conduct of the complaining witness as testified to by herself and by her neighbor, and that of a woman who had just suffered the indignity of being violated with force and threats by a man whom she had known all her life; and for the further reason that the trial judge does not appear to have noted the fact that the alleged confession to the clerk of the court appears to have been a confession merely that the accused had lain with the complaining witness and was by no means a confession that he had done so with force and violence, which is the very gravamen and essence of the charge against him.

For the reasons herein set forth the judgment of the court below convicting and sentencing the defendant should be and is hereby reversed, with the costs of this instance de oficio, and the accused should be and is hereby acquitted of the crime with which he is charged and will be set at liberty forthwith.

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

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