

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELINO SANTIAGO, DEFENDANT AND APPELLANT.

G.R. No. 9118. November 26, 1913

Ponente: TRENT, J.

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TRENT, J.:

An appeal from a judgment of the Court of First Instance of the city of Manila condemning the appellant Felino Santiago to one year eight months and twenty-one days of prision correccional, to the accessory penalties provided by law, to indemnify the offended party in the sum of P500, to the corresponding subsidiary imprisonment in case of insolvency, to recognize and maintain the offspring if there be any, and to the payment of the costs of the cause for the crime of seduction.

The facts in this case are these: The offended party Benita Mateo, a virgin about fourteen years of age, came to Manila in the month of October, 1912, to live with her sister Teodora Mateo, the wife of Manuel Ilonso, on account of her mother being dead and for the purpose of continuing her studies. About the 12th of January, 1913, the appellant secured board and lodging at a stipulated price per month, he being a distant relation of the family. Teodora, her husband, the offended party, and the appellant, continued to live in the same house where they ate, the two latter sleeping in the upper part of the house and Teodora and her husband sleeping in the lower part. They all continued to live in this manner as one family, the appellant enjoying the absolute confidence of all, until he was expelled from the house on or about the 2d of April of this year. About a month prior to the time that the appellant was compelled to leave the house he began having illicit relations with the offended party without the knowledge or consent of either Teodora or her husband. These illicit relations continued until the day of his expulsion when he was caught in & compromising position with the offended party by the father of the latter. In order to have and carry on these illicit relations the appellant solemnly promised the offended party to marry her and it was on account of these promises that she consented to the illicit relations. It is clear that the appellant deceived the young girl as he never intended to marry her and he only made these promises for the sole purpose of having carnal relations with her. The girl had implicit confidence in the statements of the appellant, and she and all of the family treated him like a brother and son, but in place of treating this family in the same manner the appellant took advantage of the confidence imposed in him and seduced the young girl.

Article 443 of the Penal Code reads :

"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.

"The same penalty shall be imposed upon any person who shall have carnal knowledge of his sister or descendant, even though she be over twenty-three years of age.

"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 same penalty shall be imposed for any other act of lewdness committed by the same persons and under the same circumstances."

It is insisted that the appellant should be punished by *arresto mayor* as provided in the third paragraph of the above quoted article, while, on the other hand, the Attorney-General is of the opinion that the penalty imposed by the trial court is in accordance with the law and is that which is provided for in the first paragraph. If the appellant was a domestic within the meaning of the first paragraph, the penalty imposed is correct, as the complaint specifically and directly charges that the appellant was a domestic in the house of the offended party.

This court has already held, in *United States vs. Arlante* (9 Phil. Rep., 595), where the head of a family seduced an orphan girl, a relative of his wife living in his house, that the word domestic as used in this article is not restricted to servants. In that case the court said:

"And even though the accused were not, as a matter of fact, in charge of the keeping of the offended girl, it is beyond doubt that, as she was a domestic, the crime is included within paragraph 1 of said article (art. 443). 'Upon the word domestic being employed in said legal provision segregating it from that of servant, the term is applied to persons usually living under the same roof, pertaining to the same house, and constituting, in this sense, a part thereof, distinguishing it from the term servant whereby a person serving another on a salary is designated; in this manner, it has been properly used.' (Decision in cassation dated November 11, 1881.)"

That this interpretation of the term domestic is a wholesome one, founded upon the soundest principles of law and morality, requires no argument. By reason of the intimacy and confidence existing between the various members of a household, opportunities for the commission of this crime are more frequent, and this makes the crime of seduction by one in such a position as reprehensible as, and is on a par with, the betrayal of the trust reposed in any other of those persons enumerated in the first paragraph of the above quoted articles.

The term domestic not being restricted to servants, it remains to be seen whether it is sufficiently broad to include the appellant in the case at bar. The case decided by the supreme court of Spain on January 30, 1891, is chiefly relied upon by the defendant. That case, however, is easily distinguishable from the case at bar. The defendant in that case was merely stopping at a public inn or tavern when he seduced the landlord's daughter, the court holding that the defendant was not a domestic. Following this case, the argument for the defendant seems to be based chiefly upon the fact that the defendant's residence in the home of the injured girl was not permanent but temporary, and that he was paying for his accommodations. These considerations can have little, if any, bearing upon the qualification of the crime. The important question is, Were the parties members of the same household at the time the defendant seduced the girl? A review of the cases decided by the supreme court of Spain shows conclusively that this is the important question.

In the case dated November 11, 1881 (cited in the quotation from *U. S. vs. Arlante*, supra), it appears that the defendant was living in the home of the complainant and paying for his accommodations, when he seduced the daughter of the family. It will be noted, however, from the above excerpt from the decision of the court, that he was regarded as one of the family circle. These facts are substantially parallel with those of the case at bar.

In the case elated April 21, 1897, the seduced girl had been sent to the home of the defendant (an intimate friend of her family) to convalesce from a severe illness. While thus temporarily residing there, she was seduced by the defendant, who was the head of the family. The court held that the term domestic covered the case, although the defendant might also be considered as having had the seduced girl under his care at the time.

In the decision of February 13, 1900, the court had under consideration a case where the defendant seduced a servant girl working in his brother's home, the defendant residing with his brother at the time. The court held that

the case should be considered as coming within the term domestic as used in article 443.

In the case decided September 29, 1909, a college student was spending his Christmas vacation at his mother's home when he seduced a servant girl. His conviction under article 443 as a domestic of the household was affirmed.

In all these cases the residence of at least one of the parties was of a temporary character, and the consideration involved in a contract with household servants is, to say the least, as mercenary as that which induced the family in the present case to receive the defendant into the sanctity of the home.

In the present case both parties were relatives of the family with which they resided. While it is true that the defendant was not permanently residing with this family and that he was paying for his food and lodging it is unquestionable that he was treated as one of the family circle. It was rather from the fact that he was a kinsman than from any idea of profit on the small pittance the defendant paid for his board and lodging that he was received into the privacy of the home. His standing in that home was vastly different from that of a stranger paying for his food and lodging at an inn or hotel, who is not tendered nor expects to receive those sentimental and confidential manifestations of intimacy exchanged between members of the same household.

We are therefore of the opinion that the lower court correctly held that the defendant was a domestic within the meaning of that term as used in article 443. The judgment appealed from being strictly in accordance with the law and the merits of the case, the same is hereby affirmed, with costs of this instance against the defendant.

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

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