

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PABLO SUAN, DEFENDANT AND APPELLANT.

G.R. No. 9201. March 03, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal by the defendant, Pablo Suan, from a judgment of the Court of First Instance of Palawan convicting him of the crime of seduction.

Aniceta Saldivia, the offended party, testified that she was 14 years old; that in 1911 she was a pupil in school at Coron, Palawan; that Pablo Suan was one of her teachers; that in the month of September, 1911, he began making love to her and promised to marry her; that after the engagement in the following month he began having sexual inter-course with her; that Exhibits C to M are letters written to her by the defendant and delivered to her by her cousin Alejandra Obispado, a school girl who lived at their house and who knew of her illicit relations with the defendant; that she had sexual intercourse with the defendant many times during the period of seven months; that after she became pregnant the defendant stopped coming to her house; and that in June, 1912, she gave birth to a child. This testimony of the girl is true.

The defendant showed conclusively that the offended girl had illicit relations with various young men at various times before he had carnal relations with her. Upon this point the trial court said: "The court cannot shut its eyes to the fact that as no attempt was made on the part of the Government to deny the allegations that Aniceta Saldivia had indulged in sexual intercourse with a number of persons apparently in a promiscuous manner, the said Aniceta might well be regarded by the accused as more or less a public woman. The fact remains that by his own confession he did not know this until after she and he had entered upon their unlawful carnal relations. Nevertheless, the court is willing to regard this circumstance as an extenuating circumstance in favor of the accused,"

The defendant, by means of a promise of marriage, had sexual intercourse with the offended girl. At the time these illicit relations began the defendant did not know that Aniceta had been having illicit relations with a number of young men prior thereto. Do these facts constitute the crime of seduction?

Paragraph 1 of article 443 of the Penal Code, under which the defendant was convicted and sentenced, reads as follows:

"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 prison correccional in its minimum and medium degrees."

Viada (vol. 3, p. 132), speaking of "seduction," says:

"Should we have to define seduction we would say that it should be understood in general to be unlawful

carnal intercourse with an unmarried woman or widow of good reputation more than 12 years of age and less than 23. We say with an unmarried woman or a widow, as should it be with a married woman, it would not be seduction, but adultery; we say that the unmarried woman must be more than 12 years of age, as should she be younger, the act would not constitute the crime of seduction, but that of rape; and finally, we say of good reputation, because should the carnal intercourse be with a public woman or with one of corrupt practices the act would constitute simply fornication Subject only to moral and religious penance, but by no means to a legal penalty."

In Webster's International Dictionary "virgin" is defined as "a woman who has had no carnal knowledge of man: a maid."

The meaning of the expression "a virtuous * * * female," as used in reference to the crime of seduction, was explained by the supreme court of Georgia in *Washington vs. State* (124 Ga., 423; 52 S. E., 910) as follows: "The court instructed the jury that it was a question for them to determine, from the evidence submitted, whether the woman alleged to have been seduced was virtuous at the time of the alleged seduction—that is, had she at that time had sexual intercourse with another man? If she had, she was not a virtuous woman; if she had not, she was a virtuous woman/ This charge was excepted to on the ground that it confined the jury to a consideration of her physical chastity, and eliminated all consideration by the jury of any fact or circumstance tending to show want of moral chastity. This exception was not well taken. The court, in this instruction, was giving to the jury the legal meaning of the expression a virtuous female,' as applied to a woman who had never married, in reference to the crime of seduction, and the definition given was substantially correct. The general rule is that 'unmarried females who are virgins are virtuous; and those who, by their own consent, have ceased to be virgins, are not virtuous.' (*O'Neill vs. State*, 85 Ga., 383, 407, 408; 11 S. E., 856, 857.) 'The jury should treat (the woman alleged to have been seduced) as virtuous unless the evidence, direct or circumstantial, should satisfy them that she had lost her virtue, by having illicit intercourse.' (*McTyler vs. State*, 91 Ga., 254; 18 S. E., 140.)"

The supreme court of North Carolina in affirming the conviction of one *Crowell* (*State vs. Crowell*, 116 N. C., 1052; 21 S. E., 502), who had been convicted of seduction under promise of marriage, remarked as follows: "The precedents sustain the definition given by the court that an innocent and virtuous woman is one 'who has never had illicit intercourse with any man, and who is chaste and pure.' (*State vs. Ferguson*, 107 N. C., 841; 12 S. E., 574.) The court properly refused to go further and charge that the prosecutrix must have had a mind free from lustful and lascivious desires.' "

The case of *Clemons vs. Seba* (131 Mo. App., 378; 111 S. W., 522) was a civil case for breach of marriage promise, accompanied with seduction. In that case the Kansas City court of appeals defines and comments upon the crime of seduction as follows: "Seduction, in general terms, means to withdraw one from the path of rectitude. It is a leading astray. And, as applied to intercourse with a woman under a promise of marriage, it implies that a woman of previous chaste character, has been induced to consent to unlawful sexual relations by persuasion and the promise to marry. Therefore, evidence of previous unlawful intercourse with others destroys the very basis upon which seduction must rest, viz., previous chastity, and would relieve the case of such aggravating circumstance. The evidence should have been admitted. (*State vs. Patterson*, 88 Mo., 89; 57 Am. Rep., 374; *State vs. Wheeler*, 94 Mo., 252; 7 S. W., 103; *State vs. Sharp*, 132 Mo., 165; 33 S. W., 795; *Broyhill vs. Norton*, 175 Mo., 190; 74 S. W., 1024; *Cole vs. Holliday*, 4 Mo. App., 94.) * * * The cases above cited (*State vs. Patterson* and *State vs. Wheeler*) were based on a statute making one guilty of a felony who, under promise of marriage, seduces a woman of good repute.' But the reasoning of the cases applies to a civil case of this character. Those words, or those of like character, are not in the Michigan statute, and yet the supreme court of that State held that previous intercourse with other men went to disprove seduction, as that word is understood to mean in this connection. (*People vs. Clark*, 33 Mich., 112.) That case is quoted and approved in *State vs. Patterson*."

The Cyclopedia of Law and Procedure (Vol. 35, p. 1294), after defining seduction, gives "other definitions" in a footnote, among which is the following: "The word 'seduce,' as found in the statute, imports not only illicit sexual inter-course, but it imports also a surrender of chastity; a surrender of the woman's personal virtue. The statute is for the protection of the chastity of unmarried women, and the existence of the virtue at the time of the intercourse is a necessary ingredient of the offense; for, as has been often said, the woman who has lost her chastity, the prostitute, may be the victim of rape, but is not the subject of seduction."

The American and English Encyclopedia of Law (1st ed., vol. 21, p. 1046) sums up the decisions as to what is meant by chaste character in reference to the crime of seduction, in the following language: "The statutes generally require that the woman seduced must have had a previous chaste character, and that must be alleged in the indictment. Probably this averment must be made even though the statute makes no mention of chastity, as that, as has been stated, is regarded by the courts as an essential feature of the offense; but it is generally held that 'character,' as used in these statutes, means actual personal virtue and not merely reputation, * * *."

The authorities seem unanimous that prior absolute chastity on the part of the woman is an essential element of the crime of seduction, especially, so when made a requisite by the express words of the statute. As we have seen from the authorities cited above, the reputation of the woman is not the test; it is a matter of physical conditions, of past conduct, of actual purity. The fact that the man may have considered her a virgin does not seem to change the rule. His ignorance of her previous immoral and unchaste practices cannot make her a virgin in the eye of the law.

We therefore agree with the Attorney-General that the defendant did not commit the crime of seduction. The judgment appealed from is reversed and the defendant acquitted with costs de officio.

Arellano, C, J., Carson, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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