

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BRAULIO DE VIVAR, DEFENDANT AND APPELLANT.

*G.R. No. 9298. February 11, 1915*

Ponente: ARAULLO, J.

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### ARAULLO, J.:

This action against Braulio de Vivar was commenced and tried in the Court of First Instance of Pampanga by virtue of an information filed by the fiscal of the said province dated January 22, 1912, and drawn up in the following language:

"In view of the preliminary investigation made in the justice of the peace court of Magalang, Pampanga, P. I., by reason of a complaint filed by Prudencio Bondoc against the said Braulio de Vivar for the crime of abduction, the undersigned charges Braulio Vivar with the said crime, committed as follows:

"That, early in the morning of December 30, 1911, in the; municipality of Magalang, Pampanga, P. I., the said Braulio de Vivar did abduct Teodora Bondoc, an unmarried woman 22 years of age, removing her, against her will and with unchaste designs, from the control of Prudencio Bondoc, her father, in whose company she was then living; an1 act committed in violation of law."

The accused pleaded not guilty and after trial and the introduction of evidence by both the prosecution and the defense, the said Court of First Instance of Pampanga rendered judgment on April 26, 1913, wherein he found the defendant guilty of the crime charged in the information and sentenced him to the penalty of fourteen years eight months and one day of reclusion temporal, with the accessory penalties provided by law, to indemnify Teodora Bondoc in the sum of P500 and to pay the costs. From this judgment the defendant appealed alleging in his .defense in this court that the trial judge erred: (1) In holding that the facts and evidence of record showed the existence of the crime of abduction and that this crime was committed by defendant, as defined by article 445 of the Penal Code; and (2) in holding that the crime of abduction was committed against the person of the aggrieved party, Teodora Bondoc, she being of legal age.

After a careful examination of the evidence presented at the trial, we find that it conclusively proves the following facts: Teodora Bondoc, an unmarried woman 22 years 8 months and 17 days of age on the date of the commission of the crime, the daughter of the railroad station agent in Magalang, Province of Pampanga, was living at the time at said station with her father and was being courted by Benigno Indiongco, an employee of the same railroad company in the central station of Manila. Defendant, who was one of the said company's train conductors, served as an intermediary between the lovers. Early in the morning of December 30,1911, the said Teodora Bondoc left her house and, accompanied by defendant who was waiting for her outside, went to a spot near a growth of sugar cane, a short distance from the station in the said pueblo, in the belief that her lover, Indiongco, was awaiting her there for the purpose of joining her and eloping with her, an elopement which defendant made her believe had been planned the night before. When defendant and the young woman arrived at the place referred to, as the latter did not see her lover she inquired about him of defendant, who replied that before delivering her to him she should be for defendant. Thereupon she attempted to return home, but defendant caught her by the hand, gave her

a slap (textual, from record) and dragged her into the midst of the sugar cane growing nearby, where, threatening her with a dagger he had in his hand, he overcame her resistance and succeeded in lying with her. Defendant kept Teodora Bondoc among the sugar cane until nighttime, when he took her, also by force, in a cart through the fields to the house of a relative of his in the vicinity of a wood in the municipality of Capas, Province of Tarlac. There he remained with her alone for three days and, taking advantage of her helplessness and by intimidating her, lay with her several times during that period, until, as a result of the search and inquiries made by her father and brother, she was found in the said house and freed from defendant's control. Consequently a complaint was made against the said Braulio de Vivar and later the information was filed that gave rise to this prosecution.

The admission on the part of defendant that he served as an intermediary between Benigno Indiongco and Teodora Bondoc, the former residing in this city of Manila, and the latter in Magalang, defendant being a train conductor on the line between these points, a position which put him in a way to enjoy the confidence of both the lovers; the fact, likewise admitted by him, that he kept the young woman in a house far from the pueblo of the municipality of Capas and there lived with her for three days; the fact that he secretly removed her from Magalang to the house during the night and in so doing traveled by roads off the main thoroughfare; and more especially the fact that defendant received no instructions whatever from the young woman's lover to tell her to wait for him on December 30 either in Magalang, or in Capas, or in any place whatsoever, during the three days that defendant retained her in the said pueblo, for Indiongco himself so specifically testified and this is also proven by the fact that the latter remained in this city on those very days, when it would have been very easy for him to have gone to any of those points—evident proof that defendant tricked the young woman into believing that her lover was awaiting her outside of her house early in the morning of December 30, and that defendant's purpose in so doing was to possess her and realize his unchaste designs, knowing as he did, for she had so told him, that she was willing to elope with her lover from her father's house—are facts which, in connection with the other evidence of record and especially with the clear and positive testimony of the aggrieved party herself, who at the trial candidly and feelingly related the various acts committed by the defendant to the injury to her person and honor and in treacherous abuse of the friendship and confidence reposed in him by his friend and companion, Benigno Indiongco, bring out in bold relief and prove without the slightest doubt the truth of the occurrence as hereinbefore related, pursuant to the evidence introduced at the trial.

According to this evidence, Teodora Bondoc left her father's house of her own free will early in the morning of December 30, 1911, to join her lover and fiancé, in the belief that he was waiting for her in Magalang whither she was conducted by the defendant. Therefore, she was not abducted (*sustraida*) either against her will or with her consent, inasmuch as she left her house to repair to the meeting which defendant made her believe had been prearranged by her fiancé, Indiongco. If the latter had been in that place and, taking advantage of the presence of his sweetheart, Teodora Bondoc, had taken her away with him for unchaste purposes, thus removing her from her father's control, it could then be said that the act committed was the crime of abduction with consent, provided she was of the age specified by law for the existence of such a crime, and in that case the defendant would have been a coprincipal or accomplice in the said crime. This crime not having been committed, then neither the fact that Teodora Bondoc left her house voluntarily on that occasion to go to the place where defendant made her believe that her fiancé was waiting, nor the fact that she was then accompanied by defendant, should be taken into consideration in the present case with regard to the defendant, either for the qualification of the crime or for the determination of his liability therein, because Teodora Bondoc then left the paternal abode, not on account of the defendant, nor to join him, but on account of her fiancé, Indiongco, to go with him wherever he might take her, for she was ready to elope with him from her father's house; however, as the elopement did not take place, and as there is no evidence that in any way shows what intention Indiongco might have entertained with regard to this young woman if it had, there are no grounds upon which to qualify such an act and to deduce therefrom the

attendant liability.

Article 445 of the Penal Code punishes by reclusion temporal the abduction of a woman against her will and with lewd designs. Viada, in his Commentaries on the Penal Code, says that the elements constituting this crime are three: (1) The person kidnaped must be a woman. It is immaterial whether she be a widow, a married woman, or a virgin, for all three classes are comprised within the generic term of "woman." (2) The crime must be committed against her will. (3) It must be committed with unchaste designs—that is, with the intention of lying with the woman.

The evidence introduced at the trial shows that Teodora Bon doc voluntarily went with the defendant to the place where she expected to find her fiance, Indiongco; as soon as she became convinced that he was not there she attempted to return home, but this the defendant opposed; he caught her by the hand, slapped her and dragged her into the midst of some sugar cane nearly where, by means of threats and the use of force, he dishonored the young woman. On the night of that same day he took her, also by force, to Capas, where he kept her for three days, during which period he again lay with her several times, until she was found by members of her family.

It is unquestionable that Teodora Bondoc, who had freely gone to the place where she believed she would find her fiance, lost her liberty from the moment defendant opposed, in the manner aforesaid, her returning home, and that, consequently, it was against her will that she was taken by defendant into the sugar cane. This was the commencement of the abduction of the young woman, committed by defendant with violence and against her will. When he got her into the cane field, he abused her by means of force and intimidation. If defendant had then left her free, the crime committed by him might perhaps have been classified as rape, because then the deprivation of her liberty would have been but brief and only for the purpose of his lying with her. But, considering that defendant retained her among the sugar cane until night, continued to retain her in Capas for three days longer in his company and against her will, and that he also enjoyed her carnally there; and considering the deprivation of liberty of the aggrieved party during all of that time, in connection with the unchaste designs which defendant entertained toward her and which were the motive of his abducting her against her will, the acts committed by this defendant, and which were proved at the trial, constitute the crime of abduction, provided for and punished by article 445 of the code.

As Viada says in his aforesaid work, abduction is understood to be the kidnaping of a woman by removing her from her home, or from whatever place she may be, to take her to some other, for the purpose of her abductor's marrying her or corrupting her. Defendant deceived Teodora Bondoc by telling her that her fiance, Indiongco, was awaiting her outside of her house, early in the morning of December 30th, and he accompanied her to the place where he said Indiongco was waiting; but upon their arrival there he first forced her to enter the growth of sugar cane and afterwards, in the same manner, took her to Capas for the purpose of satiating his brutal appetite. Briefly, he stole Teodora Bondoc in the one place and took her to the other and kept her in his power for three days for the purpose of corrupting her. It matters not whether the kidnaping of the young woman was effected after she had voluntarily left her house, deceived, as she was, by the defendant, or whether it took place in the house itself; nor does it matter whether the offended party was or was not then of legal age, because the acts performed by defendant with respect to her involved offenses against liberty, honor and public order. These are offenses which, the law punishes in the crime of abduction with force, and those same acts contain the elements that go to make such crime, and not that of abduction with consent to which article 446 of the Penal Code refers.

The trial court, therefore, did not incur any of the errors assigned by counsel for defendant, and as, in the judgment appealed from, the penalty specified in the said article 445 of the Penal Code was imposed in the medium degree, it not being found that the commission of said crime waft attended by any generic circumstance that would modify the liability incurred by defendant, the said judgment, together with the accessory and other

penalties therein provided, must be, as it is hereby, affirmed. However, in view of the nature of the principal penalty imposed upon the defendant, he shall not suffer subsidiary imprisonment for insolvency in the payment of the indemnity to which he was sentenced. With the costs against the appellant, it is so ordered.

Arellano, C. J., and Johnson, J., concur.

Moreland and Carson, JJ., concur in the result.

Torres, J., concurs in the result, as he is of the opinion that the crime committed is rape.

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