

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ADEL HERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 9405. December 24, 1914*

Ponente: ARELLANO, C.J.

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Adel Hernandez, in order to enjoy a girl of 15 years, named Elena M. Santos, had a talk with the other defendant, Juan Bautista; between them they concocted a plan and then he proposed marriage to the girl. She agreed and was told to come to a house, No. 104 Calle Isaac Peral, in Ermita. The girl left the school she was attending (Meisic Intermediate) to keep the engagement, and there Juan Bautista, under the name of Aniceto de Castro, a fictitious name, made out that he was a Protestant minister and before two women who pretended to be witnesses he simulated the performance of a marriage ceremony. Afterwards he certified, issuing the suitable document, that Adel Hernandez and Elena M. Santos "were legally united in holy matrimony by me" (says Bautista) "in the presence of Maxima Rambel and Manuela Agustin." Bautista also certified, over the name of "Aniceto de Castro, Protestant minister," that "the contracting parties were of the age fixed by the law for contracting it." (Exhibit A.) In the certificate the age of the girl was set down as 20 years when she was only 15.

After the ceremony had been performed, Elena M. Santos returned to her parents' house and did not join Adel Hernandez. According to her, she went on thus for several months. Both before and after the ceremony in Calle Isaac Peral, Adel Hernandez visited her in her house as a teacher and as such was received by the girl's mother. But during the lesson one afternoon, her mother caught them in dalliance and scolded her daughter, so that the latter felt compelled to declare that they were married, showing Exhibit A.

Convinced that they were married, the mother received Adel Hernandez in her house, and Adel Hernandez and Elena M. Santos lived therein as a married couple. So they continued for two years, but Elena did not conceive of Adel nor did they have any offspring. But on March 1, 1912, Adel Hernandez told Elena that he was going to enter a college in Calle Almansa to continue his studies. Elena went to visit him in said college twice, but the second time she did not find him there. He had gone to the provinces.

He returned from the provinces and Elena, accompanied by her mother, had an interview with him and finally made an agreement of separation before a lawyer who drew up the grounds therefor, which were signed by both of them in a notarial instrument in the presence of two witnesses; but when the lawyer saw Exhibit A he then learned that it was not a genuine but a simulated marriage. The matter having been reported to the secret service, the assistant chief thereof, George W. Marshall, testified in this case that on July 1, 1913, he conducted the investigation regarding the false marriage certificate and Adel Hernandez told him that he had, in fact taken Elena on January 31, 1909, to the house at No. 104 Calle Isaac Peral before Juan Bautista, and when asked why he had not taken her to a real minister of some religion to get married, he replied that Elena's parents were forcing him by threats to marry her, and what he did was to reach an understanding with a friend of his, Juan Bautista, in order to make it appear that he had got married; he did not apply to a real minister of religion, because his parents had not given their consent to his marriage with the girl; that he had lived with her some six months; that that house, No.

104 Calle Isaac Peral, belonged to his women frienda who figure as witnesses in Exhibit A. With reference to Juan Bautista, Marshall stated that he was examined by him, Marshall, on the afternoon of the same day, July 1, 1913, regarding the document Exhibit A, and Bautista told him that he had written it at the request of Adel Hernandez, who "asked him to make out this document so that he might have carnal intercourse with that girl;" that he signed "Aniceto de. Castro, Protestant minister," because his friend Adel Hernandez begged him to make out the document so that, as has been said, "he might have complete liberty with that woman" and to put down everything he might wish.

Adriano Herrera, who acted as interpreter in these declarations, corroborated them and added that "Adel Hernandez declared the document to be false, and that he had made it out as such solely in order to deceive the injured girl," and that Juan Bautista declared that he was the author of the document and had made it out in order to please his intimate friend Adel Hernandez, "so that the latter might exercise complete liberty over Elena M. Santos by demonstrating that they were joined in marriage."

Hence the criminal complaint filed on July 3, 1913, drawn up in these terms: That Adel Hernandez,,by means of false promises of marriage and availing himself of a simulated ceremony, seduced Elena Miclat Santos, a virgin over 12 and under 23 years, and succeeded in having carnal intercourse and in living in marital relations with her; that in the commission of this crime, Juan Bautista, conspiring aiti confederating With Adel Hernandez, took part as a principal through acts of cooperation without which the crime could not have been consummated, simulating and pretending to be a Protestant and a minister authorized to perform marriage cerenionies, and simulating that he was performing a marriage ceremony between said Adel Hernandez and Elena Miclat Santos in order thus the more easily to deceive said injured girl and cause her to live in marital relations; as she in fact did, with the defendant Adel Hernandez.

The Court of First Instance of the city of Manila sentenced Adel Hernandez, as guilty of seduction, to four months of arresto mayor to pay one-half of the costs of the trial, to :endow the injured girl with the sum of P500 Philippine currency, or in case of insolvency to the equivalent subsidiary imprisonment, and to recognize and maintain the offspring in due time, if there were any. It sentenced Juan Bautista, as accomplice of the foregoing convict, to a fine of 325 pesetas, or in case of insolvency to suffer subsidiary imprisonment according to law, and to pay the other half of the costs. Both defendants appealed.

The first thing they allege, with respect to procedure, is that the lower court erred in denying their petition for the transfer of the hearing in the case to another day. This ground of error cannot be sustained. The right of the accused, after their plea, is to request a period of two days at least, in order to prepare their defense. They pleaded "not guilty," according to the record of the case, on July 7, 1913. On the 15th next subsequent, they acknowledged summons to appear for trial, which was to take place on the 22d. They had sufficient time to prepare their evidence, and they did not request any time to prepare their defense until the trial had actually commenced.

With respect to the merits of the case, it is contended that it is erroneous to affirm that the accused Adel Hernandez committed seduction on the person of Elena M. Santos. But there is nothing clearer than that this defendant, by means of deception, succeeded in enjoying the girl—the fact is evident not only from the testimony of witnesses, but also from documents demonstrating the deception and by facts not denied or controverted at the trial by the defendant himself, that he had enjoyed the girl by living in marital relations with her only when her mother was informed from the false certificate of marriage, issued by a pretended Protestant minister, that they were married.

With reference to the responsibility of the defendants, the part of accomplice cannot be attributed to Juan Bautista; for he was a principal; it was really he who supplied the essential element of deception without which there would

not have existed in the present case the crime of seduction, "cooperating in the commission of the act by another act without which it would not have been accomplished." (Penal Code, art. 13, No. 3.)

But furthermore, as the prosecuting attorney remarks in this instance, he cooperated in the commission of the act by an act that in itself constitutes another crime. He is thus really on a par with one who cooperates in the commission of a fraud by means of the falsification of a document which in itself is another crime. The law (Penal Code, art. 328) says:

"Anyone who, without legal right or legitimate cause, shall perform acts properly pertaining to any person in authority or a public officer, assuming an official character, shall be punished with the penalty of prison correccional in its minimum and medium degree."

Without legal right Juan Bautista performed an act properly pertaining to a person in authority, assuming the official character of a minister of a religious sect in order to legalize a marriage, and issuing a certificate, signed moreover, with a false name under the predication, in an additional signature, of being a Protestant minister. The crime charged in the information is, therefore, the complex one of seduction by means of usurpation of functions. Hernandez was likewise a coprincipal by inducement to this crime actually committed by Bautista. Marshall said that it appeared from his investigation that Bautista made out the marriage certificate at the instance of an intimate friend of his called Adel Hernandez, and that the latter admitted that he had made that request because he wanted to live with a female cousin of his—"he reached an understanding with an intimate friend of his called Juan Bautista, in order to make out this document, so as to make it appear that he had got married" (p. 29). "I acceded to this request," said Bautista in his turn, "and I made out the document; the reason was because this friend of mine, Adel Hernandez, begged me to make out the document so that he might have complete liberty with that woman and he asked me to put down everything I might wish."

Adriano Herrera, testified that Adel Hernandez stated, as the previous witness has said, that the document was false and that he had made it out solely as such in order to deceive the injured girl; and that Juan Bautista stated that he made out this document only in order to please Adel Hernandez who had told him of his desire to possess Elena M. Santos.

"Those who directly force or induce others to commit a crime are considered as principals." (Penal Code, art. 13.)

"Inducement exists if the compact, the command, or the advice is of such a nature that without its concurrence the crime would not have been committed." (Decision of December 2, 1902.)

"Fixing of individual responsibility is only proper when between the proposals and the acts of each defendant there is the necessary independence for weighing them separately, not when there exist unity of action and mutual assistance." (Decision of October 4, 1901.)

This being so, according to article 89 of the Penal Code, only the penalty for the more serious crime will be imposed, to be applied in its maximum degree, which, in this case, is the penalty for the crime of usurpation of functions—that is, the maximum degree of prison correccional in its minimum and medium degrees—two years eleven months and eleven days to four years and two months.

Both the trial court and the prosecuting attorney in this instance agree that the defendant Adel Hernandez must recognize and support the offspring if in due time any should be had* But Elena M. Santos, the injured girl, testified in these words:

"Q. How long did you and Adel live together in your mother's house?—A. Over two years.

"Q. Did Adel Hernandez live there, sleep there, and also eat there?—A. Yes, sir.

"Q. Did you live a life of complete marital relations?— Yes, sir.

"Q. Were you ever pregnant ?—A. No, sir.

"Q. So you haven't any offspring?—A. No, sir.

"Q. When did you and Adel separate?—A. The year 1912; he asked my permission to enter a college in order to finish his course of study. I went to the college twice, and the second time I went I didn't find him any more.

"Q. And since then he hasn't returned to your house?—

A. No, sir." (p. 24.)

This admitted, there is no ground for decreeing the forcible recognition of the offspring that in the year 1912 or since July 3, 1913, the date of the complaint, the injured girl could or might have had.

On August 4 last Juan Bautista withdrew his appeal and his withdrawal was entered on the record on the 6th next following. The appeal actually pending is solely that of Adel Hernandez.

On the foregoing grounds, Adel Hernandez is sentenced to two years eleven months and eleven days of prison correccional, to endow the injured girl with P500 Philippine currency, and to pay one-half of the costs.

Torres, Johnson, Carson, Moreland, and Araullo, JJ., concur.

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