

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALERIANO VILORIA, DEFENDANT AND APPELLANT.

G.R. No. 9479. July 28, 1914

Ponente: TORRES, J.

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TORRES, J.:

This case was brought up on appeal filed by the accused from the judgment dated October 14, 1913, whereby the Honorable Francisco Santamaria, judge, found him guilty of the crime of rape and sentenced him to the penalty of seventeen years four months and one day of reclusion temporal, to pay an indemnity of P500 to the injured party, and the costs.

It appears to be duly proven in the case that on the night of Thursday, September 4, or the early morning of Friday, the 5th of the same month, 1913, that the accused, who lived in the outskirts of the town of Vigan, the capital of Ilocos Sur, with his children, Monica Viloria, 19 years old, Marcos Viloria, 16 years old, and two younger children, 4 and 6 years of age, while lying down at one end of the only room in his house, called three times to his elder daughter Monica to come to him and massage his stomach, which, he said, was aching. When his daughter did so, her father caught her by the hand and the neck, stretched her out on the floor, raised her skirt, and climbed upon her for the purpose of lying with her. As the daughter offered resistance to the accomplishment of her father's criminal purpose, he choked her and threatened to kill her with a bolo which he had beside him and which he placed against her throat. Taking advantage of the fear that possessed his daughter in this situation, the accused succeeded in consummating his horrifying and loathsome design. While he was doing so, Marcos Viloria was awakened by the cries his assaulted sister was uttering and started to get up, but desisted from doing so and remained quiet in his bed because of the threat his father addressed to him. But when the injured girl had got up after the rape, in order to go to the porch, or azotea, of the house, Marcos also arose and joined his sister, who, after changing her clothes, left the house and at daybreak went to the town hall to denounce the crime of which she had been the victim.

It likewise appears to be proven that one night some days preceding the date of the occurrence the accused Viloria said to his daughter Monica that since her childhood he had made many sacrifices and had toiled for her, that therefore she ought to give him what he needed, and at that time demanded that she accede to his carnal desires, but the girl rejected his proposal and fled, returning later to her father's house early the next morning.

The fact set forth undoubtedly constitutes the crime of rape, penalized in article 438, No. 1, of the Penal Code, since the accused succeeded in lying with his daughter, Monica Viloria, by employing force, violence, and intimidation, whereunder the poor girl succumbed, dishonored by her own father.

The accused denied the charge and pleaded not guilty, alleging in his own favor on the witness stand that upon being awakened in the night or early morning of the occurrence by the sound of footsteps inside his house, he struck a match and saw a man jumping out of his house through the window; wherefore he pursued him with a weapon but did not overtake him; and upon returning to his house inquired of his daughter Monica who that

individual was, and as she refused to reply he chastised her. This allegation appears to be absolutely unproven, for the Viloría boy, another child of the accused, denied the fact of the chastisement that is said to have been inflicted by his father upon the person of his sister Monica.

The case reveals no reasonable motive to induce the belief that Monica Viloría may have denounced her father as the perpetrator of a very serious crime committed upon her person, through mere caprice or the desire for revenge; just as it is also incredible that the boy Marcos Viloría would have confirmed his sister's denunciation and declaration from the same motive, because it cannot be denied that he did so, impelled by the enormity of the crime, for the sole purpose of stating the truth, without being swayed by any passion against his father, nor for the purpose of injuring him. The trial court, who heard the witnesses testify and was convinced of the truth and certainty of the crime, as well as the sincerity with which both the injured girl and her brother testified, for they exhibited sincere grief over the deed done by their own father, was fully convinced that there was no room for the least doubt that the accused committed the crime under consideration, in the commission whereof circumstances Nos. 1 and 10 of article 10 of the Penal Code must be held to have concurred, for the injured girl is the daughter of the offender, who, as her father, abused in an infamous and brutal manner the confidence which it is natural his daughter should have reposed in him. But it is improper to hold the concurrence of the circumstance of nocturnity, because the night was not purposely selected for commission of the crime with impunity; and also of any extenuating circumstance.

For the foregoing reasons, whereby the only error assigned to the judgment appealed from stands refuted, the same should be affirmed: Provided, however, that the accused be sentenced to the penalty of twenty years' imprisonment, with the other penalties set forth in said judgment, and to the costs of this instance. So ordered.

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

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