

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CARLOS GARCIA, DEFENDANT AND APPELLANT.

G.R. No. 9874. March 13, 1915

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was convicted in the court below of the crime of "rapto" (abduction, with her own consent, of a virgin, less than 21 and more than 12 years of age, for immoral purposes).

We are of opinion that the facts disclosed by the evidence of record necessitate the reversal of the judgment of conviction entered in the court below and the dismissal of the information charging this defendant with the crime of "rapto," under the doctrine laid down by the supreme court of Spain with reference to this crime, as set forth in the following citations:

"An essential requisite for the crime of abduction, as provided for in article 461 of the Penal Code, is the removal of a virgin under 23 and over 12 years of age from her legal domicile or from the place where she is staying, with the intention of concealing her residence and of placing her in one way or another, with some character of permanence, where the authority and right of vigilance that pertains to the guardians of her person can not be freely and easily exercised." (Decision of the supreme court of Spain, May 19, 1888, 40 Jur. Crim., 879.)

"As the second branch has already held, the crime of abduction is not sufficiently established when a virgin leaves her dwelling house by agreement with her seducer, for the purpose merely of having an interview and carnal intercourse, but there must concur as a condition essential to that crime the intention of abandoning said dwelling, thus removing herself for an indefinite time from under the authority of the persons charged with watching over her." (Decision of the supreme court of Spain, September 22, 1882, 49 Jur. Crim., 219.)

"To establish the crime of abduction, as provided for in article 461 of the Penal Code, it is necessary that the removal of a virgin over 12 and under 23 years of age be carried out with her consent and by removing her from her legal domicile or the place where she is staying, with the intention of concealing her residence, and with such character of permanence that does not permit the free and unrestricted exercise of the authority and vigilance which pertain to the guardians of the minor's person.

"The fact of taking a woman over 12 and under 23 years of age to the country with her own consent, and there cohabiting with her under promise of marriage, constitutes the crime of seduction (estupro), but not abduction (rapto), because the minor's short absence from her domicile does not reveal in this case the intention of removing her from the paternal vigilance, but merely that of overcoming the girl's natural chastity by a promise of marriage." (Decision of the supreme court of Spain, December 14, 1901, 67 Jur. Crim., 332.)

"A defendant can not be convicted of abduction when there is no evidence that he induced the woman to leave her home, or that he had anything to do with her departure." (U. S. vs. Javate, 4 Phil. Rep., 465.)

The doctrine laid down in those decisions is manifestly well-founded, and based upon a substantial distinction which should be kept in mind, between the crime of "estupro" (seduction) and "rapto."

It may be that the defendant in this case was guilty of the crime of "estupro," but the evidence wholly fails to establish the essential requisite (condition esencial) of the crime of "rapto," as laid down by the supreme court of Spain in the foregoing citations.

The judgment of conviction entered in the court below should be reversed, and the appellant acquitted of the crime of "rapto" with which he is charged in the information, with the costs of both instances de officio. So ordered.

Arellano, C. J., Moreland and Trent, JJ., concur.

Johnson and Araullo, JJ., dissent.

TORRES, J., dissenting:

In view of the fact that the crime and the defendant's guilt are proven, I think that the judgment appealed from should be affirmed with costs, and so I dissent from the majority opinion.

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