

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAULINO SANTIAGO, DEFENDANT AND APPELLANT.

G.R. No. 9893. January 29, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Tarlac convicting the accused of the crime of abduction con anuencia and sentencing him to one year eight months and twenty-one days of prison correccional, to the accessories provided by law, to indemnify the injured party in the sum of P500, to recognize and maintain the child, if any there should be, and to pay the costs.

It is claimed by the prosecution that about 9 o'clock at night of the 3d of January, 1914, Catalina Oglive, a resident of the barrio of Guevara, municipality of La Paz, Tarlac, a single girl 16 years of age, while passing from her house to that of her aunt, met Paulino Santiago, the accused, a short distance from her house, in company with one Esteban Matias; that they stopped her and conducted her to a place called Caut, where they arrived at about 10 o'clock at night, after having passed through various places on the road; that from Caut they conducted her to the village of Concepcion, where she was placed in the house of the fiscalillo of the church, named Tomas Lulu, where she was found a week later by the authorities.

It is claimed by the prosecution that the accused on the way to Concepcion had carnal relations with the complaining witness. It is admitted that, after arriving at the house of the fiscalillo of the church, the accused had no relations with the complaining witness; that she voluntarily, with the accused, took the first steps recognized by the church as prerequisites to marriage, and that she was kept there in the house of the fiscalillo in order that the preliminaries necessary to the ceremony having been gone through they could be married by the proper ecclesiastical authority.

The learned trial court found that, although the complaining witness testified that she was forcibly abducted, that testimony was untrue and that she went voluntarily with the accused without force or influence of any kind on his part other than an agreement to marry. We are satisfied from a careful reading of the evidence that the statement of the complaining witness that the accused had carnal relations with her before arriving at Concepcion is untrue. It has even less foundation than her statement that force was used; and she having testified falsely in the one case, we are forced to conclude, upon all the facts and circumstances of the case, that she testified falsely in the other. Eliminating this element, we have no evidence whatever establishing the element of abduction—lewd designs (*miras deshonestas*). It is admitted by the complaining witness herself that, apart from the single occurrence which is alleged to have taken place before arriving at Concepcion, the accused had no illicit relations with her, although he was with her every day during the time she was in the house of the fiscalillo.

We have held in several cases that, in order to constitute the crime of abduction, committed with the consent of the woman abducted, lewd designs on the part of the accused must be shown. The chapter of the Penal Code relating to abduction falls within title 9, which is headed "crimes against chastity." Under that title there are six

chapters, the first of which deals with "adultery;" the second, with "rape and unnatural crimes;" the third, with "crimes of public scandal;" the fourth, with "seduction and corruption of minors;" the fifth, with "abduction;" and the sixth, with "provisions common to the preceding chapters." From the title and chapter headings it is clear that it was the intention of the code makers, in formulating these five chapters, to deal exclusively with crimes against chastity. If we eliminate lewd designs from the crime of abduction, it ceases to be a crime against chastity and becomes one against personal liberty and should be included within the title of the Penal Code which deals with that class of crime.

Articles 445 and 446 of the Penal Code deal with the subject of abduction. They read as follows:

"ART. 445. The abduction of a woman against her will and with lewd designs shall be punished by reclusion temporal.

"The same penalty shall be imposed in every case if the female abducted be under twelve years of age.

"ART. 446. The abduction of a virgin over twelve and under twenty-three years of age, committed with her consent, shall be punished by prision correccional in its minimum and medium degrees."

While article 446, within which the crime we are dealing with in the case at bar falls, makes no mention of lewd designs, it has always been understood by the Spanish courts, textwriters, and commentators that lewd designs are part of the article and an essential element of the crime therein defined. It is said that the word "abduction" carries with it necessarily the conception of lewd designs. The word is held to be defined by article 445; and, as that definition includes "lewd designs," the repetition of the word in article 446 is deemed unnecessary.

In its judgment of the 16th of November, 1874, the supreme court of Spain decided squarely that lewd designs is a necessary element of the crime of abduction as defined by article 461 of the Peninsular Penal Code, which is article 446 of the Philippine Penal Code. The Audiencia which tried the case held that "according to article 460 (445, Philippine) of the code, in order that the crime of rapt exist, it is indispensable that there be present the two essential elements of the crime, namely, that the abduction take place (1) against the will of the woman, and (2) with lewd designs; and where the abduction occurs with the consent of the woman and is punishable under article 461 because the woman is less than 23 years, nevertheless, the element of lewd designs must be present, although such element is not expressly required by the article. Such an interpretation should be given for the reason that both of the articles, 460 and 461, are in the same title of the code, and article 461 being in juxtaposition to 460, the one supplies the omission of the other; and there being no evidence in the case that the abduction took place against the will of the woman and with lewd designs, it must have taken place with her consent and without lewd designs and the act did not constitute a crime." The case was appealed to the supreme court of Spain, which affirmed the judgment of the Audiencia on the grounds which the Audiencia presented to support its judgment.

In the case of *United States vs. Rodriguez*, 1 Phil. Rep., 107, we said:

"From these facts, which we consider sufficiently proved, it is seen that the departure of Marcosa Peñalosa from her house was, instead of a case of abduction, a real elopement carried out by her as a means for contracting marriage with the defendant against the opposition of her father, inasmuch as she acted upon her own initiative and was not seduced by the said defendant. But whether elopement or abduction, it is evident that the act was not committed with unchaste designs but with matrimonial intentions which were, indeed, well known to certain persons from the very commencement of the affair, and which were realized the following day by the marriage of the accused to the woman alleged to have been abducted.

"The unchaste designs constitute one of the essential elements that characterize the crime of abduction, as well when committed with violence against the will of the woman as when carried out with her consent in case of her minority: This is precisely the point which constitutes one of the principal differences which distinguish

this crime from crimes against personal liberty and security. If the removal of a woman from her house, although she be a virgin under the age of 23 years, is committed for the purpose of murdering her or demanding a ransom, or holding her a prisoner somewhere, it would undoubtedly constitute a crime but would by no means fall under the provisions of the sections of the Penal Code which define and punish the crime of abduction, but of other sections quite distinct, although there exists in such case the material fact of the stealing away of a woman. This consideration demonstrates that the unchaste purpose is essential in all cases to the crime of abduction, and this same conclusion is deduced from the fact that the crime is classified in the code among the crimes against chastity. Article 445 of the said code establishes clearly and conclusively the necessity of said circumstance in order that the crime of abduction may exist, and even though section 446, invoked by the complainant as applying to the present case, in speaking of the abduction of a virgin under the age of 23 years and over 12, committed with her consent, does not make express mention of unchaste designs, the provisions of this article should be considered in connection with those of the preceding one, which requires this circumstance as indispensable and essential. Article 445 is the complement of article 446, the two forming, as they do, a part of one and the same chapter included in the title which the code devotes to crimes against chastity.

"In addition to this, paragraph 2 of article 448, which treats of causes for abduction, speaks only of abduction committed with unchaste designs, and the preceding interpretation is still further confirmed by article 449 in that it provides that those convicted of abduction shall be sentenced, by way of indemnity, to endow the complainant and acknowledge the offspring. This impliedly presupposes the idea of unchaste purpose in all cases of abduction, for the provisions of this article as well as in that of article 448 above-mentioned are applicable to all cases of abduction for the reason that the code expressly declares them to be of common application to all crimes against chastity."

In the case of *United States vs. Ysip* (6 Phil. Rep., 26), the court said:

"A severe penalty is prescribed in article 446 of the Penal Code for the taking away from her home of a damsel more than 12 and less than 23 years of age without the consent of her father or lawful guardian, and this even though she herself consents thereto. But this court has heretofore held, in line with the decisions of the supreme court of Spain, that it is an essential element of this crime that it be committed for immoral purposes (*con miras deshonestas*) (*U. S. vs. Rodriguez*, 1 Phil. Rep., 107), and in this case there is not a scintilla of evidence to support the allegation that the girl was taken away *con miras deshonestas*.

"The trial judge was of opinion that improper motives on the part of the accused must be presumed, in view of the fact that he proposed taking the girl to his native province without having previously assumed the lawful bonds of matrimony. We think, however, that the premises do not justify the conclusion, and we are confirmed in this opinion by the fact that the accused burdened himself in his flight with the impedimenta of a prospective mother-in-law and her two minor children, and also by the exemplary conduct of the young couple on their journey as far as they succeeded in making it, for it was conclusively proven that during their flight the girl never left her mother's side."

To the same effect is *United States vs. Padua* (7 Phil. Rep., 399), which was a case where the abduction occurred with the consent of the woman abducted. In that case we find the following:

"This court has frequently held that it is an essential element of the crime of rapto, as denned in article 446 of the Penal Code, that it be executed *con miras deshonestas* (for immoral purposes), and that the burden is upon the prosecution to establish this fact. (*U. S. vs. Rodriguez*, 1 Phil. Rep., 107; *U. S. vs. Ysip*, 6 Phil. Rep., 26; and *U. S. vs. Galves*, August 30, 1906, 5 Off. Gaz., 93.)

"The agreed statement of facts submitted in the trial court does not sustain an allegation that the defendant committed the act for immoral purposes, and, indeed, we are of opinion that the contrary affirmatively appears, because the abduction was evidently had solely for the purpose of marrying the abducted damsel with her own

consent."

In the case of *United States vs. Alvarez* (1 Phil. Rep., 351), it was said in the headnotes: "The taking of a woman from her parents' home by wiles and persuasion and for a lewd purpose constitutes the crime of abduction defined and penalized in article 446 of the Penal Code, the use of physical force not being an element thereof."

In the body of the decision this appears: "Nor can it be doubted, in view of the deceit practiced by the defendant and in the entire absence of any evidence upon which any other explanation of his conduct in receiving her in his house can be based, that his purpose was an immoral one."

The headnotes in the case of *United States vs. Tagle* (1 Phil. Rep., 626), read: "Unchaste designs on the part of the abductor are an essential part of the crimes defined in articles 445 and 446 of the Penal Code."

In the body of the opinion the court says:

"We think the evidence is sufficient to show that she was carried off and detained by the defendant against her will but the injured girl makes a direct and positive denial that the defendant ever said anything or did any act from the time of her abduction to indicate that he personally had any unchaste designs. The circumstances rather indicate that the girl was abducted and held by the defendant for the purpose of lending her to illicit intercourse with other men, and there being a want of this essential element in the case the evidence is insufficient to support the conviction under the provisions of article 445.

"For the same reason a conviction could not be sustained if the defendant had been charged with the offense defined and punishable under article 446.

"By a decision of the supreme court of Spain of November 16, 1874, article 446 has been construed, and while this article does not prescribe in express terms that the abduction should be with unchaste designs, nevertheless the unchaste designs are said to be inherent to the character of this crime, and it is necessary that they should occur in the act in order to constitute the crime of abduction punishable under this article."

In that case the accused was acquitted on the ground that unchaste purposes had not been shown.

The case of *United States vs. Mendoza* (2 Phil. Rep., 429) assumes, without discussing, that lewd designs are a necessary element in the crime of abduction as defined in article 446 of the Penal Code. The court says: "After considering the complaint and the evidence in this case, we are of the opinion that the defendants are guilty of abduction under article 446 of the Penal Code. The court concludes from the evidence that Augustina consented to the abduction, with a view to matrimony, she being a virgin 14 years of age, and that the accused abducted her for lewd purposes."

In the case of *United States vs. Cecilio* (8 Phil. Rep., 24) the court said:

"In view of these facts it has not been proven that the girl Concordia de Ocampo was abducted by the accused with dishonest or evil intent; and this being one of the essential elements necessary to constitute the crime of abduction with the consent of the abducted party, in accordance with the many decisions of this court, we cannot find the existence of sufficient facts to declare the accused guilty as alleged in the complaint."

In this case also the accused was acquitted on the ground that lewd designs had not been shown. (See also *U. S. vs. Meneses*, 14 Phil. Rep., 151; *U. S. vs. Reyes*, 20 Phil. Rep., 510; *U. S. vs. Tandiana*, 25 Phil. Rep., 64; *Escriche*, vol. 4, pp. 794, 795; *Diccionario Enciclopédico Hispano-Americano*, p. 135, *Derecho Penal*.)

The headnotes in the case of *United States vs. Galves* (5 Off. Gaz., 93) are as follows:

"Lewd designs is one of the essential elements of the crime of abduction of a woman, whether the same was committed with violence and against her will, or whether the woman thus abducted, being under age, gave her

consent thereto.

"The taking of an unmarried girl 14 years of age, with her consent, to a justice court for the purpose of marrying her does not constitute the crime of abduction unless the act is committed with lewd designs."

In the body of the opinion we find this:

"The taking of Maria Lozano, an unmarried girl 14 years of age, with her consent, from the house where she lived to the justice court for the purpose of marrying her does not of itself constitute the crime of abduction. It does not appear, and the record does not disclose, that the offense was committed with lewd designs. It does appear, however, that the only object of the defendant was to marry the girl before the justice of the peace. Lewd designs is one of the essential elements of the crime of abduction, whether it was committed with violence and against the will of the woman abducted or whether a girl under age is taken out of her house with her consent.

"That the crime was committed with lewd designs, even with the consent of the girl abducted, is an essential requisite in determining whether the crime of abduction as defined and punished in article 446 of the Penal Code has or has not been committed, and although this article says nothing about lewd designs, yet it is to be inferred from the chapter in which provision is made for the punishment of the crime that such lewd designs must appear. Article 445 and 446 are embraced in the same chapter of the code, and article 448, paragraph 2, supplies the omission of lewd designs from the provisions of article 446. The supreme court of Spain has so held in the application of those above referred to. (Criminal judgments of the 16th of November, 1874, and 16th of February, 1888. See also the decision of this court in the case of the United States vs. Enrique Rodriguez, 1 Phil. Rep., 109)

In the case of United States vs. Bernabe (23 Phil. Rep., 154), there is a statement which seems to indicate that the court held that lewd designs are not a necessary element of the crime of abduction where it occurs with the consent of the woman abducted. A careful examination of the case, however, discloses that such was not the holding of the court, as it was expressly and specifically found in the case that the element of lewd designs was present and the accused was about to carry those designs into execution when he was apprehended. It is clear that the writer of the opinion did not understand that the court was holding that lewd designs were not a necessary element of the crime of abduction with consent. One of the paragraphs in the headnotes of the case, prepared by the writer of the opinion, reads as follow:

"Although article 446 of the Penal Code does not require, as an essential element in the crime of abduction, that it be committed with unchaste designs, yet the jurisprudence established by the courts of these Islands, following that set forth in several judgments of the supreme court of Spain in the application of article 461 of the Penal Code of that country, analogous to the foregoing, has stated the principle that in the commission of the crime of abduction, to which said article 446 refers, the presence of the circumstance of unchaste designs is necessary."

While one expression in the opinion seems to be to the effect that lewd designs are not a necessary element of the crime, it was not intended so to hold. Such a holding would have been mere obiter, it having been found by the court as a fact in the case that the abduction actually took place with lewd designs.

If the question of the necessity of lewd designs in cases such as the one before us was an open one much might be said in favor of the doctrine contended for by the prosecution. But the contrary having been uniformly held by the supreme court of Spain and this court, we are not inclined to open the matter for discussion.

It not having been shown beyond a reasonable doubt that the abduction was committed with lewd designs, the conviction cannot stand.

The judgment of conviction is reversed and the accused acquitted. So ordered.

Arellano, C. J., Carson, Trent, and Araullo, JJ., concur.
Johnson, J., dissents.

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