

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN OXILES, PEDRO MANANSALA, ALBERTO NICDAO, MACARIO LACSAMANA, AND RUFINA RAMOS, DEFENDANTS. JUAN OXILES, PEDRO MANANSALA, AND A...

G.R. No. 9999. February 23, 1915

Ponente: TORRES, J.

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TORRES, J.:

This appeal was raised by the defendants Juan Oxiles, Pedro Manansala, and Alberto Nicdao, from the judgment of conviction rendered by the Honorable Julio Llorente, judge, in the cause prosecuted against them for the crime of abduction.

About midnight of the 12th of June, 1913, in the barrio of Cabalantian of the municipality of Bacolor, Pampanga, while Emilia Cunanan was returning home from Marcelino Quison's rice hulling in company with her cousin Sabina Dimarucot, she was suddenly seized on the road by three men wearing Constabulary uniforms and armed with revolvers, two of whom carried her in their arms while the third gagged her with a handkerchief. In this manner she was carried to a sugar-cane field where the men stopped and put her down on the ground, though without releasing her. By the light of the moon she recognized her bearers as Pedro Manansala and Alberto Nicdao; the man who had gagged her with the handkerchief turned out to be the Constabulary sergeant, Juan Oxiles. From this cane field, the abducted woman, intimidated by the defendant Oxiles with his revolver and held by the hands of Manansala and Nicdao, was compelled to walk along to the house of the spouses Macario Lacsamana and Rufina Ramos, in San Fernando, near the railroad; here, Oxiles pointed his revolver at her and compelled her to enter the house and afterwards one of the rooms thereof, where, after a struggle in which the woman was weakened and overcome by force, he finally succeeded in lying with her three times during the night in question, with his revolver beside him. On the morning of the following day he went away and left her in the house, warning her not to leave or else he would kill her. The woman's camisa, exhibited at the trial, was torn in the struggle with her abductor. She was unable to scream, at first, because she was gagged; afterwards, she was prevented by fear. When she tried to leave the house, its occupants told her that if Oxiles should see her in the road, he would kill her. When, before this occurrence, Oxiles made love to her, she told him that she was married and that, although she was separated from her husband, she could not be unfaithful to him. On the afternoon of that same day, June 13, 1913, the aggrieved party was discovered by the policeman, Eduardo Galang, who immediately took her to her house, where her mother, Crispina Dimarucot, was at the time staying.

By reason of the foregoing facts, a complaint was filed in the Court of First Instance of Pampanga by the provincial fiscal at the instance of the abducted woman herself, charging Juan Oxiles, Pedro Manansala, Alberto Nicdao, Macario Lacsamana, and Rufina Ramos with the crime of abduction, and after due trial the court, in view of the evidence, rendered judgment on April 4, 1914, whereby he sentenced each of the three defendants first named to the penalty of seventeen years four months and one day of reclusion temporal, to the accessory penalties, and to pay, each of them, one-fifth of the costs. In addition, Juan Oxiles was sentenced to indemnify the

offended party in the sum of P500. The spouses Macario Lacsamana and Rufina Ramos, the owners of the house to which the abducted woman had been taken, were absolved from the complaint and their proportional share of the costs.

From this judgment an appeal was taken by the defendants Juan Oxiles, Pedro Manansala, and Alberto Nicdao. Therefore we shall concern ourselves in this decision only with the appellants' participation in the said crime of abduction.

The facts above related, duly proved in the present cause, constitute the crime of abduction perpetrated with violence and lewd designs, provided for and punished by article 445 of the Penal Code, inasmuch as the defendant-appellants, at a late hour of the night of June 12, 1913, did, employing force and intimidation with revolvers, and with lewd designs, forcibly detain the offended woman, Emilia Cunanan, and conduct her from a street of the pueblo of Bacolor to a house situated in the neighboring pueblo of San Fernando, where the defendant Juan Oxiles, who prevented the abducted woman from crying out by gagging her with a handkerchief and afterwards overcame her stubborn resistance, finally succeeding in lying with her several times. All of these acts constitute the essential elements of the crime for which defendants were prosecuted.

Sabina Dimarucot, an unmarried woman 22 years of age, who was in the company of the offended party when the abduction was committed, corroborated the latter's testimony. At that time she identified the defendant Oxiles as one of the three men who, armed with revolvers, seized Emilia Cunanan and gagged her with a handkerchief, and through fear witness ran away to report the occurrence to the abducted woman's mother, Crispina Dimarucot; the latter also testified to this and stated that immediately upon hearing the news she left her house to look for her daughter and that while so engaged she met the policeman Eduardo Galang in the road and begged him to search for her daughter. This policeman corroborated the reference to him contained in Crispina Dimarucot's testimony and testified that the latter was crying when she asked him to look for her daughter.

The defendants pleaded not guilty and denied the charge. Two of them attempted to prove an alibi, in support of which the Constabulary soldiers named Vicente Gabe, Maximo Mercado and Casimiro Labitag testified that at 8 o'clock in the evening on the date of the occurrence they met the sergeant Juan Oxiles at the door of a cinematograph in the pueblo of San Fernando and the four men went in together to see the motion pictures; that they all left the place together about 11 o'clock; that Oxiles separated from them near the bridge and walked to the other side of the river; and that witnesses did not know where he went afterwards.

Macario Lacsamana and his wife Rufina Ramos, to whose house the abducted woman was taken, testified that they knew the defendants, but that none of them were at their house on the night of June 12, 1913. The defendant Oxiles did not testify at the trial in his own behalf. It is to be observed that the crime under prosecution was committed at 12 o'clock on that same night.

The witnesses Mercado and Labitag themselves testified that about 11 o'clock of said night they arrived at the house of the defendant Pedro Manansala, in San Fernando, where they passed the night; that they went to sleep a short while after their arrival, and that the said Manansala did not go out of his house that night, as his wife was then in childbirth. This defendant who, like them, is also a Constabulary soldier, corroborated the testimony of these witnesses.

The defendant Alberto Nicdao, a herdsman in the service of Mariano Lim, and who on the night of the occurrence had disguised himself as a Constabulary soldier, and his wife Gregoria Batag, agreed in their testimony that on the night of June 12, 1913, the said Nicdao did not leave his house and that he remained therein from the afternoon of that day until the following morning. The defendant Nicdao also testified that he did not know his codefendants, particularly the sergeant Oxiles.

The testimony of the witnesses presented by the defense in no wise proves the alibi set up in their defense, for neither Alberto Nicdao nor his wife explained why they remembered so well that, on the said date of June 12, 1913, the former remained in his house and did not leave it during that night. As the witnesses called by the defendant Manansala to prove the alibi fell asleep shortly after their arrival at the latter's house, they could not affirm positively that this defendant remained in his house all night; besides, it was not proved that his wife's alleged childbirth prevented him from leaving, or at least was the reason why he did not leave the house that night. It is also to be noted that these witnesses contradicted one another, for while Mercado stated that he and his companion Labitag ate supper in Manansala's house and slept in the sala in company with the owners of the house, Labitag affirmed that he and Mercado ate supper in a native restaurant and that they alone slept in the sala, Manansala and his wife occupying another room.

The witnesses presented by the defense to prove an alibi in behalf of the defendant Oxiles only established the fact that on the night of the crime they were in a cinematograph in San Fernando until about 11 o'clock, at which hour Oxiles separated from his three companions and went toward the other side of the river, and they did not know where he went afterwards. His witnesses, who remembered this fact very well, did not remember, however, who paid for their admission to the said cinematograph, for Mercado affirmed that Oxiles bought the tickets for the whole party, while the other witness, Labitag, stated that each one of them paid for his own admission.

The evidence offered by the defense is not satisfactory and can not weaken or disprove the facts related by the offended party and her witnesses and proved by the prosecution, for, as this court has already held in its decision of December 22, 1914, rendered in the case of *United States vs. Yango and Cabalu* (Case No. 10199, not reported), "an alibi should be established by probable evidence which reasonably satisfies the court of the truth of such a defense." The same principle was laid down by the supreme court of the State of Pennsylvania in the case of *Watson vs. Commonwealth* (95 Pa. St. Rep., 418), from the syllabus of which the following quotation is taken: "Where the Commonwealth rests upon positive and undoubted proof of the prisoner's guilt, it should not be overcome by less than full, clear and satisfactory evidence of the alleged alibi."

Aside from the foregoing, the record discloses the irrefutable facts that Oxiles separated from his companions about 11 o'clock of the night of June 12, 1913, and they did not know where he went; that the witnesses relied upon by the defendant Manansala to prove an alibi went to sleep immediately upon their arrival at his house at 11 o'clock, whither they had come from the cinematograph; and that the abduction was committed at 12 o'clock that same night in the barrio of Cabalantian of the pueblo of San Fernando,—a detail which strengthens the evidence of the prosecution, for, even supposing the allegations of the defendants and the testimony of their witnesses to be true, these latter did not prove that it was impossible for Oxiles and Manansala to have gone in less than half an hour to the barrio of Cabalantian for the purpose of abducting Emilia Cunanan. In the case of *Klein vs. People* (113 111., 596), it was held that:

"Where the proof clearly shows the commission of a robbery, and the defendant is identified as the guilty party by two witnesses, and an alibi is relied upon in defense, which is not very satisfactorily proved, giving allowance for differences in time and the opinions of witnesses of the time when the offense was committed, and owing to the proximity of the place where the alibi is shown to the place where the robbery occurred, a judgment on a verdict finding the defendant guilty will not be reversed.

"A defendant, to establish an alibi, must not only show he was present at some other place about the time of the alleged crime, but also that he was at such other place such a length of time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place."

The allegations made in this instance by counsel for the defendant-appellants that the crime for which the latter

were sentenced was not proved beyond all reasonable doubt, deserve no attention, for the reason that the record shows it to have been duly proved that the offended party, Emilia Cunanan, recognized Juan Oxiles when she arrived at the sugar-cane field, for, prior to the date of the abduction, he had made advances to her and she had rejected his attentions inasmuch as they both were married; that she also knew Alberto Nicdao as being a herdsman in the employ of Mariano Lim; and that she was likewise acquainted with Pedro Manansala, one of the men who seized and carried her. Sabina Dimarucot, Emilia's cousin, who was with her on the night of the occurrence, testified that at the time her cousin was seized and taken away witness identified Juan Oxiles among the men who abducted the woman, but was unable to identify the other defendants because she immediately started to run home for fear lest something might also happen to her.

After the policeman Galang had taken Emilia Cunanan to her house, the defendant Juan Oxiles himself went to that of the said Galang in a vexed mood and asked him why he had interfered in matters that did not concern him as he was not a justice of the peace; to which Galang replied that neither had the defendant any authority to take away the offended party.

Counsel for the defendant Oxiles also alleged that the abduction of Emilia Cunanan was with her consent and that his carnal relations with her were effected with her permission, inasmuch as he had made love to her and she was separated from her husband; and that, besides, she did not cry out for help, notwithstanding that the place where she was abducted was inhabited, neither did she ask for help after she was in the house of Macario Lacsamana and Rufina Ramos. These spouses testified that about 9 o'clock at night of June 12, 1913, Emilia Cunanan asked them for lodging in their house, saying that night had overtaken her while she was looking for her husband—statements which she positively denied—and that she remained there until the afternoon of the next day, when the policeman Eduardo Galang took her away. They further testified that while Emilia was in their house the defendant Juan Oxiles did not go there.

It is to be noted that counsel for the defendant Oxiles admitted that the offended party was taken by the defendants to the house of Macario Lacsamana. If the abduction had been effected with the consent of the offended party, there would have been no need for Oxiles to avail himself of the aid of other persons, as he did by requesting the services of Manansala and Nicdao.

The abducted woman was unable to make any outcry, as they prevented her from doing so by stuffing a handkerchief into her mouth and Oxiles frightened her by pointing his revolver at her. Afterwards she was intimidated by the three defendants and compelled by force to go to Lacsamana's house and there Oxiles, threatening her with his revolver, made her enter the building and took her to a room where through force and by threats with his revolver and after a brutal struggle he succeeded in lying with her three times, but not before the camisa (Exhibit A) which the woman was then wearing had been torn and spoiled in her resistance to the assault upon her honor.

The fact that Oxiles left the woman the next day in the house of the spouses Lacsamana and that she did not leave that house nor ask for any help, is explainable, because, as Oxiles had threatened to kill her if she left the house—a threat corroborated by the said spouses—and as she was only 21 years of age, it is to be presumed that she believed, as there is every likelihood that she did, that this defendant would carry out his threat; wherefore, overcome by fear, bereft of all defense, with no one to rely upon, an ignorant young woman, as she was only 21 years of age, it is not strange that she should have resigned herself for the moment to that distressful situation, until at last she saw the rural policeman Eduardo Galang approach the house. Him she gladly followed to her home, and once free and out of danger she went to the authorities and complained of the horrible crime of which she had been the victim.

In the commission of the crime in question we must consider the aggravating circumstance of nocturnity, with no extenuating circumstance. Therefore the penalty specified in article 445 of the Penal Code should be imposed in the maximum degree.

By the foregoing reasons the errors assigned to the judgment appealed from have been duly refuted and as the said judgment is in conformity with the law we hereby affirm the same, with the costs against the appellants. So ordered.

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

Trent, J., dissents.

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