

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF, AND
APPELLEE, VS. HIPOLITO UNDIANA, BENITO SUPNET, PEDRO
CABUNUT, SALVADOR GARCIA, GREGORIO GARCIA AND MELECIO
CABALATEJA, DEFEN...**

G.R. Nos. 26853-26855. September 10, 1927

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Maria Aragonés, a maiden, 20 years of age, at one time had amorous relations with Pedro Cabunut; but, having heard later that he was a vagrant, she broke off these relations. On the night of May 6, 1925, while Maria Aragonés was in the house of her parents, Severino Aragonés and Pilar Quejas, Gregorio Garcia, Hipolito Undiana, Pedro Cabunut, Arcadio Cabrera, Salvador Garcia, Melecio Cabalateja and Benito Supnet presented themselves and asked for supper because they said they were very hungry. Severino Aragonés ordered Maria to cook some rice and while she was thus preparing the supper Gregorio Garcia, Hipolito Undiana, Pedro Cabunut and Arcadio Cabrera went upstairs to the house and one of them caught hold of Severino by the feet and he fell to the ground. Upon seeing this act of those who had gone upstairs, Pilar Quejas closed and fastened the door in order to prevent those who had remained downstairs from coming up, but they pushed it and when they succeeded in opening it, one of them struck Pilar Quejas with a bolo inflicting a wound on the right elbow and another on the right thigh. Gregorio Garcia seized Maria and threw her through the window, Benito Supnet, Melecio Cabalateja and Salvador Garcia catching her below, and dragging her towards the woods along the road that leads to the town. When they had gone a distance of 20 meters from the house, Gregorio Garcia, Hipolito Undiana, Pedro Cabunut and Arcadio Cabrera arrived and between them they continued to drag Maria. Benigno de la Cruz responded to the latter's cries for help and was attacked by Gregorio Garcia and Hipolito Undiana, the former inflicting a deep wound about 4 1/2 inches long on the left front parietal region, and the latter a wound on the left palm, another at the end of the little finger and the thumb of the same hand. Pedro Cabunut and Arcadio Cabrera continued dragging Maria towards the woods and when they were at a distance of 40 meters from the house Pablo Lasam appeared upon the scene and Maria implored him to release her from her abductors. When Pedro Cabunut made an attempt to attack Pablo Lasam with a bolo the latter succeeded in snatching the bolo from him and attacked Pedro Cabunut with it, who thereupon let go of Maria Aragonés. Pablo Lasam immediately took the latter to her house.

The wound inflicted by Gregorio Garcia on Benigno de la Cruz's head produced a permanent disfigurement and incapacitated him from his customary work until the month of August of the same year. Of the wounds inflicted by Hipolito Undiana, that on the left palm took eighteen days to heal with medical attendance; that on the little finger of the right hand ten days and that on the left thumb twelve days.

Three complaints were filed herein: One against Hipolito Undiana, Gregorio Garcia, Melecio Cabalateja, Benito Supnet, Pedro Cabunut and Salvador Garcia for the crime of frustrated abduction with violence, reading as follows:

"That on or about the night of May 6, 1925, in the municipality of Gattarman, Province of Cagayan, Philippine Islands, the said accused Hipolito Undiana, Gregorio Garcia, Melecio Cabalateja, Benito Supnet, Pedro Cabunut and Salvador Garcia voluntarily, illegally and criminally, conspiring and plotting together, tried to abduct Maria Aragonese, a maiden 20 years of age, against her will and with lewd designs, and if they did not succeed in spite of having performed all of the acts which should have produced abduction, it was by reason of causes independent of the will of the accused."

Arcadio Cabrera was not included in this complaint as he had not been found, but having been subsequently arrested, another complaint was presented against him for the crime of frustrated abduction in the same language as the former. A third complaint was filed against Gregorio Garcia and Hipolito Undiana for the crime of physical injuries inflicted upon Benigno de la Cruz.

The court not finding any evidence of lewd designs in the two complaints for frustrated abduction, held that the crime committed was that of illegal detention and sentenced Pedro Cabunut, Gregorio Garcia, Hipolito Undiana, Benito Supnet, Melecio Cabalateja, Salvador Garcia and Arcadio Cabrera to six years and one day prison mayor, with the accessories of the law, and to pay, proportionally, the costs of the action. In the case of physical injuries, the court sentenced Gregorio Garcia to one year, one month and one day prison correccional, with the accessories of the law, and Hipolito Undiana to one month and fifteen days arresto mayor, with the accessories of the law, each to pay onehalf of the costs of the action. All appealed from this judgment.

The facts above stated, have been fully proven in the case.

In regard to cases of abduction it is contended that the trial court committed an error in convicting the appellants of the crime of illegal detention. But, in the case of *People vs. Crisostomo* (46 Phil., 775), this court held that under a complaint for abduction with violence, according to article 445 of the Penal Code, judgment may be rendered for illegal detention, according to article 481, when no lewd designs have been proven.

It is also contended that, in any event, paragraph 3 is applicable and not paragraph 1 of article 481 applied by the court. Article 481 of the Penal Code reads:

"ART. 481. Any private individual who shall lock up or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of prison mayor.

"The same penalty shall be imposed upon any person who shall provide a place for the commission of the crime.

"If the offender shall release the person so locked up or detained, within three days after the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be prison correccional in its minimum and medium degrees and a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas."

Paragraph 3 of the quoted article is applicable, as it is clearly stated in the text, when the offender releases the person detained within three days. The reason why the law imposes a lighter penalty in this case is the repentance which is shown by the culprit by this act. When, as in this case, the appellants did not voluntarily release the offended party, who was released by Pablo Lasam who even had to overcome the resistance which Pedro Cabunut offered to her release, having had to fight with the former, there is no reason for the application of paragraph 3. It is said that the detention of the offended party not having lasted three days, said paragraph 3, at any rate, is applicable because, while the appellants did not voluntarily release the offended party, it is possible that they would have done so if the detention had lasted three days and that they did not have the time which the law fixes for repentance and for voluntarily releasing the offended party. But, as may clearly be seen from the wording of this provision, what is taken into consideration is not what the culprit might do, but what he did do during that

time. If the appellants' theory were correct, paragraph 3 would always be applicable in cases where the detention did not last more than three days, notwithstanding the fact that the culprit did not voluntarily release the detained party, if the latter for any other cause might get free at any time during said period. If such were the intention of the law for the application of this paragraph, it would not have required that the culprit release the offended party, and it would have been sufficient to require that the detention should not last more than three days.

The court imposed upon the appellants the penalty corresponding to the consummated crime of illegal detention. This is an error. The complaint is for frustrated abduction and it is alleged therein that the appellant only attempted to abduct the offended party. The reason why a judgment may be rendered for illegal detention upon a complaint for abduction is that the acts constituting abduction, with the exception of lewd designs, also constitute the crime of illegal detention, for abduction with violence being the taking away of a woman from her house by means of force, the same act implies illegal detention. When the abduction of the woman has not been consummated, naturally it cannot be said that the detention was consummated. According to this, a complaint for frustrated abduction cannot involve a charge of consummated illegal detention, but, at most, frustrated illegal detention. We are of the opinion that the complaint filed in this case against the appellants being for the crime of frustrated abduction with violence, and it not having been proven that they had any lewd designs, the appellants may be convicted of frustrated illegal detention.

In regard to the judgment rendered for the crime of physical injuries, there are no assignments of error, and the same is in accordance with the law and the evidence.

The aggravating circumstance of nocturnity must be held to have been present in the commission of the crime.

Therefore, the penalty of four years, two months and one day prision correccional is imposed upon the appellants in the cases of frustrated abduction and the judgments appealed from are affirmed in all other respects, with the costs against the appellants. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

Villa-Real, J., concurs in the result.

DISSENTING OPINION

JOHNS, J.:

This prosecution is the outgrowth of the impetuous and indiscreet conduct of the defendant, Pedro Cabunut, who was in love with the girl, Maria Aragones, and who wanted to marry her. There is evidence tending to show that the girl was also in love with him. The parents objected to the marriage, and, for such reason, it could not be consummated. On the night in question, with the other defendants, he went to the home of the girl, and together they took the girl a very short distance from her home, but were intercepted by a superior force, and the girl was returned to the home of her parents.

The record is conclusive that the real purpose of the attempted abduction was for the defendant, Pedro Cabunut, to marry the girl, and that it was not done with any lewd design, and that the girl was not in any way injured. In other words, the sole intent of the defendant, Pedro Cabunut, was to obtain the possession of the girl, and to marry her and for them to become husband and wife. The most that can be said is that it was a foolish and indiscreet effort of a young man to marry the girl that he loved, without the consent of her parents.

The record shows that since their conviction about one year ago, all of the defendants have been confined in the provincial jail. We are clearly of the opinion that the punishment which they have now suffered by reason of that confinement is amply sufficient to atone for any crime which they committed.

For that reason, I dissent and vote to discharge the defendants.

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