

2 Phil. 1

[G.R. No. 1001. February 21, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GERONIMO TORRENTE, DEFENDANT AND APPELLANT.

D E C I S I O N

COOPER, J.:

Geronimo Torrente is accused of the crime of *lesiones graves* committed in the following manner:

That the defendant on the afternoon of March 15, 1902, in the city of Manila, maltreated his niece, Jacinta de Leon, a maiden of 17 years of age, by striking her, kicking her, and burning her with carbolic acid for not having acceded to his lustful desires.

The defendant pleaded not guilty. The trial resulted in a conviction of the defendant by the lower court of the offense of *lesiones menos graves* as defined in article 418 of the Penal Code, and he was sentenced to five months and a day of *arresto mayor*.

He appeals from this judgment.

The trial of the case having been fixed for the first of May, 1902, on account of the alleged unavoidable absence of the defendant's attorney from the city of Manila, he asked for a suspension of the trial, which was denied him.

The refusal of the trial court to grant the continuance is assigned as error. This assignment of error is not borne out by the record. From it, it appears that the case having been called for trial the defendant produced a telegram from his attorney to the effect that he could not come "on account of accident to boiler." The judge thereupon required the defendant to employ other counsel, and, the defendant having stated that he was unable to do so, the court appointed Senor Monroy *de officio* as his attorney. No objection was made by the defendant to proceeding to trial after the assignment of Senor Monroy as counsel; he

acquiesced in the action of the court and proceeded to trial without further objection.

The case appears to have been tried in a proper and skillful manner and no essential right of the accused has been prejudiced. Besides, no reason is given why the defendant's counsel should have been absent. The case had been continued once before, and the circumstances of the absence of his attorney were not shown, except that he was delayed by an accident.

Another objection to the judgment is that it is contrary to the law and the evidence, in that it does not appear beyond a reasonable doubt that the intention of the accused was to commit the crime of which he was convicted, nor does it appear that the injured party was incapacitated for a period of eight days or more on account of the injuries received. This objection requires a review of the evidence.

The testimony of Jacinta de Leon, the injured girl, shows that she was 16 years old, and on the 15th day of March lived with her aunt, the defendant's wife; that while she was lying on the bed on the 15th of March, taking a siesta, she was approached by the defendant, who made an improper proposal to her; that he kissed her, whereupon she arose from the bed and went into the presence of her aunt; that the defendant put on his shoes and went off; after a time she saw that he was coming toward her and she sat down, whereupon he struck her; that she said nothing because she did not know what wrong she had done. He again struck her and gave her a kick and said that she must leave the house; that she dressed herself and went off in order that his rage might pass away, and being about to go out the defendant followed her, having in his hand a bottle of acid which he threw in her face; that raising her hand the hand of the defendant was struck and, a part of the contents was spilled; that she entered the hospital for treatment of the burns, and was two weeks being cured.

The defendant gives quite a different version of the occurrence. He testifies that he was leaving the house on the evening of the day in question to disinfect a water-closet, and had in his hand a bottle of carbolic acid; that the noise he made awoke his wife who asked him where he was going, and upon his replying she said that he could not go out and seized him by the shoulder; that being unable by her strength to prevent him from leaving the house, she called to her niece and commanded her to assist her; that in his effort to disengage himself from his wife and the niece, and not recollecting that the bottle had no stopper, the acid was spilled upon the girl, a part of it falling on himself. In this statement the defendant is corroborated by the testimony of his wife.

We are disposed to take the version of the injured girl as true and to discard entirely the statements of the husband and wife. The girl's statement shows not only a gross violation of confidence resulting from the relationship existing between her and the defendant, but discloses a case of most brutal and cruel conduct to an unoffending person. There is no conceivable reason why such a charge should have been falsely made by the injured girl; on the contrary, it appears that from some influence exercised upon her she very unwillingly appeared in court to testify. She failed to appear at the time fixed for the trial and it was only through the process of the court that her testimony was secured. There were strong motives on the part of the defendant to exculpate himself, and there was the natural desire upon the part of the wife to relieve him of his embarrassment.

It is also assigned as error that the court erred in overruling the defendant's motion for a new trial based upon the ground of newly discovered evidence.

Attached to the application is the affidavit of Damos de Leon, the father of the injured girl, in which he states that Jacinta was not incapacitated from following her ordinary pursuits and that she recovered within six days from the time she entered the hospital.

Also the affidavit of Doctor Juan Miciano, the attending physician of the hospital of San Juan de Dios, where the injured girl Avas treated, who states that Jacinta de Leon entered the hospital on account of burns caused by carbolic acid in the face and on the right arm, and that she was cured in nine days from her entrance in the hospital without any deformity or permanent physical disability being occasioned, there only remaining white spots as the result of the burns.

This last affidavit sustains the charge that the injuries were more than eight days in curing, and the testimony of this witness would strengthen the case of the prosecution. There is no reason shown why the testimony of Damos de Leon was not known before the trial, and the witness produced at the trial.

The difficulty has not been so much in reaching a conclusion in view of the conflict in the evidence as in discovering adequate punishment under the present laws for the defendant.

The offense was of a most brutal character, and the punishment which we affix we regard as wholly inadequate to the case.

Article 418 of the Penal Code provides that injuries which shall render the injured person unable to work for eight days or more, or winch shall require the care of a physician for a

similar period, shall be punished with *arresto mayor* or banishment and a fine of from 325 to 3,250 pesetas, in the discretion of the court, and when such injuries shall be inflicted with manifest intent of outrage, or under humiliating circumstances, in addition to *arresto mayor* a fine of from 325 to 3,250 pesetas may be imposed.

The evidence shows manifest intent of outrage, and in addition to this there were other circumstances which should have been taken into consideration. The offense was committed with *alevosia*, and also with abuse of confidence; both of which are circumstances which aggravate criminal liability. (Paragraphs 2 and 10, article 10, Penal Code.)

The judgment of the lower court will be reversed, and judgment is now here entered convicting the defendant of lesions menos graves inflicted with the manifest intent of outrage, and with the attending aggravating circumstances defined in paragraphs 2 and 10 of article 10 of the Penal Code; and he is sentenced to imprisonment of *arresto mayor* for the period of six months, and to pay a fine of 3,250 pesetas, and in the event of insolvency on the part of the defendant he is sentenced to subsidiary imprisonment at the rate of one day for every 12 1/2 pesetas of the fine, such subsidiary imprisonment not to exceed two months.

Costs of suit are also adjudged against the defendant. So ordered.

Arellano, C. J., Torres, Mapa, and Ladd, JJ., concur.

Willard, J., concurs in the result.