

1 Phil. 734

[G.R. No. 1018. February 17, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. IGNACIO CRUZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

The evidence shows that the defendant and two other members of the Insular Police entered the house where Antonia Evangelista, a girl of 17 years of age, lived with her grandmother, Carmen Tayag, at about 7 o'clock in the evening of the 30th of March, 1902, in search of the girl's father, who was at that time in Manila. The defendant and his companions took Carmen downstairs and tied her to a "chico" tree, went upstairs where the girl Antonia had been left alone, and the three assailants then ravished her in succession, having stretched her upon the floor and stuffed a handkerchief into her mouth so as to prevent her from calling for help. The foregoing facts were corroborated by the witness Carmen Tayag and by Nicolasa Cruz, a neighbor of the injured party, who, from the window of her house, saw the girl Antonia in the hands of two men inside of the house where the occurrence took place, and shortly after heard the voice of the girl who was crying for help. Her cries were also heard by Paula Cruz, a relative of the victim, who lived near by. She came out of her house and unsuccessfully attempted to prevent the assailants from taking the girl Antonia away. The latter was carried to the barrio of Sucat and there, according to the testimony of the accused, who pleaded not guilty, she was again ravished by three other policemen.

These facts, as established by the testimony of creditable witnesses and the damaging evidence furnished by the statements of the defendant, constitute the crime of rape defined and punished under article 438 of the Penal Code, inasmuch as the accused, in order to outrage the girl, used violence and intimidation, having been further aided by two others who, like himself, were armed with guns, they being members of the Insular Police.

The defendant heard the evidence of the complaining witness, who stated in her testimony

that she knew the accused because he was a resident of the same town and gave a full account of the occurrence, and asked the girl if she was not mistaken in what she had stated to the court, to which she replied that all that she had testified to was true. The accused then testified that he did not rape the girl at all, but that the two constables, Catiple and Luis, did. He also stated that she was not raped at her house, but at the barrio of Sucat, where she was ravished by the two policemen already mentioned, one Batunbacal and Corporal Tagayum. These statements, in connection with those of the witnesses who either saw or heard of the occurrence and who also heard the noise caused by the struggle between the assailants and the victim, as well as the cries of the latter, prove conclusively the guilt of the accused, who was unable to present any exculpatory evidence or adduce any in his defense.

In the commission of the offense in question there must be appreciated the attendance of the aggravating circumstance No. 20 of article 10 of the Penal Code, there being no mitigating circumstances to be considered, as the offense was committed in the dwelling of the injured party, and without provocation. The adequate penalty must therefore be imposed in the minimum grade of the maximum degree.

For the reasons stated the judgment should, in our opinion, be reversed and the defendant sentenced to seven-teen years four months and one day of imprisonment, and to suffer the corresponding accessory penalty of temporary absolute disqualification, being subject to the surveillance of the authorities during his term of confinement and for a like period after the expiration thereof. Defendant shall pay to the injured party an indemnification in the amount of 300 Mexican pesos, being further obliged to recognize the issue that may be born, if its origin should not be a bar thereto, to support the same, and to pay the costs of this appeal. The judge, upon the filing of the necessary information for the five other crimes of rape enumerated on page 28 of the record, shall proceed in each case according to law. So ordered,

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.

