

1 Phil. 626

[G.R. No. 930. January 10, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BASILIO TAGLE,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Basilio Tagle, is charged with the crime of abduction, alleged in the following manner:

That on the 19th day of February, 1902, in the city of Manila, the defendant willfully and illegally abducted Martina Baiia, a girl 13 years of age, against her will and with unchaste designs, punishable under the provisions of article 445 of the Penal Code.

The Court of First Instance reached the conclusion from the testimony that the abduction was not against the will of the injured party, but found the defendant guilty, under the provisions of article 446, Penal Code, of the abduction of a virgin under 23 years of age and over 12, executed with her assent, and sentenced him to the punishment of one year of *prision correccional* and to the payment of costs of the proceedings. From this conviction the defendant appeals.

The defendant having been charged with the abduction executed against the will and with unchaste designs, under the provisions of article 445 could not be convicted of the offense punishable under article 446 of the abduction of a virgin under 23 years of age and over 12, executed with her assent. The latter offense is a distinct and separate crime, and is not included in the former. Therefore, the judgment of the Court of First Instance must be reversed unless the proof is sufficient to sustain the conviction for the offense with which he is charged in the complaint.

An examination of the testimony shows the following facts:

On the 19th day of February, 1902, Martina Bana, who was then residing with her mother, was sent out to purchase coal oil; she was met by the defendant, who seized her by the hand and placed her in a carromata, and against her will was taken to the house of Valeriana Ponce and there remained about an hour.

From there she went with the defendant to Tondo, and was placed at the house of a friend of the defendant Tagle, and there remained for three days.

She was during this time in company with one Federico Roxas, and the evidence is sufficient to show that the relations between Martina Bana and Federico Roxas were illicit.

She was afterwards taken to the house of one Benito Eusebio in Pasay, where she remained from the 21st of February to the 15th of March. She seems to have been detained there against her will.

She was afterwards taken to the house of the defendant and there again had meetings of an illicit nature with Federico Roxas.

The injured party was a near relative of Teodora Baffa, the *querida* of the defendant, and had formerly lived two years with them as a member their family.

We think the evidence is sufficient to show that the girl 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.

The proof in the case is entirely sufficient to support a conviction under article 444 of the

Penal Code, which reads as follows:

“Whosoever shall habitually, or, taking advantage of his authority or of another’s trust, promote or facilitate the prostitution or corruption of minors to satisfy the lusts of another, shall be punished with the penalty of *prision correccional* in its minimum and medium degrees and absolute temporary disqualification if he were a public official.”

The defendant should have been prosecuted under this article of the Code.

For the reasons above stated we reverse the judgment and remand the case to the Court of First Instance with direction that a complaint be presented against the defendant under the provisions of article 444, and that he be tried for the offense prescribed in this article. The costs of the proceedings are adjudged *de officio*.

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

Willard, J., concurring in the result.