

1 Phil. 378

[G.R. No. 887. September 25, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BENIGNO DE VERA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

Appeal by the defendant from the judgment of the 20th of January, 1902, rendered in case No. 83 of the Court of First Instance of Pangasinan, by which the defendant was convicted of the crime of abduction and was sentenced to seventeen years four months and one day of imprisonment with hard labor, to count from the day of the judgment, with the corresponding accessories, and to the payment of costs.

After 10 o'clock one night in the year 1900, day and month unknown, the defendant, Benigno de Vera, and several other men, provided with arms, went to the house of Rosa Magalon. De Vera immediately entered the house and seized Severina de Guzman, a girl some 18 years of age, the daughter of the owner of the house. Notwithstanding her opposition and her attempt to cling to her mother, he forcibly carried her off against her will, taking her out of the house. In the struggle he struck the girl's mother a blow in the chest, upon which she fled from the house. The three women who were living in the house were unable to call for assistance or prevent the aggression, as they were overcome with fear. The abducted girl was placed on horseback by De Vera and taken to his house at a place called Bagnat, where she was held for three days and by threats compelled to accede to De Vera's lewd desires, until Mariano Gonzalez, accompanied by several other men, came to the house and notwithstanding the opposition of the defendant succeeded in recovering the girl and restoring her to her mother's house.

These facts constitute the crime of abduction, committed against the will of the victim, and with a lewd intent, a crime covered by article 445 of the Penal Code. The commission of the offense is fully proven by the testimony of the injured party, of her mother, and of another

woman who lived with them in the house, all of whom uniformly testified to the occurrence in all its details.

Notwithstanding the plea of not guilty entered by the defendant, the evidence in the case is sufficient to establish his guilt. This evidence, has not been contradicted by the defendant, who was present when the prosecuting witness testified and heard the testimony of each one of the witnesses for the prosecution without having alleged any exculpation or having made any attempt to show his innocence of the crime of which he is charged.

In the commission of the abduction for which this prosecution is brought, the circumstance of nocturnity, No. 15 of article 10 of the Code, must be considered in view of the fact that the defendant availed himself of the darkness and silence of night for the consummation of the crime. Furthermore, aggravating circumstance No. 20 of article 10 must be applied, by reason of the fact that the crime was committed in the dwelling of the offended person, this circumstance being compensated in its effects by article 11 as a mitigating circumstance to be applied in view of the nature of the crime, the disturbed condition of the country at the time the abduction took place, and the personal conditions of the defendant. Therefore the penalty assigned by the law must be imposed in its maximum degree.

Furthermore, with respect to the motion made by the counsel for the defendant for a dismissal of the proceedings on the ground that the prosecution was commenced without the express solicitation or instance of the offended party, it is a sufficient answer to consider the object and purpose of the penal law, which does not require a formal written denunciation as a basis for the prosecution of the crime of abduction. This formality is not required by article 448 of the Code, which expressly declares that it is not necessary that a formal petition be filed.

In this case the provincial fiscal filed an information by virtue of the complaint made to him by the complaining witness, who, with her mother, sustained and confirmed during the trial the action brought by the fiscal in the name of the Government. Therefore there is no legal reason or ground upon which the petition of the defendant that the proceedings be set aside can be granted, and, consequently, for the reasons stated, the defendant, Benigno de Vera, must be convicted and sentenced to the penalty of seventeen years four months and one day of *reclusion temporal*, with the accessories designated in article 59, indemnification as a dowry for the girl Guzman of 500 Mexican pesos, and to acknowledge the issue, if any, unless the quality of its origin should prevent, and to support such issue, if any, and to pay the costs of both instances. The judgment of the court below is reversed. So ordered.

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

Mapa, J., did not sit in this case.

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