

1 Phil. 358

[G.R. No. 886. September 09, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ADRIANO SOLAR,
DEFENDANT AND APPELLANT.**

D E C I S I O N

SMITH, J.:

In this case Adriano Solar was convicted in the Court of First Instance of the Province of Pangasinan of the crime of "attempt to rape" and sentenced to four years and two months imprisonment in the public prison of the province, with costs. He now appeals to this court from the judgment, and the only question raised by his appeal is the sufficiency of the evidence upon which his conviction was secured. The testimony for the prosecution as disclosed by the record is to the effect that about 10 o'clock of the morning of the 15th of November, 1901, the accused, Adriano Solar, having a knife in his hands, entered the house in which the prosecuting witness, Juliana Perez, then was and seizing her hands attempted to embrace her and to throw her on the floor. All this took place near an open window of the house and in the actual presence of Aniceta Solar, the aunt of Adriano Solar, and Potenciana Salcedo, the aunt of Juliana Perez. The accused said nothing from the time he entered the house and commenced the assault until he left it after the complainant, with the aid of the other two women, had released herself from him. The prosecutrix claims that she received injuries about the head and breast caused by the knife in the hands of Solar. From these injuries she says she recovered in about a week.

The only witness in behalf of the defense is the accused himself, who testified that he lived in the same house with his accuser and that she is the daughter of Antonio Perez and one Petra Salinas, who was the concubine of his father. He further says that he went to the house on the morning of the alleged offense and in the presence of Tomas Tirao, Maxima, his wife, and Aniceta Solar, ordered Juliana Perez to leave the house because she and her mother had stolen certain documents and money from him and had tried to bribe a man by

the name of Pedro to kill him. He says, also, he inflicted no violence on the prosecutrix, and that she denounced him to the court in revenge for being ordered from the house. Neither Pedro, Tomas Tirao, nor his wife were produced as witnesses.

One of the essential elements of the crime of "attempt to rape" is the intent to have carnal knowledge of a woman against her will, and in despite of any resistance she may make. If this element is wanting or the prosecution fails to establish it by competent evidence beyond a reasonable doubt the charge is not made out and no conviction on it can be had.

The evidence in this case seems to show that an assault was committed, but hardly goes to the extent of establishing that it was committed with the intent to rape. There is no, act, word, or deed which satisfactorily shows beyond a reasonable doubt that the accused sought to have criminal knowledge of the person of the complaining witness or that his design was any other than the infliction on her of physical violence or bodily harm.

Any inference or presumption that he intended to violate the complainant which might be drawn from the fact that he seized her hands, put his arms about her, and attempted to throw her on the floor is overcome by the fact that these acts of violence were perpetrated in broad daylight near an open window in the presence of close relatives of both. Crimes against the chastity of women are not usually committed in the presence of persons not aiding and abetting the offense and much less in the immediate personal presence of kinswomen whose active opposition might be reasonably expected.

The evidence being insufficient to support the charge of "an attempt to rape" the judgment based on it ought to be reversed, and it is so ordered, with costs *de officio*.

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