

[G.R. No. 430. January 27, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. ENRIQUE RODRIGUEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

MAPA, J.:

The defendant was on intimate terms with Marcosa Peñalosa, 18 years of age, while the latter lived at the house of her father, Gregorio Peñalosa, who is the private prosecutor in this case and who was opposed to these relations. During the afternoon of May 2, 1901, Marcosa left her house of her own free will and went to that of the defendant for the purpose of demanding from him the fulfilment of the promise of marriage which he had repeatedly made her on previous occasions. Two witnesses were present in the defendant's house, dealing with him on business matters, when she presented herself there between 1 and 2 of that afternoon. These witnesses were informed that very afternoon that Marcosa would be married to the defendant and were asked by the latter to act as witnesses to the marriage which was celebrated the following day, May 3, as appears from the corresponding certificate which is a part of the record.

From these facts, which we consider sufficiently proved, it is seen that the departure of Marcosa Peñalosa from her house was, instead of a case of abduction, a real elopement carried out by her as a means for contracting marriage with the defendant against the opposition of her father, inasmuch as she acted upon her own initiative and was not seduced by the said defendant. But whether elopement or abduction, it is evident that the act was not committed with unchaste designs but with matrimonial intentions which were, indeed, well known to certain persons from the very commencement of the affair, and which were realized the following day by the marriage of the accused to the woman alleged to have been abducted.

The unchaste designs constitute one of the essential elements that characterize the crime of

abduction, as well when committed with violence against the will of the woman as when carried out with her consent in case of her minority. This is precisely the point which constitutes one of the principal differences which distinguish this crime from crimes against personal liberty and security. If the removal of a woman from her house, although she be a virgin under the age of 23 years, is committed for the purpose of murdering her or demanding a ransom, or holding her a prisoner somewhere, it would undoubtedly constitute a crime but would by no means fall under the provisions of the sections of the Penal Code which define and punish the crime of abduction, but of other sections quite distinct, although there exists in such case the material fact of the stealing away of a woman. This consideration demonstrates that the unchaste purpose is essential in all cases to the crime of abduction, and this same conclusion is deduced from the fact that the crime is classified in the Code among the crimes against chastity. Article 445 of the said Code establishes clearly and conclusively the necessity of said circumstance in order that the crime of abduction may exist, and even though section 446, invoked by the complainant as applying to the present case, in speaking of the abduction of a virgin under the age of 23 years and over 12, committed with her consent, does not make express mention of unchaste designs, the provisions of this article should be considered in connection with those of the preceding one, which requires this circumstance as indispensable and essential. Article 445 is the complement of article 446, the two forming, as they do, a part of one and the same chapter included in the title which the Code devotes to crimes against chastity.

In addition to this, paragraph 2 of article 448, which treats of causes for abduction, speaks only of abduction committed with unchaste designs, and the preceding interpretation is still further confirmed by article 449 in that it provides that those convicted of abduction shall be sentenced, by way of indemnity, to endow the complainant and acknowledge the offspring. This impliedly presupposes the idea of unchaste purpose in all cases of abduction, for the provisions of this article as well as in that of article 448 above-mentioned are applicable to all cases of abduction for the reason that the Code expressly declares them to be of common application to all crimes against chastity.

In view of the foregoing considerations we are of the opinion that the judgment appealed from should be affirmed with costs in this instance *de officio*. It is so ordered.

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

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

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