

3 Phil. 337

[G.R. No. 1446. February 17, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. AMBROSIO DE LA CRUZ, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

The defendant in this case was charged with the crime of attempted rape.

The evidence discloses the fact that on the 20th of July, 1903, the accused went to the house where one Paula de los Santos lived, at about 8 o'clock at night, and entered the house without the permission of the said Paula, After the accused entered the house he took hold of her and threw her upon the floor. Paula at once cried for help. Her aunt was in the house with her at the time and saw the accused enter the house, but was afraid to go to her help when she heard her cries. One Apolinar Acosta, who lived in an adjoining house, hearing the cries of Paula, ran immediately to her aid. When Apolinar Acosta entered the house where Paula was he found the accused struggling with her, both being upon the floor. The mother of Paula, who was in an adjoining house, also heard the cries of her daughter, Paula, for help, on this same occasion.

The evidence shows that Paula was about 15 years of age and that the accused was about 16 years of age. The evidence further shows that the accused had visited the house of Paula before this night and desired to marry her. The position in which the accused was found upon the floor with Paula by Apolinar Acosta at the time he, Apolinar Acosta, answered her cries, clearly indicates that the accused intended to commit the crime charged in the said complaint.

The judge of the Court of First Instance, after hearing the testimony, found the defendant guilty of the crime of attempted rape and sentenced him to be imprisoned for the term of two years and six months of *prision*

correcional with the costs.

Article 438 of the Penal Code provides that those who are found guilty of the crime of rape shall be punished with the penalty of *reclusion temporal*.

Article 66 of the Penal Code provides that those who shall be found guilty of an attempt to commit a crime shall be punished by the penalty two degrees lower than that prescribed by law for the consummated crime.

Inasmuch as the evidence shows that the defendant is guilty of the attempt to commit a crime only, then by virtue of article 66 of the said code, he should be punished with the penalty of *prision correccional*.

The evidence discloses the fact that the accused was but 16 years of age. Subsection 1 of article 85 of the said code provides that persons under 18 years of age and over 15 years of age shall be punished with the penalty one degree lower than that prescribed by law. By virtue of this last-quoted provision of the Penal Code, then, the penalty of *arresto mayor* should be imposed.

The offense was committed at nighttime. This should be appreciated as an aggravating circumstance.

There being no extenuating circumstances and one aggravating circumstance, the court must impose the maximum degree by virtue of subsection 3 of article 81 of the Penal Code. Therefore, by virtue of the foregoing provisions of the law and facts, the court does hereby modify the sentence of the Court of First Instance of the Province of Rizal and does hereby sentence the accused, Ambrosio de la Cruz, to six months of *arresto mayor* and to pay the costs of both instances.

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

