

2 Phil. 549

[G.R. No. 1328. September 29, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANDRES SALVADOR,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

Andres Salvador is charged with the offense of an attempt to commit rape upon Eulalia Medina on the morning of the 27th day of May, 1902. On the 21st day of April, 1903, he was convicted and sentenced by the Court of First Instance of Pampanga to the punishment of eight months' prison correctional, with accessories, from which sentence he has taken an appeal to this court.

It is contended by the attorney for defendant that the evidence is insufficient to show an attempt to commit the crime, or to show that the intention of the defendant was to abuse the honor of the complaining witness.

The complaining witness, Eulalia Medina, testified that on the morning of the 27th day of May, about 8 o'clock, she was in the Rio Grande River washing clothes, and while there saw the accused and became frightened; that she immediately left the river and started for home, but on arriving on the bank of the river she was met by the accused, who pursued her. That she threw the tul> she was carrying at the defendant and began to run; that in running she fell face downward; that the defendant seized her and placed himself upon her and prevented her from getting up; that she cried out for aid, and her mother came and attempted to separate the defendant from her; that the defendant wounded witness's mother in the right hand with a knife; that lie was prevented from accomplishing his purpose by the arrival of witness's mother and aunt; that while they were lying on the ground the defendant had one arm around her, and had a knife in the other hand. The witness supposed he intended to abuse her honor from the fact that lie would not permit her to get up.

Vicenta Solas, the mother of the complaining witness, testified that upon hearing the latter's cry she hastened to her daughter's presence and attempted to separate the defendant from the girl, and that the defendant caused a wound on witness's hand with a knife; that the witness then railed for aid, that several persons responded, and the defendant was arrested and taken to prison.

We think this evidence shows, beyond a reasonable doubt, that the defendant intended to abuse the honor of Eulalia Medina, and that he is guilty of the offense of attempted rape dened and punished under article 438 in connection with paragraph 3 of article 3 of the Penal Code.

It was also urged by counsel for the defendant that the Court of First Instance erred in not continuing the case on the application of the defendant, in order to enable the defendant to procure the attendance of certain witnesses. The defendant had previously asked for a suspension some time during the trial, which was commenced on February 26, 1908, in order that he might procure the attendance of those witnesses, and the trial was not completed until the 21st day of April, 1903.

No diligence is shown upon the part of the defendant by request for the issuance of process to compel the attendance of the witnesses, nor is it shown that any effort was made to procure their attendance. This was sufficient cause for the denial by the Court of First Instance of further postponement of the trial.

Under article 93 of the Provisional Law for the application of the Penal Code in the Philippine Islands, the defendant will be entitled to the benefit of one-half of the time during which he may have remained in prison awaiting the final results of the case, which must be given him in the execution of the sentence.

It is ordered that the judgment of the lower court be affirmed, and that the costs of this appeal be adjudged against the defendant.

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

