

1 Phil. 435

[ G.R. No. 946. October 22, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MANUEL BANZON ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**TORRES, J.:**

Shortly after 8 o'clock on the night of the 29th of June, 1901, Manuela and Felicisima Key Hipolito, sisters, the latter 15 years and the former 13 years of age, while in the watercloset, some distance from the house in which they lived, observed that the two defendants were concealed behind a tree near the privy. Upon this the two girls left the closet for the purpose of going back to the house, but before they succeeded in this the defendants approached them, Manuel seizing Manuela and Jose seizing Felicisima. They embraced the girls and tried to throw them on the ground, with the intent to rape them. Notwithstanding their forcible efforts to do so they did not succeed in carrying out their purpose, owing to the resistance of the girls and their screams for help, which attracted the attention of their parents. Manuela retained in her hand a piece of her aggressor's shirt as a result of the struggle. The girls' parents were unable to catch the accused, as they made their escape before the parents reached the spot.

The facts related constitute the double crime of attempted rape. The accused, by the mere fact of having embraced the complaining witnesses and struggling with them and endeavoring to lay them or throw them on the ground, with the unquestionable intent of raping them, evidently commenced the execution of the crime of rape by exterior acts, and if they did not succeed in consummating the crime or performing the other acts necessary for its complete realization, it was not due to any voluntary withdrawal, but to the resistance of the victims, and the fact that their parents, attracted by their cries, came to their assistance. It follows, therefore, that the crime committed is that defined and punished by article 438, in connection with articles 3 and 66 of the Penal Code.

Although the defendants plead not guilty to the charge, the record discloses sufficient evidence for the prosecution to conclusively establish their guilt, as authors respectively of these attempted rapes, notwithstanding the denials and exculpatory allegations of the defendants.

The testimony of the girls and that of their parents and that of several other witnesses, some of whom heard the screams and others observed from a distance the struggle between the complaining witnesses and the defendants and who say the latter ran away upon the approach of the girls' parents; the piece of Manuel's shirt which, as a result of the struggle, was left in Manuela's hand; the two letters written in the native dialect, by the accused to each one of the complaining witnesses, respectively, some days after the event, in which, confessing their guilt, they asked pardon, and begged that the girls themselves impose the punishment upon them, and the statements made by Manuel Banzon in his sworn testimony, in which he relates the occurrence as having a different character, all tend to prove the facts upon which the complaint is based and to show that there was not a simple quarrel, as they allege by their unsupported statements. This conclusion is further supported by the other circumstances connected with the commission of the crime.

No aggravating circumstance was present in the commission of the offense, but the mitigating circumstance of article 11 of the Penal Code should be applied, in view of the character of the crimes' prosecuted, and the personal conditions of the defendants and of the complaining witnesses. Therefore, each one of them must be condemned to the minimum degree of the penalty assigned by law.

We are, therefore, of the opinion that the judgment below should be reversed, and each one of the defendants convicted and sentenced to one year and six months of *prison correccional*, and to pay, each one, a half of the costs, they being also condemned to the accessory penalties established by article 61 of the Penal Code.

So ordered.

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

