4 Phil. 527

[G.R. No. 2164. May 01, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO SANTOS, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

The defendant is charged in the complaint with the crime of rape. The court sentenced him, not for this crime but for seduction, which is in accordance with the findings of the judge in the judgment appealed from, that crime being proven at the trial.

We agree with the judge in considering the crime of rape charged against the defendant not proven. It has been fully proven and shown that the defendant was assisted by the alleged raped woman and there is no proof that he employed any violence or intimidation to accomplish his purpose. We do not think it necessary to decide at present whether the facts proven constitute the crime of seduction, because we are of the opinion that, although they do, the defendant could not be sentenced for that crime under the complaint filed and sustained by the prosecution at the present trial, even taking the theory which the judge establishes in his judgment and as to which we do not care to establish the precedent that the crime of seduction is necessarily included in that of rape.

The crime of seduction can not be prosecuted by the public prosecutor. Paragraph 1 of article 448 of the Penal Code states that no action for seduction can be brought except at the instance of the offended party, her parents, grandparents, or her legal guardian. It is true that the mother of the injured party gave the information in the

present case, but she did not sign or make any formal complaint in the case. The one who has brought this suit—that is to say, the one who brought the corresponding criminal action and has sustained it during the trial up to the rendition of final judgment, which is what is meant by the word "instance" in its technical sense-was the public prosecutor. The distinction between the words "instance" and "denouncement" appears clearly set forth in paragraph 2 of article 448 above cited, which provides as follows:

> "In order to proceed in cases of rape and in those of abduction committed with unchaste designs, the denunciation of the interested party, of her parents, grandparents, or guardians shall suffice even though they do not present a formal petition to the judge."

This suit is not at their "instance," which is necessarily indispensable for the prosecution and punishment of the crime of seduction. There being no penal action exercised formally for the crime of seduction in the case at bar by any of the persons who are expressly designated by law, there is no legal way to sentence the defendant for the said crime, although from the evidence adduced at the trial the commission of the crime by said defendant has been shown.

With a reversal of the judgment appealed from, we freely acquit the defendant of the charge of the crime of rape, reserving to the interested party the action which she may have for the crime of seduction, declaring the costs in both instances *de oficio*. So ordered.

Arellano, C. J., Torres, Johnson, and *Carson, JJ.,* concur.

Date created: April 24, 2014