

4 Phil. 204

[G.R. No. 1662. February 13, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE YAMBAO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

The defendant has been charged with the crime of rape and his guilt has been proven conclusively. The court below sentenced him to eighteen years of reclusion, with the accessories provided for in article 59 of the Penal Code, viz, to indemnify Maria Pineda, the injured party, in the sum of 3 reales and 12 cuartos (the value of a shirt which was torn), to support the offspring, should there be any, and to pay the costs. From this judgment the defendant appealed.

As regards the principal penalty and the accessories, the sentence is in conformity with the law. The aggravating circumstances, to wit, the commission of the crime in the nighttime and at the house of the injured party, justify the application of the penalty in its maximum degree.

As regards the civil liability, the judge acted in accordance with the law when he abstained from making any statement about the first two obligations imposed by article 449 of the Penal Code upon those guilty of the crime of rape, *estupro*, or seduction—that is, to endow the injured party and to acknowledge the offspring. The obligation to endow is imposed by the code in favor of the injured party, if she is unmarried or a widow. The woman on whom the rape was committed in this case is a married woman. The defendant can not be condemned to acknowledge the offspring because the character of its origin prevents

that. Further, the law prohibits the acknowledgment of the offspring in this case on account of the parental authority which might thus be conferred upon the party committing the rape, and because of the inherent parental right in favor of the father in *constanti matrimonio*. If this legal right should be violated the family rights would be disturbed and the acknowledgment on the part of the offender would cause its consequent disturbance in the family as a result of the crime committed by the man, who would thus introduce into the family a spurious offspring.

The judge has imposed on the defendant the obligation to support the offspring, should there be any. The woman in this case who was raped was a married woman, pregnant, four months gone, and the same reason which prevents the offender from acknowledging the offspring should also prohibit him from entering periodically the home of the woman raped, in order to comply with the duty thus imposed toward the spurious offspring. This duty, depriving it of all correlative rights on the party furnishing the maintenance, would be the source of great disturbance to the family rights of the parents, who should live in peace and enjoy the attributes, of their legitimate authority over their children.

Stripped of the three forms of civil liability prescribed by article 449 of the Penal Code, the defendant can not be placed in a better condition than one who violates an unmarried woman or a widow. The latter would not in any case be deprived of the three obligations arising from the performance of any one of these crimes against her chastity.

The indemnification of 3 *reales* and 12 *cuartos*, the value of the mutilated garment, which the judge imposed on the defendant, is reparation merely for the damage caused by this offense against her property, but for the offense against chastity he should respond for a damage of a different and a higher entity, and this reparation should always be a civil reparation corresponding to the character of the crime which injures both honor and chastity.

Therefore we affirm the judgment below except as regards that part which imposes on the defendant the obligation of supporting the offspring, should there be any. In place of this we condemn Jose Yambao to indemnify Maria Pineda in the sum of P500, Philippine currency, and to pay the costs in both instances, without having to suffer subsidiary imprisonment in case of failure to pay the indemnification which we impose, for the reason that the nature of the principal penalty imposed relieves him from such imprisonment. Let this judgment be executed as modified. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.

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