

3 Phil. 380

[ G.R. No. 1482. February 29, 1904 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANTONIO FERNANDEZ, DEFENDANT AND APPELLANT.**

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

**MAPA, J.:**

The guilt of the defendant of the crime of rape with which he is charged is fully established by the proof. The crime was committed with the aggravating circumstance that the accused availed himself of his position as sergeant of the Constabulary forces to commit the crime, and with the further circumstance of its commission in the dwelling of the complaining witness. Consequently the penalty of seventeen years four months and one day of *reclusion temporal* imposed on the defendant by the trial judge is in accordance with law and should therefore be affirmed.

The court below also condemned the defendant to the payment of the sum of 500 pesos to the father of the complaining witness. There is no authority of law for this, and consequently the decision can not in this respect be sustained. In lieu thereof the defendant should be obliged to endow the complaining witness, who it appears is unmarried, in the sum of 500 Philippine pesos, and to acknowledge and support the offspring, should there be any, in accordance with the provision of article 449 of the Penal Code.

With this modification we affirm the judgment of the court below, with the costs of this instance against the defendant.

*Arellano, C. J., Torres, Cooper, and McDonough, JJ.,*  
concur.

*Willard and Johnson, JJ.,* dissent.

Date created: January 17, 2019