4 Phil. 434

[G.R. No. 1661. April 19, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FELICIANO VILLAROSA, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

In a complaint dated November 15,1902, Feliciano Villarosa was charged by the provincial fiscal of Nueva Ecija with the crime of rape committed as follows: That on the 11th day of the same month the defendant, taking advantage of his physical superiority, did commit rape upon the person of the girl Primitiva Domingo, of the age of about 12 years, resulting in serious injury to her, according to the medical examination; that the act was committed in the country and in the midst of plantations in the barrio of Ahia, town of San Isidro, in said province; all contrary to law.

The case having come on for trial by virtue of the aforesaid complaint, the court, in view of the results of the evidence adduced therein, on July 28,1903, rendered judgment whereby the defendant, Feliciano Villarosa, was sentenced to the penalty of eighteen years of *reclusion temporal* and the accessories set forth in article 59 of the Penal Code, to give the injured party as indemnity the sum of 500 pesos, to indemnify her in the sum of 10 pesos for medical expenses, without subsidiary penalty on account of the character of the principal penalty imposed, and to pay the costs. From this judgment the defendant appealed.

From the evidence adduced during the trial it appears that the outraged child, Primitiva Domingo, after being sworn, stated that she did not know how old she was on July 28,1903; that on the afternoon of

November 12,1902, between 12 and 1 o'clock, she was going to the town of San Isidro to sell some fish; and on the road the defendant met her and bought the fish which she carried, and that as she did not have change for 50 cents, the value of the fish sold, the defendant took her to his house and from there, leading her by the hand, took her to the interior of a woods, where he laid her down on the ground and forcibly had intercourse with her, and as a result of the violence which he used on her she was prevented from attending to her ordinary work for a long time. She added that she knew the defendant previously; that when he released her the witness went back to her house to tell her mother about the occurrence, but did not know where her effects went, having lost 1 real and 4 quartos (15 cents); that while en route to the woods she did not meet anybody and her aggressor did not speak to her; that she could not liberate herself from him, notwithstanding the efforts she made. Juan Domingo, the father of the girl, stated that when he returned to his house on the evening of the said day, the 12th, his daughter told him about the occurrence; that he found his daughter in bed and unable to arise and suffering from hemorrhage; that as a consequence of the rape of which she was the victim and which was committed by the defendant in an uninhabited place, his daughter was obliged to remain in bed for more than two weeks; that he did not remember the date of her birth. Cipriano Binuya, a neighbor of the injured girl, said that he was present when the girl Primitiva pointed out the defendant as the one who had raped her, when the defendant was brought to her bed led by the police. It also appears by the certificate made by the physician, Hilario Jacinto, president of the municipal board of health, who examined the outraged girl two or three hours after the commission of the rape, which certificate was identified by him during the trial, that the injured party was very depressed; that she suffered from frequent fainting spells at the least motion; that her hypogastrium, limbs, hips, pelvis, and muscles were sore; * * * that the girl was confined to her bed for more than fifteen days, during which time he attended her, with an expenditure of 10 pesos for medicine. He also stated that the girl appeared to be about 11 or 12 years of age.

From the facts above related it appears proven that the child Primitiva, 11 or 12 years of age, was forcibly raped by a man of middle age, full of vigor, in the midst of a woods, resulting in injury of some seriousness to her genital organs, with abundant hemorrhage, which compelled her to stay in bed for two weeks under medical treatment.

Article 438 of the Penal Code, among other things, says the following:

"Rape is committed by lying with a woman in any of the following cases: If force or intimidation shall be used; if she is under 12 years of age."

The certificate of baptism of the girl is absent from the record, but it appears, however from expert examination that the injured child was, at the date the crime was committed, about 11 or 12 years old. This age appears to some extent confirmed by the material and physical results produced on her by the crime; and even if the injured party should be considered more than 12 years of age (and, by the way, no reason appears for this supposition), it is by no means fully proven that the aggressor laid down with said girl without making use of violence and of his superior physical strength, which, no doubt, was superior to that of the force which his victim might have employed.

It is a doctrine well established by the courts that in order to consider the existence of the crime of rape it is not necessary that the force employed in accomplishing it be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose which he had in view. (Judgment Kay 14,1878, supreme court of Spain.) A simple reading of the medical certificate and the testimony of the physician who examined and attended the outraged girl fixes the measure of the character and class of force used by the defendant in the act of rape. It is undeniable that the defendant, Feliciano Villarosa, is guilty as the only principal by direct participation in the said crime.

The allegations of the defense and the testimony of its witnesses can not prevail against the allegations and merits of the prosecution's

case. The former do not exclude the certainty of the prosecution's allegations nor is the *alibi* which the defense attempted to set up justified.

In the commission of the crime there is no extenuating circumstance to be taken into consideration. There does exist the aggravating circumstance provided for in paragraph 15 of article 10 of the Penal Code, the crime having been committed in an uninhabited place, for which reason the defendant has incurred the maximum penalty.

In view, therefore, of the reasons above stated, and of those set forth in the judgment appealed from, we are of the opinion that the same should be confirmed, with the costs in this instance to the defendant

This case to be returned to the court of its origin with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

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

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