

1 Phil. 567

[G.R. No. 944. December 19, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. UBALDO BORNALES,
DEFENDANT AND APPELLEE.**

D E C I S I O N

MAPA, J.:

This is a prosecution for the crime of abduction, defined and punished in article 445 of the Penal Code. In the information five witnesses are cited, among others the woman alleged to have been abducted, to give testimony for the prosecution.

The case having come on for trial on the 21st day of April, 1902, the defendant having plead not guilty, it was found necessary to order a continuance, on account of the absence of the witnesses for the prosecution. The case was reset for 9 a. m. on the 25th of the same month. During the trial on that date the abducted woman testified strongly against the defendant. Owing to the lateness of the hour, the case was again continued to 3 o'clock p. m. of the same date. This time having arrived without the appearance of the witnesses for the prosecution who had not yet testified, the court below, without further proceedings, acquitted the defendant, with costs *de officio*.

The judge has not stated the legal grounds upon which he reached this conclusion, but whatever they may have been it is unquestionable that the facts charged, if true, constitute the crime of abduction. The testimony of the prosecutrix having been given, which can not be disregarded as an element of proof because it is the testimony of the injured party, but should have been weighed by the court within its discretion like that of any other witness in accordance with section 55 of General Orders, No. 58, the case should have been continued throughout as provided by section 31 of the order cited, and the defendant given an opportunity to introduce evidence on his behalf, as it would be improper to determine the case without giving him an opportunity to make his defense. The defendant not having been given this opportunity, he has been left defenseless in this case. The right to a defense being

an essential one, it follows that the trial was fatally defective, and that therefore the judgment rendered therein can not stand (sec. 10, General Orders, No. 58).

We therefore reverse the judgment appealed, with directions to the judge to continue the case in accordance with law, with the costs of this instance de officio.

Arellano, C. J., Torres, Cooper, Smith, Willard, and Ladd, JJ., concur.

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