

1 Phil. 185

[ G.R. No. 534. April 01, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CUSTODIO PAYOG ET AL., DEFENDANTS AND APPELLANTS.**

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

**MAPA, J.:**

The information filed in this case charges the crime of abandonment of children, defined and punished in article 488 of the Penal Code, which is literally as follows: "He who, being responsible for the rearing and education of a child, should deliver such child to a public establishment or to any other person without the consent of the person who has placed such child in his care, or the consent of the authorities in defect thereof, shall be punished by a fine of from 325 to 3,250 pesetas."

The accused pleaded not guilty to the crime charged. The complainant introduced no evidence in the trial in support of the charge. The only testimony taken at the trial was that of the defendant Payog, which constitutes the only data upon which we must decide this case.

From this testimony it appears that while Payog was in the forest one day he found a little girl who was all alone, and who told him that her people, the Negritos, had refused to care for her. He therefore took charge of her and brought her to Manila for the purpose of delivering her to some person who might care for and support her, he being very poor and without means to do so himself, and that he did deliver the little girl to Santiago Barcelona, who on this account gave him the sum of 55 pesos as a present. The participation of the other defendant, Domingo Garcia, in the matter was limited solely, according to Payog, to accompanying him, at his request, to Barcelona's house.

The court below, considering that the facts shown fall within the sanction of article 488 of the Penal Code above cited, rendered judgment condemning Payog to pay a fine of 325

pesetas, and Garcia to pay a fine of 3,250 pesetas, with the costs to each one of them in equal parts. Against this judgment Garcia appealed. Payog consented to the judgment.

Without determining the question as to whether the delivery of the girl by Payog to Santiago Barcelona, under the circumstances and for the reasons stated in his testimony, does or does not constitute the crime of abandonment of children, defined in the article above cited, as we do not consider it necessary in disposing of this case, we are of the opinion that the mere fact that Garcia accompanied Payog to Barcelona's house is not in itself sufficient to make him responsible for the crime with which he is charged, whether Payog was guilty or not. It does not appear that when Garcia did this he had any knowledge of how or why it was that the girl in question was in Payog's possession, nor consequently of any duty which Payog may have had with respect to the rearing and education of the girl. Among other cases which might be supposed it might very well be that the girl' had been confided by her parents to Payog for the purpose of delivering her to Barcelona, in which case Payog's action in so doing in accordance with this request would evidently not be punishable before the law. It is true that these were not the facts, but the accused, Garcia, was not obliged to know them, nor to investigate them for the purpose of doing what he did, which was simply to point out to Payog the house of Barcelona and accompany him thereto. In order to render him this service, which certainly was not in itself unlawful, he was under no obligation of knowing or finding out whether Payog was responsible in the technical sense of the Penal Code for the rearing and education of the girl in question, or whether he was under any other obligation to keep her in his custody; still less in view of the fact that it does not appear that Payog communicated to him the purpose for which he desired to see Barcelona when asking Garcia to accompany him to Barcelona's house.

We therefore decide that the judgment appealed must be reversed, and the accused, Domingo Garcia, acquitted, with the costs of this instance and one-half of the costs of the court below *de officio*.

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

