thereunder, and that having once urged the invalidity of the indictment he was estopped from thereafter claiming it to have been valid." (14 Ann. Cas. 426; underscoring ours.)

"*Although under Rev. Stat. sec.* 1342, *art.* 2, *it has been held that a former trial may be pleaded when there has been a trial for the offense, whether or not there has been a sentence adjudged or the sentence has been disapproved* (*Dig. JAG* /1912/ *p.* 167,) *the rule is and should be otherwise when the disapproval was made in response to the defendant's plea based on lack of jurisdiction.* (Ex parte Castello, 8 F. 2nd, 283, 286). In such case the former trial may not be pleaded in bar in the second trial." (Underscoring ours.)

Postscript

Now all the rulings in all those cases[20] attempting to overrule the Salico doctrine, can not stand and do not apply under the strength of the theory of estoppel established in the Acierto case, and finally ratified, after mature deliberation, in the Casiano case, which lastly was reiterated in People v. Archilla et al., G. R. No. L-15632, February 28, 1961.

[20] People v. Bangalao, G. R. No. L-5610, Feb. 17, 1954; People v. Ferrer, G. R. No. L-9072, Oct. 23, 1956; People v. Labatete, G. R. No. L-12917. April 27, 1960.

ABDUCTION*

Section 1. Statutory origin. — Article 342 of the Revised Penal Code, which defines and penalizes the crime of forcible abduction, is identical to article 445 of the old Penal Code which, in turn, was taken from article 460 of the Spanish Penal Code of 1870.[1] Article 343 of the Revised Penal Code, which defines and penalizes the crime of abduction with consent, is, with minor modifications as to the age of the offended party, identical to article 446 of the old Penal Code which, in turn, was taken from article 461 of the Spanish Penal Code of 1870.[2]

* This is the first topic of the projected *Philippine Corpus Juris* undertaken by a research staff of the College of Law under a grant by the Ateneo de Manila University, with Prof. Federico B. Moreno as Research Director and Atty. Antonio F. Navarrete as Assistant Research Director.

[1] People v. Rabadan, 53 Phil. 694 (1927).

Article 342 of the Revised Penal Code provides: "The abduction of any woman against her will and with lewd designs shall be punished by *reclusion temporal*. The same penalty shall be imposed in every case, if the female abducted be under twelve years of age."

Article 445 of the old Penal Code provides: "El rapto de una mujer, ejecutado contra su voluntad y con miras dishonestas, sera castigado con la pena de reclusion temporal. En todo caso se impondra la misma pena si la robada fuere menor de doce años."

[2] United States v. Reyes, 20 Phil. 510 (1911); United States v. Santiago, 29 Phil. 374 (1915).

Article 343 of the Revised Penal Code provides: "The abduction of a virgin over twelve and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of *prision correccional* in its minimum and medium periods.

Article 446 of the old Penal Code provides: "El rapto de una doncella menor de veintetres años y mayor de doce, ejecutado con su anuencia, sera castigado con la pena de prision cor-

Section 2. Definition and nature. —Abduction is understood to be the kidnaping or taking away of a woman by removing her from her home or house, or from whatever place she may be, to take her to some other, for the purpose of her abductor's marrying or corrupting her.[3]

Abduction, the Spanish term for which is "rapto", is of two kinds: forcible abduction and abduction with consent. The first is that which is effectuated by violence, against the will of the person abducted, and the second is that which is accomplished without the resistance of the person, when she consents to it through the promises, enticements or artifices of her abductor.[4] The etymology of the word "rapto" would indicate that the offense involves the physical taking of the person, but in the case of an abduction with the consent of the woman, where she is not taken away from her home by force but leaves it of her own accord, enticed by the wiles and persuasions of her abductor, it is apparent that the word is not used in its original and proper signification, but is employed in the sense of seduction.[5]

The essence of the offense of abduction is not the wrong done to the offended girl or woman, but the shame, outrage, disgrace, insult or dishonor to her family and the alarm, anxiety and fearful apprehension caused therein by the disappearance of one of its members who, by reason of her age and sex, is susceptible to cajolery, seduction and deceit.[6]

reccional en sus grados minimo y medio." This was amended by section 3 of Act No. 2298, which was enacted on November 24, 1913, to read: "The abduction of a virgin over twelve and under eighteen years of age, committed with her consent, shall be punished by *prision correccional* in its minimum and medium degrees."

[3] United States v. De Vivar, 29 Phil. 451 (1915); People v. Crisostomo, 46 Phil. 775 (1923); People v. De la Cruz, 48 Phil. 533 (1925); People v. Rabadan, 53 Phil. 694 (1927).

[4] United States v. Alvarez, 1 Phil. 351 (1902).

[5] United States v. Alvarez, 1 Phil. 351 (1902).

[6] United States v. Alvarez, 1 Phil. 351 (1902); United States v. Meneses, 14 Phil. 151 (1909); United States v. Reyes, 20 Phil. 510 (1911); United States v. Bernabe, 23 Phil. 154 (1912); United States v. Jayme, 24 Phil. 90 (1913); United States v. Reyes, 28 Phil. 352 (1914); United States v. Casten, 34 Phil. 808 (1916); People v. Flores, (CA) 44 O.G. 3838 (1947;) People v. Thelmo, CA-G.R. No. 12309-R, April 29, 1955; People v. De la Cruz, CA-G.R. No. 13245-R, June 30, 1956; People v. Adriano, CA-G.R. No. 12850-R, August 4, 1957; People v. Gaddi, CA-G.R. No. 19868-R, July 25, 1958; People v. Callo, CA-G.R. No. 18325-R, August 25, 1958.

The fact that no carnal intercourse had taken place is no bar to a prosecution for consented abduction under article 446, inasmuch as it is not the deed that the said article punishes but the intent which prompted the perpetration of the crime and the punishment of the offense to public morals and to the family by removing from the direction and vigilance of the latter a maiden under age. United States v. Meneses, 14 Phil. 151 (1909).

It matters not whether the kidnaping of the young woman was effected after she had voluntarily left her house, deceived, as she was, by the defendant, or whether it took place in the house itself; nor does it matter whether the offended party was or was not then of legal age, because the acts performed by the defendant with respect to her involved offenses against liberty, honor and public order. These are offenses which the law punishes in the crime of abduction with force. United States v. De Vivar, 29 Phil. 451 (1915).

Abduction is an offense not mainly against the victim thereof but against her parents who are entitled to her custody at all times while she is under parental authority and who are the objects of protection on the part of the law punishing this offense.[7] This has, however, been said to be true only of abduction with consent and not of forcible abduction.[8]

Both the civil and the common law authorities agree that the crime of abduction is one which is highly serious and detestable.[9] It is a crime which involves moral turpitude.[10]

Section 3. Distinctions. — It is the presence of the element of lewd designs which distinguishes the crime of abduction from many other allied or comparable crimes in the Revised Penal Code.[11] Thus, abduction must be disinguished, generally, from crimes against personal and liberty and security.[12] More particularly, abduction must

[7] United States v. Alvarez, 1 Phil. 351 (1902); United States v. Jayme, 24 Phil. 90 (1913); United States v. Garcia, 30 Phil. 74 (1915); People v. Thelmo, CA-G.R. No. 12309-R, April 29, 1955; People v. Gaddi, GA-G.R. No. 19868-R, July 25, 1958.

[8] The gravamen of the offense of the abduction of a woman with her own consent, who is still under the control of her parents or guardian, is the alarm and perturbance to the parents and family of the abducted person, and the infringement of the rights of the parents or guardian. The gravamen of the offense of [forcible] abduction is the wrong done to the young woman who is seduced. United States v. Jayme, 24 Phil. 90 (1913).

[9] The penal law regarding abduction, says the Supreme Court of Spain, was intended to punish the offense against public morality and the insult to the family of the abducted girl. The abduction statutes, say the American authorities, were intended for the preservation of the peace of the home and the virtue of inexperienced females, and to save the members of the family from sorrow and disgrace. United States v. Ramirez, 39 Phil. 738 (1919).

[10] An attorney-at-law, convicted of the crime of abduction with consent, was suspended from his office of lawyer for one year. In re Basa, 41 Phil. 275 (1920).

[11] If the unchaste designs are lacking, the taking of a woman against her will might constitute some other crime, but never a violation of article 445. United States v. Borromeo, 23 Phil. 279 (1912).

Abduction under articles 445 and 446 of the old Penal Code must also be distinguished from the abduction or kidnaping of minors under articles 484 to 486 of the same Code. See: United States v. Canlas, 9 Phil. 708 (1907) unp.; United States v. Vito, 18 Phil. 630 (1911) unp.; United States v. Montiel, 20 Phil. 621 (1911) unp.; People v. Caragay, 56 Phil. 840 (1932) unp.

[12] The presence of unchaste designs is precisely the point which constitutes one of the principal differences which distinguish this crime from crimes against personal liberty and security. If the removal of a woman from her house, although she be a virgin under the age of 23 years, is committed for the purpose of murdering her or demanding a ransom, or holding her a prisoner somewhere, it would undoubtedly constitute a crime but would by no means fall under the provisions of the sections of the Penal Code which define and punish the crime of abduction, but of other sections quite distinct, although there exists in such case the material fact of the stealing away of a woman. United States v. Rodriguez, 1 Phil. 107 (1902).

In order to constitute the crime of abduction, committed with the consent of the woman abducted, lewd designs on the part of the accused must be shown. If the element of lewd designs is eliminated, it ceases to be a crime against chastity and becomes one against personal liberty and should be included within the title of the Penal Code which deals with that class of crime. United States v. Santiago, 29 Phil. 374 (1915).

be distinguished from acts of lasciviousness,[13] corruption of minors,[14] grave coercion,[15] illegal detention,[16] kidnaping,[17] seduction[18] and rape.[19]

Section 4. Elements in general. — Forcible abduction has the following essential elements: (1) that the person abducted be a woman, whether married, unmarried or a widow, and regardless of her age, morality or reputation; (2) that the abduction be committed through force, violence or intimidation or that it be against her will or consent; and (3) that the abduction be committed with lewd or unchaste designs.[20]

Abduction with consent has the following essential elements: (1) that the person abducted be a virgin; (2) that the person abducted be over twelve but under eighteen years of age when the crime was committed; (3) that the abduction be committed with her consent; and (4) that the abduction be committed with lewd or unchaste designs.[21]

The place of taking or detention is immaterial and of no importance in the legal elements of the crime since no mention of it is made in the Penal Code.[22]

Section 5. Taking or detention. — One of the essential elements of forcible abduction is the taking away of the woman against her will

[13] To prove lewd designs in forcible abduction, actual illicit relations with the woman abducted need not be shown. Intent to seduce is sufficient. Lustful designs may be inferred from acts or may be shown by conduct. So even though an accused did not actually commit any acts of lasciviousness, libidinous designs may exist. On the other hand, in the crime of acts of lasciviousness, the lecherous acts must have actually been committed. Moreover, in the crime of abduction the person abducted must be a woman while in the crime of acts of lasciviousness the lustful acts may be committed upon persons of either sex. People v. Franco, (CA) 53 O.G. 410 (1956).

[14] Where the girl was abducted and held by the defendant for the purpose of lending her to illicit intercourse with other men, without any unchaste designs on his part personally, the crime committed is that defined in article 444 and not abduction under either article 445 or 446. United States v. Tagle, 1 Phil. 626 (1903).

[15] Where the accused did not take away the girl merely for the purpose of depriving her of her liberty, but on the contrary, in order to satisfy his sexual instincts, the crime is abduction and not grave coercion. People v. Hatib Tala, (CA) 44 O.G. 117 (1947).

Where the accused, by means of violence and intimidation, took and put the offended woman in a truck against her will, compelling her to do something against her will whether right of wrong, but without molesting her nor attempting to molest her during the ride, he is guilty of the crime of grave coercion and not of forcible abduction since the essential element of lewd designs was absent. People v. Cruz, (CA) 50 O.G. 3720 (1954).

[16] There is one common element in the crimes of illegal detention and abduction: the taking without consent. But the element of intent is quite different in the two crimes. The intent in illegal detention may be revenge, greed for gain, or caprice; but in abduction, the intent is "with lewd designs." United States v. Borromeo, 23 Phil. 279 (1912).

If the unchaste designs, the intent to abuse the woman, do not exist, the act will no longer constitute the crime of abduction, but a crime against liberty, or that of illegal detention. People v. Crisostomo, 46 Phil. 775 (1923).

Abduction, being one of the ways in which illegal detention can be committed, specially qualified by lewd intention, the kidnaping of a woman without unchaste designs must be considered as illegal detention. People v. Crisostomo, 46 Phil. 775 (1923).

Under a complaint for abduction with violence under article 445, judgment may be rendered for illegal detention under article 481, when no lewd designs have been proven. The reason for this is that the acts constituting abduction, with exception of lewd designs, also constitute the crime of illegal detention, for abduction with violence being the taking away of a woman from her house by means of force, the same act implies illegal detention. People v. Undiana, 50 Phil. 641 (1927).

Where the element of lewd designs is not present, the crime is not that of abduction but that of illegal detention. Dissenting opinion in People v. Bustos, 54 Phil. 887 (1930).

[17] When the violent taking of a woman is motivated by lewd designs, forcible abduction under article 342 is the offense. When it is not so motivated, such taking constitutes kidnaping under article 267 as amended. One offense is against chastity, the other against personal liberty. People v. Quitain, 53 O.G. 384 (1956).

[18] The reasons assigned for the reduction of the age limit from 23 to 18 years in the case of the abduction of a woman with her own consent, as defined in article 446, are in no wise applicable in cases of seduction as defined in article 443. United States v. Jayme, 24 Phil. 90 (1913).

The fact of taking a woman over 12 and under 23 years of age to the country with her own consent, and there cohabiting with her under a promise of marriage, constitutes the crime of seduction but not abduction, where the minor's short absence from her domicile does not reveal the intention of removing her from the paternal vigilance, but merely that of overcoming the girl's natural chastity by a promise of marriage. United States v. Garcia, 30 Phil. 74 (1915).

[19] If the accused, after he had brought the offended party into the cane field and abusing her by means of force and intimidation, had left her free, the crime committed by him might perhaps be classified as rape, because then the deprivation of her liberty would have been but brief and only for the purpose of lying with her. But where the accused retained the offended party in the cane field until night and continued to retain her in another place for three days against her will for the purpose of enjoying her carnally, considering the deprivation of liberty of the aggrieved party all that time, in connection with the unchaste designs which defendant entertained toward her and which were the motive of his abducting her against her will, the acts committed constitute the crime of forcible abduction. United States v. De Vivar, 29 Phil. 451 (1915).

[20] United States v. Banila, 19 Phil. 130 (1911); United States v. Borromeo, 23 Phil. 279 (1912); United States v. De Vivar, 29 Phil. 451 (1915); United States v. Ramirez, 39 Phil. 736 (1919); United States v. Reynalde, 39 Phil. 751 (1919); People v. Mirasol, 43 Phil. 860 (1922); People v. Crisostomo, 46 Phil. 775 (1923); Dissenting opinion in People v. Bustos, 54 Phil. 887 (1930); People v. Guhil, (CA) 56 O.G. 1191 (1959).

[21] United States v. Reyes, 28 Phil. 352 (1914); People v. Mirasol, 43 Phil. 860 (1922); People v. De la Cruz, 48 Phil. 533 (1925); People v. Guhil, (CA) 56 O.G. 1191 (1959).

A forcible taking of the woman is not an element of the offense described in article 446 as consented abduction. United States v. Alvarez, 1 Phil. 351 (1902).

In consented abduction, if the woman leaves her home in the company of the abductor, or if he provides means whereby she may effect her escape, and so in a sense, takes her from her house, these circumstances are merely incidental in the commission of the offense, and do not pertain to its essence. United States v. Alvarez, 1 Phil. 351 (1902).

In strict law, deceit is not an essential element of consented abduction. People v. Adriano, CA-G.R. No. 12850-R, August 4, 1957.

[22] United States v. Reyes, 20 Phil. 510 (1911); United States v. Bernabe, 23 Phil. 154 (1912); United States v. Reyes, 28 Phil. 352 (1914); United States v. De Vivar, 29 Phil. 451 (1915); United States v. Eugenio, 36 Phil. 794 (1917).

or consent, committed either through force, violence or intimidation.[23]

In abduction with consent, however, the woman is not materially removed or taken away from her home by force but leaves and abandons it of her own accord, enticed by the wiles, persuasions, promises, allurements, artifices or cajolery of the abductor.[24] Technically, there

[23] United States v. Rodriguez, 1 Phil. 107 (1902); United States v. Banila, 19 Phil. 130 (1911); United States v. Borromeo, 23 Phil. 279 (1912); United States v. De Vivar, 29 Phil. 451 (1915); United States v. Ramirez, 39 Phil. 738 (1919); United States v. Reynaldo, 39 Phil.. 751 (1919); People v. Mirasol, 43 Phil. 860 (1922); People v. Crisostomo, 46 Phil. 775 (1923); People v. Rabadan, 53 Phil. 694 (1927); Dissenting opinion in People v. Bustos, 54 Phil. 887 (1930); People v. Quitain, 53 O.G. 384 (1956); People v. Guhil, (CA) 56 O.G. 1191 (1959).

There is "taking", as contemplated in the Code, when force is used in snatching the offended girl from a street in the city of Manila and carrying her to the rice paddies some distance away. United States v. Ramirez, 39 Phil. 738 (1919).

Where the intimidation and fraud practised by the accused upon the person of the offended girl had restrained, destroyed, and overpowered absolutely the will of the said girl in such a manner that the accused succeeded completely to subdue it, it is as if he had really used upon the said girl physical force and violence. United States v. Reynaldo, 39 Phil. 751 (1919).

Where an unfortunate girl of 14 years, without any education and belonging to a poor and ignorant family, was terrorized by the accused who made her believe that he was an agent of authority, so that she submitted herself to obey him without verifying the true motive of her detention, the crime committed is forcible abduction and not abduction with consent. United States v. Reynaldo, 39 Phil. 751 (1919).

When trick, falsehood, deceit and fraud have been employed to overpower not a woman who, in physical strength and intelligence by reason of her advanced age, might have made a strong opposition and resistance, but a girl of some 14 years of age, uneducated and without sufficient discretion and judgment to oppose the ulterior and wicked designs practised upon her, it is undeniable that in the mind of the said girl the acts of the accused have produced consequences identical to those which would have been produced had the accused employed material force to carry her away. United States v. Reynaldo, 39 Phil. 751 (1919).

Where the offended party left her home voluntarily and without any persuasion on the part of the defendants and they eventually brought her to her destination on the same day, the fact that the defendants temporarily carried her beyond her destination against her will must be considered as part of the preparation for the attempted rape that later occurred and cannot be regarded as a separate offense, so that they cannot be convicted of abduction with attempted rape but only of attempted rape. People v. Rabadan, 53 Phil. 694 (1927).

[24] United States v. Alvarez 1 Phil. 351 (1902); United States v. Estrella, 12 Phil. 773 (1908) unp.; United States v. Meneses, 14 Phil. 151 (1909); United States v. Reyes, 20 Phil. 510 (1911); United States v. Tandiana, 25 Phil. 64 (1913); United States v. Reyes, 28 Phil. 352 (1914); United States v. Casten, 34 Phil. 808 (1916); People v. Mirasol, 43 Phil. 860 (1922); People v. De la Cruz, 48 Phil. 533 (1925); People v. Guhil, (CA) 56 O.G. 1191 (1959); People v. Adriano, CA-G.R. No. 12850-R, August 4, 1957; People v. Mahilum, CA-G.R. No. 20694-R, June 5, 1959.

A forcible taking of the woman is not an element of the offense described in article 446 as consented abduction. United States v. Alvarez, 1 Phil. 351 (1902).

In consented abduction, if the woman leaves her home in the company of the abductor, or if he provides means whereby she may effect her escape, and so, in a sense, takes her from her house, these circumstances are merely incidents in the commission of the offense, and do not pertain to its essence. United States v. Alvarez, 1 Phil. 351 (1902).

is still a taking away because of the inducement by the abductor which, in most cases, takes the form of a false promise to marry the girl.[25] While the inducement may ordinarily reach the proportions of actual deceit practiced upon the offended girl, in strict law, deceit is not an essential element of the crime of abduction with consent.[26]

The taking or detenton of the offended girl in abduction with consent must be for some appreciable length of time or with some character of permanence.[27] This is also true in the case of forcible ab-

The etymology of the word "rapto" would indicate that the offense involves a physical taking of the person, but in the case of a *rapto* with the consent of the woman, where *ex hypothesi* the woman is not taken away from her home by force, but abandons it of her own accord, enticed by the wiles and persuasions of the *raptor*, it is apparent that the word is not used in its original and proper signification, but is employed in the sense of seduction. United States v. Alvarez, 1 Phil. 351 (1902).

Even if the girl was not forcibly taken from her mother's house, the crime of abduction is committed where the girl should have left, removing herself from her mother's custody and yielding to the cajolery, inducement, and promises of her abductor, who took her away with unchaste designs. United States v. Reyes, 20 Phil. 510 (1911).

In the crime of abduction with the consent of the abducted, it is not necessary that the abducted woman should have been materially removed from the house of her parents or from that of persons charged with her keeping and custody; it is sufficient that she should have left it and withdrawn herself from their control and vigilance, yielding to the cajolery and promises of her seducer. United States v. Reyes, 28 Phil. 352 (1914).

[25] United States v. Alvarez, 1 Phil. 351 (1902); United States v. Estrella, 12 Phil. 773 (1908) unp.; United States v. Meneses, 14 Phil. 151 (1909); United States v. Reyes, 20 Phil. 510 (1911); United States v. Tandiana, 25 Phil. 64 (1913); United States v. Garcia, 30 Phil. 74 (1915); People v. Cuenco, (CA) 46 O.G. 3208 (1948).

[26] People v. Adriano, CA-G.R. No. 12850-R, August 4, 1957.

[27] It is not necessary that the virgin should have been taken physically from her parent's house, but it is sufficient that she has abandoned it, and that, yielding to the allurements and promises of the seducer, she has withdrawn herself for a time from the power and vigilance of her parents. United States v. Alvarez, 1 Phil. 351 (1902).

To establish the crime of abduction with consent, it is necessary that the removal of a virgin be carried out with her consent and by removing her from her legal domicile or the place where she is staying, with the intention of concealing her residence, and with such character of permanence that does not permit the free and unrestricted exercise of the authority and vigilance which pertain to the guardians of the minor's person. United States v. Garcia, 30 Phil. 74 (1915).

The crime of abduction is not sufficiently established when a virgin leaves her dwelling house by agreement with her seducer, for the purpose merely of having an interview and carnal intercourse, but there must occur as a condition essential to that crime the intention of abandoning said dwelling, thus removing herself for an indefinite time from under the authority of the persons charged with watching over her. United States v. Garcia, 30 Phil. 74 (1915).

An essential requisite of the crime of abduction with consent is the removal of a virgin under 23 and over 12 years of age from her legal domicile or from the place where she is staying, with the intention of concealing her residence and of placing her in one way or another, with some character of permanence, where the authority and right of vigilance that pertains to the guardian of her person cannot be freely and easily exercised. United States v. Garcia, 30 Phil. 74 (1915).

The fact of taking a woman over 12 and under 23 years of age to the country with her own consent, and there

duction.[28]

While violence and intimidation characterize the crime of forcible abduction,[29] the crime committed is abduction with consent where the girl, after the violence and intimidation have ceased, willingly followed

cohabiting with her under a promise of marriage, constitutes the crime of seduction but not of abduction where the minor's short absence from her domicile does not reveal the intention of removing her from the paternal vigilance, but merely that of overcoming the girl's natural chastity by a promise of marriage. United States v. Garcia, 30 Phil. 74 (1915).

In order that the taking away should constitute abduction with consent, it is necessary that the girl over 12 and below 18 years be taken away with her consent from the possession of the person having her under his authority and custody, in order to conceal her whereabouts for an appreciable period of time with lewd designs. People v. De la Cruz, 48 Phil. 533 (1925).

The mere riding in an automobile with a girl over 12 and below 18 years without intent to take her away from the authority of those who have her under their control and custody, nor to conceal her whereabouts, is not sufficient to constitute the crime of abduction with consent, whatever its consequences in morals may be. Criminal law does not punish mere amorous appointments. People v. De la Cruz, 48 Phil. 533 (1925).

The element of "taking" referred to in the article penalizing theft means the act of depriving another of the possession and dominion of a movable thing coupled, like in crimes of abduction, with the intention, at the time of the "taking", of withholding it with character of permanency. People v. Galang, (CA) 43 O.G. 577 (1947).

The appellant also contends that there was no character of permanency in the withdrawal of the offended girl from her father's house as she returned the next day. The disappearance of the girl from her parent's house for one night was sufficient to produce great alarm to her father who made frantic efforts to search for her. This case is, therefore, different from that of People v. De la Cruz (48 Phil. 533) where the accused took the girl for a ride and brought her back to her house after a couple of hours, her absence not having produced any alarm in her housemates. People v. Cuenco, (CA) 46 O.G. 3208 (1948).

The rule laid down in United States v. Garcia (30 Phil. 74) that the taking away should be with some character of permanence was based on earlier decisions of the Supreme Court of Spain of May 19, 1888, September 22, 1882, and December 14, 1901. Said rule, to our mind, is no longer controlling because in the majority of later decisions of the same Supreme Court of Spain, to wit, those of January 18, 1904, February 16, 1912, May 8, 1926, and June 5, 1928, it was uniformly held that the taking away in consented abduction need not be with some character of permanence. People v. Ingayo, CA-G.R. No. 3723-R, December 10, 1949.

Where a minor of 16 years was absent from her home for a period of more than 15 hours in the company of the accused, it was held that this was evidence that she was taken away from her home with the degree of permanence required under the law. People v. Thelmo, CA-G.R. No. 12309-R, April 29, 1955.

[28] If the accused, after he had brought the offended party into the cane field and abusing her by means of force and intimidation, had left her free, the crime committed by him might perhaps be classified as rape, because then the deprivation of her liberty would have been but brief and only for the purpose of lying with her. But where the accused retained the offended party in the cane field until night and continuedd to retain her in another place for three days against her will for the purpose of enjoying her carnally, considering the deprivation of liberty of the aggrieved party during all that time, in connection wih the unchaste designs which defendant entertained toward her and which were the motive of his abducting her against her will, the acts committed constitute the crime of forcible abduction. United States v. De Vivar, 29 Phil. 451 (1915).

[29] See *supra*, Section 4.

her abductor and allowed herself to be conducted by him to another house.[30] On the other hand, where there was no longer any necessity for the accused to employ force or violence on the offended girl inasmuch as the intimidation proved sufficient in carrying out his criminal purpose, the crime is forcible abduction and not abduction with consent.[31]

Section 6. Age and character of female. — The offended party in both the crimes of forcible abduction and abduction with consent must be a woman.[32] If the girl is under twelve years old, the crime committed will always be forcible abduction.[33] If the girl is over twelve years old, the crime is also forcible abduction if all the requisites therefor are present, regardless of her age.[34] In abduction with consent, however, the girl must be over twelve years and under eighteen years of age at the time of the commission of the offense.[35]

In forcible abduction, all that is necessary is that the offended party be a woman,[36] regardless of her age, morality or reputation.[37] It is im-

[30] United States v. Yumul, 34 Phil. 169 (1916).

[31] United States v. Reynaldo, 39 Phil. 751 (1919).

[32] Article 342, Revised Penal Code, article 445, old Penal Code; article 343, Revised Penal Code, article 446, old Penal Code; People v. Franco, (CA) 53 O.G. 410 (1956).

[33] Article 342, Revised Penal Code, article 445, old Penal Code.

[34] People v. Mirasol, 43 Phil. 360 (1922); People v. Guhil, (CA) 56 O.G. 1191 (1959).

[35] Article 343, Revised Penal Code; article 446, old Penal Code; United States v. Meneses, 14 Phil. 151 (1909); United States v. Reyes, 28 Phil. 352 (1914); People v. Mirasol, 43 Phil. 860 (1922); People v. De la Cruz, 48 Phil. 533 (1925); People v. Guhil, (CA) 56 O.G. 1191 (1959).

The maximum age limit of the girl under article 446 of the old Penal Code was twenty-three years but this was amended by section 3 of Act No. 2298 to eighteen years. See *supra*, note 2.

In declaring that a woman may be abducted, with her consent, up to the notably advanced age of 23, article 446 evidently considered the provisions of the former law touching the status of women less than 23 years of age. Under that law a woman less than 23 years of age was placed under the strict control of her father or other legal guardian; and so strict was this control that until she arrived at this age she could not marry without his consent, and he had the right to restrain her freedom so as to prevent her from doing so. With the change of sovereignty however, these strict provisions have been somewhat relaxed, and the age at which a woman may leave her home and marry without the consent of her father or other legal guardian is fixed at 18 years. This change of the status of women between 18 and 23 years of age draws with it, by necessary implication, a modification of the penal provisions of article 446. The age limit under which a woman may be abducted, with her consent, must be the same as the age limit under which she is forbidden to marry without the consent of her father or other legal guardian. United States v. Fideldia, 22 Phil. 372 (1912).

Where the woman is more than 18 years of age, there can be no abduction with her consent for the age limit under which a woman may be abducted, with her own consent, must be held to be the same age limit under which she is forbidden to marry without the consent of her father or other legal guardian. United States v. Fideldia, 22 Phil. 372 (1912).

The reasons assigned for the reduction of the age limit from 23 to 18 years in the case of the abduction of a woman with her own consent, as defined in article 446, are in no wise applicable in cases of seduction as defined in article 443. United States v. Jayme, 24 Phil. 90 (1913).

[36] See *supra*, Section 4.

[37] People v. Guhil, (CA) 56 O.G. 1191 (1959).

material whether she be a widow, a married woman, an unmarried woman or a virgin for all these are comprised within the generic term "woman."[38] The virginity of the offended woman is not an essential element of the crime of forcible abduction and is not a determining factor in its prosecution.[39]

In abduction with consent, the offended party must be a virgin.[40] It is sufficient if the woman has a good reputation as being honest, virtuous and respectable[41] for she need not be a virgin in the strictly literal sense.[42] Virginity, as understood in the provision of the law on abduction with consent, should not be construed in such a material sense as to exclude from its scope the abduction of a virtuous woman of good reputation.[43] The fact, therefore, that the accused has had prior sexual relations with the offended girl does not necessarily mean that she is no longer a virgin at the time of her abduction since there exists no sufficient interruption of the continuity between the one act and the other to negative the object and purpose of the law punishing the crime.[44]

Section 7. Lewd designs. — The presence of lewd designs, which has been variously designated as "unchaste," "lascivious," "dishonest," "lustful," "libidinous," "immoral," "evil" or "lecherous," is the element which characterizes the crime of abduction.[45] There is no question that, both under the old Penal Code and the Revised Penal Code, the presence of lewd designs is necessary in the case of forcible abduction.[46] While a doubt was raised by the specific mention of the phrase in article 445 of the old Penal Code (on forcible abduction) and its absence in article 446 of the same Code (on abduction with consent) it has been consistently held that the presence of lewd designs is necessary not only for forcible abduction but also for abduction with consent.[47] The Revised Penal Code has clarified the matter by including the phrase "with

[38] United States v. De Vivar, 29 Phil. 451 (1915); United States v. Reynaldo, 39 Phil. 751 (1919); People v. Mirasol, 43 Phil. 860 (1922).

[39] People v. Torres, 62 Phil. 942 (1936).

[40] See *supra*, Section 4.

[41] United States v. Meneses, 14 Phil. 151 (1909).

[42] People v. De la Cruz, CA-G.R. No. 13245-R, June 30, 1956.

[43] United States v. Casten, 34 Phil. 808 (1916); People v. Cuenco, (CA) 46 O.G. 3208 (1948); People v. De la Cruz, CA-G.R. No. 13245-R, June 30, 1956; People v. Ibañez, CA-G.R. No. 17077-R, November 29, 1957; People v. Gaddi, CA-G.R. No. 19868-R, July 25, 1958; People v. Prande, GA-G.R. No. 21460-R, June 25, 1959.

[44] United States v. Casten, 34 Phil. 808 (1916); People v. Cuenco, (CA) 46 O.G. 3208 (1948); People v. Ibañez, CA-G.R. No. 17077-R, November 29, 1957; People v. Prande, CA-G.R. No. 21460-R, June 25, 1959.

[45] See *supra*, Section 3.

[46] United States v. Caido, 4 Phil. 217 (1905); United States v. Banila, 19 Phil. 130 (1911); United States v. Borromeo, 23 Phil. 279 (1912); United States v. De Vivar, 29 Phil. 451 (1915); United States v. Ramirez, 39 Phil. 738 (1919); United States v. Reynaldo, 39 Phil. 751 (1919); People v. Mirasol, 43 Phil. 860 (1922); People v. Crisostomo, 46 Phil. 775 (1923); People v. Undiana, 50 Phil. 641 (1927); Dissenting opinion in People v. Bustos, 54 Phil. 887 (1930); People v. Quitain, 53 O.G. 384 (1956); People v. Hatib Tala, (CA) 44 O.G. 117 (1947); People v. Cruz, (CA) 50 O.G. 3720 (1954); People v. Guhil, (CA) 56 O.G. 1191 (1959).

[47] The unchaste designs constitute one of the essential elements that characterize the crime of abduction, as well when committed with violence against the will of the woman as when carried out with her consent in case of her minority. This is precisely the point which constitutes one of the principal differences which distinguish this crime from crimes against personal liberty and security. If the removal of a woman from her house, although she be a virgin under the age of 23 years, is committed for the purpose of murdering her or demanding a ransom, or holding her a prisoner somewhere, it would undoubtedly constitute a crime but would by no means fall under the provisions of the sections of the Penal Code which define and punish the crime of abduction, but of other sections quite distinct, although there exists in such case the material fact of the stealing away of a woman. This consideration demonstrates that the unchaste purpose is essential in all cases to the crime of abduction, and this same conclusion is deduced from the fact that the crime is classified in the Code among the crimes against chastity. Article 445 of the said Code establishes clearly and conclusively the necessity of said circumstance in order that the crime of abduction may exist, and even though article 446, in speaking of the abduction of a virgin under the age of 23 years and over 12, committed with her consent, does not make express mention of unchaste designs, the provisions of this article should be considered in connection with those of the preceding one, which requires this circumstance as indispensable and essential. Article 445 is the complement of article 446, the two forming, as they do, a part of one and the same chapter included in the title which the Code devotes to crimes against chastity.

In addition to this, paragraph 2 of article 448, which treats of the causes of abduction, speaks only of abduction committed with unchaste designs, and the preceding interpretation is still further confirmed by article 449 in that it provides that those convicted of abduction shall be sentenced, by way of indemnity, to endow the complainant and acknowledge the offspring. This impliedly presupposes the idea of unchaste purpose in all cases of abduction, for the provisions of this article as well as in that of article 448 are applicable to all cases of abduction for the reason that the Code expressly declares them to be of common application to all crimes against chastity. United States v. Rodriguez, 1 Phil. 107 (1902).

While article 446 does not prescribe in express terms that the abduction should be with unchaste designs, nevertheless the unchaste designs are said to be inherent to the character of this crime, and it is necessary that they should occur in the act in order to constitute the crime of consented abduction punishable under this article. United States v. Tagle, 1 Phil. 626 (1903).

It is an essential element of the crime of abduction under article 446 that it be committed for immoral purposes (*con miras dishonestas*). United States v. Ysip, 6 Phil. 26 (1906).

Lewd designs is one of the essential elements of the crime of abduction of a woman, whether the same was committed with violence and against her will, or whether the woman thus abducted, being under age, gave her consent thereto. United States v. Galves 5 O.G. 93 (1906).

It is an essential element of the crime of abduction as defined in article 446 that it be executed for immoral purposes (*con miras dishonestas*), and the burden is upon the prosecution to establish this fact. United States v. Padua, 7 Phil. 399 (1907).

Dishonest or evil intent is one of the essential elements necessary to constitute the crime of abduction with the consent of the offended party. United States v. Cecilio, 8 Phil. 24 (1907).

Even if there is in reality the material fact of abduction, if there is no proof that such offense was committed with dishonest intent, the accused must be acquitted of the charge of abduction with consent. United States v. Cecilio, 8 Phil. 24 (1907).

Even if the girl was not forcibly taken from her mother's house, the crime of abduction is committed where the girl should have left, removing herself from her mother's custody and yielding to the cajolery., inducement and

lewd designs" in the case not only of forcible abduction but also of abduction with consent.[48]

Lewd designs may consist in "the intention of lying with the woman,"[49] "the intention to abuse the abducted woman"[50] or "the intention to marry or corrupt her."[51]

The intention to marry the abducted woman, of itself, does not constitute lewd designs[52] and is a good defense to a prosecution for abduction.[53] The concurring circumstances, however, may vitiate such an intention.[54]

The intention to corrupt the abducted girl, in order to constitute lewd designs, must be personal to the accused. Thus, where the girl was taken away and held by the defendant for the purpose of lending her to illicit intercourse with other men, without any unchaste designs on his part personally, there is wanting the essential element of lewd designs necessary to support a conviction for either forcible abduction or abduction with consent.[55] In another case, however, it was held that the fact that the defendants were trying to force a girl to marry and live as a concubine of one of them, who was married and well knew that he could not marry the girl, shows clearly that their intention in abducting the girl was to force her to have illicit intercourse with that defendant and they were all convicted of forcible abduction.[56]

In one case, despite the absence of the intent to marry or to corrupt the woman, it was held that the act of the accused in forcibly dragging a girl downstairs and carrying her away to a certain distance from her house until interrupted by her neighbors was indicative of unchaste designs even if committed to do the woman no injury other than the notoriety of the adventure.[57]

Section 8. Degree of the offense. — Ordinarily, there are three stages in the execution of a crime or felony: it may be attempted, frustrated or consummated.[58] The majority of cases seems to indicate the applicability of this principle to abduction.

Thus, it has been held that there is attempted abduction where the defendant caught the offended party around the waist, attempting to put her in a vehicle which was in readiness, but did not succeed because of the resistance offered by the girl and the intervention of a policeman who came in answer to her cries;[59] where the accused forcibly dragged a girl downstairs and carried her away to a certain distance from

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promises of her abductor, who took her away with unchaste designs. United States v. Reyes, 20 Phil. 510 (1911).

While article 446 does not expressly require it, abduction with assent must be accompanied by unchaste designs. United States v. Bernabe, 23 Phil. 154 (1912).

In order to constitute the crime of abduction, committed with the consent of the woman abducted, lewd designs on the part of the accused must be shown. United States v. Santiago, 29 Phil. 374 (1915).

While article 446 makes no mention of lewd designs, it has always been understood that lewd designs are part of the article and an essential element of the crime therein defined. The word "abduction" carries with it necessarily the conception of lewd designs. The word is held to be defined by article 445; and, as that definition includes "lewd designs," the repetition of the word in article 446 is deemed unnecessary. United States v. Santiago, 29 Phil. 374 (1915).

The principal question in a prosecution for abduction is whether the accused induced the offended girl to stay with him for purposes of debauchery. United States v. Eugenio, 36 Phil. 794 (1917).

The essential elements of the crime of abduction with consent are three: (1) the taking away of a maiden over 12 and below 18 years of age; (2) that the girl shall have consented to being taken away; and (3) that the act shall have been committed with lewd designs. People v. De la Cruz, 48 Phil. 533 (1925).

[48] Article 343, Revised Penal Code; People v. Guhil, (CA) 56 O.G. 1191 (1959); People v. Zaragoza, CA-G.R. No. 2943-R, November 13, 1950.

[49] United States v. De Vivar, 29 Phil. 451 (1915).

[50] People v. Crisostomo, 46 Phil. 775 (1923).

[51] United States v. De Vivar, 29 Phil. 451 (1915); People v. Crisostomo, 46 Phil. 775 (1923); People v. De la Cruz, 48 Phil. 533 (1925); People v. Rabadan, 53 Phil. 694 (1927).

[52] People v. Crisostomo, 46 Phil. 775 (1923); People v. Hatib Tala, (CA) 44 O.G. 117 (1947).

[53] Whether elopment or abduction, it is evident that the act was not committed with unchaste designs but with matrimonial intention which were well known to certain persons from the very commencement of the affair and which were realized the following day by the marriage of the accused to the woman alleged to have been abducted. United States v. Rodriguez, 1 Phil. 107 (1902).

The fact that the accused proposed taking the girl to his native province without having previously assumed the lawful bonds of matrimony will not give rise to a presumption of improper motives where the evidence shows that he also burdened himself with the impediment of taking along the girl's mother and two minor brothers and that the conduct of the young couple on their journey was exemplary since the girl never left her mother's side during their flight. United States v. Ysip, 6 Phil. 26 (1906).

The taking of an unmarried girl 14 years of age, with her consent, to a justice court for the purpose of marrying her does not constitute the crime of abduction unless the act is committed with lewd designs. United States v. Galves, 5 O.G. 93 (1906).

The fact that the abduction was had solely for the purpose of marrying the abducted damsel with her own consent negates the allegation that the defendant committed the act for immoral purposes. United States v. Padua, 7 Phil. 399 (1907).

Where the only purpose of the accused in taking the girl away was to marry her and he committed nothing that could offend, in the least, the honor of the said girl, he cannot be found guilty of abduction with consent. United States v. Cecilio, 8 Phil. 24 (1907).

Where not only the woman, but the man as well, had the required age for consenting to marriage, and it does not appear that either of them had any impediment to contracting it, the intention to marry does not constitute unchaste designs. People v. Crisostomo, 46 Phil. 775 (1923).

The violent taking away of a woman is not incompatible with an intention to marry the woman taken away. People v. Crisostomo, 46 Phil. 775 (1923).

[54] See *infra*, notes 137-164.

[55] United States v. Tagle, 1 Phil. 629 (1903).

[56] United States v. Banila, 19 Phil. 130 (1911).

[57] United States v. De la Cruz, 8 Phil. 176 (1907).

[58] See: article 6, Revised Penal Code.

[59] United States v. Luna, 4 Phil. 269 (1905).

her house until interrupted by neighbors answering her cries;[60] and where the accused took hold of a girl and told her to come away with him but had to escape immediately upon hearing the voice of the girl's brother downstairs.[61]

There are no decisions which squarely held that there can be frustrated abduction but there are cases wherein this seems to be implied.[62]

All the cases wherein the accused were convicted of abduction must of necessity be for a consummation thereof, unless otherwise expressly stated.[63]

In one decision, however, it was held that in all cases of crimes against chastity, which include abduction, from the moment the offender performs all the elements necessary for the existence of the felony, he actually attains his purpose and, from that moment, all the essential elements of the offense have also been accomplished. Such being the case, from the standpoint of the law, there can be no frustration of these crimes because no matter how far the offender may have gone towards the realization of his purpose, if his participation amounts to performing all the acts of execution, the felony is necessarily produced as a consequence thereof.[64]

Section 9. Persons liable. — The persons criminally liable for crimes or felonies are the principals, the accomplices, and the accessories.[65] This classification is applicable to the crime of abduction.

The following have been held guilty as principals in the crime of abduction: those who entered the house to take away the girl as well as those who stayed outside;[66] the master who instigated his servant to

[60] United States v. De la Cruz, 8 Phil. 176 (1907).

[61] United States v. Narvasa, 8 Phil. 410 (1907).

Evidence sufficient to sustain conviction for attempted abduction with violence. People v. Escueta, 57 Phil. 977 (1932) unp.

[62] When the abduction of a woman has not been consummated, naturally it cannot be said that the detention was consummated. According to this, a complaint for frustrated abduction cannot involve a charge for consummated illegal detention, but, at most, frustrated illegal detention. People v. Undiana, 50 Phil. 641 (1927).

See also: United States v. Ramirez, 39 Phil. 738 (1919) where, on appeal from a judgment of the lower court convicting the defendants of frustrated abduction, the Supreme Court held them guilty of consummated abduction.

[63] The crime of abduction with consent is consummated where the minor girl leaves her mother's house, gives herself up to her abductor, and lives with him conjugally until they were arrested in the house where the abductor had sexual intercourse with her. United States v. Reyes, 20 Phil. 510 (1911).

Since sexual intercourse is not necessary in order to commit abduction, the crime is consummated where the accused snatched a girl from a street in the city of Manila and carried her to the rice paddies some distance although they had to flee upon seeing that many people were coming to the aid of the girl. United States v. Ramirez, 39 Phil. 738 (1919).

[64] People v. Famularcano, (CA) 43 O.G. 1721 (1947).

[65] See: articles 16, 17, 18 and 19 Revised Penal Code.

[66] United States v. Ramos, 4 Phil. 555 (1905).

assist in inducing a girl to leave her home for immoral purposes;[67] those who took a direct part in the commission of the crime even if the real moving spirit in its commission was still at large;[68] those who, assisted by the abductor, held the offended party and dragged her along to a rice field;[69] those who forcibly dragged the girl from the store she was tending to the vehicle where her rejected suitor was waiting to receive her and who, throughout the ride and while the suitor was handling the girl, seated to one side of the girl;[70] and the accused who inserted his fingers into the woman's organ and widened it, acting either out of lewdness or to help his co-accused consummate the act.[71]

The following have been held guilty as accomplices: the servant who, at the instigation of his master, assisted in inducing a girl to leave her home for immoral purposes;[72] the driver of the automobile used by the accused for the purpose of the abduction;[73] those who, after the abductor had taken the girl from her house at night and had sexual intercourse with her, knew of the abduction and aided and assisted the abductor the following morning in taking the girl to another place;[74] and those who did not lay hands upon the person of the offended party but held the latter's companion to prevent her from helping the offended party.[75]

Section 10. Attendant circumstances. — Generally, three generic classes of circumstances or conditions attending the commission of a crime are taken into consideration for purposes of fixing the proper degree of the penalty that may be imposed upon the accused, namely, mitigating, aggravating and alternative circumstances.[76]

The mitigating circumstance of minority must be applied where the accused charged with abduction was between the age of fifteen and eighteen years at the time of the commission of the offense.[77]

The following aggravating circumstances have been considered in fixing the penalty for the crime of abduction: that the crime was committed in the nighttime, where the accused deliberately took advantage of the darkness of the night[78] but not where it was not shown that

[67] United States vs. Sotto, 9 Phil. 231 (1907).

[68] United States v. Ramirez, 39 Phil. 738 (1919).

[69] People v. Crisostomo, 46 Phil. 775 (1923).

[70] People v. Castillo, 76 Phil. 839 (1946).

[71] People v. Quitain. 53 O.G. 384 (1956).

[72] United States v. Sotto, 9 Phil. 231 (1907).

[73] People v. Balotan, 45 Phil. 573 (1923).

[74] People v. Calalas, 45 Phil. 640 (1924).

[75] People v. Crisostomo, 46 Phil. 775 (1923).

[76] See: articles 13, 14 and 15, Revised Penal Code. Circumstances which justify the act (art. 11, Revised Penal Code) or which exempt from criminal liability (art. 12, Revised Penal Code) are not herein treated.

[77] United States v. Mendoza, 2 Phil. 429 (1903); People v. De Guzman, 51 Phil. 105 (1927).

[78] United States v. De Vera, 1 Phil. 378 (1902); United States v. De la Cruz, 8 Phil. 176 (1907); United States v. Narvasa, 8 Phil. 410 (1907); United States v. Cordoba, 15 Phil. 686

advantage was taken of such darkness;[79] that the crime was committed in the dwelling of the offended party,[80] since the place of taking or detention is not an essential element of the crime;[81] that the crime was committed with abuse of superior strength;[82] that the crime was committed by means of a motor vehicle;[83] that the crime was committed by a band;[84] that the crime was committed in an uninhabited place;[85] that the crime was committed through the false impersonation of an officer of justice;[86] that the crime was committed through abuse of an official position.[87] Abuse of confidence was, however, not considered where there was no evidence on record to justify the conclusion that it existed.[88]

Intoxication, which is an alternative circumstance, was considered as mitigating in a prosecution for forcible abduction.[89]

The alternative circumstance which refers to the degree of instruction or education of the accused has had a varied history. Article 11 of the old Penal Code[90] was applied as a mitigating circumstance in certain

(1910) unp.; United States v. Banila, 19 Phil. 130 (1911); United States v. Borromeo, 23 Phil. 279 (1912); United States v. Oxiles, 29 Phil. 587 (1915); United States v. Evangelista, 32 Phil. 321 (1915); United States v. Yumul, 34 Phil. 169 (1916); United States v. Casten, 34 Phil. 808 (1916); United States v. Ramirez, 39 Phil. 738 (1919); People v. Mirasol, 43 Phil. 860 (1922); People v. Pineda, 56 Phil. 688 (1932); People v. Legaspi, 58 Phil. 980 (1933) unp.; People v. Zenarosa, 62 Phil. 487 (1935); People v. Torres, 62 Phil. 942 (1936); People v. Cuenco, (CA) 46 O.G. 3208 (1948).

[79] United States v. Gregorio, 14 Phil. 758 (1909) unp.

[80] United States v. De Vera, 1 Phil. 378 (1902); United States v. De la Cruz, 8 Phil. 176 (1907); United States v. Narvasa, 8 Phil. 410 (1907); United States v. Banila, 19 Phil. 130 (1911).

[81] See *supra*, Section 4.

[82] United States v. Herrera, 13 Phil. 745 (1909) unp.; People v. Cruz, 49 Phil. 163 (1926); People v. De Guzman, 51 Phil. 105 (1927); People v. Pineda, 56 Phil. 688 (1932); People v. Fernando, (CA) 43 O.G. 1717 (1947).

[83] People v. Ruste, 58 Phil. 961 (1933) unp.; People v. Legaspi, 58 Phil. 980 (1933) unp; People v. Quitalig, (CA) 49 O.G. 5456 (1953).

[84] People v. Torres, 62 Phil. 942 (1936).

Contra, see People v. Corpus, (CA) 43 O.G. 2249 (1947) where, in a prosecution for rape, it was stated that "the circumstance that the crime was committed by a band can only be taken into consideration in connection with crimes against property."

[85] People v. De Guzman, 51 Phil. 105 (1927); People v. Oso, 62 Phil. 271 (1935).

[86] United States v. De la Cruz, 8 Phil. 176 (1907).

[87] United States v. Yumul, 34 Phil. 169 (1916).

[88] United States v. Evangelista, 32 Phil. 321 (1915).

[89] People v. Cruz, 49 Phil. 163 (1926).

[90] Article 11 of the old Penal Code provides: "La circunstancia de ser el reo indigena, mestizo o chino, la tendran en cuenta los Jueces y Tribunales para atenuar o agravar las penas, segun el grado de intencion respectivo, la naturaleza del hecho y las condiciones de la persona ofendida." Translated: "The circumstance of the offender being a native, mestizo, or Chinaman shall be taken into consideration by the judges and courts in their discretion for the purpose of mitigating or aggravating the penalties, according to the degree of intent, the nature of the act, and the circumstances of the offended person."

cases of abduction[91] but not in a case where the accused was a person sufficiently intelligent as to have been selected as a corporal in the police force.[92] After its amendment by Act No. 2142 of the Philippine Commission[93] it was not considered as a mitigating circumstance in crimes against chastity,[94] although much later, after the Revised Penal Code had already become effective,[95] it was held that lack of instruction mitigates the crime of forcible abduction.[96] The latest ruling on the point is one reverting to the former doctrine that the circumstance of illiteracy is not mitigating in crimes against chastity.[97]

Section 11. Complaint and information. — Under the old Penal Code, it was sufficient to authorize a prosecution for abduction that charges have been preferred by the offended party or by her parents, grandparents or guardian, without the filing of a complaint by such person or persons. If the offended person was disqualified by reason of non-age or mental incapacity to maintain the suit, and was furthermore absolutely destitute, having no parents, grandparents, brothers or sisters, guardian or curator, by whom the charge could have been brought, such charge could be made by the prosecuting officer upon general information.[98] From this, it appears that the right to prosecute the crime and appear in the action is attributed in the first place to the person aggrieved, and, in the event of such person being unable to do so by reason of lack of personality, the law designated in successive

[91] United States v. De Vera, 1 Phil. 378 (1902); United States v. Luna, 4 Phil. 269 (1905).

[92] United States v. Narvasa, 8 Phil. 410 (1907).

[93] Act No. 2142, which was enacted on February 5, 1912, amended article 11 of the old Penal Code to read as follows: "The degree of instruction and education of the offender shall be taken into consideration by the courts for the purpose of mitigating or aggravating the penalties, according to the nature of the offense and the circumstances attending its commission."

[94] United States v. Ramirez, 39 Phil. 738 (1919).

[95] Article 15 of the Revised Penal Code, which took effect on January 1, 1932, provides in its first paragraph: "Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender."

It is noteworthy that while the second and third paragraphs of article 15 make provision for the alternative circumstances of relationship and intoxication, there is nothing is the said article which serves to elucidate on the circumstance of the degree of instruction and education of the offender.

[96] People v. Oso, 62 Phil. 271 (1935).

[97] People v. Riotes, (CA) 49 O.G. 3403 (1953).

[98] Article 448, paragraphs 2 and 3, of the old Penal Code provides: "Para proceder en las causas de violacion y en las de rapto ejecutado con miras deshonestas, bastara la denuncia de la persona interesada, de sus padres, abuelos o tutores, aunque no formalicen instancia. Si la persona agraviada careciere, por su edad o estado moral, de personalidad para comparecer en juicio, y fuere ademas de todo punto desvalida, careciendo de padres, abuelos, hermanos, tutor o curador que denuncien, podran verificarlo el Procurador Sindico o el Fiscal, por fama publica."

order the persons upon whom devolves the duty of prosecuting the crime.[99] Since this provision expressly declared that it was not necessary that a formal written denunciation be filed, an information filed by the fiscal by virtue of the complaint made to him by the complaining witness, who sustains and confirms during the trial the action brought by the fiscal in the name of the government, has been held sufficient.[100] Likewise, the denunciation by the interested party, or her parents, grandparents, or guardian shall suffice though they did not present a formal complaint to the judge.[101]

Upon the enactment of Act No. 1773 by the Philippine Commission on October 11, 1907, however, it was provided that hereafter, the crime of abduction shall be deemed to be a public crime which shall be prosecuted in the same manner as are all other crimes defined by the Penal Code. By virtue of this, the crime of abduction became a public offense, without any restriction or limitations as to the manner in which it should be instituted.[102]

The Revised Penal Code, which took effect on January 1, 1932, reverted to the old procedure with even greater stringency by providing that the offense of abduction shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian.[103] This requirement is jurisdictional in nature, essential to vest jurisdiction in the court to try the defendant.[104] A complaint is a sworn statement charging a person with an offense subscribed by the offended party. Thus, when the offended party merely signed an amended information filed by the fiscal, it was not a valid complaint because it was not sworn to by her.[105] Likewise, the fact that the offended party signed at the bottom of the information and above the signature of the

[99] In the third paragraph of article 448, it is provided that if the injured party, by reason of non-age or moral condition, should be without capacity to sue, and should be so unprotected as to be without parents, grandparents, brothers, tutor, or curator, then the fiscal may denounce the crime. United States v. Luna, 1 Phil. 360 (1902).

[100] United States v. De Vera, 1 Phil. 378 (1902).

[101] United States v. De la Santa, 9 Phil. 22 (1907).

[102] United States v. Salazar, 19 Phil. 233 (1911).

Section 1 of Act No. 1773 provides: "Hereafter, the crimes of *adulterio, estupro, rapto, violacion, calumnia,* and *injuria,* as defined by the Penal Code of the Philippine Islands, shall be deemed to be public crimes and shall be prosecuted in the same manner as are all other crimes defined by said Penal Code or by the Acts of the Philippine Commission: ..."

[103] Article 344, paragraph 3, Revised Penal Code.

[104] The complaint filed by the offended party is essential to vest jurisdiction in the court to try the defendant charged with any of the offenses enumerated in article 344. People v. Palabao, G.R. No. L-8027, August 31, 1954.

The offense of abduction shall not be prosecuted except upon a complaint filed by the offended party, or her parents, grandparents, or guardians, which requirement is jurisdictional and procedural. People v. Quitalig, (CA) 49 O.G. 5456 (1953).

[105] People v. Quitalig, (CA) 49 O.G. 5456 (1953).

prosecuting officer and that the information recited that it was brought at the instance of the offended party was held not sufficient for non-compliance with the requirement of the law that the complaint must be sworn to.[106]

The filing of a verified complaint by the offended party, even though she was a minor at the time, in the justice of the peace court is sufficient compliance with the requirement of the law to such an extent that the provincial fiscal does not even have to file any information in the court of first instance for the latter to acquire jurisdiction over the case.[107]

At one time, it was held that the right to file the complaint was reposed exclusively and successively in the persons mentioned in the law in the order in which they are named, thus giving the offended person a preferential right by placing her in the first rank for the filing of the complaint although she is not of age.[108] This view has already been expressly abandoned.[109] If the offended party is already of age and is in complete possession of her mental and physical faculties, it is undoubtedly her paramount right to avenge the wrong done her to the exclusion of her parents and other relatives mentioned by the law. However, the law does not state or does not intend to state that the right of the offended party to file the complaint against the offender is hers exclusively in the sense that when she does not file the same, her parents, grandparents or guardian cannot file it. What it means to say and what it in fact says is that when the offended party is a minor and she does not file the complaint, this may be done by her parents, grandparents or guardian, in the order named.[110]

This general rule is, however, not conclusive in cases of consented abduction. Since the girl voluntarily agreed to her abduction, it would be unreasonable to expect her to sign a criminal complaint against the man with whom she willingly went. If her signature is required for the validity of the complaint, it would be well-nigh impossible to prosecute crimes of abduction with consent. In such cases, the father, as the head of family, is the most logical complainant,[111] confirming once more the principle that abduction with consent is an offense not mainly against the victim thereof but against her parents.[112]

[106] People v. Palabao, G.R. No. L-8027, August 31, 1954.

[107] People v. Riotes, (CA) 49 O.G. 3403 (1953).

[108] United States v. De la Santa, 9 Phil. 22 (1907); People v. Mapotol, (CA) 35 O.G. 1153 ( ).

[109] People v. Varela, 64 Phil. 1066 (1937) unp. (seduction); Tolentino v. De la Costa, 66 Phil. 97 (1938) (acts of lasciviousness); Benga-Oras v. Evangelista, 51 O.G. 5165 (1955) (abduction). The provision of the Revised Penal Code in question is applicable to crimes against chastity in general.

[110] Benga-Oras v. Evangelista, 51 O.G. 5165 (1955).

[111] People v. Sanchez, CA-G.R. No. 6110-R, May 10, 1951; People v. De la Cruz, CA-G.R. No. 13245-R, June 30, 1956.

[112] See *supra,* Section 2.

The law prescribes no special form of establishing the relation between the complainant and the minor who is the victim of the abduction, nor does it require that such relation, in the case of a guardian and ward, be necessarily proved by means of a judicial order or decree. Thus, when a person affirms under oath that he is the guardian of a minor, and this not denied, his affirmation under such circumstance constitutes sufficient evidence that he is in fact the guardian in the legal sense.[113]

It is unnecessary for the complaint or information in cases of forcible abduction to allege that the accused had not been pardoned by the offended party for pardon, in such cases, is a matter of defense which the accused must plead and prove at the proper time.[114] On the other hand, where the information does not allege that the abduction was made or that the carnal knowledge was had without the girl's consent, it must legally be assumed that both the abduction and the carnal knowledge were with her consent.[115]

Section 12. Evidence. — The guilt or innocence of the accused must be decided upon the manner of taking and the purpose or intent which the accused had at the time the offended girl was seized and taken away.[116]

Taking or detention: It is an essential element of abduction that there be a taking or detention of the woman abducted, whether actual, as in the case of forcible abduction, or technical, by inducement, as in the case of abduction with consent.[117] Thus, there can be no conviction for abduction where the inducement was not proved[118] or where there is no evidence that the accused had induced the woman to leave her home or that he had anything to do with her departure therefrom.[119]

There is forcible abduction where the accused caught the offended woman around the waist and attempted to put her in a carromata which was in readiness;[120] where the accused forcibly dragged a girl downstairs and carried her away to a certain distance from her house;[121] where the accused took hold of a girl and told her to get her bundle and come away with him to another house while his companion stood guard at the door of the house;[122] where the defendants tried to force a little girl to marry or live as a concubine of one of them who was already married;[123] where the accused deceived the girl into going voluntarily to a place where she expected to find her fiance and, when she attempted to return home upon being convinced that he was not there, slapped and dragged her to a field nearby where, by means of threats and the use of force, he dishonored her and still brought her to another place where he lay with her several times;[124] where the accused, employing force and intimidation, forcibly detained a woman and brought her to another house where he succeeded in lying with her after overcoming her resistance;[125] where the accused had to avail himself of the aid of other persons, since he would not have done that if the abduction had really been effected with the consent of the offended party;[126] where the accused snatched a girl from a street in the city and carried her to the rice paddies some distance away;[127] where a helpless, defenseless woman was forcibly taken out of her carromata into a rice field where she was surrounded by six strong men who caressed and fondled her and touched her private parts and undertook to throw her down on the ground;[128] and where a rejected suitor, whose persistent offers of love and marriage had been decidely spurned, forcibly took the girl away and embraced and kissed her and handled her private parts against her will.[129]

Where the evidence is conclusive that the abduction was accomplished and completed with force and violence, any evidence tending to show that the girl may thereafter have acquiesced in her abduction is no defense.[130]

Although there may be no actual taking of the woman from her home as to warrant a conviction for forcible abduction, there may still be abduction with consent where the woman was a willing party to the alleged abduction which could not have been committed without her consent,[131] where force and violence were not proven,[132] or where the

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[113] People v. Formento, 60 Phil. 434 (1934); People v. Elgar, (CA) 47 O.G. 318 (1949).

[114] People v. Riotes, (CA) 49 O.G. 3403 (1953).

[115] People v. Amerela, 48 Phil. 620 (1926).

[116] People v. Bustos, 54 Phil. 887 (1930).

[117] See *supra*, Section 5.

[118] People v. Teodoro, 57 Phil. 1005 (1932) unp.

[119] United States v. Javate, 4 Phil. 465 (1905); United States v. Garcia, 30 Phil. 74 (1915).

There is no abduction where the complainant issued the invitation to serve her own purpose. People v. Mahilum, CA-G.R. No. 20694-R, June 5, 1959.

[120] United States v. Luna, 4 Phil. 269 (1905).

[121] United States v. De la Cruz, 8 Phil. 176 (1907).

[122] United States v. Narvasa, 8 Phil. 410 (1907).

[123] United States v. Banila, 19 Phil. 130 (1911).

[124] United States v. De Vivar, 29 Phil. 451 (1915).

Contra, see People v. Rabadan, 53 Phil. 694 (1927), where the offended woman hired a man to carry her in his automobile from her home to another town and on the way, the accused, in connivance with the driver, entered the car and took the woman to another uninhabited place and attempted to violate her. Saying that since the woman left her home voluntarily and without persuasion, the court held that there can be no abduction but only attempted rape.

[125] United States v. Oxiles, 29 Phil. 587 (1915).

[126] United States v. Oxiles, 29 Phil. 587 (1915); People v. Torres, 62 Phil. 942 (1936).

[127] United States v. Ramirez, 39 Phil. 738 (1919).

[128] People v. Columna, 44 Phil. 134 (1922).

[129] People v. Castillo, 76 Phil. 839 (1946).

[130] People v. Bustos, 54 Phil. 887 (1930).

[131] United States v. Cordoba, 15 Phil. 686 (1910) unp.; People v. Manalili, 46 Phil. 891 (1923); People v. Fausto, 51 Phil. 852 (1928).

[132] People v. Panganiban, 61 Phil. 1018 (1935) unp.

woman was willing to be abducted and did not make any actual resistance and was even ready and willing to marry her abductor after the abduction.[133]

Place of taking or detention: Since the place of taking or detention is immaterial and of no importance in the legal elements of the crime,[134] there is still abduction where the offended girl was induced to abandon or leave the college where she had been placed by her father under the care and protection of the nuns.[135] While this may be true, where there is an irreconcilable conflict between the testimony of the offended girl and the only other prosecution witness upon the very material point of the location of the house where the detention occurred, the defendant is entitled to an acquittal.[136] Also, it is only when the offender deliberately prepares for the job and is assisted by co-conspirators that an abduction by force is possible in populated or inhabited places, because in such a case the victim is overpowered and physical resistance is instantly suppressed. It is only in isolated places where the abduction of a woman against her will can be perpetrated successfully by a single person without the aid of another for then the abductor would not entertain any fear of possible resistance or discovery of the misdeed coming from third persons, and the physical resistance the victim may offer can immediately be suppressed through threats and intimidation.[137]

Age of female: The testimony of the offended girl as to her age cannot prevail over that of her father's since all the knowledge a person has of his age is acquired from what he is told by his parents, and the remarks or statements of his parents in regard thereto are the best evidence.[138] However, where there is a conflict of evidence, both documentary and testimonial, as to the offended party's age, the judge may take into account the girl's general appearance, features and other physical conditions.[139]

Virginity of female: Since virginity, as understood in the provision of the law punishing abduction with consent, should not be construed in such a material sense as to exclude from its scope the abduction of a virtuous woman of good reputation,[140] it is not necessary that the offended woman be a virgin in the strictly literal sense,[141] it being sufficient if she has a good reputation as being honest, virtuous and respectable.[142] The fact that the offended girl has had prior sexual relations with the accused does not, therefore, necessarily mean that she is no longer a virgin at the time of the abduction.[143]

Slight evidence is sufficient to warrant the inference of a young woman's virginity when there is no absolute proof to the contrary.[144] Thus, there is a presumption that a woman is a virgin whenever it is shown that she is unmarried, and this would continue until thrown by proof to the contrary.[145] This would be especially true where she lives at home with her parents since this is a mode of life not commonly or naturally associated with dissolute habits.[146] Even the absence of an intact hymen is not necessarily proof that a woman is no longer virgin since it is claimed by medical authorities, on the basis of clinical observations, that the hymen is not always present even in a state of undoubted virginity for it is sometimes torn during childhood due to various causes.[147] Of course, where the woman is married, she can no longer be considered a virgin.[148]

Lewd designs: It is an essential element of the crime of abduction that it be committed with or that the defendant be actuated by unchaste designs[149] and the burden is upon the prosecution to establish this fact.[150] Thus, even if there is in reality the material fact of abduction of a woman, where there is no proof beyond reasonable doubt that such abduction was committed with lewd or unchaste designs, there can be no conviction for abduction.[151]

To demonstrate the presence of lewd designs, actual illicit criminal relations with the woman abducted need not be shown. The intent to seduce the woman is sufficient. The evil purpose or lustful designs need not be established by positive evidence but may be inferred from the acts or conduct of the accused.[152] The fact, therefore, that no car-

[133] People v. De Loyola, 45 Phil. 799 (1924).

[134] See *supra*, Section 4.

[135] United States v. Casten, 34 Phil. 808 (1916).

[136] United States v. Eugenio, 36 Phil. 794 (1917).

[137] People v. Pedralvez, CA-G.R. No. 12483-R, April 14, 1955.

[138] United States v. Evangelista, 32 Phil. 321 (1915).

[139] United States v. Yumul, 34 Phil. 169 (1916).

[140] See *supra*, note 43.

[141] People v. De la Cruz, CA-G.R. No. 13245-R, June 30, 1956.

[142] United States v. Meneses, 14 Phil. 151 (1909).

[143] United States v. Casten, 34 Phil. 808 (1916); People v. Cuenco, (CA) 46 O.G. 3208 (1948); People v. Ibañez, CA-G.R. No. 17077-R, November 29, 1957; People v. Prande, CA-G.R. No. 21460-R, June 25, 1959.

[144] United States v. Alvarez, 1 Phil. 351 (1902).

[145] United States v. Alvarez, 1 Phil. 351 (1902); People v. Gaddi, CA-G.R. No. 19868-R, July 25, 1958.

[146] United States v. Alvarez, 1 Phil. 351 (1902).

[147] People v. Torres, 62 Phil. 942 (1936).

[148] People v. Fausto, 51 Phil. 852 (1928).

[149] See *supra*, notes 11, 20 and 21.

[150] United States v. Padua, 7 Phil. 399 (1907); People v. Crisostomo, 46 Phil. 775 (1923).

[151] United States v. Caido, 4 Phil. 217 (1905); United States v. Ysip, 6 Phil. 26 (1906); United States v. Cecilio, 8 Phil. 24 (1907); United States v. Santiago, 29 Phil. 374 (1915); People v. Arce, 57 Phil. 1002 (1932) unp.; People v. Teodoro, 57 Phil. 1005 (1932) unp.; People v. Asuncion, 61 Phil. 1061 (1935) unp.; People v. Cruz, (CA) 50 O.G. 3720 (1954).

[152] United States v. Ramirez, 39 Phil. 738 (1919); People v. Franco, (CA) 53 O.G. 410 (1956).

The fact that the defendant made an attempt on the chastity of the of-

nal intercourse had taken place is no bar to a prosecution for abduction,[153] although the fact that carnal relations had taken place has invariably been construed as showing the presence of lewd designs.[154] Thus, even if the accused did not actually commit any acts of lasciviousness, libidinous designs may still exist.[155] However, while it is not necessary to show that the unchaste designs where carried into effect, it is still required to establish the existence of the unchaste intention.[156]

The intention to contract marriage with the abducted woman is a good defense to a prosecution for abduction[157] because it does not, of itself alone, constitute lewd designs.[158] Such an intention, as a general proposition, may sometimes constitute unchaste designs because of the concurring circumstances which vitiate it, as in the case where the abductor knew that the girl cannot legally consent to the marriage and still eloped with her,[159] where there was no marriage license,[160] where there was no parental consent in those cases where the girl cannot legally marry

fended party the previous night justifies the presumption that the attempted abduction committed the next morning was done with unchaste designs. United States v. Luna, 4 Phil. 269 (1905).

The mere riding in an automobile with a girl over 12 and below 18 years without intent to take her away from the authority of those who have her under their control and custody, nor to conceal her whereabouts, is not sufficient to constitute the crime of abduction with consent, whatever its consequences in morals may be. Criminal law does not punish mere amorous appointments. People v. De la Cruz, 48 Phil. 533 (1925).

[153] United States v. Meneses, 14 Phil. 151 (1909).

[154] United States v. Meneses, 14 Phil. 151 (1909); United States v. Tandiana, 25 Phil. 64 (1913); United States v. Casten, 34 Phil. 808 (1916); People v. Castillo, 76 Phil. 839 (1946); People v. Ignacio, (CA) 44 O.G. 2291 (1947); People v. Alcasen, CA-G.R. No. 4966-R, September 29, 1950.

[155] People v. Franco, (CA) 53 O.G. 410 (1956).

[156] People v. Crisostomo, 46 Phil. 775 (1923).

[157] See *supra*, note 53.

[158] People v. Crisostomo, 46 Phil. 775 (1923); People v. Hatib Tala, (CA) 44 O.G. 117 (1947).

Where the departure of the woman from her house was a real elopment carried out by her as a means for contracting marriage with the defendant against the opposition of her father, there can be no case of abduction. United States v. Rodriguez, 1 Phil. 107 (1902).

The taking of an unmarried girl 14 years of age, with her consent, to a justice court for the purpose of marrying her does not constitute the crime of abduction unless the act is committed with lewd designs. United States v. Galves, 5 O.G. 93 (1906).

The fact that the abduction was had solely for the purpose of marrying the abducted damsel with her own consent negates the allegation that the defendant committed the act for immoral purposes. United States v. Padua, 7 Phil. 399 (1907).

Where the only purpose of the accused in taking a girl away was to marry her and he committed nothing that could offend, in the least, the honor of the said girl, he cannot be found guilty of abduction with consent. United States v. Cecilio, 8 Phil. 24 (1907).

Where not only the woman, but the man as well, had the required age for consenting to marriage, and it does not appear that either of them had any impediment to contracting it, the intention to marry does not constitute unchaste designs. People v. Crisostomo, 46 Phil. 775 (1923).

[159] People v. Crisostomo 46 Phil. 775 (1923); People v. Hatib Tala, (CA) 44 O.G. 117 (1947).

[160] People v. Cabrera, (CA) 37 O.G. 2029 (1937); People v. Ignacio, 44 O.G. 2291 (1947).

without the consent of her parents,[161] where the abductor took the girl to the office of the justice of the peace at a time when it is usually closed and no marriages are therein solemnized, much less at a moment's notice and without having previously fulfilled the requisites provided by law,[162] and where the abductor was already married and well knew that he could not possibly marry the abducted girl.[163] Lewd designs will invariably be present where the defendant practices deceit upon the abducted girl by making a false promise to marry her without really any intention of fulfilling the same.[164]

Witnesses: In cases of this nature, much depends upon the appearance of the girl and her manner and conduct on the witness stand.[165] Considering the extreme modesty and timidity of the Filipino woman, it is hard to believe that a girl, whose chastity has not been questioned, would fabricate or wish to fabricate facts which would so seriously dishonor her, much less discuss them at a public trial, thus giving rise to gossip and slander, without a powerful motive that would paralyze all her sense of modesty and shame.[166] Girls who have hardly begun to know the ways of the world and who have such a high and delicate regard for purity would not ordinarily be capable of fabricating such a bestial and shameful act of which they were the victims for their own sentiment of purity would rebel against such an idea, inasmuch as they would be exposed to the scorn and disrespect of honest people.[167]

However, the testimony of the offended woman should not be received with precipitate credulity. When the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion.[168] More so, when there is an irreconcilable conflict between the testimony of the offended girl and the only other witness of the prosecution on a very material point,[169] when the testimony of the offended party alone as to the acts of the defendant, perceived by her in those moments when she was

[161] People v. Ignacio, (CA) 44 O.G. 2291 (1947); People v. Alcasen, CA-G.R. No. 4966-R, September 29, 1950.

[162] People v. Castillo, 76 Phill. 839 (1946).

[163] United States v. Alvarez, 1 Phil. 351 (1902); United States v. Estrella, 12 Phil. 773 (1908) unp.; United States v. Banila, 19 Phill. 130 (1911); United States v. Reyes, 20 Phil. 510 (1911); United States v. Reyes, 28 Phil. 352 (1914); People v. De la Cruz, CA-G.R. No. 13245-R, June 30, 1956; People v. Arada, CA-G.R. No. 18976-R, February 27, 1959.

[164] United States v. Alvarez, 1 Phil. 351 (1902); United States v. Mendoza, 2 Phil. 429 (1903); United States v. Estrella, 12 Phil. 773 (1908) unp.; United States v. Meneses, 14 Phil. 151 (1909); United States v. Reyes, 20 Phil. 510 (1911); United States v. Tandiana, 25 Phil. 64 (1913); United States v. Casten, 34 Phil. 808 (1916); People v. Bustos, 54 Phil. 887 (1930).

[165] People v. Bustos, 54 Phil. 887 (1930).

[166] People v. De Guzman, 51 Phil. 105 (1927).

[167] People v. Amante, 49 Phil. 679 (1926).

[168] People v. Fausto, 51 Phil. 852 (1928).

[169] United States v. Eugenio, 36 Phil. 794 (1917).

excited and was doing her best to escape, was positively denied by said defendant,[170] and where the offended party's story is not only improbable in most parts but is not corroborated by the other evidence in the case, the best action to take, as justice demands, is to give more credit to the exculpatory testimony of the accused, applying favorably, as subsisting and intact, the presumption that a man is innocent until the contrary is shown.[171]

Similarly, where the evidence for the prosecution does not ring true, is full of many contradictions and inconsistencies, and does not give any details on important matters, the accused must be acquitted.[172]

However, where the evidence for the prosecution is uncontradicted by the defendant, who was present and heard all the prosecution witnesses without alleging any exculpation or making any attempt to show his innocence, it is sufficient to establish his guilt.[173]

Section 13. Defenses. — The old Penal Code provided that the pardon, express or presumptive, of the offended party shall extinguish the penal action or work a remission of the penalty, if the offender shall have been already convicted. Likewise, it provided that the pardon shall not be presumed except by the marriage of the offended woman to the offender.[174] This was amended by Act No. 1773 of the Philippine Commission, enacted on October 11, 1907, which provided that the condonation, pardon, or remission of penalty by the aggrieved person or the parents, grandparents, or guardian of such person shall in no way extinguish the liability of the guilty person or persons to criminal prosecution and punishment, nor shall such condonation, pardon, or remission operate to dismiss or suspend any prosecution once commenced. It provided, however, that the legal marriage of the accused or convicted person to the aggrieved person shall extinguish such criminal liability.[175] The Revised Penal Code again amended this by providing that the offense of abduction shall not be prosecuted if the offender has been expressly pardoned by the offended party or her parents, grandparents or guardian. Likewise, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him, his co-principals, accomplices and accessories after the fact.[176]

Under the old Penal Code, the express pardon for the offense must be granted by the injured party, and in case the injured party should be a minor, or should lack the necessary capacity to maintain an action, then, in order that the pardon have its effect, it is necessary that this defect be cured by the completion of this deficient personality. The pardon must be made by the person injured, or in case that person be a minor, then the parents or guardian of such person must take part in the granting thereof. But the granting of pardon by these persons alone, in the name or on behalf of the minor, is not sufficient because, as the offense essentially and directly affects the injured party, she alone is entitled to remit the offense and to authorize the extinction of the penal action. The pardon can only be presumed in the marriage of the injured party

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[170] People v. Crisostomo, 46 Phil. 775 (1923).

[171] People v. Cosca, 52 Phil. 361 (1928).

[172] United States v. Chico, 10 Phil. 741 (1908) unp.; People v. Mañgon, 60 Phil. 821 (1934).

[173] United States v. De Vera, 1 Phil. 378 (1902).

Evidence held sufficient to sustain conviction for abduction with consent: United States v. Lim Chui, 20 Phil. 587 (1911) unp.; United States v. Gonzalez, 20 Phil. 620 (1911) unp.; United States v. Felipe, 21 Phil. 640 (1912) unp.; United States v. Evangelista, 32 Phil. 321 (1915); People v. Imbag, 56 Phil. 791 (1931) unp.; People v. Du Uhiam, 56 Phil. 835 (1932) unp.; People v. Torres, 56 Phil. 841 (1932) unp.; People v. Elis, 57 Phil. 953 (1932) unp.; People v. Candido, 57 Phil. 968 (1932) unp.; People v. Tuason, 57 Phil. 985 (1932) unp.; People v. Timonel, 58 Phil. 907 (1933) unp.; People v. Romasanta, 60 Phil. 1004 (1934) unp.; People v. Domingo, 60 Phil. 1024 (1934) unp.; People v. Piñgul, 60 Phil. 1029 (1934) unp.; People v. Ignacio, (CA) 44 O.G. 2291 (1947).

Evidence held insufficient to sustain conviction for abduction with consent: People v. Pickett, 61 Phil. 1059 (1935) unp.

Evidence held sufficient to sustain conviction for forcible abduction: United States v. Herrera, 13 Phil. 745 (1909) unp.; United States v. Talaoag, 14 Phil. 761 (1909) unp.; People v. De los Santos, 59 Phil. 905 (1933) unp.; People v. Gumiran, 60 Phil. 993 (1934) unp.; People v. Zenarosa, 62 Phil. 487 (1935); People v. Franco, (CA) 53 O.G. 410 (1956).

Evidence held insufficient to sustain conviction for forcible abduction: United States v. Caido, 4 Phil. 217 (1905).

Evidence held sufficient to sustain conviction for attempted forcible abduction: People v. Escueta, 57 Phil. 977 (1932) unp.

Evidence held sufficient to sustain conviction for abduction with rape: People v. Amante, 49 Phil. 679 (1926); People v. Manguiat, 51 Phil. 406 (1928); People v. Pineda, 56 Phil. 688 (1932); People v. Umali, 56 Phil. 852 (1932) unp.; for abduction with two rapes: People v. Quitain, 53 O.G. 384 (1956); for abduction with rape and physical injuries: People v. Villanueva, 58 Phil. 977 (1933) unp.; for triple forcible abduction with rape: People v. Burgos, CA-G.R. No. 3934-R, December 7, 1950.

Evidence held insufficient to sustain conviction for abduction with rape: People v. Remulla, 56 Phil. 852 (1932) unp.

[174] Paragraphs 4 and 5, article 448 of the old Penal Code provide: "En todos los casos de este articulo, el perdon expreso o presunto de la parte ofendida extinguira la accion penal, o la pena, si ya se hubiere impuesto al culpable. El perdon no se presume sino por el matrimonio de la ofendida con el ofensor." "In all cases falling under this article, the pardon, express or presumptive, of the offended party shall extinguish the penal action or work a remission of the penalty, if the offender shall have been already convicted. The pardon shall not be presumed, except by the marriage of the offended woman to the offender."

[175] Section 2, Act No. 1773.

[176] Paragraphs 3 and 4, article 344 of the Revised Penal Code provide: "The offense of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian nor in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the coprincipals, accomplices and accessories after the fact of the above-mentioned crimes."

with the offender and cannot be presumed from any act on the part of her representatives. Thus, where it does not appear that the offended party herself has expressly pardoned the injury done to her, an express pardon, recorded in a public instrument, granted by her parents who were exercising parental authority over her, is not sufficient to authorize the dismissal of the case against the defendant.[177]

The pardon, furthermore, must be bestowed prior to the filing of the criminal action. An express pardon does not justify the dismissal of the criminal action where it was granted only after the institution thereof.[178]

Pardon is a matter of defense which the accused must plead and prove at the proper time. As such, it is unnecessary for the complaint or information to allege that the accused had not been pardoned by the offended party.[179]

The marriage of the abductor or of one of the abductors to the offended party is a bar to the criminal action against him and his other co-defendants.[180] As a matter of fact, even after conviction, where the accused furnishes satisfactory proof of his marriage with the aggrieved party, his criminal liability is extinguished.[181]

However, where the marriage was not voluntary and valid[182] or where it was merely an artifice or device used by the accused to escape the criminal consequences of his acts, it does not constitute an obstacle to the prosecution of the accused for the offense.[183]

Section 14. Trial, sentence and review. — Justice of the peace courts have no jurisdiction over the crime of abduction because of article 449 of the old Penal Code[184] and article 345 of the Revised Penal Code[185] under which the court must, in addition to the imprisonment

[177] United States v. Luna, 1 Phil. 360 (1902).

[178] People v. Flores, (CA) 44 O.G. 3838 (1947); People v. Gaspar, CA-G.R. No. 12597-R, November 23, 1955.

[179] People v. Riotes, (CA) 49 O.G. 3403 (1953).

[180] United States v. Poquis, 14 Phil. 261 (1909); People v. Tisbe, 48 Phil. 1 (1925).

[181] United States v. Meneses, 14 Phil. 151 (1909).

[182] People v. Manguiat, 51 Phil. 406 (1928).

[183] People v. Hatib Tala, (CA) 44 O.G. 117 (1947); People v. Acosta, CA-G.R. No. 3467-R, November 25, 1950.

[184] Article 449 of the old Penal Code provides: "Los reos de violacion, estupro o rapto, seran tambien condenados por via de indemnizacion: 1. A dotar a la ofendida, si fuere soltera o viuda. 2. A reconocer la prole, si la calidad de su origen no lo impidiere. 3. En todo caso a mantener la prole." "Any person guilty of rape, seduction, or abduction shall also be condemned by way of indemnification: 1. To endow the offended woman, if she be single or a widow. 2. To recognize the offspring, unless the situation of the parents be such that the status of a recognized natural child can not be conferred upon such offspring. 3. In every case to support the offspring."

[185] Article 345 of the Revised Penal Code provides: "Persons guilty of rape, seduction or abduction, shall also be sentenced: 1. To indemnify the offended woman. 2. To acknowledge the offspring, unless the law should prevent him from so doing. 3. In every case to support the offspring."

which the accused must suffer, require him to acknowledge and maintain the offspring and compensate and endow the mother for the wrong done her.[186]

If the abduction was commenced in one province but was consummated in another where the defendant was to carry out or intended to carry out the unchaste designs, the court of first instance of either province has jurisdiction and is competent to take cognizance of the crime.[187]

It is axiomatic in this jurisdiction that a former conviction or acquittal shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[188] Likewise, a defendant may be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.[189]

Accordingly, since acts of lasciviousness is a crime that involves some important act which is not an essential element of abduction, an accused convicted of either one of them cannot plead double jeopardy as an obstacle to that of the other;[190] an accused charged with abduction cannot be convicted of seduction;[191] an accused charged with forcible abduction can be convicted of illegal detention since the acts constituting abduction, with the exception of lewd designs, also constitute the crime of illegal detention, for abduction with violence being the taking away of a woman from her house by means of force, the same act implies illegal detention;[192] and the filing of a complaint for rape does not confer jurisdiction upon the court to try and sentence the defendant for abduction.[193]

[186] United States v. Bernardo, 19 Phil. 265 (1911).

[187] United States v. Bernabe, 23 Phil. 154 (1912); People v. Garcia, CA-G.R. No. 11041-R. September 23, 1955.

[188] Section 9, Rule 113, of the Rules of Court provides: "When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

[189] Section 4, Rule 116, of the Rules of Court provides: "When there is variance between the offense charged in complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

[190] People v. Franco, (CA) 53 O.G. 410 (1956).

[191] People v. Salazar, CA-G.R. No. 19111-R, July 29, 1958.

[192] People v. Undiana, 50 Phil. 641 (1927).

[193] People v. Santos, 60 Phil. 450 (1934).

Where there is nothing in the complaint for rape from which it may be

The question of whether the offense of forcible abduction includes the offense of abduction with consent is still unsettled. One view holds that the elements of these two crimes are entirely different and distinct so that one does not include and is not included in the other.[194] The other view inclines to the theory that the crime of abduction with consent is, at least, included in that of forcible abduction, the only difference being that the element of force or violence is missing.[195]

Section 15. Punishment. — The crime of abduction has existed since time out of mind and has been dealt with by all nations with the severest penalties, and people have often been so intolerant of the crime that they have been unwilling to await the slow action of the law, but have taken the matter in hand themselves and inflicted death by burning at the stake, hanging or any other convenient method. It cannot therefore be claimed that the penalty fixed by law for the crime is cruel and unusual.[196] The penalty may indeed be harsh and severe but it is justified since the law was intended to protect and defend the person and body of a woman from vicious and brutal assaults.[197]

In the imposition of the penalty, the general principles of the law must be applied. Thus, where the defendants took a sum of money from the girl they abducted, they should be condemned to return the amount illegally appropriated by them.[198] Where the accused was detained during the pendency of the action, credit must be allowed for one-half the time of imprisonment he thus suffered while awaiting trial.[199] The defendant may also be sentenced to suspension of the right to hold public office and the right of suffrage during the term of his sentence.[200] The court may also, in its discretion, suspend the execution of its judgment where the accused is a minor.[201]

The law also provides that the person guilty of abduction be sentenced to indemnify the offended woman.[202] The declarations of the indemnification, necessarily required by the law, are not really, in a strict legal sense, accessories of the personal penalty imposed by the Penal Code upon the abductor, but are rather those which the law

deduced that abduction was also charged, the court, although it correctly finds that the offense committed was abduction with consent, has no jurisdiction to try and sentence the accused for that crime. People v. Santos, 60 Phil. 450 (1934).

Where the complaint alleges facts which, while sufficient to constitute the crime of forcible abduction, are not sufficient to determine the crime of rape, the accused cannot be convicted of the complex crime of forcible abduction with rape, but only of forcible abduction. People v. Oso, 62 Phil. 271 (1935).

Even if an accused may not be held guilty of the crime of forcible abduction with rape because of the defect in the information to sufficiently describe the crime of rape, he may be found guilty of forcible abduction where there are sufficient allegations in the information and proof in the records which would render him liable for such crime. People v. Quitalig, (CA) 49 O.G. 5456 (1953).

[194] Where the accused was charged with abduction executed against the will and with unchaste designs under article 445, he cannot be convicted of the abduction of a virgin under 23 years of age and over 12, executed with her consent, under article 446. The latter offense is a distinct and separate crime, and is not included in the former. United States v. Tagle, 1 Phil. 626 (1903).

The dismissal of a complaint charging abduction with consent of the injured girl does not constitute double jeopardy with respect to the subsequent complaint charging forcible abduction, since the elements of these two crimes are entirely different and distinct. People v. Mirasol, 43 Phil. 860 (1922).

A complaint or information charging the crime of consented abduction does not include the crime of forcible abduction, neither is this included in the crime charged. People v. Guhil, (CA) 56 O.G. 1191 (1959).

If the trial court, after hearing the testimony of the prosecution witnesses in a case of consented abduction, finds that the crime committed was forcible abduction, it should dismiss the information and then, without releasing the accused or cancelling his bond, order the filing of a new information charging the proper offense. People v. Guhil, (CA) 56 O.G. 1191 (1959).

An accused who has been charged with consented abduction, cannot be convicted and sentenced for the crime of forcible abduction notwithstanding the fact that the evidence presented during the trial shows that the offense committed was forcible abduction, for it is elementary that an accused cannot be convicted merely upon the allegations of a complaint or information but also upon the evidence establishing beyond reasonable doubt the facts alleged therein. People v. Guhil, (CA) 56 O.G. 1191 (1959).

[195] Defendant was charged with abduction under article 445 but was found guilty under article 446. United States v. Urbina, 14 Phil. 759 (1909) unp.

Where the evidence does not establish beyond reasonable doubt that force or threats were used in the abduction of the girl, but rather shows that she gave her own assent, the judgment of the lower court convicting the accused of forcible abduction under article 445 was reversed and he was convicted of abduction with consent under article 446. United States v. Asuncion, 31 Phil. 614 (1915).

Even if the complaint charges the crime of forcible abduction, where the evidence shows that the offended girl gave her consent thereto, the accused may be convicted of abduction with consent. United States v. Yumul, 34 Phil. 169 (1916).

[196] United States v. Borromeo, 23 Phil. 279 (1922).

[197] People v. Columna, 44 Phil. 134 (1922).

[198] United States v. Banila, 19 Phil. 130 (1911).

[199] United States v. Narvasa, 8 Phil. 410 (1907); United States v. Bernabe, 23 Phil. 154 (1912).

[200] United States v. Reyes, 28 Phil. 352 (1914).

[201] In accordance with section 1 of Act No. 1438, whenever any male minor between the ages of 8 and 16, or any female between the ages of 8 and 18, shall be found guilty of an offense not punishable by life imprisonment or death, the court, instead of directing the confinement of such minor in any public prison or jail, may, in its discretion, suspend judgment and commit such minor to the custody of any orphan asylum, reform school, charitable society, or society for the prevention of cruelty to children, or to any other charitable or educational institution having for its purpose the care, betterment, reform, or education of minors, until such minor shall have reached his majority, or for such less period as to the court may seem proper. United States v. Tandiana, 25 Phil. 64 (1913).

Defendant being under 18 years of age, he was ordered to be confined in the Philippine Training School for Boys. People v. Santos, 58 Phil. 938 (1933) unp.

While it is true that the crime of abduction is not one of the exceptions provided in the Probation Law (Act No. 4221) to the application of its provisions, it is no less true that it is discretionary with courts to suspend the execution of a final judgment and to extend the benefits of the said law to applicants therefor, inasmuch as sections 1 and 2 thereof use the verb "may" which undoubtedly implies the exercise of discretion. Zenarosa v. Garcia, 63 Phil. 13 (1936).

[202] See *supra*, notes 184 and 185.

prescribes shall be made by the judge in passing final sentence in the cause, in order that it may be shown that, besides the personal penalty, the accused, in consequence of his crime, has incurred the obligations expressly stated by the said Code.[203] The sum which the defendant is required to endow the woman must consider the circumstances of the parties and the social and economic conditions of the country,[204] so that in the absence of special reasons an indemnity awarded by the lower court may be considered excessive and may be reduced on appeal.[205] Of course, where the crime committed was not abduction, the endowment awarded by the lower court cannot be upheld and must be eliminated.[206]

The law also provides for the acknowledgment and support of the offspring, should there be any.[207] Where the accused is married, he cannot be sentenced to maintain, much less acknowledge, the offspring that results from the abduction. He should, however, be sentenced to pay indemnity to the offended woman.[208]

[203] United States v. Bernardo, 19 Phil. 265 (1911).

[204] People v. Crisostomo, 46 Phil. 775 (1923).

[205] United States v. Casten, 34 Phil. 808 (1916).

[206] People v. Crisostomo, 46 Phil. 775 (1923).

[207] See *supra*, notes 184 and 185; United States v. Meneses, 14 Phil. 151 (1909); People v. Timonel, 58 Phil. 907 (1933) unp.

[208] United States v. Soledad, 14 Phil. 777 (1909) unp.

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