

[G.R. No. 2062. April 25, 1905]

THE UNITED STATES ET AL., COMPLAINANTS AND APPELLANTS, VS. AGUSTINA BARRERA, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

In the month of March, 1902, the defendant, Agustina Barrera, presented to a justice of the peace in the Province of Occidental Negros a complaint charging Carlos Magalona with theft. The latter was prosecuted for this offense in the Court of First Instance of that province, and was acquitted. The judgment of acquittal contains the following clause:

“Considering that in the judgment of this court the complaint presented by Doña Agustina Barrera is false, there is reserved to Don Carlos Magalona his right of action against her.”

After the rendition of this judgment Carlos Magalona presented a complaint against Agustina Barrera, charging her with the crime of false accusation, as defined in article 326 of the Penal Code. To his complaint he attached a copy of the judgment rendered in the case against him.

The defendant, Agustina Barrera, appeared and filed a demurrer to the complaint substantially upon the ground that it did not state facts sufficient to constitute a cause of action. This demurrer was sustained by the court below, and it was ordered that the defendant be discharged and her bail exonerated. From this order sustaining the demurrer the complaining witness Carlos Magalona has appealed. Whether or not such an appeal can be allowed since the decision of the Supreme Court of the United States in the case of *Kepner vs. The United States* (195 U. S., 100) we do not decide, for we think that the order of the court below was in any event correct.

It will be observed that when the court disposed of the case for theft against Carlos Magalona it did not direct proceedings to be commenced by the fiscal against Agustina Barrera for false accusation. Article 326 requires this to be done when the court below is of the opinion that the accusation is false. Instead of making such an order the court made an order reserving to Carlos Magalona his right to prosecute a civil action against her. We hold with the court below, and for the reasons stated in its decision, that that provision is an integral part of the offense defined in article 326, and that there can be no prosecution for a false accusation unless the court in dismissing the first case expressly orders the prosecuting attorney to proceed against the complaining witness in that case for a violation of this article. This part of the article has not been repealed or in any way affected by General Orders, No. 58.

The order appealed from is affirmed, with the costs of this instance against the appellant.

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