101 Phil. 798

[G. R. No. L-8520. June 29, 1957]

THE PEOPLE OF THE PHILIPPINES, ET AL., PETITIONERS, VS. ENGRACIO SANTOS, ET AL., RESPONDENTS.

D E C I S I O N

PARAS, C.J.:

Respondent Engracio Santos was charged in the Court of First Instance of Rizal with the crime of rape. After trial, said respondent was convicted and sentenced to the maximum period of *reclusion temporal*, from 17 years, 4 months and 1 day to 20 years, and to pay the costs. Appealing to the Court of Appeals, respondent filed a motion to quash and for discharge, on the ground that the trial court was without jurisdiction, there having been no valid complaint subscribed and sworn to by the offended party as required by Article 344 of the Revised Penal Code. Said motion was granted. Hence this appeal by the petitioners.

It is contended that the "salaysay" executed and signed by petitioner Policarpia Bansuelo on January 12, 1954, before and in the presence of Fiscal Nicanor P. Nicolas of Rizal and Capt. Hermogenes Marco of the PCAC, is sufficient in form and substance to serve as the complaint required by Article 344 of the Revised Penal Code. That the law requiring that the crime of rape, among others, shall be commenced by a complaint filed by the offended party is merely "designed for the protection of the offended party and her family who may prefer to suffer the outrage in silence rather than go through with the scandal of a public trial" (Samilin vs. Court of First Instance of Pangasinan, 57 Phil. 298, 304) ; that when petitioner Bansuelo executed said "Salaysay", she had manifested her desire to prosecute the maniacal abuse committed against her; that said "salaysay" has conformed substantially to the requisites of a, valid complaint; that it cannot be considered as her testimony during the preliminary investigation because, if it were so, the other witnesses should have also signed it.

After a thorough examination of the "salaysay" in question, we agree with the appealed decision that it is a narration of how the crime of rape was committed against petitioner Bansuelo. Aa correctly pointed out by the Solicitor General in his comment on the motion for recon- sideration, such sworn statement "salaysay" is not the complaint contemplated in and required by sections 1, 2 and 5 of Rule 106 of the Rules of Court and Article 344 of the Revised Penal Code."

> The complaint is the process which begins the criminal action, and no other pleading on the part of the government is necessary. So, if a criminal action, had been commenced by complaint in appropriate cases, it would he error for the court to dismiss it, because it was not presented through the mediation of the prosecution officer." (Moran's Comments on the Rules of Court, 3d ed. [1950], Vol. II, p. 548).

The complaint contemplated by the law and the rules is necessarily that one filed in court. The "salaysay" was filed with the Fiscal and not with the court; it did not start the criminal proceedings. The Court of Appeals dwelt lengthily on this point when it said:

> "Counsel for the complainant vigorously states in the motion for reconsideration, as well as in his reply to the comment of the Solicitor General, that in the instant ease there has been substantial compliance with the law requiring the filing of a complaint by the offended party in order to confer jurisdiction to the trial court, for it is alleged, on January 13, 1954, the offended party has subscribed and sworn to before the provincial fiscal a written statement "salaysay" wherein she narrated how she was raped by the accused.
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> "Section 1 of Rule 106 provides that:
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> 'All criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons "who appear to be responsible therefor.'
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> "Section 2 of Rule 106 defines a complaint as a:

> '. . . sworn statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.'
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> "And pursuant to Section 5 of Rule 106, a complaint or information is sufficient:
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> '. . . if it states the name of the defendant; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place "wherein the offense was committed.'
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> "Article 344 of the Revised Penal Code provides that: 'The offenses 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 front of these provisions of law, it cannot be certainly pretended that the aforementioned 'salaysay' or written statement of the offended party, Exhibit 1, could be considered as the complaint required by law for the proper initiation of the present case of rape.

"It is argued, however, that said Exhibit 1 should be considered as the complaint required by law, for on the basis thereof the provincial fiscal of Rizal conducted the preliminary investigation and then filed the information at bar. It is further argued that since under Republic Act No. 732, provincial fiscals have now the same authority as the Justice of the Peace to conduct preliminary investigation, said Exhibit 1 should be considered as the complaint contemplated in the Rules of Court and the Revised Penal Code. We cannot concur to this theory, for according to Section 2 of Republic Act No. 782, after the provincial fiscal has conducted an investigation of a case, he has the duty to have prepared an information or complaint. The pertinent portion of Section 2 of Republic Act No. 782 provides:

> CA provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint

prepared or made against persons charged with the commission of the same.'

And the complaint mentioned in this provision of law is precisely what is denned and mentioned' in the Rules of Court and the Revised Penal Code. Accordingly, we hold the view that in the case at bar, after the fiscal has investigated the case, he should have procured the filing of a. complaint by the offended party to properly initiate this case and not file by himself an information as he did."

It is also argued that in affixing her signature and swearing to the allegations of the information together with the fiscal, petitioner Bansuelo had complied with the requirement of a valid complaint. Respondent Santos has answered this argument by saying that such fact is not borne out by the records; that such assertion has never been made before the Court of Appeals; that, the opening paragraph of the information clearly and unmistakably shows that the fiscal alone accuses respondent Santos of the crime of rape; that the offended party has never been referred to in the body of the information as having requested its filing.

We cannot consider the information, although signed by petitioner Bansuelo together with the fiscal, as equivalent to the complaint required by law, because said information lacks the oath of the complainant; the what contained therein is the subscribed and sworn certification of the fiscal that he had conducted the preliminary investigation in which obviously the offended party had taken no participation "whatsoever; in very unequivocal terms, the information commences with the statement that "the undersigned fiscal accuse Engracio Santos of the crime of rape", the offended party not having been mentioned at all as one of the accusers.

It is not altogether true that to require the offended party to draft the complaint in legal form and terminology, —otherwise the complaint will be insufficient,—would impose a penalty on ignorance, and that a person with no legal-training will not be able to institute a criminal action for private crimes; because, as may be gathered from the provisions of Section 2 of Republic Act 732, it is the duty of the Provincial Fiscal to prepare the necessary complaint after having taken down the testimony of the offended party and his witnesses during the preliminary investigation. Indeed, the law required this, since the victims of crimes which cannot be prosecuted except upon their complaint may be ignorant of the law, to say the least.

This Court has invariably maintained strict compliance with the jurisdictional requirement

of a complaint by the offended party, as defined in Section 2 of Rule 106 and Article 344 of the Revised Penal Code. In the case of People vs. Palabao (L-8027, August 31, 1954), we considered insufficient an information filed with the Provincial Fiscal, wherein the offended party signed at the bottom thereof and above the signature of the prosecuting officer, the information even reciting that the Provincial Fiscal charged defendant with the crime of seduction at the "instance of the offended party." In the case of People vs. Martinez, (76 Phil. 559), this Court *motu proprio* dismissed the case for failure of the aggrieved party to file the proper complaint for the offense of oral defamation, although the accused never raised the question on appeal, thereby showing the necessity of strict compliance with the legal requirement even at the cost of nullifying all the proceedings already had in the lower court.

Wherefore, the decision appealed from is hereby affirmed. So ordered, without costs.

Bengzon, Montemayor, Bautista Angelo, Labrador, Conception, and *Reyes, J. B. L., JJ.,* concur.

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