

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. BASILIO PALABAO, DEFENDANT-APPELANT.

G. R. No. L-8027. August 31, 1954

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Davao finding the defendant guilty of the crime of abduction with consent and sentencing him to suffer a minimum penalty of 3 months and 11 days of arresto mayor and a maximum penalty of 1 year, 8 months and 21 days of prision correccional, the accessories of the law, to indemnify the complainant Remedios Sarillo in the sum of P500, or to undergo subsidiary imprisonment in case of insolvency in the payment of the indemnity, not to exceed one-third of the principal penalty, to support the offspring, if any, and to pay the costs.

The appellant assigns as one of the errors committed by the trial court the fact that in spite of the lack of complaint filed by the offended party, the Court proceeded to try the defendant, found him guilty and sentenced him to suffer the penalty above stated. After the filing of the appellant's brief, the Solicitor General filed a motion to dismiss on the ground that as provided for in article 344 of the Revised Penal Code "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, * * *" and that such complaint to be filed by the offended party is essential to vest in the Court jurisdiction to try the defendant charged with any of the offenses enumerated in the aforesaid article. The fact that at the bottom of the information and above the signature of the prosecuting officer the offended party signed and that in the first paragraph of the information it is recited that "at the instance of the offended party" the provincial fiscal charges the defendant of the crime of seduction does not vest jurisdiction in the court, for a complaint must be sworn to by the offended party. Her signature at the bottom of the information does not comply with the requirement of the law that the complaint be sworn to. [1]

In view of the rule laid down in the cases referred to, the Court of First Instance of Davao acquired no jurisdiction to try the defendant in this case and the trial, verdict and judgment are a nullity.

The judgment appealed from is annulled and the information dismissed, without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemeyor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] U.S. vs. Narvas, 14 Phil., 410; U.S. vs. Cruz et al., 20 Phil., 363; People vs. Trinidad, 58 Phil., 163; People vs. Manaba, 58 Phil., 665; People vs. Ugalde (unpublished), 58 Phil., 968; People vs. Mandia, 60 Phil., 372; Tolentino vs. de la Costa, 66 Phil., 97.

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