

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HON. CESAR R. MARAVILLA AND MANUEL B. GADON ALIAS “EDRING,” DEFENDANTS-APPELLANTS.

G.R. No. L-47646. September 19, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

Challenged in this petition for certiorari is the decision of the respondent judge dismissing a criminal case for unjust vexation on the ground of prescription.[1] The crime prescribes in sixty days.[2] The petitioner contends that this period has not been exceeded and that the private respondent must stand trial for his act.

The accused is a lawyer who, if the complainant's account is true, did not act like one. According to Remy G. Gomboc, a 24-year old saleslady, Manuel B. Gadon grabbed her left breast against her will in the evening of April 29, 1977, causing her shock, indignation and shame. She says she gave him an angry kick but missed and the man then ran away.[3]

This sequence of events followed:

On May 10, 1977, a complaint for acts of lasciviousness was filed in the municipal court of San Andres, Romblon, by Gomboc against Gadon and docketed as Criminal Case No. 1995. In the absence of the judge, the preliminary investigation was conducted by the mayor, who issued a warrant of arrest and fixed bail at P4,000.00. This was immediately posted by the accused.[4]

On July 1, 1977, the municipal judge, herein respondent, dismissed the case after annulling the preliminary investigation and the warrant of arrest for failure of the mayor to ask the "searching questions" required by the Rules of Court.[5]

On July 13, 1977, the complainant re-filed her charge of acts of lasciviousness against the accused in Criminal Case No. 1998.[6]

On July 19, 1977, the respondent judge, after conducting a preliminary investigation, held that there was no prima facie showing of the designated crime and ordered the prosecution to file the proper charge "as warranted by the evidence presented." [7]

Accordingly, the original charge was changed to unjust vexation in a complaint filed on July 21, 1977, and docketed as Criminal Case No. 2000.[8]

The accused pleaded not guilty to the charge, then moved to quash on the ground that the crime had prescribed.[9] Following an exchange of memoranda between the prosecution and the defense, the respondent judge issued his order dated October 11, 1977, granting the motion and dismissing the case.[10] The motion for reconsideration was denied in his order dated November 9, 1977.[11]

These are the orders now assailed by the petitioner.

The applicable provision is Article 91 of the Revised Penal Code, reading as follows:

"Art. 91. Computation of prescription of offenses. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

"The term of prescription shall not run when the offender is absent from the Philippine Archipelago."

The respondents' contention is that the period of prescription should be reckoned from April 29, 1977, when the alleged unjust vexation was committed and ran without interruption until July 21, 1977, when the amended complaint for the said offense was actually filed with the municipal court. At the time of filing, 83 days had already elapsed and the prosecution was already barred by prescription.

It is stressed by them that the complaint for unjust vexation was instituted only on July 21, 1977, and that all previous proceedings dealt with the earlier complaint for acts of lasciviousness. These proceedings did not suspend the prescriptive period for unjust vexation.

Moreover, even assuming that they did, the suspension should commence not from the date the first complaint was filed for this was acted upon not by the municipal judge but by the municipal mayor. At the earliest, the prescriptive period should be deemed suspended only from July 13, 1977, when the complaint was re-filed with the municipal court and the respondent judge conducted his own preliminary investigation. Under this theory, the complaint will have been filed after 75 days from the date of the commission of the offense, or 15 days late.

This argument is unacceptable.

Filing of the complaint with the municipal mayor in the absence of the municipal judge was a valid act authorized under Rule 112, Section 3, of the Rules of Court, which was then in force. As such, it had the effect of suspending the period of prescription pursuant to Article 91 of the Revised Penal Code. The municipal mayor who took cognizance of the case and conducted the preliminary investigation was in effect acting as a judge and was authorized to do so under the said section. This ran as follows:

"SEC. 3. Preliminary examination by the municipal mayor. – In case of temporary absence of both the municipal and auxiliary judges from the municipality, town or place wherein they exercise their jurisdiction, the municipal mayor shall make the preliminary examination in criminal cases when such examination cannot be delayed without prejudice to the interest of justice. He shall make a report of any preliminary examination so made to the municipal or the auxiliary judge immediately upon the return of one or the other. He shall have authority in such cases to order the arrest of the defendant and to grant him bail in the manner and cases provided for in Rule 114."

Even if it is conceded that under the said provision the municipal mayor could only investigate and not try the case, the filing of the complaint with him effectively interrupted the running of the prescriptive period. So this Court held through Justice J.B.L. Reyes in *People v. Olartes*,^[12] and then affirmed in *People v. Galano*:^[13]

"x x x the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should and does interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits. Several reasons buttress this conclusion: First, the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription shall be interrupted by the filing of the complaint or information without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate

the case, its actuation already represents the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."

The Olarte case overruled the doctrine earlier announced in *People v. Del Rosario*[14] and *People v. Coquia*.^[15] It is also worth observing that the unusual authority given the municipal mayor under the above-cited provision has not been retained in the 1987 Revised Rules of Court.^[16]

Coming back to the first contention, we hold that it is also untenable. The crime of unjust vexation, while concededly different from the crime of acts of lasciviousness, is embraced by the latter and prosecution for this crime will suspend the period of prescription for the former crime. A common characteristic of the two offenses is molestation of the offended party. Where it is not shown that this was accompanied by lewd designs, the accused may not be convicted of acts of lasciviousness but may nevertheless be held guilty of unjust vexation, as the lesser offense. In fact, conviction or acquittal of either offense should bar prosecution for the other offense under the rule on double jeopardy.^[17]

The other reason is based on a more familiar and accepted principle. It is settled that what controls is not the designation of the offense but its description in the complaint or information, as we have held in numerous cases.^[18] Hence, even if the crime alleged in the complaint first filed on May 10, 1977, was expressly denominated acts of lasciviousness, the prescriptive period for the crime of unjust vexation was interrupted because that was the crime actually described by the complainant. In her complaint, she clearly said that the accused "in a bestial manner, criminally, wilfully, feloniously and intentionally held my left breast against my will by means of force, deceit and treasonable manner."^[19]

This Court has repeatedly held that "when the facts, acts and circumstances are set forth in the body of an information with sufficient certainty to constitute an offense and to apprise the defendant of the nature of the charge against him, a misnomer or innocuous designation of a crime in the caption or other parts of the information will not vitiate it; in such case, the facts set forth in the charge controls the erroneous designation of the offenses and the defendant stands charged with the offense charged in the statement of facts. Such erroneous designation may be disregarded as surplusage."^[20]

Applying these principles, we find that the prescriptive period began to run from the date of the incident in question, to wit, April 29, 1977, when the complainant claims she was molested. It was interrupted after 11 days, when the original complaint for acts of lasciviousness was filed in the municipal court on May 10, 1977, and began running again when the case was dismissed on July 1, 1977. Suspended after 12 days when the case was re-filed on July 13, 1977, the period resumed running on July 19, 1977, when the case was again ordered dismissed for the filing of the proper charge as indicated by the evidence. From that date, the period was interrupted again for 2 more days until the complaint for unjust vexation was filed on July 21, 1977.

All told, the period of prescription had run, from the time the crime was committed on April 29, 1977, to the filing of the complaint on July 21, 1977, only for 25 days.

The action, therefore, has not prescribed.

WHEREFORE, the petition is GRANTED. The challenged orders of the respondent judge are SET ASIDE. The records of this case are remanded to the lower court for trial on the merits, to be commenced and terminated with deliberate speed. No costs.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Original Records, pp. 65-68.

[2] Article 287, 2nd paragraph, in relation to Articles 25 and 90, Revised Penal Code.

[3] Exhibit "C," Original Records.

[4] Rollo, p. 7.

[5] Ibid., pp. 7 & 46.

[6] Id., pp. 7-8.

[7] Original Records, p. 24.

[8] Ibid., p. 1.

[9] Id., p. 38.

[10] Id., p. 68.

[11] Id., p. 95.

[12] G.R. No. L-22465, Feb. 28, 1967.

[13] 75 SCRA 198.

[14] G.R. No. L-15140, Dec. 29, 1960.

[15] G.R. No. L-15456, June 29, 1963.

[16] Rule 112, 1987 Revised Rules of Court of the Philippines. But the rule is retained in the Local Government Code, Sec. 143.

[17] Rule 117, Sec. 7, 1987, Revised Rules of Court of the Philippines; Art. III, Sec. 21, Constitution of 1987.

[18] *People v. Mabag*, 98 SCRA 6; *People v. Olivera*, 67 Phil. 427; *People v. Peralta*, 8 Phil. 200; *People v. Treyes*, 14 Phil. 270.

[19] Original Records, p. 1.

[20] *People v. Enriquez*, CA-G.R. No. 3094, July 30, 1949; *U.S. v. Jeffrey*, 15 Phil. 341.

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