

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMOGENES CAYOSA, DEFENDANT-APPELLANT.

G.R. No. L-24689. December 26, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the order of the Court of First Instance of Leyte (in Criminal Case No. 10269) denying, for lack of merit, the motion to dismiss the information filed by therein accused.

On 6 September 1963, upon the strength of a warrant issued by the Justice of the Peace Court of Dulay, Leyte, Hermogenes Cayosa was arrested to answer the charge of acts of lasciviousness allegedly committed by him on the person of one Celenia Galarosa, a minor. The complaint was signed by Eleuteria T. Galarosa, mother of the minor, subscribed on the same day, 6 September 1963, before the Municipal Mayor of Dulay, Leyte. This complaint was supported by the affidavits of the offended girl and another witness, both signed and subscribed before the same municipal official.[1] The accused having renounced the right to preliminary investigation, the case was remanded to the Court of First Instance of Leyte for further proceedings.

In due time, the necessary information was filed by the Pro-vincial Fiscal in the Court of First Instance of Leyte (Criminal Case No. 10269), and on 4 May 1964 accused Hermogenes Cayosa, assisted by counsel, was arraigned and pleaded not guilty to the charge.[2] When the case was called for hearing on 4 June 1964, however, counsel for the accused moved for the dismissal thereof, claiming that the complaint signed by the mother of the minor as well as the supporting affidavits were all subscribed before the Municipal Mayor of Dulay, Leyte, not before the Justice of the Peace, as required by Republic Act 3828, and were thus defective. The trial court denied the motion on the ground that the accused's pleading to the charge constituted a waiver of that defense; and the latter instituted the present appeal, raising the same question of alleged lack of jurisdiction of the trial court to try the case.

The issue involved is whether or not the subscribing of the complaint before the municipal mayor, and not before the justice of the peace, conferred jurisdiction on the court over the person of the accused.

In pointing to the defect in the complaint as basis of his motion to quash the information, appellant actually assails the validity of the warrant for his arrest, said to have been issued by the Justice of the Peace of Dulay, Leyte, in violation of Republic Act 3828, amending Section 87 of the Judi-ciary Act, providing that no warrant of arrest shall issue except upon per-sonal examination of the witnesses by the justice of the peace, and which examination shall be by question and answer method and in writing. Parenthetically, it may be noted that the charge is not lack of personal examination by the justice of the peace of the complainant and her witnesses, which is now presumed to have been conducted. In fact, the complaint signed before the municipal mayor on 6 September 1963 appeared to have been filed with the justice of the peace on the same day (Exhibit "1").

We find no error in the lower court's denial of the motion. In the first place, appellant's failure to set up the question before he pleaded to the charge of the information is fatal to his cause. It is well-established under

Revised Rule 117, section 10, that the failure of an accused to move for the quashal of the complaint or information before he pleads thereto constitutes a waiver of all objections which may properly be grounds for such a motion, except when the complaint or information does not charge an offense or the court is without jurisdiction over the said offense.[3] In the present case, as previously stated, the pretended defect is one of jurisdiction over the person, and it is one of the defenses deemed waived by the accused-appellant when he submitted to the arraignment and entered his plea therein.[4]

Secondly, under the Rules, a complaint is substantially sufficient if it states the name of the defendant, the designation of the offense by statute, the acts or omissions constituting the offense, the name of the offended party, the approximate time of the commission of the offense, and the place where it was committed[5] -- all of which elements were duly satisfied by the complaint under consideration. The defect adverted to by the accused-appellant, i.e., the complaint's being subscribed to before the municipal mayor instead of before the Justice of the Peace, is clearly one of form that is curable by amendment.[6] For even the absence of an oath in the complaint does not necessarily render it invalid,[7] unless the complaint charged a private offense under Articles 344 and 360 of the Revised Penal Code, which is not the case here.[8]

Finally, the denial of the motion to dismiss was not a final order, since it did not put an end to the proceedings in the court below. Not being final, said denial order is not appealable (section 1, Revised Rule 122). The duty of the accused was to go ahead with the trial until judgment on the merits, and thereafter reiterate his objections embodied in the motion to dismiss in the course of his appeal from the judgment, if it be one of conviction.

FOR THE FOREGOING CONSIDERATIONS, the order appealed from is hereby affirmed, and the case is remanded to the lower court for further trial, without retaking evidence already received, and decision on the merits. And because the present appeal has merely served to delay final disposition of the case, the appellant is assessed treble costs, to be paid by his counsel, Attorney Leovigildo Radaza.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, and Teehankee, JJ., concur. Barredo, J., did not take part.

[1] Exhibits "1" and "2", pages 4-8, CFI record.

[2] Pages 16-17, Id.

[3] Oca vs. Jimenez, G.R. No. L-17777, 29 June 1962, 5 SCRA 425; see also Provincial Fiscal vs. CFI of Nueva Ecija, 79 Phil. 165; People vs. Enrique, G.R. No. L-3094, 30 July 1949, 47 O.G. No. 10, 5182; People vs. Marquez, G.R. No. L-23654, 28 March 1969, 27 SCRA 808; Palanea vs. Querubin, G.R. No. L-29510, November, 1969.

[4] Francisco, Revised Rules of Court Anno., Criminal Procedure, page 588.

[5] Section 5, Revised Rule 110; People vs. Rodrigo, G.R. No. L-18507, 31 March 1966, 16 SCRA 475.

[6] Section 13, Revised Rule 110.

[7] "The want of an oath was, in any event, a defect of form which did not affect the substantial rights of the defendant on the merits." (U.S. vs. Bibal, 4 Phil. 369).

[8] Griñen vs. Consolacion (31 July 1962), 5 SCRA 722; Hernandez vs. Albano (31 May 1961), 2 SCRA 607.

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