

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES JAYME, DEFENDANT AND APPELLANT.*G.R. No. L-7802. January 16, 1913*

Ponente: CARSON, J.

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The evidence of record in this case fully sustains the findings of the trial judge, and establishes the guilt of the defendant and appellant of the crime with which he was charged and of which he was convicted in the court below, beyond a reasonable, doubt.

The contention of counsel that in the prosecution of these proceedings against the accused he had been placed "twice in jeopardy" may be dismissed without extended discussion. It appears that on a former occasion, this accused was brought to trial and convicted in the court below on an information filed by the provincial fiscal, charging the identical offense of which he was convicted in this case; that in that case, this court, on appeal, dismissed the information and all the proceedings had in the court below, on the ground that the court had no jurisdiction over the subject matter of the action, it appearing that the proceedings had not been instituted on a complaint filed by the offended party or her proper legal representative as required under the provisions of section 1 of Act No. 1773. (*U. S. vs. Andres Jayme*, 20 Phil. Rep., 626.)

In support of our position in that case we cited and reaffirmed the doctrine laid down in *United States vs. Castañares* (18 Phil. Rep., 210); *United States vs. Narvas* (14 Phil. Rep., 410); *United States vs. De la Santa* (9 Phil. Rep., 22); wherein we discussed the nature and effect of the provisions of the first section of Act No. 1773.

In the case of *United States vs. De la Santa*, supra, we said:

"It is to be observed, however, that under the provisions of the above-cited article 448 of the Penal Code, jurisdiction over the crime of seduction is expressly denied the trial court unless such jurisdiction be conferred by one of certain persons specified in the law; in this case, as we have seen, by the offended person herself. The objection in this case is not, strictly speaking, to the sufficiency of the complaint, but goes directly to the jurisdiction of the court over the crime with which the accused was charged. It has been frequently held that a lack of jurisdiction over the subject matter is fatal, and subject to objection at any stage of the proceedings, either in the court below or on appeal (*Ency. of Pl. & Pr.* vol. 12, p. 189, and large array of cases there cited), and indeed, where the subject matter is not within the jurisdiction, the court may dismiss the proceeding *ex mero motu*. (*Wakefeld vs. Goudy*, 4 111., 133; 190 Ind., 79; *Chipman vs. Waterbury*, 59 Conn., 496.)"

Jurisdiction over the subject matter in a judicial proceeding is conferred by the sovereign authority which organizes the court; it is given only by law and in the manner prescribed by law and an objection based on the lack of such jurisdiction cannot be waived by the parties. Hence, the accused in a criminal case cannot, by express aiver or otherwise, confer jurisdiction on a court over an offense as to which such jurisdiction has not been conferred upon such court by law. (*Harkness vs. Hyde*, 98 U. S., 476; *Nazro vs. Cragin*, 3 Dill (U. S.), 474; *Baker vs. Chisholm*, 3 Tex., 157; *Gamber vs. Holben*, 5 Mich., 331; *Gilliland vs. Admrs. of Sellers*, 2 Ohio St., 223; 82 Wis., 644; *Fleischman vs. Walker*, 91 111., 318.)

In the case of *United States vs. Castaños*, supra we said:

"The objection in this case, however, goes directly to the jurisdiction of the court. Jurisdiction over the crime of injuria is expressly denied to the court in these Islands by the above-cited provisions of section 1 of Act No. 1773, unless such jurisdiction is conferred by the filing of a complaint by the aggrieved party, his parents, grandparents, or guardian. In the case of *United States vs. Narvas* (14 Phil. Rep., 410), we held that the complaint referred to in this section is a sworn written statement as defined in section 4 of General Orders, No. 58. The information upon which these proceedings were instituted was not such a complaint, and there can be no doubt, therefore, that the court below was without jurisdiction to proceed upon that information."

A conviction or an acquittal before a court having no jurisdiction is, of course, like all the proceedings in the case, absolutely void, and therefore no bar to subsequent indictment and trial in a court which has jurisdiction of the offense. (*Kepner vs. U. S.* 195 U. S., 100, 129; *Commonwealth vs. Peters*, 12 Met, 387; 2 Hawk. P. C., c. 35, sec. 3; 1 Bishop's Crim. Law, sec. 1028.)

Citing as authority our decision in the case of *United States vs. Fideldia* (22 Phil. Rep. 372), counsel contends that since the offended person in this case was shown to have been over 18 years of age at the time when the alleged offense was committed, he should not have been convicted of the crime of seduction.

Article 443 defines the crime of seduction as follows:

"The seduction of a virgin over twelve and under twenty three years of age, committed by any person in public authority, priest, servant, domestic, guardian, teacher, or any person who in any capacity shall have charge of the education of the woman seduced, or shall have her under his care, shall be punished by prison correccional in its minimum and medium degrees.

"The same penalty shall be imposed upon any person who shall have carnal knowledge of his sister or descendant, even though she be over twenty-three years of age.

"Any other person who by means of deceit shall accomplish the seduction of a woman over twelve and under twenty-three years of age shall suffer the penalty of *arresto mayor*.

"The same penalty shall be imposed for any other act of lewdness committed by the same persons and under the same circumstances."

But counsel contends that the age limitation fixed in this article should be held to have been modified in like manner as in the case of *United States vs. Fideldia*, supra, where we held that the age limitation set forth in article 446 defining "abduction" had been modified. We cannot agree with this contention.

Article 446 of the Penal Code is as follows:

"The abduction of a virgin over twelve and under twenty three years of age, committed with her consent, shall be punished by prison correccional in its minimum and medium degrees."

In the case of *United States vs. Fideldia* we said that the reduction of the age at which a woman may leave her home and marry without the consent of her father or other legal guardian from 23 years to 18 years, draws with it a like reduction from 23 years to 18 years in the limit prescribed in article 446 of the Penal Code under which a woman may be abducted with her own consent

But the reasons assigned for the reduction of the age limit in the case of the abduction of a woman with her own consent, as defined in article 446, are in no wise applicable in cases of seduction as defined in article 443.

As has been frequently pointed out, the gravamen of the offense of the abduction of a woman with her own consent, who is still under the control of her parents or guardians is "the alarm and perturbation to the parents and

family" of the abducted person, and the infringement of the rights of the parent or guardian. But in cases of seduction, the gravamen of the offense is the wrong done the young woman who is seduced. It would be going far to hold that the reduction of the age at which a woman may leave her home and marry without the consent of her father or other legal guardian, carries with it, by necessary implication, a declaration that the seducer of a woman between the ages of 18 and 23 is not liable to conviction and punishment for the crime of seduction. In the case relied upon by appellant, *United States vs. Fideldia*, supra, we pointed out that notwithstanding our conclusion that the accused could not be convicted of the crime of abduction, as defined in article 446 of the Code, it appearing that the young woman in that case was over 19 years of age at the time he was charged with abducting her, nevertheless it might be "that he was guilty of seduction or some other allied offense." We see no reason for modifying the view expressed then, and we hold that the provisions of article 443 of the Penal Code are in no wise modified by the provisions of existing law touching the age at which a woman may marry without the consent of her parents or guardian.

The judgment of the trial court convicting and sentencing the defendant and appellant should be and is hereby affirmed, with the costs of his instance against the appellant. So ordered.

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

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