

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. JESUS BANGALAO, FILEMON JUBAHIB, FRANCISCO LOVENO AND TITO ESTACA, DEFENDANTS AND APPELLEES.*G.R. No. L-5610. February 17, 1954*

Ponente: LABRADOR, J.

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The above-entitled case was begun in the Justice of the Peace Court of Tagbilaran, Bohol, upon complaint of Abundia Palban, mother of the offended party, Rosita Palban, a minor. The complaint alleges that the accused "by means of force and intimidation succeeded in having sexual intercourse with one Rosita Palban, a minor." When the case reached the Court of First Instance, the provincial fiscal filed an information for rape, alleging that Rosita Palban is "a minor and demented girl," and that the defendants-appellees "successively had sexual intercourse with her by means of force and against the will of Rosita Palban," and as a result of which she suffered less serious physical injuries in her genitalia.

In the Court of First Instance, with Hon. Hipolito Alo as presiding judge, the proceedings and trial were interrupted by failure of some of the witnesses to appear, and in the course of the hearing of a motion for the arrest of the absent witnesses, the father and the mother of the offended party, a motion was presented by counsel for the defense to quash the information on the ground that the court lacks jurisdiction to try the case. As ground for this motion, it was argued that while the complaint filed by the mother of the offended party alleges that the crime was committed through the use of force and intimidation, no such allegation exists in the informations filed by the provincial fiscal, and in lieu thereof allegation is made that the offended party is a minor and demented girl. A motion to the same effect had been previously denied in the earlier part of the proceedings by Judge Segundo Apostol, who had previously presided over the court that was trying the case. Judge Alo granted the motion to quash, stating that there was a difference between the complaint and the information insofar as the manner in which the crime of rape was committed, and that although the information alleges also the use of force, the Fiscal admitted during the trial that he had no evidence to prove it. His Honor reasoning that the main basis of the charge contained in the information is the offended party's insanity, while the complaint, that of intimidation and force, so that the complaint alleges one way of committing the crime while the information charges another, held that as the allegation of force set forth in the information was not alleged in the complaint, the proceedings were not initiated by the person called upon by article 344 of the Revised Penal Code to file the complaint, and in violation of the rule enunciated in the case of *People vs. Oso*, 62, Phil., 271.

The Fiscal has appealed against the order of dismissal, claiming that the court had jurisdiction to try the case and that the lower court erred in applying the doctrine laid down in the case of *People vs. Oso*. The accused-appellees try to justify the order of dismissal, arguing that even if the lower court had erred in dismissing the case for lack of jurisdiction, they have the right to invoke the defense of double jeopardy, and this would be a bar to the prosecution of the appeal.

We find that His Honor did not correctly apply our ruling in the case of *People vs. Oso*. In that case the complaint filed was for forcible abduction, while the information filed by the Fiscal was for rape. Inasmuch as the crime of rape is different from the crime of forcible abduction alleged in the complaint, said complaint could not serve as a basis for the court to acquire jurisdiction over the crime actually committed, rape. In the case at bar, however, the complaint was for rape, and this gave the court jurisdiction to try the case. The power of jurisdiction of the court is not over the crime of rape when committed on a minor and demented girl, but over rape, irrespective of the manner in which the same may have been committed.

It must be borne in mind that complaints are prepared in municipalities, in most cases without the advice or help of competent counsel. When the case reaches the court of first instance, the Fiscal usually conducts another investigation, and thereafter files the information which the results thereof justify. The right and power of the court to try the accused for the crime of rape attaches upon the filing of the complaint, and a change in the allegations thereof as the manner of committing the crime should not operate to divest the court of the jurisdiction it has already acquired. The right or power to try the case should be distinguished from the right of the accused to demand an acquittal unless it is shown that he has committed the offense charged in the information even if he be found guilty of another offense; in the latter case, however, even if the court has no right to find the accused guilty because the crime alleged is different from that proved, it cannot be stated that the court has no jurisdiction over the case.

We are, therefore, constrained to hold that His honor committed an error in holding that the court had no jurisdiction to try the crime charged in the information, simply because it charges the accused with having committed the crime on a demented girl, instead of through the use of force and intimidation. However, we find the claim of the defendants-appellees that the appeal can not prosper because it puts them in double jeopardy, must be sustained. Under section 2, Rule 118 of the Rules of Court, the People of the Philippines can not appeal if the accused or defendant is placed thereby in double jeopardy.

As the court below had jurisdiction to try the case upon the filing of the complaint by the mother of the offended party, the defendants-appellees would be placed in double jeopardy if the appeal is allowed.

Wherefore, the appeal is hereby dismissed, with costs de oficio. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

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