

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
DAMASO ATIENZA, DEFENDANT-APPELLEE.***G.R. No. L-19857. October 26, 1968*

Ponente: MAKALINTAL, J.

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This is an appeal from the order of dismissal of the Municipal Court of the City of Cagayan de Oro in its Criminal Case No. 6612.

Defendant-appellee, Damaso Atienza, was charged with grave oral defamation in the said Court upon a sworn complaint signed by the offended party, Pilar Lee. The defamatory words allegedly uttered by the defendant were: "Pauli na, puta ka. Oo, puta ka, puta kat bilaw." The translation given in the complaint itself is: "Go home, you prostitute. Yes, you are a prostitute, really a prostitute." Below the verification and the list of prosecution witnesses, the complaint likewise had the signature of the special counsel, acting as public prosecutor.

The trial of the case, after the defendant's plea of not guilty, was already well advanced, with only the sur-rebuttal witness for the defense still to be presented, when counsel moved to dismiss the case on the ground that the court had no jurisdiction over the offense charged. Specifically, the jurisdictional objection was based on the fact that the case was being prosecuted upon complaint signed by the offended party herself instead of upon information signed by the prosecuting officer.

The lower court sustained the motion and issued the order of dismissal on March 30, 1962, citing Article VII, Section 24 of the charter of the City of Cagayan de Oro (Republic Act No. 521), which provides that the City attorney shall "investigate all charges of crimes, misdemeanors, and violations of laws and city ordinances and prepare the necessary informations or make the necessary complaints against the persons accused." The theory advanced is that since the offense of prostitution imputed by the defendant to the offended party for which imputation the complaint for oral defamation was lodged, is a public crime, it cannot be prosecuted except by information signed by the public prosecutor himself. Consequently, it is pointed out, the complaint here, having been, signed by the offended party herself, did not effectively and validly launch the criminal action.

There is a misapprehension both of law and of fact in the order of dismissal appealed from. The provision of the charter of the City of Cagayan de Oro aforecited is not restrictive in character. While it imposes upon the City attorney the duty to investigate offenses and to sign the corresponding informations or complaints, it does not say that the victim of the offense may not himself file a complaint. The law of more immediate relevancy is Article 360 of the Revised Penal Code, which states: "No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de officio shall be brought except at the instance of and upon complaint expressly filed by the offended party." As construed by the lower court, invoking *People vs. Martinez*, L-50, April 30, 1946, the foregoing provision sets up a prohibition against the prosecution of a charge of defamation upon complaint by the offended party when the defamation consists of the imputation of a crime which may be prosecuted de officio. The decision in *People vs. Martinez* does not support this conclusion. It simply underlines

the indispensability of such a complaint where the crime imputed cannot be prosecuted de oficio such as adultery, concubinage, rape, seduction, abduction, or acts of lasciviousness. The more recent case of *Balite vs. People*, L-21475, September 30, 1966, is more apropos, its facts being similar to those in the case before us now. Speaking through Mr. Justice Conrado V. Sanchez, this Court there said:

"Read as it should be, the plain import of the statute just reproduced is that where defamation imputes a crime which cannot be prosecuted de oficio, the general rule must give way, the criminal action must have to be brought solely "at the instance of and upon complaint expressly filed by the offended party." The converse pro-position, however, cannot be true. Reasonable construction will not permit a deduction which could constrict criminal prosecution of defamation which can be pro-secuted de oficio by means of information. We do not propose to undertake the impermissible task of writing into the statute an alien concept: that which would exclude criminal action started by complaint. Nor should we attribute to the law an occult content."

The misapprehension of fact on the part of the lower court lies in its having overlooked two circumstances: (1) the word "puta" alleged to have been uttered by the defendant in referring to the offended party does not necessarily connote the crime of prostitution as defined in the Revised Penal Code. (Art. 202); and (2) the subject complaint, while signed and sworn to by the offended party herself, is also signed by the special counsel, as public prosecuting officer, who retained supervision and control of the case for the State and in fact conducted the cross-examination of the witnesses for the defense and the presentation of the rebuttal witness for the prosecution. Besides, the technical objection raised by the defense should have been deemed waived under those cir-cumstances and at that late stage of the case.

Wherefore, the order of dismissal appealed from is set aside and the case is remanded for further proceed-ings, with costs against defendant-appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on official leave.

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