

LAUREANO FERNANDEZ, PETITIONER, VS. THE HONORABLE JUDGE JAIME M. LANTIN AND THE CITY FISCAL OF QUEZON CITY, RESPONDENTS.

G.R. No. L-44759. December 17, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petitioner, who is charged with Libel in Criminal Case No. Q-4141, entitled "People of the Philippines vs. Atty. Laureano B. Fernandez", questions in this petition for certiorari the validity of the Order of respondent Judge denying his "Motion to Quash". At issue is whether the criminal action for defamation subject of the case consists in the imputation of a crime which cannot be prosecuted de officio. The following are the relevant facts:

On August 12, 1974, an Information for Libel in Criminal Case No. Q-4141 was filed against petitioner Laureano Fernandez by Assistant City Fiscal Rogelio Concepcion. The information,[1] accused petitioner of the crime of Libel, consisting in his having written and caused the publication of a let-ter wherein he directly, publicly and maliciously imputed to one Iluminada Tandiamia "the commission of a crime, vice, defect, or any act or omission, with intent to ridicule, put to hate, shame and em-barrass said Iluminada Tandiamia." More explicitly, it was stated in said letter that:

"a) One Iluminada Tandiamia, an employee in the Bureau and married to Celedonio Tandiamia, also employee and nephew of Mrs. Caridad T. Raval was allegedly discovered having an illicit relation-ship with another man who was also employed as a Prison Guard. The said prison guard and alleged paramour of Iluminada Tandiamia is Hector Valde-leon. Action taken by the Acting Director who got sore when he learned of it Prison Guard Valdeleon was in no time separated from the ser-vice while the woman involved who is equally guilt-y, if not more, but who happened to be the niece of Acting Director and Mrs. Vicente R. Raval by affinity was spared the axe; and, on top of this, at the expense of the government treasury, Mrs. Tandiamia, together with her husband Celedonio Tandiamia and children despite being involved in another administrative case was prematurely transferred to the San Ramon Prison and Penal Farm of Zamboanga City by the Acting Director; perhaps, so the prison officials and employees in the NBP who knew of the case would forget it if she is not around." [2]

Petitioner filed a "Motion to Quash"[3] the above Information, predicated the same upon the provisions of Article 360 of the Revised Penal Code, which states, in part, that "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 filed by the offended party", and calling the atten-tion of the court to the fact that the Information was signed, not by the alleged offended party, but by the Assistant City Fiscal.

On June 8, 1976, Assistant City Fiscal Marga-rito S. Viola filed an "Opposition" to the Motion to Quash,[4] stating, in effect, that "illicit rel-ation" does not necessarily mean "unlawful cohabit-ation or intercourse", much less does it connote adultery, concubinage, rape, seduction, abduction and acts of lasciviousness, the imputation of any of which crimes would necessitate the commencement by the offended party of the action for defamation. An

"Addendum to the Opposition to Motion to Quash"[5] was filed by Assistant City Fiscal Viola, further elaborating upon his thesis that the libelous letter did not impute the commission of adultery, but some other form of unlawful relationship, and that at any rate the alleged defamatory statements also ad-vert to the fact that Valdeleon was the victim of compartmentalized justice.

Petitioner filed a "Reply to the Opposition to Motion to Quash",[6] bringing out the point "that the alleged libelous imputation is an issue in an administrative case against the Acting Director Vicente R. Raval of the Bureau of Prisons, now pre-sently under investigation by the Department of Justice. Clearly, ergo, the same is covered by Art. 354, Par. 1 RPC, which is a qualified privi-legged communication."

On July 28, 1976, respondent Judge issued an Order,[7] holding that "the slanderous imputation of the alleged illicit relationship between com-plainant and a prison guard could be a vice or de-fect, in which case Article 360 of the Revised Penal Code does not apply. What the law only exacts is that a criminal action for defamation be filed upon the complaint of the offended party where the crime imputed cannot be prosecuted de officio, such as adultery, concubinage, rape, seduction, abduction, or acts of lasciviousness", and denying the Motion to Quash.

Within the period allowed by law, petitioner filed a "Motion for Reconsideration"[8] of the fore-going Order, but said motion was denied "for lack of merit" on August 11, 1976.

This Court, on October 18, 1976, resolved to require the respondents to file their Comment to the instant petition.

On November 15, 1976, the Acting Solicitor General, in behalf of the respondents, commented that:

“* * * petitioner's malicious imputations refer not only to the offended party's having an 'illicit relation' with, and her being a 'para-mour' of, one named Hector Valdeleon, but like-wise to the 'premature transfer' of offended par-ty and her family to the San Ramon Penal Farm in Zamboanga City 'so that the prison officials and employees who knew of the case would forget if she is not around'. It is thus apparent that aside from the derogation of offended party's in-tegrity, honor and reputation in the first por-tion * * *, petitioner goes on with his defama-tory story, alleging that in order to spare the offended party from further disgrace and obloquy arising from the discovery of her 'illicit rela-tion' with another man, the Acting Director of Prisons, being her relative by affinity, caused her 'premature transfer' to San Ramon Penal Farm in Zamboanga City 'at the expense of the govern-ment treasury'.”[9]

It is further averred that the words "illicit relation" and "paramour" do not exclusively connote the commission of adultery, and that the "mere fact that a married woman is alleged as having 'illicit relation' with a man who is her 'paramour' would not necessarily make her adulterous within legal contemplation."

Thereafter, the Comment of the Acting Solicitor General was considered as the answer of the respon-dents and this case was considered submitted for decision on the basis of the pleadings.

It is undeniable that the thrust of the letter-complaint in question is that while Iuminada Tan-diana, wife of Celedonio Tandiana, nephew of the wife of the Acting Director of Prisons and an em-ployee of the Bureau of Prisons, was discovered having illicit relations with Prison Guard Hector Valdeleon, the latter being the paramour of Ilumi-nada, was separated from the service by the Acting Director of Prisons because of such illicit rela-tionship, while Iuminada, who is "equally guilty, if not more" was spared the axe. Although the foregoing appears to imply that the Acting Director of Prisons exercised partiality and undue favoritism in favor of a relative, there is no question that this is predicated on the alleged discovery by said official of the existence of an illicit relationship between Ilumi-nada and Hector, the former being the paramour of the latter. When the term "illicit relationship" is used to describe the relationship between a mar-ried woman and a man other than her husband and at the same time the former is labelled as the para-mour of the latter, there can be no other purpose than to imply that the two are having carnal inter-course with each other. Thus, the phrase "illicit relationship"

when used in a complaint for abduction had been construed to mean clearly the existence of an unlawful sexual intercourse.[10] Similarly, the word "paramour", according to Webster, is "one who loves or is loved illicitly; one taking the place without the legal rights of a husband or wife; mis-tress ? called also lover." [11] The term "mis-tress" means "a woman with whom man habitually forni-cates". [12] To state that Iluminada Tandiana is having carnal intercourse with Hector Valdeleon is to accuse her, therefore, of committing adultery. For adultery means the carnal relation between a married woman and a man who is not her husband, the latter knowing her to be married. [13] Adultery is not a continuous crime, and the culprits commit adultery on every sexual intercourse. As the Supreme Court of Spain has held: [14] "It is a crime of result and not of tendency. It is an instantane-ous crime which is consummated and exhausted or completed at the moment of the carnal union. Each sexual intercourse constitutes a crime of adulte-ry." [15]

The provision of paragraph 4 of Article 360 of the Revised Penal Code requires that if the defama-tion consists in the imputation of a crime against chastity, such as adultery, concubinage, rape, se-duction and acts of lasciviousness, a complaint by the offended party is required. [16] When the libel imputes the commission of a crime which can be pro-secuted de officio, or attributes a vice or defect not constituting a crime, the Information filed by the Fiscal is enough to confer jurisdiction upon the court to try the defendant charged with the crime. [17]

Thus, in a case where the Fiscal filed an In-formation charging the accused with "telling some people in the neighborhood that said Fausta Bravo (a married woman) was a paramour of one Sangalang, a man not her husband", and Fausta Bravo did not subscribe to the complaint, this Court held that the trial court had no jurisdiction over the case. It ruled that since the accused imputed to Fausta Bra-vo the commission of adultery, a crime which cannot be prosecuted deoficio, the Information filed by the Fiscal cannot confer jurisdiction upon the court of origin. [18]

It must be noted, however, that this error could be corrected without sustaining the motion to quash and dismissing the case. Pursuant to section 1 of paragraph (a) of Presidential Decree No. 77, under which the Assistant City Fiscal conducted the preliminary investigation, the statement of the com-plainant was sworn to before the aforesaid Investi-gating Fiscal. Assuming that the recitals in said sworn statement contain all those required of a com-plaint under the Rules, [19] a copy of said verified statement of the complainant should be filed with respondent Court in order to comply with the require-ments of Article 360 of the Revised Penal Code; otherwise, the respondent Fiscal should file with said court a verified complaint of the offended party.

WHEREFORE , in view of the foregoing, the prayer asking that the questioned Order overruling peti-tioner's motion to quash be set aside is denied, but the respondent City Fiscal of Quezon City is hereby directed to file with respondent court, within ten (10) days from notice, either the aforestated sworn statement of the offended party, or her verified complaint. No special pronouncement as to costs.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Annex "A", Petition, Rollo, pp. 44-45.

[2] Page 11, Petition, Ibid., p. 12.

[3] Annex "B", Ibid., pp. 46-48.

[4] Annex "C", Ibid., pp. 49-50.

[5] Annex "D", Ibid., pp. 51-54.

[6] Annex "E", Ibid., pp. 55-57.

[7] Annex "F", Ibid., pp. 58-59.

[8] Annex "G", Ibid., pp. 60-63.

[9] Page 5, Comment, Ibid., pp. 74-75.

[10] 225 N.W. 61.

[11] Webster's Third New International Dictionary, 1971 ed., p. 1638.

[12] Ibid., p. 1446.

[13] Article 333, Revised Penal Code.

[14] S. 10 December, 1945.

[15] Aquino, Revised Penal Code, 1961 ed., p. 1560; People v. Zapata, et al., 88 Phil. 688, citing Cuello Calon, De-recho Penal, Vol. II, p. 569.

[16] People v. Martinez, 76 Phil. 599.

[17] People v. Santos, et al., 98 Phil. 111; People v. Añel (unrep.), 98 Phil. 1011; Mangila v. Lantin, 30 SCRA 81.

[18] People v. Padilla, 105 Phil. 45, 47.

[19] Section 5, Rule 110 of the Revised Rules of Court.

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