

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. HONG DIN CHU, DEFENDANT-APPELLEE.

*G.R. No. L-27830. May 29, 1970*

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 Manila dismissing the complaint in Criminal Case No. 81257 allegedly for lack of jurisdiction.

On 22 January 1966, Hong Din Chu was charged with grave oral defamation before the Court of First Instance of Manila (Criminal Case No. 81257) in an information reading as follows:

"That on or about the 21st day of November, 1965, in the City of Manila, Philippines, the said accused, with the malicious purpose of impeaching the virtue, honor, character and reputation of one Mercedes Japco Ong, did then and there willfully, unlawfully, feloniously and publicly proffer in the presence of many people against Mercedes Japco Ong the following abusive and slanderous remarks and expressions, to wit: 'Your daughter is a prostitute and she is a prostitute because you too are a prostitute', and other words and phrases of similar import which insinuations and imputations, as the said accused well know, were entirely false and untrue and without foundation in fact whatsoever, highly offensive and derogatory to her good name, character and virtue, thereby imputing to the said Mercedes Japco Ong, a married woman of chaste virtues, good moral character and of high, social standing, unchaste acts, loose virtues, tending to bring said Mercedes Japco Ong into public discredit, disrepute, contempt and ridicule, as she was in fact brought into public discredit, disrepute, contempt, and ridicule.

"Contrary to law."

Arraigned on 28 December 1966 the accused pleaded not guilty to the charge. The hearing of the case was postponed several times, upon representation of counsel for the accused that serious efforts were being exerted by friends of both parties to effect an amicable settlement of their difference. On 14 April 1967, the accused moved for the dismissal or quashal of the information on the ground that, as it charges defamation consisting of the alleged commission by the complainant of an offense (adultery) that cannot be prosecuted de officio the case should have been initiated at the instance of the latter. The records show that the information in the case was filed by an assistant city fiscal of Manila without the signature of the supposed complainant or offended party.

On 8 May 1967 and over the objection of the prosecution, the trial court ordered the dismissal of the case, as prayed for by the accused reasoning that under Section 8 of Rule 110 of the Revised Rules of Court a case for defamation involving an offense that cannot be prosecuted de officio has to be made out upon the complaint of the offended party. Since the accused was alleged to have imputed to the complainant, a married woman, the commission of acts of prostitution, the former, in effect, charged the latter with adultery, and the information, therefore, cannot be filed by the fiscal without the signature of the supposed offended party.

From this order of dismissal, the prosecution interposed the present appeal, claiming that the allegations of the

complaint charged the accused of having specifically imputed upon the offended party the commission of the crime of prostitution, which is a public crime. Consequently, according to herein appellant, the information, signed and filed by the Assistant City Fiscal even without the signature of the said offended party, was sufficient to confer jurisdiction on the trial court.

We incline to agree with this contention of the State.

Under the pertinent legal provisions on the matter (Section 4, Rule 110, revised Rules of Court, last paragraph; Article 360, Revised Penal Code, last paragraph),<sup>[1]</sup> no criminal action for defamation or slander consisting in the imputation of an offense that cannot be prosecuted de officio, such as adultery, concubinage, seduction, abduction, rape or acts of lasciviousness, shall be filed except upon the complaint of the offended party in the slander case. The issue in this proceeding, therefore, hinges on the nature of the act or activity that was imputed by the accused upon the offended party. Did the alleged defamatory remark imputed on the offended party the commission of a public crime or of a private offense that cannot be prosecuted de officio?

It must be remembered in this connection that what determines the offense of which the accused stands charged are the allegations in the information,<sup>[2]</sup> the actual recital of facts made therein.<sup>[3]</sup> The information in this case averred that the accused, with the malicious purpose of impeaching the virtue, honor, character and reputation of Mercedes Japco Ong, a married woman, uttered against the latter, publicly and in the presence of many people, the remarks - "Your daughter<sup>[4]</sup> is a prostitute and she is a prostitute because you too are a prostitute". As thus alleged, it is clear that, while the utterance in effect also imputed on her the commission of adultery, the offended party being a married woman, the disreputable conduct she was particularly charged with was the crime of prostitution, not adultery. And it may be pointed out that prostitution and adultery are not one and the same thing; the first is a crime against public morals, committed by a woman, whether married or not, who, for money or profit, habitually indulges in sexual intercourse or lascivious conduct,<sup>[5]</sup> whereas adultery is in the nature of a private offense committed by a married woman who shall have sexual intercourse with a man not her husband.<sup>[6]</sup> In short, the essential element in prostitution is not simply a woman's entering into marital relations with a man other than her husband, if she happens to be married, but the existence of pecuniary or financial gain as inducement to, or consideration for, that woman's engaging in sexual activities. Thus, to call a married woman a prostitute is not merely to proclaim her an adulteress, a violator of her marital vows; it is to charge her of having committed an offense against public morals, of moral degeneracy far exceeding that involved in the maintenance of adulterous relations.

It appearing from the recital of the information that the alleged defamatory remark by the accused specifically imputed upon the offended party the commission of prostitution, which is a public crime that can be prosecuted de officio, the information filed under the signature of the Assistant City Fiscal duly conferred jurisdiction upon the lower court to try the case.<sup>[7]</sup>

WHEREFORE, the appealed order of dismissal is hereby set aside, and the case is remanded to the trial court for further proceedings. No costs.

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

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[1] "SEC. 4. Who must prosecute criminal action. -- All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal.

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"No criminal action for defamation which consists in the imputation of an offense mentioned above, shall be brought except at the instance of and upon complaint filed by the offended party." (Rule 110, Revised Rules of Court)

"ART. 360. Persons responsible. – xxxxxxxxxxxx .

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party." (Revised Penal Code).

[2] People vs. Agito, G.R. No. L-12120, 28. April 1958, 103 Phil. 526; Que Po Lay vs. Central Bank, G.R. No. L-11019, 28 Nov. 1958, 104 Phil. 853; People vs. Abesamis, 93 Phil. 712; also People vs. Rodis, G.R. No. L-11670, 30 April 1959; People vs. Defensor, 86 Phil. 591.

[3] People vs. Cosare, 95 Phil. 656.

[4] The daughter of the offended party referred to is the daughter-in-law of the accused.

[5] Article 202, Revised Penal Code.

[6] Article 333, id

[7] People vs. Santos, et al., 98 Phil. III.

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