

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. FELIPE ABUY, DEFENDANT AND APPELLEE.

G. R. No. L-17616. May 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On April 1, 1959, Felipe Abuy was charged in the Municipal Court of Zamboanga City with the crime of "trespass to dwelling" (Crim. Case No. 6751), in an information which reads:

"That on or about February 21, 1959, in the City of Zamboanga, Philippines, and within the jurisdiction of this Court, the said accused did then and there wilfully, unlawfully, and feloniously enter the dwelling of Ruperto Carpio without his knowledge or consent.

"Contrary to law."

On arraignment, the accused Abuy pleaded not guilty, and the case was thereafter tried. When the case was called for continuation on trial on November 5, 1959, the prosecution moved for the dismissal of the case, on the ground that the evidence so far presented by it would, not sustain the accused's conviction of said crime charged. The motion was granted by the court.

Subsequently, on November 13, 1959, the accused Abuy was charged before the same Municipal Court of Zamboanga City with the crime of "unjust vexation" (Crim. Case No. 7201) under the following information:

"That on February 21, 1969, in the City of Zamboanga, Philippines, and within the jurisdiction of this Court, the said accused with intent to cause vexation upon Nicolasa B. de Magadia; did then and there wilfully, unlawfully, and feloniously embrace, and take hold of her wrist, thereby causing vexation upon her person; that there being present the aggravating circumstance that it was committed in the dwelling of said Nicolasa B. de Magadia.

"Contrary to law."

On November 19, 1959, the accused Abuy filed a motion to quash the above information for "unjust vexation", on the ground that said offense "has already prescribed". To this motion, the prosecution filed its answer (opposition) on December 23, 1959. On May 14, 1960, the Court granted said motion to quash, in an order which partly states:

"The record of this case show that on February 21, 1959, on the complaint of complainant Michaela B. de Magadia, the Prosecuting Officer, Special Counsel Vicente Largo filed an information, docketed as Criminal Case No. 6751, for Trespass to Dwelling, against the accused Felipe Abuy. This case for Trespass to Dwelling called for trial when the accused aided by the same counsel that appeared for him in Criminal Case No. 7201, for Unjust Vexation, when arraigned pleaded not guilty to the crime of Trespass to Dwelling. On the day when Criminal Case No. 6751, was called for continuation of the trial on November 5, 1959, the Prosecuting Officer, Special Counsel Vicente Largo, moved for the dismissal of the information charging Felipe Abuy of Trespass to Dwelling, on the alleged ground that the evidence so far presented by the prosecution would not sustain the conviction of the accused of the crime of Trespass to Dwelling, which motion was duly granted by the Court,

ordering the acquittal of the accused with costs de officio, ordering further the cancellation of the bail bond filed by the accused for his provisional liberty.

"Subsequent to the dismissal, rather the acquittal of the accused Felipe Abuy of the crime of Trespass to Dwelling on motion of the prosecuting officer, Special Counsel Largo, another information charging the same accused Felipe Abuy acquitted of the crime of Trespass to Dwelling with the crime of Unjust Vexation, the present case to which the motion to quash, was filed by the defense attorney, on the ground of prescription.

"The Court, taking into consideration the above findings of facts, together with the motion to quash filed by the defense attorney and the opposition filed by the Special Counsel, the arguments advanced by the counsels on the motion and opposition to the motion to quash, and the additional oral arguments, taken by the Court Stenographer at the time of the formal hearing conducted by this Court on the motion and opposition to the granting of the motion to quash, believes that the crime of Unjust Vexation, for which the accused is presently charged under Criminal Case No. 7201, filed after the said accused based on the same facts complained by complainant Michaela de Magadia, for which the accused Felipe Abuy was charged and wherein he was acquitted on motion of the prosecuting officer in the first case of Trespass to Dwelling which after dismissal of the same, the accused is now again charged of Unjust Vexation "which crime this Court believes had already prescribed as provided for under the provisions of the Revised Penal Code, paragraph 5 of Article 89 and Article 91 of the same Code and, therefore, the motion to quash the information filed under Criminal Case No. 7201, for Unjust Vexation, is hereby granted, ordering the dismissal of Criminal Case No. 7201, with costs de officio.

"So Ordered."

From this order, the prosecution appealed to the Court of First Instance of Zamboanga City. On July 30, 1960, said court denied the appeal, in an order of this tenor:

"ORDER

"The appeal in this case taken by the City Attorney's Office being unmeritorious and unfounded, the same is hereby DENIED and let the records of this case be returned to the court of origin.

So Ordered."

Hence, this appeal.

There is no merit in the People's appeal. There can be no question that the crime of "unjust vexation" (Art. 287 [2], Revised Penal Code) is a light offense (Art. 9 [3], id.) and, therefore, prescribes in 2 months (Art. 90[6], id.). Now, the information dated November 13, 1959 charging appellee Abuy with said offense, expressly alleges that he committed it "on February 21, 1959" on the person of Nicolasa (Michaela) B. de Magadia". According to Article 91 of the Revised Penal Code, the period of prescription of an offense "shall commence to run upon the day on which the crime was discovered by the offended party, the authorities or their agents". From February 21, 1959 to November 13, 1959 (date of filing of the information) is 6 months and 20 days, far beyond the 2-month prescriptive period of said offense. In the circumstances, appellee Abuy correctly moved to quash said information, and the Municipal Court properly granted the same. The Court of First Instance, on its part, committed no reversible error in dismissing the prosecution's appeal from said quashal by the Municipal Court, for being "unmeritorious and unfounded".

The prosecution argues, however, that the offense of "unjust vexation" had not yet prescribed when it filed the information (Crim. Case No. 7201) against appellee Abuy, on November 13, 1959, reasoning thus:

"The acts complained of occurred on February 21, 1969. The information for trespass to dwelling against the

accused was filed on April 1, 1959, 39 days after (p. 1, mun. court folder). The filing of the information for trespass to dwelling on April 1, 1959 interrupted the running of the two-month prescriptive period (Art. 91, Rev. Penal Code).

"After the municipal court of the City of Zamboanga dismissed the case on November 5, 1959 on motion of the prosecution (p. 17, mun. court folder), it was only then that the prescriptive period commenced to run again.

"The information for unjust vexation was received by the municipal court of the City of Zamboanga on November 18, 1959, 8 days after the dismissal of the information for trespass to dwelling was handed down by the court.

"Adding the 39 days which had elapsed prior to the filing of the information for trespass to dwelling with the 8 days, prior to the filing of the information for unjust vexation, the aggregate total of 47 days would still be shy of the 2-month prescriptive period allowed by law for the latter crime."

This contention of the prosecution is not in accordance with Article 91 of the Revised Penal Code which provides that, "The period of prescription * * * shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him (accused)". The "complaint or information" or "such proceedings" mentioned in the law must be the proper information or complaint corresponding to the offense committed in order that "such proceedings" thereunder may interrupt the prescriptive period. Here, the first information was trespass to dwelling committed against Ruperto Carpio, the elements of which as described in the information are, the prosecution expressly admits (see appellant's brief, page 8), entirely different from the elements of the other offenses of unjust vexation against Nicolasa B. de Magadia charged in the second information. There is nothing in the two informations to show that the two offenses are related to each other except that they were committed by the same accused on the same date and within the jurisdiction of the same court. The one, in fact, is not a bar to the other. Consequently, the filing of the one does not interrupt the prescriptive period as to the other.

Neither is the other contention of the prosecution tenable—that the municipal court should not have discharged the accused but should have committed him to answer to the proper offense, as there appears to have been a mistake in charging the correct offense. (Sec. 12, Rule 115, Rules of Court). In the first place, the fiscal moved for the dismissal of the case, not because of an alleged mistake, but because the evidence so far presented by him would not sustain the accused's conviction of the crime charged in the information. Secondly, even if the intention was to subsequently charge the accused with unjust vexation, since the offense has clearly prescribed, it would not be proper to further commit the accused to answer to the proper charge where this is no longer available.

Wherefore, finding no reversible error in the order appealed from, the same is hereby affirmed, without costs. So ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

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