

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. HON. ANTONIO A. ORCULLO, AS ACTING CITY JUDGE OF CAGAYAN DE ORO CITY, AND VENIDA PERALTA ALIAS EDAT PERALTA, RESPONDENTS.

G.R. No. L-57103. January 30, 1982

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari filed by the City Fiscal and Assistant City Fiscal of Cagayan de Oro City praying that the order of the respondent Judge, Hon. Antonio A. Orcullo, dismissing Criminal Case No. 40117 be set aside and that said case be ordered reinstated and tried on the merits.

The petition alleges that on September 4, 1978, a special counsel in the Office of the City Fiscal of Cagayan de Oro City filed an information with the City Court of Cagayan de Oro, Branch I, charging the respondent Venida Peralta alias Edat Peralta with oral defamation committed as follows:

"That on or about August 17, 1978, at 7:00 o'clock in the evening, at Gumamela Extension Street, Carmen, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to cast undue shame, public ridicule, discredit, disrepute and contempt against one Lydia Flores, did then and there wilfully, unlawfully and feloniously speak and shouted the following words towards the latter: 'Hostess ug nangabit, bisan unsa lang oten and nakapaslak; which approximately means in English: 'A hostess and has a paramour, any kind of penis had penetrated your vagina,' or words of similar import, directed to the said Lydia Flores, in the presence and with the hearing of many people, well-knowing that what she uttered were not only defamatory but downright false, causing the offended party by said utterance to suffer undue shame, public ridicule, disrepute, discredit and contempt, to the great damage and prejudice of the said Lydia Flores.

"Contrary to Article 358 of the Revised Penal Code.

"Cagayan de Oro City, September 1, 1978.

"(SGD) EFREN L. LAMPIOS

Special Counsel"[1]

which information was docketed as Criminal Case No. 40117; that on November 3, 1978, Criminal Case No. 40117 was set for arraignment and the accused-respondent pleaded not guilty; that on February 2, 1981, the accused-respondent filed a motion to quash on the ground that the crime alleged constituted an imputation of a crime which cannot be prosecuted de officio; that on February 10, 1981, the respondent Judge, Hon. Antonio A. Orcullo, issued an order dismissing Criminal Case No. 40117 on the ground that the offense alleged in the information is a private crime which can be instituted or filed only by the offended party; that on February 27, 1981, the City Fiscal filed a motion for reconsideration of the order dismissing Criminal Case No. 40117; and that on March 11, 1981, the respondent judge denied the motion for reconsideration.[2]

In his comment filed on November 3, 1981, the private respondent contended that the wordings "Hostess and has a paramour, any kind of penis had penetrated your vagina" are in unequivocal terms and can be readily understood as imputing to the offended party the commission of the act of adultery, she being a married woman, hence the crime charged consists in the imputation of an offense which cannot be prosecuted de officio and can be brought only upon complaint filed by the offended party as provided in paragraph 5, Article 360 of the Revised Penal Code.[3]

The Solicitor General was required to comment on the petition and on the opposition of the accused.⁴

The pertinent portion of the comment of the Solicitor General filed on December 18, 1981 reads:

"The main issue to be resolved is whether the derogatory remarks - 'A hostess and has a paramour, any kind of penis had penetrated your vagina' - imputes adultery or prostitution. Petitioner submits that the remarks impute prostitution rather than adultery. The word 'hostess' has acquired a notorious connotation. It has a peculiar reference to one who works in nightclubs and ministers to the pleasures of men for fee. The expression 'any kind of penis had penetrated your vagina' definitely describes and only refers to the work of a prostitute, and not that of a mere adulteress.

"It is alleged by accused-respondent that the remarks imputed adultery, because the word 'paramour' was mentioned, thereby implying complainant to be a married woman who was carrying on an affair with a man not her husband. It must be pointed out that since the information does not allege the civil status of complainant as married, she should be presumed to be single, and therefore the remarks must be understood as imputing prostitution, and not adultery. Assuming arguendo that complainant is married and that the remarks, while imputing acts of prostitution to her and in effect charged her with adultery, the information can still be filed without her complaint. The case of *People v. Hong Din Chu*, 33 SCRA 199, 202 is in point.

'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, 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. 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.' (Underscoring supplied)

"This ruling is a mere reiteration of previous pronouncements made by this Honorable Court in *People v. Santos*, 98 Phil. 111, and *Mangila v. Lantin*, 30 SCRA 82. Still, for another reason, assuming arguendo that adultery which is a private crime, and prostitution which is a public crime, are both imputed to complainant, criminal action may still be instituted without her complaint because public interest, which is always paramount to private interest, so requires (*People v. Yu*, 1 SCRA 199).

"It must be noted that it is only when derogatory remarks clearly and categorically reflect the elements constituting adultery would the complaint for libel by the offended party be necessary to commence

prosecution (People v. Padilla, 105 Phil. 45). In this case, however, the derogatory remarks of accused-respondent, not only do not clearly show the elements of adultery, but on the contrary, such remarks indubitably impute the crime of prostitution. Therefore, the information for libel can be filed without the complaint of the offended party."^[5]

The submission of the Solicitor General is well taken. Indeed, the words quoted in the information are indubitably an imputation of the crime of prostitution which can be prosecuted de officio.

WHEREFORE, the petition is granted, the order dismissing Criminal Case No. 40117 of the City Court of Cagayan de Oro City is set aside, and the respondent judge, Hon. Antonio A. Orcullo, is ordered to reinstate said criminal case and to try the same on the merits.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

[1] Annex "A" to the Petition, Rollo, p. 93.

[2] Rollo, pp. 86-91.

[3] Rollo, pp. 106-107.

[4] Rollo, p. 109.

[5] Rollo, pp. 120-122.

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