

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. INOCENCIO RUBAL, DEFENDANT AND APPELLANT.

G.R. No. 11259. February 08, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a decision of the Court of First Instance of Manila acquitting the defendant, Inocencio Rubal, but failing to declare that the accusation is false. Waiving the question of whether or not appeal is proper under these circumstances, in order to settle the points at issue, we proceed to describe the various phases of the case and to analyze the applicable article of the Penal Code.

The assistant prosecuting attorney of the city of Manila, after conducting a preliminary examination, charged Arturo Conde and Inocencio Rubal with the crime of estafa. Conde was a fugitive from justice and was not tried. Rubal was tried. At the close of the trial, the attorney for the defense moved for the acquittal of his client and for the inclusion in the judgment of an order for the prosecution of Heacock Co. for false and slanderous charges. the trial court acquitted Rubal. No order for the institution of action for false accusation was made. On the contrary, in the body of the short decision of Judge Campbell will be found the following:

"As the case against the defendant Conde is still pending we will not comment at this time on the testimony, further than to say that the telegrams sent by the defendants to the house of Heacock Co., and which were admitted in evidence, were amply sufficient to warrant the action of the prosecuting attorney in causing the arrest of the said defendants and in instituting the present case against them; so that the defendants were themselves the chief factors in causing this complaint to be filed."

Defendant excepted and by order of the trial court, appeal was permitted.

The first attorney de oficio for appellant in the Supreme Court found after study that there were not sufficient grounds to sustain the appeal and asked to be relieved. A second attorney de oficio was appointed, who made the same request. The court designated still another attorney de oficio, who, after careful study, insists that the lower court incurred an error in not declaring the complaint presented by Clyde W. Chambers to be false and slanderous, and in not ordering his prosecution for the crime of false accusation as prescribed by article 326 of the Penal Code. Counsel also asks that there be reserved to the appellant Rubal the right of civil action to recover from Chambers and H. E. Heacock Co. the damages which have been caused him by reason of the prosecution. The Attorney-General, by motion, disclaimed any interest in the appeal on the part of the Government. Upon ascertaining that Clyde W. Chambers could not be found in the Philippine Islands, service by publication has been made. Finally, in obedience to an order of this court, the attorneys for H. E. Heacock Co. have filed a brief. The latter meet the attorney for the appellant on his own ground as to the merits of false accusation, and also, although we surmise rather in furtherance of their argument than in all seriousness, suggest that since the finality of the judgment herein has been denied by the appeal of the defendant, and since the evidence proved him guilty of the crime imputed to him, we now declare the appellant guilty of estafa.

Article 326 of the Penal Code is as follows:

"The crime of false accusation or complaint is committed by any person who falsely charges another with acts which, if committed, would constitute an offense upon which a prosecution might be instituted by the Government on its own motion, if such charge be made to any executive or judicial officer whose duty it is to investigate or punish such felony.

"Nevertheless, no action shall be taken against the person making the accusation or complaint except by virtue of a final judgment or order of dismissal by the court before which the offense charged shall have been tried.

"The court shall order the prosecution of the person making the accusation or complaint whenever the principal case discloses facts sufficient to justify such prosecution."

What is here termed the crime of false accusation or complaint is practically identical with the crime of malicious prosecution as known to Anglo-American law. For the crime of false accusation to be committed, there must first be a false charge. The proof of falsity must, however, not be pressed too hard for in addition it must be shown that the accuser knew that the charge was false at the time the same was presented. (U. S. vs. Del Campo and Del Campo [1913], 26 Phil., 67.) The accuser must have instigated the commencement of the prosecution without probable cause, and must have been actuated by malice.. To sustain the charge of malicious prosecution (false accusation) it is necessary to show: "First, that the suit had terminated unfavorably to the prosecutor; second, that in bringing it the prosecutor had acted without probable cause; third, that he was actuated by legal malice, i. e., by improper or sinister motives. The above three elements must concur." (Crescent City Live-Stock etc. Co. vs. Butchers' Union etc. Co. [1886], 120 U. S., 141; Wheeler vs. Nesbitt [1860], 24 How., 544; various decisions of the supreme court of Louisiana; and Torres vs. Ramirez [Porto Rico] reported in a late number of Revista de Legislacion y Jurisprudencia.) It does not matter that Rubal may have been found to be innocent if it cannot be demonstrated that Chambers in so far as he had participated in the prosecution had not reasonable grounds for believing Rubal guilty at the time the charge was made. The record discloses that the prosecution was really instituted by Conde charging Rubal with theft. As intimated by the trial court, the principal information giving rise to the prosecution came from certain telegrams from Rubal and Conde. The only activity by Chambers has been in laying before the authorities the information which came to him concerning the acts of Rubal for such action as might be deemed proper by said authorities. Chambers was not guilty of misrepresenting the facts upon which Rubal was prosecuted. The fact that the prosecution deemed the evidence sufficient to warrant the charge, but that the trial court deemed the evidence insufficient to warrant the conviction of the appellant, should not, under the circumstances above noted, be attributed to Chambers so as to make him liable for a criminal offense.

The second element of the crime of false accusation is that the charge be made to an executive or judicial officer whose duty it is to investigate or punish the felony. The charge was made to the prosecuting attorney of the city of Manila, who is such judicial officer.

Article 326 of the Penal Code finally provides that action can only be begun by virtue of a final judgment by the trial court and an order by the court for the prosecution of the person making the accusation. The judgment herein is one that is final. (U. S. vs. Lat [1908], 11 Phil., 269.) But the lower court instead of making an order for the prosecution of Chambers placed in the judgment what amounts to a vindication for Chambers. This court has held that: "There can be no prosecution for a false accusation unless the court in dismissing the first case expressly orders the prosecuting attorney to proceed against the complaining witness in that case for a violation of this article." (U. S. vs. Barrera [1905], 4 Phil., 461; and Gonzalez Quiros vs. Palanca Tan-Guinlay [1906], 5 Phil., 675 [civil action].) Counsel for H. E. Heacock Co. thereupon naturally take the view that the Supreme Court is without jurisdiction for the reason that the making of the order is limited by law to the court taking cognizance of the

crime imputed. We believe that in this contention counsel is correct. The law places this duty solely and expressly on the trial court. The supreme court of Spain has said: "Considering that article 340 provides that the crime of malicious prosecution can only be prosecuted by virtue of final judgment or order by the court taking cognizance of the crime imputed, who shall order the prosecution of the accuser if from the case it results that there is sufficient basis for the institution of proceedings; and considering that this provision of law, as has been repeatedly held by this Supreme Court, confers on the trial court the discretionary power of determining if in the case there exist sufficient basis to declare the accusation slanderous and false and to institute the new proceedings, and that against such determination by the trial judge no appeal is allowed, it results that the trial court is the only judge whether to order or not the prosecution of the accuser, or to determine if in the principal case exist sufficient facts to institute the new proceedings." (Decisions of the supreme court of Spain of February 10, 1877, and November 4, 1880; 2 Viada, Código Penal, p. 480—supplement, vol. 4, p. 294.) If the trial judge who is in a position to form an adequate appreciation of the true facts, on acquittal of an accused has not ordered the prosecution of the person instituting the charge, unless there is disclosed convincing proof of abuse of discretion, this court should not by appeal usurp the functions of the trial court. Not having shown any abuse of discretion on the part of the trial court, the judgment must stand as rendered.

We conclude that the judgment of the lower court should be affirmed, but with costs de officio. So ordered.

Arellano, C. J., Carson, Araullo, and Street, JJ., concur.

Avanceña, and Fisher, JJ., did not take part.

CONCURRING OPINION

TORRES, J., concurring:

The undersigned concurs in the preceding decision signed by a majority of the court, but, in respect to the grounds on which it is based, does not accept the theory that it is discretionary on the part of the judge who absolves the defendant or dismisses the proceedings prosecuted against him, to order the institution of a new cause for false accusation or complaint, against the accuser or complainant, for the reason that in accordance with the last paragraph of article 326 of the Penal Code, such new cause may be instituted only when the principal case discloses facts sufficient to justify such prosecution,—facts or proofs of falsity which the judge must estimate correctly, guided by the rules of common sense and sound judgment. Such determination does not depend on his free judgment and reasonable discretion, abstractedly from the facts resultant from the principal case, but depends on his due estimation of the proofs of falsity. The appellate court will decide, not whether the trial judge did or did not abuse his discretion, but whether he did or not duly estimate the proofs and other facts in order to conclude that the complainant or accuser was actuated or not by malice and falsity.

With respect to the thrice repeated appointment of an attorney to represent the defendant, who had no counsel of his own, when as in the present case, the first two appointees state in writing that their client is absolutely wrong and has no defense at all, it has always been a just and reasonable practice to make a further appointment of counsel, in order not to leave the defendant entirely bereft of protection, lest in connection with the charge prosecuted against him, he might have some right of exception or defense which, though insufficient to obtain for him total exemption from liability, may, at least in some manners, attenuate his delinquency.

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