

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ALFREDO ARAQUEL, DEFENDANT AND APPELLEE.*G. R. No. 12629. December 09, 1959*

Ponente: GUTIERREZ DAVID, J.

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This is an appeal by the Government from an order of the Court of First Instance of Ilocos Sur, dismissing the information for homicide filed against the accused Alfredo Araquel on the ground of double jeopardy.

The record shows that on January 30, 1955, the acting chief of police of Narvacan, Ilocos Sur, filed with the justice of the peace court of that municipality a complaint for homicide against Alfredo Araquel accusing him of having hacked and killed Alberto Pagadian with a bolo. More than a year and a half later, or on July 3, 1956, while said complaint, for reasons not stated, was still pending in the justice of the peace court, the chief of police of Narvacan moved for the amendment thereof, alleging that upon reinvestigation of the facts he found that the crime committed by the accused was not homicide as charged in the original complaint but that of homicide under exceptional circumstances as provided for in article 247 of the Revised Penal Code. Finding the motion to be well taken, the justice of the peace court, on July 16, allowed the filing of the amended complaint which charged the accused with "the crime of HOMICIDE UNDER EXCEPTIONAL CIRCUMSTANCES defined and punished under Article 247 of the Revised Penal Code." That same day, the accused was arraigned under the amended complaint. And as he entered a plea of "guilty", the justice of the peace court, also on that same day, sentenced him to suffer the penalty of destierro for a period of one year to any place not within the radius of at least 25 kilometers from the municipal building of Narvacan, Ilocos Sur.

During the service of the sentence by the accused, the acting Provincial Fiscal of Ilocos Sur was informed of the case through the Department of Justice to which the private prosecutor had lodged a complaint. And after conducting an investigation, the said acting provincial fiscal, on February 16, 1957, filed with the Court of First Instance of the province an information against the accused Alfredo Araquel charging him with homicide as defined and penalized under Article 249 of the Revised Penal Code for the killing of Alberto Pagadian.

On July 9, 1957, the accused moved to quash the information on the ground of double jeopardy, invoking the previous charge against him for homicide under exceptional circumstances and the subsequent sentence passed upon him by the justice of the Peace Court of Narvacan, Ilocos Sur. The fiscal opposed the motion, but the trial court, in its order of July 18, 1957, sustained the plea of double jeopardy and dismissed the information. Hence, this appeal.

The plea of jeopardy made by the accused was, to our minds, erroneously sustained by the lower court.

In order that a defendant may legally be placed in jeopardy, one of the necessary and indispensable conditions is that he should have been tried before a court of competent jurisdiction. (Sec. 9, Rule 113, Rules of Court.) The court below, in upholding the plea of double jeopardy, held that the Justice of the Peace Court of Narvacan, Ilocos Sur, had jurisdiction to take cognizance of the complaint for "homicide under exceptional circumstances defined

and punished under Article 247 of the Revised Penal Code," on the theory that "the act defined" in that article "is a felony" which is penalized with destierro and, consequently, falls under the jurisdiction of the inferior court, following the ruling laid down in the case of *Uy Chin Hua vs. Dinglasan, et al.*, (86 Phil., 617; 47 Off. Gaz. No. 12, Supp., p. 233).

There can of course be no question that, under the rule enunciated in the case of *Uy Chin Hua vs. Dinglasan et al.*, supra, offenses penalized with destierro fall under the jurisdiction of the justice of the peace and municipal courts. (See also *De los Angeles vs. People*, 103Phil., 295.) That rule, however, cannot be made to apply to the present case, for it is apparent that Article 247 of the Revised Penal Code does not define a crime distinct and separate from homicide, parricide, or murder, as the case may be, depending, in so far as those crimes are concerned, upon the relationship of the victim to the killer and the manner by which the killing is committed. The article in question reads:

"Art. 247. Death or physical injuries inflicted under exceptional circumstances.-Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injuries, shall suffer the penalty of destierro.

"If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

"These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducers, while the daughters are living with their parents.

"Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse, shall not be entitled to the benefits of this article."

This article is found under Section One of Chapter One, Title Eight of Book Two of the Revised Penal Code. Title Eight refers to Crimes against Persons, Chapter One is entitled Destruction to Life and Section One thereof treats of the crimes of parricide, murder and homicide.

As may readily be seen from its provisions and its place in the Code, the above-quoted article, far from defining a felony, merely provides or grants a privilege or benefit— amounting practically to an exemption from an adequate punishment—to a legally married person or parent who shall surprise his spouse or daughter in the act of committing sexual intercourse with another, and shall kill any or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury. Thus, in case of death or serious physical injuries, considering the enormous provocation and his righteous indignation, the accused—who would otherwise be criminally liable for the crime of homicide, parricide, murder, or serious physical injury, as the case may be—is punished only with destierro. This penalty is mere banishment and, as held in a case, is intended more for the protection of the accused than a punishment. (*People vs. Coricor*, 79 Phil., 672.) And where physical injuries other than serious are inflicted, the offender is exempted from punishment. In effect, therefore, Article 247, or the exceptional circumstances mentioned therein, amount to an exempting circumstance, for even where death or serious physical injuries is inflicted, the penalty is so greatly lowered as to result to no punishment at all. A different interpretation, i. e., that it defines and penalizes a distinct crime, would make the exceptional circumstances which practically exempt the accused from criminal liability integral elements of the offense, and thereby compel the prosecuting officer to plead, and, incidentally, admit them, in the information. Such an interpretation would be illogical if not absurd, since a mitigating and much less an exempting circumstance cannot be an integral element of the crime charged. Only "acts or omissions ... constituting the offense" should be pleaded in a complaint or information, and a circumstance which mitigates criminal liability or exempts the accused therefrom, not being an essential element of the offense charged—but a matter of defense that must be

proved to the satisfaction of the court—need not be pleaded. (Sec. 5, Rule 106, Rules of Court; U. S. vs. Campo, 23 Phil., 368.)

That the article in question defines no crime is made more manifest when we consider that its counterpart in the old Penal Code (Article 423) was found under the General Provisions (Chapter VIII) of Title VIII covering crimes against persons. There can, we think, hardly be any dispute that as part of the general provisions, it could not have possibly provided for a distinct and separate crime.

We also note that under Republic Act No. 296, the jurisdiction of the justice of the peace and municipal courts, as enlarged, extends only to "assaults where the intent to kill is not charged or evident at the trial." (Section 87[c]). A fortiori, where the intent to kill is evident—as in cases of homicide under the exceptional circumstances provided in Article 247 of the Revised Penal Code—the case must necessarily fall beyond the jurisdiction of the inferior courts. An absurd situation would, indeed, be created if the justice of the peace courts could exercise jurisdiction over a case involving an actual killing, when they lack jurisdiction to try even a case of slight physical injury where the intent to kill was evident. Such could not have been the intendment of the law.

It may not be amiss to state here that the killing under exceptional circumstances under both the old (Art. 423) and Revised Penal Code (Art. 247) had invariably been tried before the Courts of First Instance under an information charging the accused with either homicide, parricide, or murder. (See U. S. vs. Vargas, et al., 2 Phil., 194; U. S. vs. Melchor, 2 Phil., 588; U. S. vs. Posoc, et al., 10 Phil., 711; U. S. vs. Alano, 32 Phil., 381; U. S. vs. Verzola, 33 Phil., 285; People vs. Loata, 46 Phil., 392; People vs. Bituanan, 56 Phil., 23; People vs. Zamora de Cortez, 59 Phil., 568; People vs. Gonzales, 69 Phil., 66; People vs. Dumon, 72 Phil., 41; People vs. Coricor, 79 Phil., 672; People vs. Sabilul, 89 Phil., 283; 49 Off. Gaz., 2743.) In all the above-cited cases, the accused merely invoked the privilege or benefit granted in Article 247 of the Revised Penal Code or Article 423 of the old Penal Code.

We, therefore, conclude that Article 247 of the Revised Penal Code does not define and provide for a specific crime, but grants a privilege or benefit to the accused for the killing of another or the infliction of serious physical injuries under the circumstances therein mentioned. Consequently, a complaint or information charging homicide under the exceptional circumstances provided in Article 247 must fall under the jurisdiction of the Courts of First Instance, the offense charged being actually that of homicide. The fact that the exceptional circumstances are also pleaded—as was done in the amended complaint filed with the Justice of the Peace Court of Narvacan—would not affect the nature of the crime charged. For they are not integral elements of the crime charged but are matters which the accused has to prove in order to warrant the application of the benefit granted by the law. As unnecessary and immaterial averments to the crime charged, they may be stricken out as surplusage and still leave the offense fully described.

Conformably to the above findings, we hold that defendant was not tried by a court of competent jurisdiction when he was arraigned before the Justice of the Peace Court of Narvacan upon the amended complaint for "homicide under exceptional circumstances" filed against him by the chief of police of the municipality, and consequently, has not legally been placed in jeopardy in the present case.

Wherefore, the order appealed from is set aside and the case remanded to the court a quo for further proceedings. No special pronouncement as to costs.

Bengzon, Labrador, and Endencia, JJ., concur.

Bautista Angelo and Barrera, JJ., concur in the result.

CONCURRING

PARAS, C. J.,

I concur in the result for the same reasons set forth in my concurring opinion in the case of *Uy Chin Hua, vs. Hon. Judge Rafael Dinglasan*, supra, promulgated June 30, 1950, which reads as follows:

"In the scale of penalties provided in article 71 of the Revised Penal Code, as amended by Commonwealth Act No. 217, the two penalties successively lower than *arresto mayor* is *destierro* and *arresto menor*. Under article 25, *destierro* is classified as a correctional penalty and, under article 27, its duration is from 6 months and 1 day to 6 years. Upon the other hand, the duration, of *arresto mayor*, classified also as a correctional penalty (Article 25), is from 1 month and 1 day to 6 months (Article 27). There can be no question that, pursuant to the Judiciary Act of 1948 (Republic Act No. 296), the consummated offense of corruption of public officials, penalized with *arresto mayor* in its medium and maximum periods, or from 2 months and 1 day to 6 months, comes within the original jurisdiction of the justice of the peace or municipal court. Under article 51, the penalty for an attempt to commit the offense of corruption of public officials is two degrees lower than *arresto mayor* in its medium and maximum periods. Said penalty—if the scale in article 71 of the Revised Penal Code, as amended by Commonwealth Act No. 217, is to be followed to the letter—is *destierro* in its minimum and medium periods, or from 6 months and 1 day to 4 years and 2 months, with the result that an attempt would fall, pursuant also to the Judiciary Act of 1948, under the original jurisdiction of the Court of First Instance. This is the theory of counsel for respondent Judge.

"According to this theory, an attempted offense is penalized with a greater penalty than the consummated offense and is to be tried by a higher court than that which will try the consummated offense. This absurd result would not have been contemplated by the lawmakers in amending article 71 of the Revised Penal Code and should accordingly be avoided.

"An attempt to commit a felony is certainly lower than the consummated felony, and this is the reason why article 51 of the Revised Penal Code specially provides that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit said felony. If this fundamental provision is, as it should be, given effect, the penalty for the attempted offense of corruption of public officials, which is a penalty lower by two degrees than *arresto mayor* in its medium and maximum periods (from 2 months and 1 day to 6 months), is *arresto menor* in its minimum and medium periods (from 1 day to 30 days). The penalty for said attempted offense should not be taken from *destierro*, because the duration of this penalty is from 6 months and 1 day to 6 years, and is therefore equal to and co-extensive in duration with *prision correccional*, a penalty higher than *arresto mayor* in the scale provided by article 71 of the Revised Penal Code, as amended by Commonwealth Act No. 217. Although *destierro* may not be an "Imprisonment", it is nonetheless a "deprivation of liberty" (*People vs. Abilong*, 82 Phil., 172; 46 Off. Gaz., 1012).

"It is noteworthy that before article 71 was amended by Commonwealth Act No. 217, the scale of penalties from which a lower or higher penalty was taken, was that provided by article 70, under which the penalty lower than *arresto mayor* was *arresto menor*. *Destierro* was not included. The obvious reason is that *destierro* is an exceptional penalty, prescribed as a principal penalty only in two cases (articles 247 and 334) and as an additional penalty only in one case (article 284). The exceptional character of *destierro* is recognized in the fact that although it is classified as a correctional penalty having a duration of from 6 months and 1 day to 6 years, in parity with *prision correccional*, it is placed in the scale fixed in article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217, below *arresto menor*, as regard severity and for purposes of successive service of sentence; and in the scale provided in article 71, as amended by Commonwealth Act No. 217, it is placed below *arresto mayor*. But, as heretofore stated, if the scale in article 71 is followed literally, we shall have the unthinkable and absurd situation that the consummated offense of corruption of public

officials is penalized with *arresto mayor* in its medium and maximum periods (from 2 months and 1 day to 6 months) originally triable in the justice of the peace or municipal court, whereas the lower offense of attempted corruption of public officials is penalized with *destierro* in its minimum and medium periods (from 6 months and 1 day to 4 years and 2 months) and originally triable in the Court of First Instance. To avoid this absurdity, I am constrained to hold that the penalty of *destierro* is to be considered only when it is specifically imposed and is to be disregarded in the scale provided in article 71.

"It is true that in the case of *People vs. Ng Pek*, 81 Phil., 562; 46 Off. Gaz., 360, decided on October 2, 1948, we held that the penalty lower by two degrees than *arresto mayor* in its medium and maximum periods is *destierro* in its minimum and medium periods; but in said case the point decided in the case at bar was not actually raised and passed upon. Upon the other hand, in the case of *Rivera vs. Geronimo*, 43 Off. Gaz., 841, decided on July 22, 1946t we ruled that tine penalty lower by two degrees than prision correctional in its minimum and medium periods is *arresto mayor* in its minimum period, the penalty of *destierro* having been disregarded."

DISSENTING

MONTEMAYOR, J.,

The facts, in this case are correctly stated in the majority opinion, the pertinent portion of which I am reproducing below for purposes of ready reference:

"This is an appeal by the Government from an order of the Court of First Instance of Ilocos Sur, dismissing the information for homicide filed against the accused Alfredo Araquel on the ground of double jeopardy.

"The record shows that on January 30, 1955, the acting chief of police of Narvacan, Ilocos Sur, filed with the justice of the peace court of that municipality a complaint for homicide against Alfredo Araquel accusing him of having hacked and killed Alberto Pagadian with a bolo. More than a year and a half later, or on July 3, 1956, while said complaint, for reasons not stated, was still pending in the justice of the peace court, the chief of police of Narvacan moved for the amendment thereof, alleging that upon reinvestigation of the facts he found that the crime committed by the accused was not homicide as charged in the original complaint but that of homicide under exceptional circumstances as provided for in article 247 of the Revised Penal Code. Finding the motion to be well taken, the justice of the peace court, on July 16, allowed the filing of the amended complaint which charged the accused with "the crime of HOMICIDE UNDER EXCEPTIONAL CIRCUMSTANCES defined and punished under Article 24? of the Revised Penal Code." That same day, the accused was arraigned under the amended complaint. And as he entered a plea of 'guilty', the justice of the peace court, also on that same day, sentenced him to suffer the penalty of *destierro* for a period of one year to any place not within the radius of at least 25 kilometers from the municipal building of Narvacan, Ilocos Sur.

"During the service of the sentence by the accused, the acting Provincial Fiscal of Ilocos Sur was informed of the case through the Department of Justice to which the private prosecutor had lodged a complaint. And after conducting an investigation, the said acting provincial fiscal, on February 16, 1957, filed with the Court of First Instance of the province an information against the accused Alfredo Araquel charging him with homicide as defined and penalized under Article 249 of the Revised Penal Code for the killing of Alberto Pagadian.

"On July 9, 1957, the accused moved to quash the information on the ground of double jeopardy, invoking the previous charge against him for homicide under exceptional circumstances and the subsequent sentence passed upon him by the Justice of the Peace Court of Narvacan, Ilocos Sur. The fiscal opposed the motion, but the trial court, in its order of July 18, 1957, sustained the plea of double jeopardy and dismissed the information. Hence, this appeal."

I just want to add that the reasons given by the Chief of Police in moving for the amendment of the original complaint for homicide were:

"1. That upon a careful reinvestigation of the facts and evidence in the above-entitled case, the undersigned found from all the declarations on record as well as the declarations of Pvdolfo Cachola (Annex A); Emilia Kabanal (Annex B) and Laureana Torqueza (Annex C) that the crime committed by the accused is not Homicide as charged in the original complaint but that of Homicide under exceptional circumstances defined and punished under Art. 247 of the Revised Penal Code;

"2. That in the face of the testimony of the witnesses available, the undersigned believes that since he cannot possibly have evidence to sustain the prosecution of the accused under the original complaint, the interest of justice require that the complaint be amended to conform with the known facts and evidence available." (Annex "B")

It may be of interest to know that the original complaint for homicide was filed only by the Acting Chief of Police, whereas the amended complaint was filed by the regular incumbent Chief of Police.

The majority opinion readily admits that offenses penalized with destierro fall under the jurisdiction of the Justice of the Peace and Municipal Courts, under the doctrine laid down in the case of Uy Chin Hua vs. Dinglasan (47 Off. Gaz., No. 12, Supp. December 1951; p. 233), and more recently, in the case of De los Angeles vs. People 103 Phil., 295 thereby making it unnecessary in this dissent to prove and establish that rule. However, in spite of said admission that the Justice of the Peace Court has jurisdiction over offenses penalized with destierro, in the present case, it holds that the Justice of the Peace Court of Narvacan, Ilocos Sur, had no jurisdiction over the case, although according to the facts, the killing should be penalized with destierro. The reason given is that "Article 247 does not define a crime distinct and separate from homicide, parricide or murder ****" and that "far from defining a felony, merely provides or grants a privilege or benefit— amounting practically to an exemption from an adequate punishment ***. The majority contends that the case should have been tried in the Court of First Instance as a case of ordinary homicide, and that if the defendant proved the special circumstances defined in Article 247, the said court could and should impose the penalty of destierro. I regret to disagree.

Article 247 reads thus:

"Art. 247. Death or physical injuries inflicted under exceptional circumstances.—Any leg-ally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury shall suffer the penalty of destierro.

"If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

"These rules shall be applicable, under the same circumstances, to parents with respect to their daughters, under eighteen years of age and their seducers, while the daughters are living with their parents.

"Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of the article."

To me, the killing under Article 247 of the Revised Penal Code is a special crime, namely, that of a person who kills under certain, circumstances. It has some similarity to the killing on the occasion of a robbery or in a tumultuous affray, in which case, the prosecuting attorney should state clearly the facts and circumstances under which a man is killed. So is the crime of rape when committed on the occasion of a robbery. It should be described by the prosecution not as an isolated crime against chastity, but as a crime committed on the occasion of robbery, thereby making it a special offense.

I cannot agree that Article 247 of the Revised Penal Code, according to the majority opinion, "merely provides or grants a privilege or benefit—amounting practically to an exemption from an adequate punishment". If that were so, then its provisions have no right or business to be under Title VIII (Crimes Against Persons), and Chapter 1 thereof (Destruction of Life), found almost at the end of the Revised Penal Code, but should have been placed under Chapter 2 of Title I, entitled, "Justifying Circumstances and Circumstances which Exempt from Criminal Liability," found at the beginning of the same Code. Under Article 11 of said Chapter 2, Title I, we find that the following persons do not incur any criminal liability: anyone who acts in defense of his person or rights under certain circumstances, or anyone who acts in defense of the person or rights of his spouse, ascendants or decendants, etc., and even of strangers, under certain circumstances. Following the theory of the majority opinion, the provisions of Article 247 of the Revised Penal Code should have been placed under or added to said cases, in the following manner: Any legally married person who in defense of his honor and the sanctity of his home or family should kill his spouse or the person caught by him in sexual intercourse with said spouse, or both of them. However, that has not been done, and as already stated, Article 247 is placed under Title VIII, entitled, "Crimes Against Persons," and found between Articles 246 (parricide) and 248 (murder), and Article 249 (homicide).

Again, the majority says that Article 247 does not define a felony. Does it not? I hold that it does. It is a separate article of the Penal Code, different and distinct from, say, Article 246 (parricide) or Article 248 (murder) or Article 249 (homicide), although they are all under the same Title VIII, Chapter 1 and Section 1 of the Code. What better proof that it defines a felony is there than that Article 247 has its own title—"Death or Physical Injuries Inflicted under Exceptional Circumstances"; it indicates and mentions the person included in and liable under its provisions; it specifies the circumstances under which the death is caused by him, and declares the penalty imposable on him? To me, the definition of the crime is complete and unmistakable. It no less defines a crime than does Article 248 (murder) which punishes a person who kills another who is not his father, mother, child, spouse, etc., under any of the following circumstances, such as, treachery, promise of reward, evident premeditation, etc.

In my opinion, Article 247 is considered and classified as a special crime, and what is more, the corresponding penalty is attached to it. Consequently, persons may be charged with its violation.

Article 247 is quite similar to Article 251 entitled, "Death Caused in a Tumultuous Affray," which reads as follows:

"ART. 251. Death caused in a tumultuous affray.—When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by prision mayor."

"If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of prision correctional in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim."

This article, like Article 247, also falls under Title VIII (Crimes Against Persons), Chapter 1 (Destruction of Life), and the same Section 1. Will the majority contend and claim, as it does as regards Article 247, that Article 251 does not define a felony but merely extends a mitigating circumstance and imposes a lesser penalty, and that consequently, one involved in or falling under its provisions (Death Caused in a Tumultuous Affray) should be charged with homicide under Article 249, and that it is up to him to invoke and prove the circumstances mentioned in Article 251, even when the prosecution already knows those circumstances to have attended or surrounded the death of the deceased? If the prosecution from its investigation is convinced that the accused

comes under the provisions of said Article 251, in that he inflicted serious physical injuries on the person killed, it should charge him with causing "death in a tumultuous affray". It should not charge him with, say, homicide and let or rather compel him to prove the facts already known to the prosecution, namely that he was among several persons, not composing groups organized for the common purpose of assaulting or attacking each other, but that he was engaged in a quarrel in a confused and tumultuous manner, and that all he did was to inflict serious physical injuries on the deceased. For the prosecution to suppress facts known to it, which facts are favorable to the accused, and file a charge of, say, homicide, and compel the defendant to prove those facts would not be playing fair and square. That would involve mental dishonesty. The duty of the Government is not to prosecute and convict one of a crime higher and more serious than that actually committed, but rather to charge the accused with what he had actually committed and the circumstances surrounding said commission, this, to serve the interest of justice. Otherwise, the Government would be undertaking and promoting persecution instead of prosecution.

If in a case, the Fiscal, after his investigation, is convinced that the accused abducted a woman with her consent, he should file a charge for abduction with consent,, under Article 343 of the Revised Penal Code (Abduction with Consent), penalized with prison correccional in its minimum and medium period and not with forcible abduction, punished with reclusion temporal, and leave it to the defendant to prove consent of the girl. Again, if an accused is found to have had sexual intercourse with a girl and the Fiscal from his investigation knows that the girl consented to said intercourse because of deceit, promise of marriage, etc., then he should charge said accused with simple seduction under Article 338, penalized only with arresto mayor and not with rape under Article 335, Revised Penal Code, punished with reclusion temporal, and leave it to said accused to prove what the Fiscal already knew—that sexual intercourse was not committed with force or intimidation, but rather with the consent of the girl. There should be sincerity and candor in the actuations of a prosecuting attorney. In the present case, the Chief of Police of Narvacan where the crime was committed, who being a resident of the place, was in a better position to know the real facts of the case, after his investigation, found as a matter of fact that the accused killed the deceased when he found him in actual sexual intercourse with his (defendant's) wife. This must have been known to the Fiscal who also must have known that the defendant had already been charged with causing death under exceptional circumstances under Article 247 of the Revised Penal Code, found guilty under said article, and had served sentence; and yet, the prosecution in this case filed a charge of homicide, omitting or suppressing the facts and circumstances surrounding the killing. To me, that was wrong, unjust, and unfair.

I hold that Article 247 clearly defines a crime and attaches to it the corresponding penalty. It is complete in definition and in the fixing of punishment, like parricide, murder and homicide, which like them, is included in the same Title VIII, Chapter 1, and Section 1 of the Revised Penal Code. It is not a mere exemption or mitigating circumstance which are included in a distinct and separate portion of the Revised Penal Code, namely, Title I, Chapter 2 and Chapter 3.

Continuing with its theory that the provisions of Article 247 only mention an exempting circumstance, the majority opinion says that it is a matter of defense on the part of the accused which he has to prove, and that to consider said article as defining and penalizing a distinct crime, then the prosecuting officer would be obliged to plead and admit the said circumstance in his information, which would be illogical if not absurd, since a mitigating or exempting circumstance cannot be an integral element to the crime charged. In my opinion, therein lies the flaw in the majority's theory, all because its premise is incorrect. The reason why justifying circumstances are a matter of defense is because they involve several elements which need proof. For instance, in the matter of self-defense, the accused must prove that there was unlawful aggression, that the means employed by him to prevent or repel it were reasonable and necessary, and that there was lack of sufficient provocation on his part. All these are matters only known, to the accused himself and which he must establish to the satisfaction of the court

in order to be exempted from criminal liability. However, where the accused is a married man and he surprises his wife and the deceased in the act of sexual intercourse and he kills anyone of them or both of them, there is nothing complicated or difficult of proof of these circumstances and when the prosecuting official knows it, as he did in this case, there is nothing illogical, much less absurd, in his sincerely, ingenuously and candidly including them in his complaint, so as to fall under the provisions of Article 247, all in the interest of justice. And knowing that the penalty attached to it is only destierro, he should file it in the Justice of the Peace Court or Municipal Court, as did the Chief of Police in this case. Why should a person accused of killing under Article 247 be compelled to submit to a mere preliminary investigation by the Justice of the Peace Court and later be sent up to the Court of First Instance, with all the attendant expense and trouble and worry, when after all, he could easily prove the circumstances under which he killed the deceased, because the very Chief of Police and the Fiscal and the witnesses for the prosecution admit and know it? We should make the administration of justice as simple, speedy and inexpensive as possible, and fair to the accused.

Here, the Chief of Police who presumably acted in all sincerity and according to his conscience, filed an amended complaint according to the facts found by him. The Justice of the Peace knowing that the penalty attached to the criminal act committed under said circumstances was penalized with destierro, which according to the majority opinion itself fell under his jurisdiction, took cognizance thereof and after court proceedings, rendered judgment. The accused served the sentence for according to the appealed order of the trial court in this case, at the time said decision was rendered, defendant's service of sentence had been completed. But the tragedy and the misfortune that visited the unfortunate accused evidently had not ended, because now here comes the Government itself, who invoking a supposed technicality as to jurisdiction, seeks to disregard and sweep away all the court proceedings so far held, and again indicts and, in my opinion, harasses the said unfortunate defendant with another prosecution, and all for what? To try him for the same offense, this time in the Court of First Instance, and if found guilty, which of course, the defendant himself admits that he committed the act, to impose the same penalty of destierro and for the accused to serve it all over again. I do not believe that is justice.

But one might claim that there could have been fraud, collusion or connivance in the filing of the amended complaint in the Justice of the Peace Court, the arraignment of the accused on said amended complaint? and his sentence thereon. However, the record of the case fails to show any such fraud, connivance or collusion. On this point, the trial court in its order of dismissal, has this to say:

"There being no showing that the first conviction in the Justice of the Peace Court was procured, through fraud, connivance or collusion of the accused, it would not seem pertinent, to discuss the contention of the Fiscal that the rule of double jeopardy could not apply if the first conviction was secured under those circumstances."

Furthermore, the judgment of the Justice of the Peace Court in the original case, reproduced in the order of dismissal of the trial court, in part reads thus:

"A motion to amend the complaint was filed by the Chief of Police of Narvacan, Ilocos Sur, attaching thereto annexes "A", "B" and "C", together with the Amended Complaint.

"The motion was set for hearing on July 9, 1956 on which date Atty. Constante R. Ayson appeared as private prosecutor in collaboration with the Chief of Police. Atty. Francisco D. Villanueva appeared as a defense counsel.

"The counsels agreed to postpone the consideration of the motion filed by the Chief of Police for July 16, 1956 at which time the private prosecutor manifested to the Court that he will file his objections to the motion to amend the complaint filed by the Chief of Police.

"On July 16, 1956 when the case was heard the private prosecutor did not appear and the Chief of Police filed a motion to correct a clerical error committed in the complaint." (*Italics supplied*)

It is, therefore, clear that considering that there was a private prosecutor representing the offended party in the first case; that although said private prosecutor at first manifested his intention to file an objection to the motion to amend the complaint, nevertheless, when hearing on said amendment of the complaint was held, said private prosecutor did not appear, showing that he no longer objected to the amendment, or that he acquiesced in said amendment, it is safe to say that there has been no collusion, connivance or fraud in the case.

The unfortunate defendant here has more than sufficiently suffered, what with the proven infidelity of his wife, the attack upon his honor, the wrecking of his home, his subjection to a criminal prosecution and the service of the penalty imposed upon him. In my opinion, the ends of justice have been more than served. I agree with the trial court in dismissing the second complaint filed by the Chief of Police on the ground of double jeopardy.

For the foregoing reasons, I dissent.

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