

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO ARANDA, DEFENDANT AND APPELLANT.

G.R. No. 12661. January 30, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

In an information subscribed and filed by the First Assistant Provincial Fiscal, Francisco Aranda was charged in the Court of First Instance of Batangas with the crime of acts of lasciviousness, defined and penalized in article 336 of the Revised Penal Code, with the aggravating circumstance of dwelling, committed upon Amparo Villanueva (crim. case No. 999).

Upon arraignment, he entered a plea of not guilty.

After trial, the Court found him guilty as charged and sentenced him to suffer an indeterminate penalty ranging from 4 months and 1 day of *arresto mayor* as minimum, to 4 years, 2 months and 1 day of *prision correccional*, as maximum, and to pay the costs. He appealed to the Court of Appeals (CA- G.R. No. 15739-R) where, within the extension of time to file his brief granted to him, he filed a motion to quash the information on the ground "that the Court which tried the cause had no jurisdiction of the offense charged or of the person of the defendant," with the reservation that should his motion be denied, he be allowed to file his brief on appeal within fifteen days from notice. As required by the third division of the Court, the Solicitor General filed an answer to the appellant's motion and prayed that it be denied. The third division of the Court resolved to have the motion to quash and answer thereto attached to the record of the case and to bring them to the attention of the division to which the case would be assigned. The second division of the Court, to which it was assigned for decision, required the appellant to show cause within ten days from notice why his appeal should not be dismissed for failure to file his brief within the extension, of time previously granted. The appellant explained that because within the extension of time to file his brief previously granted by the Court, he filed a motion to quash the information on the ground of lack of jurisdiction, with the reservation that should it be denied, he be allowed to file his brief within fifteen days from notice, he thought that the period for filing it was stayed while the motion to quash was still pending action by the Court; that he had no intention of abandoning his right to file his brief; and that his motion to quash "is sufficient in substance, if not in form, to serve the function of a brief." He prayed that his motion to quash be resolved; or that he be allowed to file his brief within fifteen days from notice; or that his motion to quash be considered as his brief for the appellant. The second division of the Court resolved to consider the appellant's motion to quash as his brief and required the appellee to file its brief within the reglementary period. After the appellee had complied with the last mentioned order, the second division of the Court certified the case to this Court for the reason that only a question of law is involved.

The record of the case shows that on 1 April 1954 the chief of police filed a criminal complaint subscribed and sworn to by him in the, Justice of the Peace Court of Taal, Batangas, against the appellant for "trespass to dwelling with unjust vexation and grave oral slander" (crim. case No. 386); that after a summary examination of the witnesses, the Justice of the Peace issued a warrant for the arrest of the appellant and fixed the bail for his

provisional liberty at P2,000, which he filed; that he denied the charge and pleaded not guilty to the complaint; that on 6 April 1954 the Justice of the Peace Court forwarded the record of the case to the Court of First Instance of Batangas; that on 20 July 1954 the First Assistant Provincial Fiscal subscribed and filed in Court an information charging the appellant with the crime of acts of lasciviousness committed upon Amparo Villanueva (crim. case No. 999); that upon arraignment on 18 November 1954, he pleaded not guilty; that after trial, on 18 February 1955 the Court rendered judgment which was promulgated to the appellant on 25 February 1955, finding him guilty of the offense charged and sentencing him to suffer the penalty mentioned at the beginning of this opinion; that on 9 March 1955 the appellant filed his notice of appeal; that on 10 March 1955 Assistant Fiscal Gregorio C. Panganiban filed a motion in the trial court claiming that, after the termination of the trial of the case on the merits, he discovered that the complaint subscribed and sworn to by the offended party on 19 July 1954 before the Justice of the Peace Court of Batangas was attached to the record of the case in the Office of the Provincial Fiscal and not to the record of the case in the Court; that Assistant Fiscal Pedro O. Sara handled the prosecution of the case at its inception and he (Assistant Fiscal Panganiban) took over the prosecution of the case from the former when he assumed office; and that this change in the prosecuting fiscals during the trial of the case resulted in confusion and their failure to attach the complaint subscribed and sworn to by the offended party to the record of the case in the Court or introduce it in evidence at the trial of the case, and praying that it be attached to and included in the record of the case in the Court; that on 21 March 1955 the appellant filed an opposition to the motion claiming that the grant of the Fiscal's motion by the Court would amount to allowing the prosecution to present additional evidence after the trial court already had been divested of its jurisdiction over the case by the appeal taken by the appellant, and praying that the Fiscal's motion be expunged from the record; that on 22 August 1955 the trial court granted the Fiscal's motion, ordering the inclusion in the record of the case of the complaint subscribed and sworn to by the offended party on 19 July 1954 before the Justice of the Peace Court of Batangas; overruled the appellant's opposition and denied his motion to have the motion of the Assistant Provincial Fiscal expunged from the record.

The crimes of adultery, concubinage, seduction, abduction, rape or acts of lasciviousness may be prosecuted only upon complaint filed by the offended party or her parents, grandparents, or guardian.[1] The failure to comply with this requirement is a fatal error.[2] The fact that at the beginning of the first paragraph of the information it recites that it is filed "at the instance of the offended party," is not sufficient to comply with the legal requirement.[3]

The criminal complaint for "trespass to dwelling with unjust vexation and grave oral slander" filed on 1 April 1954 in the Justice of the Peace Court of Taal, Batangas, was subscribed and sworn to by the chief of police and the information for "acts of lasciviousness" filed on 20 July 1954 in the Court of First Instance of Batangas was subscribed by the First Assistant Provincial Fiscal and not by the offended party. Neither was the complaint subscribed and sworn to by the offended party attached to the record of the case transmitted by the Justice of the Peace Court of Taal to the Court of First Instance of Batangas, nor was it offered in evidence at the trial of the case in the Court of First Instance. Such an omission or failure is fatal. Without the complaint of the offended party the Court of First Instance acquired no jurisdiction to hear, determine and render judgment in the case.

The fact that, after the prosecution and the defense had rested their case and the defendant appealed from the judgment rendered, the prosecution moved for the inclusion in the record of the case of the complaint subscribed and sworn to by the offended party, which motion was granted, did not cure the fatal defect. The defendant's appeal already had been perfected by the filing of the notice of appeal. After a party has perfected his appeal, the trial court loses its jurisdiction over the case, except to issue borders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal.[4] The leave granted by the trial court to the prosecution to attach to the record of the case the complaint subscribed and sworn to by the offended party,

after it had lost jurisdiction over the case, amounts to allowing the prosecution to present additional evidence. This is a reversible error. The case of *People vs. Perido*, 44 Off. Gaz., 2764, cited by the appellee, does not apply to the case at bar. There the mother of the offended party actually signed the complaint and it was attached to the record of the case in the Justice of the Peace Court but during the trial in the Court of First Instance, the prosecuting fiscal failed to introduce it in evidence. However, after the defendant had appealed, the complaint subscribed and sworn to by the mother of the offended party was transmitted to the Court of First Instance to form part of the record of the case. Here, the complaint subscribed and sworn to by the offended party was not filed in the Justice of the Peace Court or in the Court of First Instance and did not form part of the record of the case of either Court. It was subscribed and sworn to by her only on 19 July 1954, a day before the information subscribed by the First Assistant Fiscal was filed in court (Annex A) and it was not introduced in evidence by the prosecution at the trial of the case.

The appellant's motion to quash the information is granted, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez, David, JJ., concur.

Barrera, J., took no part.

[1] Article 344, Revised Penal Code.

[2] *U. S. vs. Narvas*, 14 Phil., 410; *U. S. vs. Cruz*, 20 Phil., 363; *People vs. Trinidad*, 58 Phil., 163; *People vs. Manaba*, 58 Phil, 665; *People vs. Ugalde* (unpublished), 58 Phil., 968; *People vs. Mandia*, 60 Phil., 372; *Tolentino vs. De la Costa*, 66 Phil., 97; *People vs. Palabao*, G.R. No. L-8027, 31 August 1954.

[3] *People vs. Palabao*, *supra*.

[4] *Director of Prisons vs. Teodoro, Sr.* 97 Phil., 397; 51, Off. Gaz., 4038.

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