

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
PEDRO M. DURAN, JR., ALIAS POTOY, DEFENDANT AND APPELLEE.**

G.R. No. 13334. April 29, 1960

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13334/>

REYES, J.B.L., J.:

On June 4, 1956, the Chief of Police of Balangiga, Samar, filed in the Justice of the Peace Court against Pedro M. Durari, Jr. the following complaint for serious slander by deed:

"That on or about the 16th day of April, 1956, at the Session Hall of the Municipal Building of Balangiga, Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent and decided purpose to cast dishonor, discredit or contempt upon the offended party, Ignacio A. Amarillo, Municipal Councilor of said town, did, then and there willfully, unlawfully, criminally and feloniously slap or box said offended party in the presence of many people and other councilors during the council meeting, hitting the latter in his left shoulder."

The accused waived his right to a preliminary investigation, and the case was elevated to the Court of First Instance of Samar. Consequently, on October 19, 1956, an information was filed in the latter court by the assistant provincial fiscal accusing defendant Duran of the crime of serious slander by deed allegedly committed as follows:

"That on or about the 16th day of April, 1956, in the Municipality of Balangiga, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the deliberate intent of bringing one Ignacio A. Amarillo, a municipal councilor, Balangiga, Samar, into dishonor, discredit and contempt and taking advantage of his official position, the accused being the mayor of said municipality, did then and there willfully, unlawfully and feloniously box and slap said Ignacio A. Amarillo in the presence of many people and during and on the occasion of a regularly or officially convened meeting at the Municipal Building of the municipal council at which both the offended party and the accused were then in attendance in their respective capacities."

On November 27, 1957, the accused Duran moved to quash the information or, alternatively, for a reinvestigation, claiming that the complaint and the affidavits of the prosecution witnesses filed with the inferior court did not state that the accused ever slapped the offended party so that the offense charged did not constitute grave serious slander by deed, while the information filed in the court of first instance sufficiently charged the offense. The motion was not expressly resolved but must have been denied, because the case proceeded to trial. After the prosecution had rested its case, the defense moved to dismiss the charge on the ground that the guilt of the accused had not been proved beyond a reasonable doubt. The court, Honorable Emilio Benitez presiding, ordered the dismissal of the complaint, but on another ground, namely, that it did not acquire jurisdiction over the same because the serious slander by deed charged does not impute any crime and the complaint was not subscribed and sworn to by the offended party himself, as required by Article 360 of the Revised Penal Code. From this order of dismissal, the prosecution appealed to this Court.

We agree with the Solicitor General that the dismissal was erroneous. The last paragraph of Article 360 of the Revised Penal Code under which the dismissal was made, provides that "no criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party". Under this provision, only defamation imputing crimes which may not be prosecuted de oficio under Article 344, i. e., adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness must be prosecuted upon complaint by the offended party (*People vs. Juan B. Santos and Francisco Guballa*, 98 Phil., 111; 52 Off. Gaz., No. 1, 203; *People vs. Añel*, G. R. No. L-8393, April 27, 1956). So that where no imputation of any of the crimes mentioned in article 344 is made, the complaint by the offended party is not necessary (*Vda. de Gorostiza vs. People*, G. R. No. L-9091, August 28, 1956; *People vs. Marquez*, 68 Phil., 506). Likewise, the imputation of a vice or defect which does not constitute a crime at all is not within the exception (*People vs. Añel*, G. R. No. L-8393, April 27, 1956). As the grave slander by deed charged in this case does not impute any crime, public or private, to the offended party, his complaint was not necessary to confer jurisdiction upon the court.

In dismissing the information for not having been filed by the offending party, the lower court relied on the decision of the Court of Appeals in *Pueblo vs. Virgilio Roman*, 53 Off. Gaz. No. 12 (June 30, 1957) 3818, following our rulings in *U. S. vs. de la Cruz*, 17 Phil., 139 and *People vs. Martinez*, 76 Phil., 599; 43 Off. Gaz., 135. But the doctrine of the *U. S. vs. De la Cruz* case, which later became the basis for the subsequent ruling of this Court in the *De Martinez* case and of the Court of Appeals in the *Roman* case, was based on the provision of section 1 of Act No. 1773 of the Philippine Commission that required all prosecutions for the crime of injuria committed against private persons to be instituted only upon the complaint of the aggrieved party. However, this law has already been repealed by Article 360 of the Revised Penal Code (*Vda. de Gorostiza vs. People*, supra). In fact, the ruling in the case of *Pueblo vs. Jose de Martinez* has been expressly overruled in the recent case of *People vs. Juan B. Santos and Francisco Guballa*, above cited.

The erroneous dismissal of the complaint notwithstanding, we cannot now remedy the error because, as correctly argued by the appellant, this appeal by the government places him in double jeopardy. Settled is, the rule that where a trial court has jurisdiction but mistakenly dismisses the complaint or information on the ground of lack of it, the order of dismissal is unappealable because an appeal by the government therefrom would place the accused in second jeopardy for the same offense (*People vs. Hernandez*, 94 Phil., 49; Off. Gaz. No. 12, 5342; *People vs. Ferrer*, 100 Phil., 124; 55 Off. Gaz. [4] 620; *People vs. Fajardo*, 49 Phil., 206; *People vs. Borja*, 43 Phil., 618). The only exception to this rule is where the dismissal was made with the consent of the accused (*People vs. Salico*, 84 Phil., 722; 47 Off. Gaz., 1765). It cannot be said that the appellant herein consented to the dismissal of the case on the ground of lack of jurisdiction, because his motion to quash after the prosecution has presented its evidence was based on another ground, namely, that the prosecution had failed to establish his guilt beyond a reasonable doubt.

The appeal is, therefore, dismissed, with costs de oficio.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.