

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS BAUTISTA, DEFENDANT AND APPELLANT.

G.R. No. 13946. February 05, 1920

Ponente: ARAULLO, J.

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ARAULLO, J.:

The instant case was instituted upon a complaint subscribed and sworn to by Marcela Sempio and filed by her on November 3, 1917, with the justice of the peace court of San Pedro Makati, Rizal Province, reading as follows:

"The undersigned accuses Tomas Bautista of the crime of qualified seduction committed as follows:

"That in or about the month of February, 1915, the accused Tomas Bautista, being a boarder and living in the house of the parents of the complaining witness herein, wherein the latter was also living, situated on Calle Tejeron, municipality of San Pedro Makati, Rizal Province, through proposals of love and promise of marriage, did voluntarily, unlawfully and criminally succeed in lying with the undersigned in the house aforesaid, when she was only 12 years and 2 months old, more or less.

"That after Tomas Bautista succeeded in his pretensions to have sexual intercourse with her through his prior promise of marriage, the complaining witness assiduously asked him to comply with said promise, but Tomas answered her that his lack of means rendered the realization of the promised marriage impossible; that he only confined and satisfied himself with living a marital life with her for two consecutive years as a result of which there was born to them a baby girl, who was recognized by Tomas and is at present with and under the care of the undersigned.

"That in May of this year, 1917, the accused abandoned the undersigned and her daughter.

"Acts committed against the law."

The result of the preliminary investigation having been forwarded by the justice of the peace court to the Court of First Instance of the province, on December 22, 1917, there was filed in the latter court an information reading thus:

"The undersigned Provincial Fiscal accuses Tomas Bautista of the crime of qualified seduction committed as follows:

"That in or about the month of February, 1915, in the municipality of Makati, Rizal Province, P. I., said accused, who was making love with the young girl, Marcela Sempio, single and below 18 years of age, did maliciously, unlawfully and criminally deceive her through promise of marriage and succeeded, with said deceit, in having sexual intercourse with her, as a result of which she gave birth to a baby girl, who was recognized by said accused.

"Acts committed against article 443 of the Penal Code."

The accused having pleaded not guilty, the case was heard. After the prosecution and the defense had presented their evidence, the Court of First Instance, on December 28, 1917, rendered judgment declaring the accused

guilty, beyond all reasonable doubt, of the crime alleged in the information and sentencing him to suffer four months of arresto mayor, to recognize his daughter had with the offended party, Marcela Sempio, to support and educate said daughter, to indemnify the offended party in the sum of P500 and to pay the costs of the instance. After an appeal had been filed by the accused against this judgment, his counsel filed a motion praying to dismiss said case on the ground that all of the proceedings had therein are null and void for the reason that the prosecution was initiated by the alleged offended party, Marcela Sempio, a young girl less than 18 years of age, who had, therefore, no legal capacity; and that, notwithstanding that an information was filed with the Court of First Instance by the Fiscal, said complaint as well as this information did not confer jurisdiction upon the court in the absence of a valid information or complaint, as provided by law. In support of this contention, said motion invokes the doctrine laid down by this court in the case of *United States vs. Cruz and Reyes* (20 Phil. Rep., 363) and Act No. 1773 of the Philippine Commission.

Said motion to dismiss was overruled by the Court of First Instance of Rizal in its order of January 5, 1918, on the ground that the objection contained therein ought to have been interposed in said court, at least, before the hearing of the case and not after the corresponding decision had been rendered. After the case was forwarded to this Court by virtue of the appeal aforesaid, counsel of the accused in this instance, beside attacking as erroneous the findings of fact of the lower court and the penalty same had imposed also assigned as an error the action of the court in overruling the aforesaid motion filed by the accused to dismiss the case on the ground of lack of jurisdiction. In turn, the Attorney-General in his brief is of the opinion that the lower court did not commit error in his findings of fact; that the accused was guilty not only of simple but also of qualified seduction notwithstanding that in the information only facts constituting the first crime had been alleged; that the complaint was presented by an incompetent person; that the fiscal's information did not cure said defect; and that the question of lack of jurisdiction, on account of that cause, could be raised at any stage of the proceeding. Invoking several reasons and decisions of this High Court relative to the case, the Attorney-General also maintained the same opinion as the counsel for the accused as far as the nullity of the proceedings is concerned, and finally alleged that in his opinion the judgment appealed from should be reversed and the case dismissed with the costs de ofldo.

The evidence shows, conclusively and beyond reasonable doubt, that from the year 1913 the accused was living, boarding, and paying for his board in Agaton Sempio's house in the municipality of San Pedro Makati, Rizal Province; that in said house was also living with said Sempio his daughter, Marcela Sempio, single, 11 years of age; that later Sempio and his daughter reposed upon the accused their confidence and friendship engendered, naturally, by good treatment and by the fact that the three were living together under the same roof; that the accused was even considered a member of the family and for some time he was not charged for his board; that afterwards the accused courted said Marcela Sempio, who would not accept him in the beginning, because, according to her own testimony, she was yet a little girl and could not return his love; that later the two fell in love with each other; that through persistent promise of marriage, the accused tried to have a sexual intercourse with the aggrieved party, which was rejected in the beginning; that in 1915, while living still in the same house, the accused at last succeeded in having sexual intercourse with her; that in June of the following year (1916), she gave birth to a baby girl, the fruit of those relations; that the baby, according to Marcela Sempio, not contradicted by the accused, was named after the latter; that the accused continue to live in the same house; that when the father of the offended party discovered that his daughter had been dishonored, the accused promised him to marry her; that in the year 1917, when said father as well as the girl requested him to fulfill his promise and realize the promised marriage, the accused left the house, leaving and abandoning therein the aggrieved woman and her baby; and that afterwards the accused married another woman in the municipality of Pasay, a fact which had been affirmed by the accused himself when he said, in giving his personal circumstances at the hearing, that he was then married. At the hearing the accused confined himself in denying that he had ever promised Marcela Sempio

to marry her. But when cross-examined by the prosecution, he replied that he did not remember what he had promised her.

The accused is therefore responsible as author of the crime of qualified seduction mentioned and penalized in article 443, par. 1, of the Penal Code, inasmuch as when he was living in the house of Agaton Sempio and his daughter Marcela, taking advantage of their confidence and friendship reposed upon him, even to the extreme of treating him as a member of the family and exempting him from paying for his board, he had sexual intercourse with said Marcela Sempio when the latter was scarcely 12 years old. But the facts alleged in the complaint, and for which the accused was indicted, do not constitute the crime of qualified seduction aforesaid (notwithstanding that the heading of the information says so), but only that of simple seduction. Wherefore, the penalty that must be imposed upon said accused should be that corresponding to said crime of simple seduction mentioned in paragraph 3 of the article 443 aforesaid, and the commission of said crime not having been attended with either aggravating or mitigating circumstance modifying the criminal responsibility incurred, the medium degree of said penalty should be imposed, as was done by the lower court in the judgment appealed from, together with the other findings mentioned in said judgment including that referring to the recognition of the offspring the accused had with the aggrieved party, inasmuch as, even if the accused married another woman after the consummation of the crime and is at present married, according to his own testimony, the daughter previously had with Marcela Sempio enjoys the status of a natural child and as such she should be recognized.

However, counsel for the accused alleges, and with him the Attorney-General agrees, that the Court of First Instance of Rizal had no jurisdiction over the person of the accused and the subject-matter of the complaint and that all the proceedings had are therefore null and void. Their reasons are set forth in the motion to dismiss filed by the accused with the lower court and in their respective briefs.

Indeed, it is undeniable that objection on the ground of lack of jurisdiction can be raised at any stage of the proceedings and that the consent of the parties cannot confer jurisdiction upon a court unless said jurisdiction is conferred by law. Wherefore, when the lower court refused to dismiss the action, as prayed for by the accused, for the reason mentioned in the order of January 5, 1918, it acted improperly. It is also true that the complaint, giving rise to this action, was presented by Marcela Sempio herself when she was only 14 years old with her father still leaving, and it does not appear that said father was lawfully, or in any manner, incompetent to present said complaint at that time.

It is likewise provided in article 448, paragraph 1, of the Penal Code that the offense of seduction shall not be prosecuted except upon a complaint filed by or in the name of the offended party or her parents, grandparents, or guardian. Finally, it is also true that section 1 of Act No. 1773 of the Philippine Commission provides the following:

"Hereafter the crimes of adulterio, estupro, rapto, violacion, columnia, and injuria, as defined by the Penal Code of the Philippine Islands, shall be deemed to be public crimes and shall be prosecuted in the same manner as are all other crimes defined by said Penal Code or by the Acts of the Philippine Commission: Provided, however, That no prosecution for the crimes of adulterio, estupro, or injuria committed against persons other than public officials or employees shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person." And that by said Act, according to section 4 thereof, so much of the Penal Code as is inconsistent therewith has been repealed. But neither in article 448 of the Penal Code nor in section 1 of Act No. 1773, is there any definite and clear provision to the effect that the crime of seduction shall not be prosecuted upon the complaint of the offended party when the latter is below age or is not legally competent to appear at the hearing, and that, in such a case, the complaint must necessarily be filed by her parents, grandparents, or guardian.

In his commentaries on the Penal Code (vol. 5, pp. 240-242) commenting on paragraph 1 of article 448 aforementioned, Groizard observes the following, which the Attorney-General quotes in his brief:

"Can the seduced party by herself, without the consent of her parents or guardian and even against their will, institute the necessary legal proceedings in order that the cause can be heard? The letter of the law answers this question in the affirmative, but its spirit cannot be in that sense. We say the letter, because nothing otherwise can be inferred therefrom in sound reasoning, from the moment that a disjunctive particle has been used to determine the right of the aggrieved party, her parents or guardians to give life to the criminal prosecution. * *
* But that which has been written in the law is, from all angles, violent, and it is almost a folly to suppose that the law would have meant it. How can a minor be granted capacity to appear at the hearing by herself, to institute a complaint and to accept the grave consequences of a criminal prosecution? * * *

"Now then, if, according to the civil law, it is the father and in his absence the mother, and in the absence of both the guardian, to whom belongs the right to represent a minor in the exercise of all the actions which redound for his benefit; and if, according to the procedural law, a minor cannot appear at the hearing without his personal incapacity being substituted by the authority of the parents or guardian, how can it be admitted, against what sound principles teach, positive legislation has established and science has exalted, that the legislator has here intended to make a very serious exception, destitute of all foundations and full of dangers and fatal consequences to a minor? This is inadmissible and, therefore, under sound interpretation, the spirit of the law must in this case prevail over its letter. If this opinion need greater support, it would be found on the very ground that moved our, and almost all foreign, legislators to put unsurmountable obstacles to the public prosecution for the crime of seduction, subjecting, up to a certain point, by very special reasons, the general interest—consisting of the prosecution and punishment of all crimes—to the interest of the aggrieved party and her family in that their vice or faults, their fame and honor may not be exposed to the public nor to the heated controversies before the courts of justice. * * *

"The crime of seduction demands minutely precise testimony from the offended young woman, requires the inspection and examination of medical experts, and, in many instances, gives rise to the allegation of the accused in his defense of the non-existence of the crime on the ground of the non-existence of virginity, which allegation carries with it, as an obligation of atonement, evidence and debates upon the past history of the complaining witness and upon the conduct of her family—all of which can cause painful mortifications to the modesty and honor of the woman and be the motive of a very far reaching discredit upon her and the persons under whose care she lives. Hence, before proceeding to the prosecution, prudence demands that the advantages and inconveniences, the good and the bad effect of the criminal proceedings should be studied, closely examined and counterbalanced. And as among the acts that can be executed by a minor, scarcely can one be conceived of which has more far reaching consequences to her than that of bringing a prosecution of the kind we are examining, all blame would be deserved, in our opinion, by the legislator who—after denying legal personality to a "minor in all occasions of his life in order to appear in an action without the assistance of her parents, or guardian, or husband—would grant her as an exception the right to present by and before herself a complaint for seduction against any person that she would point out as her offender."

In his commentaries also of the same Penal Code, Viada does not comment upon the meaning: that ought to be given to the provision of paragraph 1 of article 448 aforesaid, whereby it is understood that he abides by the letter of said provision and, consequently, by the interpretation which would be given or would have been given to it by the courts. So that, in fine, if we are to abide by the letter of the article aforementioned, the aggrieved party can, independently of her parents, grandparents, or guardian, bring the corresponding criminal action for the institution of the prosecution of the crime of seduction against the one who might have offended her. And if we attempt to construe said article, we would apply the same reason in construing that, as Groizard says, being a minor and therefore incompetent to appear in an action, the aggrieved party cannot at her instance institute the prosecution for the crime of seduction aforesaid except at the instance of her parents, grandparents, or guardians, as in

maintaining that the phrase "except upon a complaint filed by and in the name of the offended party or her parents, grandparents, or guardian" used in paragraph 1 of said article, must be understood in the sense that said parents, grandparents or guardian can, in the order they are named, institute in representation of the offended party the prosecution for the crime of seduction, when said offended party does not institute it herself. For it should be noted that when the aggrieved party is under 12 years of age, the fact of lying or having sexual intercourse with her constitutes not the crime of seduction but of rape; and hence, it can be perfectly explained why—besides the consideration that said crime is an offense not only against the honor but also the liberty of the woman, the offended party not being able, in certain cases, to institute at her instance the prosecution because of her lack of sufficient discernment of the far reaching consequences of her act and material means to prosecute it—the article aforesaid has provided under paragraph 2 that the charges preferred by the offended party or by her parents, grandparents or guardian would be enough without the filing of a complaint by such persons. This provision has been repealed by Act No. 1773, for in case of rape said Act does not require that the prosecution be instituted at the instance or upon charges of the aggrieved party, or her parents, grandparents or guardian, as it requires in the case of seduction. So that it can be maintained that in not requiring in the prosecution for the crime of rape, the charges or complaint of the offended party, her parents, grandparents or guardian and on the other hand requiring said charges or complaint in the prosecution for the crime of seduction, Act No. 1773 must have taken into consideration that, since the crime of seduction cannot be committed except against a virgin over 12 and under 23 or 21[1] years of age (the age of majority in the Philippines), the aggrieved party herself can, if her parents, grandparents or guardian does not do it, institute the prosecution for seduction by filing the corresponding complaint in the form prescribed in section 4 of General Orders No. 58.

It is true that, as Groizard says in his commentaries-, there exist moral considerations and good reasons within the domestic circle which should be taken into account in construing paragraph 1 of article 448 aforesaid, notwithstanding its letter in the sense in which said author expresses himself, or, more properly speaking, in determining that such is the spirit of the law. But these considerations can in no way be of such importance as to justify the impunity, in many cases, of a very serious crime of far-reaching consequence to the moral as well as the social well-being and to the reorganization and constitution of the family—a crime which, from October 10, 1907, when Act No. 1773 was approved, is considered as a public crime in the Philippine Islands and is and must be prosecuted in the same manner as are 'prosecuted all of the other crimes denoted by the Penal Code or of the Acts of the Philippine Commission. And it is even provided, according to section 2 of said Act, that the pardon or remission of the penalty by the aggrieved party or her parents, grandparents, or guardian does not in any way extinguish the liability of the guilty person, and, according to section 1, does not operate to diminish or suspend any prosecution once commenced. Paragraph 1 of article 448 of the Penal Code is thereby also repealed and according to the last part of section 2 of same Act, only the legal marriage of the accused or convicted person to the aggrieved person can extinguish such criminal liability.

Groizard bases also his opinion on the ground that, a minor not being competent to appear before the courts without his personal incapacity being substituted by the authority of his parents or guardian, a virgin over 12 but under 23 or 21 years of age (which is the age of majority in the Philippine Islands as has already been said) cannot by herself and at her instance institute the necessary legal prosecution for the crime of seduction; and that she must necessarily be represented by someone of those persons mentioned in paragraph 4 of article 448 aforesaid.

In applying and construing article 448 in various decisions rendered in the prosecution for the crimes of seduction and abduction, this High Court has explained and declared how the phrase "except upon a complaint filed by and in the name of the offended party or her parents, grandparents, or guardian," should be understood. And it is understood that, a virgin over 12 but under 21 years of age being incompetent to appear at the trial, her parents, grandparents or guardian, in the order they are mentioned in said article, are the persons called by law to institute

the prosecution for the crime of seduction in her representation. But this Court has not yet made any concrete and definite finding to the effect that, after a complaint or an action for the prosecution for the crime of seduction is instituted by the aggrieved party who is over 12 (as in the instant case) but under 21 years of age and is still living with her father, such a complaint should be declared void and without any legal force to confer jurisdiction upon the court before whom same was presented; and that, therefore, all the proceedings had by virtue of said complaint are void.

In the various cases for seduction, abduction and rape appealed to this Court no question identical to the present one has been raised, question which might have given rise to an express decision and holding that may be invoked as a doctrine applicable to the instant case in the sense in which counsel for the defense and the Attorney-General pretend. Upon a thorough examination of the various decisions rendered by this Court in the cases mentioned by counsel for the defense and the Attorney-General in their briefs, we have found that some of them are not pertinent to the instant case; that others repeat the general doctrine relative to the representation which, by provision of law, belongs to the minor's parents, grandparents or guardian, in their successive order, to initiate the prosecution for the crime of seduction against the reducer; and that the rest also treat of the doctrine that the information filed by the fiscal in seduction cases is not sufficient for the institution of the prosecution of said crime nor could it cure the omission of the complaint of the aggrieved party, or her parents, or grandparents, or guardian to the effect of conferring jurisdiction upon the courts of justice to take cognizance of said prosecutions and of preventing a declaration of nullity of all the proceedings therein had when said prosecutions were not instituted at the instance of the offended party, her parents, grandparents, or guardian. Not one of the decisions aforesaid makes any express finding relative to the nullity of all the proceedings had in the prosecution for the crime of seduction on the ground that said prosecution was instituted at the instance of the aggrieved party herself who is under age but above 12, and not at the instance of her parents, grandparents, or guardian as her representative.

Among said decisions the Attorney-General in his brief makes a special mention of that one rendered in the case of *U. S. vs. Cruz and Reyes* (20 Phil. Rep., 363). The syllabus of this case says the following:

"CRIMINAL PRACTICE AND PROCEDURE; ACT NO. 1773.—Section 1 of Act No. 1773, however, further prescribes that no prosecution for the crimes of adulterio, estupro, or injuria, shall be instituted except at the instance of the offended person and, in case he be incompetent to appear at the trial, the action must be brought by his parents, grandparents, or guardians; therefore, with respect to these three private crimes, it is indispensable that the written information be presented by the offended party himself or by his representatives, in the event of his incapacity, as provided by law, with the exception of the crime of injuria when committed against public official or employees, which latter may be prosecuted through the office of the public prosecutor."

In the body of said decision after inserting the abovementioned section 1 of Act No. 1773, and referring to the fiscal's duty to prosecute in the name of the United States all public crimes cognizable by the courts of first instance or courts of analogous jurisdiction whether they have been instituted upon a complaint or an information, the following is further stated:

"Such is the general rule; but section 1 of Act No. 1773 further prescribes that no prosecution for the crimes of adulterio, estupro, or injuria committed against persons other than public officials or employees shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person.

"Owing to this special exception of the law the prosecution of said crimes of adulterio, estupro, or injuria cannot be originated by the public prosecutor, but must be instituted by the offended person, or by his legitimate representatives in case of his incapacity to take part in the trial, in order that the court or the judge

may acquire jurisdiction over the person of the accused and the subject-matter of the action. It is, then, indispensable, with respect to these three said crimes, that the written information be presented by the offended party himself, or by one of the persons who represent him, in case of his incapacity, as prescribed by law, with the exception of the crime of injuria when committed against public officials or employees, which latter may be prosecuted by the public prosecutor."

However, the text of the aforesaid section 1 of Act No. 1773, as it may be seen, does not provide, as is mentioned in the syllabus and in the foregoing paragraphs of the decision aforementioned, that in case the offended party is unable to appear at the trial for the crime of seduction, her parents, grandparents, or guardian must institute the criminal prosecution or that, because said prosecution was not instituted by the aforesaid persons but by the offended party herself, a minor above 12 years of age, incompetent to appear at the trial, the court cannot acquire jurisdiction over the person of the accused and the subject-matter of the criminal action.

Section 1 of Act No. 1773 as well as article 448 of the Penal Code definitely provide that no prosecution for the crime of seduction can be instituted except upon the complaint of the offended person or of her parents, grandparents, or guardian; but it does not say that when the offended party is a minor and therefore incompetent to appear at the hearing, her parents, grandparents or guardian must thereby institute the criminal action as her representatives. So that the letter of section 1 of Act No. 1773 also answers in the affirmative (as Grofcard has said in his comments, inserted above, referring to article 448 of the Penal Code) the question propounded by said author as to whether or not the seduced girl can, at her own instance without the consent and even against the will of her parents, grandparents, or guardian, institute the necessary action for the prosecution for the crime of seduction. The negative of this question can only be maintained by inferring that the spirit of the law is otherwise. But said article 448 having been amended, or more properly speaking, repealed by section 1 of Act No. 1773 which provides nothing contrary to the affirmative answer of said question, we must abide by the definite provision of this section disregarding what has been expressed and held in the decision rendered in the case of *U. S. vs. Cruz and Reyes* (20 Phil. Rep., 363), because, as it is recognized by the Attorney-General himself, the statement contained in the above-quoted syllabus and in the paragraphs of that decision must be considered as a dictum. For the case was that a complaint signed by a person accusing his wife and another man of the crime of adultery having been first presented and the justice of the peace having decided, after the preliminary investigation, that there was no ground whereupon to proceed against the accused, a complaint was presented against the accused by the provincial fiscal over the signature of the previous complainant, again charging his wife and her codefendant with the crime of adultery; and that this complaint was the basis of the prosecution of the accused which terminated in their conviction by the Court of First Instance. This procedure was held void by this Court on the ground that, altho the offended person himself signed the information this was presented by the provincial fiscal and not by the former according to the provision of paragraph 2 of section 1 of Act No. 1773. Therefore, what this Court really held in said decision, taking into account the case decided therein, was simply that no prosecution for the crime of adultery can be instituted except upon the complaint of the aggrieved person and that the fact that the aggrieved party might have signed the information presented by the provincial fiscal is not sufficient to cure the omission of this formality or, what amounts to the same thing, that the aggrieved person himself must be the one who should present the complaint in the form prescribed, (as has been already said) in section 4 of General Orders No. 58, and the provincial fiscal can afterwards file the corresponding information for the prosecution of said crime, which is a public crime according to section 1 of Act No. 1773. The foregoing decision also cites the case of *United States vs. Narvas* (14 Phil. Rep., 410), which was a case for seduction instituted and prosecuted upon an information of the fiscal and not upon the complaint or at the instance of offended party. And when this Court decided that the trial court did not acquire jurisdiction over the person of the accused and the subject-matter of the action, in the syllabus it limited itself by literally inserting the second part of section 1 of Act No. 1773, which reads:

"That no prosecution for the crimes of adulterio, estupro, or injuria committed against persons other than public officials or employees shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person." And in the body of same decision, after mentioning the provisions of the first four sections of the General Orders No. 58 respecting how a criminal prosecution or action may be instituted in the courts of justice and the section 1 of Act No. 1773 aforesaid, it is said that:

"In the cases enumerated in this section the action cannot be prosecuted upon the information of the fiscal. In order to give the court jurisdiction over the person of the defendant and the subject-matter of the action it is necessary in these cases that the complaint defined by the sections of the Code of Criminal Procedure herein quoted be made and executed in writing by the offended party personally, if that person be competent to do so, and if not, then by one of the person named in the section last above-quoted in the order in which they are named therein."

The foregoing decision was cited in another decision of this court rendered in the case of *United States vs. Ortiz and Regalado* (19 Phil. Rep., 174) which, like the other, is referred to by the Attorney-General in his brief. The case was a prosecution for adultery instituted and prosecuted not upon a complaint of the offended husband but upon an information presented by the fiscal. This Court said in the syllabus of the decision:

"In order that a prosecution for adultery may be maintained, the complaint must be made in writing by the offended party, if competent, or by one of the other persons mentioned in section 1 of Act No. 1773; following *U. S. vs. Narvas* (14 Phil. Rep., 410)" and in the body of said decision, restated what has been said in the former decision (*supra*), i. e. that it is necessary that the complaint be presented in writing by the offended party personally, if that person be competent to do so and if not, then by one of the persons named in the above-quoted section in the order in which they are named therein. Therefore, in these two decisions rendered prior to that of *United States vs. Cruz and Reyes* (*supra*) wherein the first of them is cited, this Court limited itself in inserting in the syllabus the literal and definite provision of section 1 of Act No. 1773 and in holding that if the offended person is incompetent to present the complaint in seduction and adultery cases, same must be presented by any of the persons mentioned in said action, i. e. by the parents, or grandparents, or guardian in the order they are named therein. But this Court did not expressly say anything relative to the legal incapacity of the offended party, on account of minority, to present a complaint or institute at her instance the prosecution for the crimes aforesaid. Wherefore, from the result of what has been declared in the two cited decisions relative to the literal provision of section 1 of Act No. 1773, or from the result of what has been afterwards declared in the case of *United States vs. Cruz and Reyes* (20 Phil. Rep., 363), it cannot be inferred as a doctrine laid down by this Court that when the offended person in a case for seduction were a minor, the institution of the prosecution thereof or the presentation of the complaint must be precisely done by her parents, grandparents or guardian, in order that the trial court can acquire jurisdiction over the person of the accused and the subject-matter of the complaint, or what amounts to the same thing, that a virgin over 12 and under 21 years of age cannot—while her parents, or some of them, or in their absence her grandparents are living or in default of the latter while she is under guardianship—present by herself a valid and lawful complaint for seduction for the institution of the corresponding prosecution" against her offender, but that said complaint should be presented for her by her said parents or grandparents or guardian in the order they are named. The reason is this: The legal incapacity to appear at the hearing consisting not only in minority but also in some physical or legal impediments not precisely arising from minority—such as insanity, imbecility, the state of being deaf and civil interdiction, which are restrictions upon the juridical personality, from the expression "if competent" used, as it may be seen, in generic terms in the two decisions aforesaid (*U. S. vs. Narvas* and *U. S. vs. Ortiz and Regalado*) when referring to the case in which the complaint or the institution for the prosecution of the crime of seduction should be made by the parents, grandparents or guardian of the offended person and not by the latter herself—it cannot be necessarily inferred that said decisions might have referred precisely to the incapacity due to the minority of the offended person, in order that we can take it for certain that

this Court has laid down the doctrine upon which counsel for the defense and the Attorney-General base their pretension to declare null and void all of the proceedings had in this case.

The Attorney-General has also alleged that in the case of *United States vs. De la Santa* (9 Phil. Rep., 22) this Court has impliedly established that, when the offended person in a case for seduction is under age and incompetent, she is not the one but her lawful guardians who should institute the action for the prosecution and punishment of said crime. Said case was: A complaint for seduction was presented not by the offended party herself but by her father when she was already more than 24 years of age; the crime had been committed when said woman was below 21 years of age, or 4 years before the filing of said complaint; and during her minority and after she had passed it, no complaint was filed against her seducer. Upon deciding the appeal presented by the accused, this Court dismissed the complaint making the following statement contained in the syllabus:

"1. SEDUCTION; RIGHT OF ACTION.—Article 448, Penal Code, reposes the right to institute criminal proceedings exclusively and successively in the offended person, her parents, grandparents, or guardian, in the order in which they are named therein, so that no one of these persons has authority to proceed if there is any other person previously mentioned therein with legal capacity to appear and institute an action.

"2. ID.; ID.; PROSECUTION BY A WOMAN.—Under the provision of the Civil Code a woman 23 years old is of age and in full possession of her civil rights, which include the right to appear and prosecute or defend a criminal action," and in the body of said decision it is said:

"We think that since the complaint was not filed until after the offended party had attained her majority, criminal proceedings based on the alleged seduction could only be instituted and maintained at her "instance," and she, and she alone, could file a complaint which would give the trial court jurisdiction over the offense charged. The complaint having been filed by her father, at whose instance the proceedings in this case were had, the trial court had no jurisdiction over the offense charged, and its judgment of conviction should be reversed and the complaint upon which it was based dismissed. Article 448 of the Penal Code is as follows:"

(Said article is inserted.)

"It is contended that these provisions authorize the institution of criminal proceedings by the father in all cases of seduction because the offense can only be committed upon a woman under age and legally incapacitated to institute criminal proceedings on her own behalf. But if the father does not institute such proceedings until after his daughter has attained full age, we are of the opinion that he loses the right so to do, and that this right vests exclusively in the offended party, unless, of course, there is some legal impediment, riot arising out of nonage, which prevents her from maintaining such criminal action.

"The right to institute criminal proceedings in cases of seduction could not be reposed in the offended person, her parents, grandparents, and guardian, at one and the same time, without occasioning grave difficulties in the administration of justice, resulting from the attempts of some of these persons to institute criminal proceedings contrary to the wish and desire of the others; and that this was not the intention of the lawmaker becomes manifest in the light of the peculiar provisions of the above-cited article of the Penal Code, whereby the offended party is given the right to pardon the offender and thus extinguish and destroy the cause of the criminal action, or remit the penalty prescribed by law, where judgment of conviction has been actually pronounced and sentence imposed.

"Hence, although these persons are mentioned disjunctively, the above provision of the Penal Code must be constructed as meaning that the right to institute criminal proceedings in cases of seduction is exclusively and successively reposed in these persons in the order in which they are named, so that no one of them has authority to proceed if there is any other person previously mentioned therein with legal capacity to appear and institute the action.

"This construction of the law imposes upon the woman the obligation and the right to determine whether

criminal proceedings shall be instituted for seduction, if it appears that she is of age, and is not otherwise legally incapacitated from appearing in court to maintain the action at the time when it is proposed to institute such proceedings."

Upon a careful consideration of the foregoing decision, it appears that the question raised by the appeal of the accused and decided by this Court was not whether, as the Attorney-General affirms in his brief, the offended girl herself, being a minor, or her father, had right to institute the action, but whether, the offended party being already of age and not having instituted a complaint for seduction against her offender notwithstanding her having reached the age of majority, her father had the right or could have validly and lawfully filed the complaint against the accused, which gave rise to the proceedings and the penalty imposed to the same. Said decision does not definitely establish that, being over 12 but under 23 or 21 years of age, or rather being of age, the woman cannot by herself, or personally, institute criminal proceeding for seduction by filing the corresponding complaint against her offender while her parents, or grandparents are still living or she is still under guardianship. In the last paragraph of the above-quoted decision (from which the Attorney-General seemed to have drawn his conclusion mentioned in his brief) in construing article 448 of the Penal Code, reference is made to the right of the woman, who is of age, to determine whether criminal proceedings shall be instituted for seduction, and not to the right of the parents, grandparents or guardian to file a complaint for said crime in such a case. In the same paragraph this Court made it clear that even if the offended woman is of age, if she is otherwise legally incapacitated (for the causes restraining her juridical personality which we have already mentioned before) from appearing at the hearing and maintaining the corresponding action, her parents, grandparents, or guardian can exercise said action. This means that in said decision and in construing article 448 of the Penal Code, this Court referred to the case when the offended woman were already of age at the time the complaint was filed by her parents, grandparents, or guardian.

Moreover, the decision in question was rendered by this Court on October 3, 1907, when Act No. 1773 (which we have already cited before and by which we should abide as we have already said, in deciding the case before us) had not yet been enacted and had not yet gone into effect.

From the time said Act was in force, or from the day following the rendition of the decision aforesaid (which is October 11, 1907, the date of the approval of the Act aforesaid) the crime of seduction is considered a public crime and is prosecuted in the same manner as are all other crimes defined by the Penal Code and by the Acts of the Philippine Commission, i. e. with the direct and effective intervention of the fiscal as a public prosecutor. And in order to institute the prosecution for said crime according to said Act as announced by this Court in the case of *United States vs. De Ungria* (19 Phil. Rep., 518) "the accusation of the offended party is sufficient" and "it is unnecessary for her to present a formal complaint, the fiscal and the courts being unhampered to prosecute and punish the crime upon the mere accusation by the injured person or her legal representatives." This is a different procedure from what had been followed in accordance with the former procedure in such cases, which is mentioned in the syllabus of the decision rendered in that case in these terms:

"In proceedings for the crime of seduction committed before Act No. 1773 went into effect, it is absolutely necessary that a formal complaint, not a mere accusation or denuncia, be presented by the injured party or by one of her legal representatives enumerated in article 448 of the Penal Code."

According also to the statement of this Court in this case of *United States vs. Narvas* already mentioned (*supra*), the accusation or denuncia appearing in the foregoing syllabus is "the process which begins the action and gives the court or magistrate jurisdiction of the person of the defendant and the subject matter of the action."

There is no reason, therefore, for establishing a difference between any other public crime such as *lesiones* (physical injuries) and the crimes of seduction as far as are concerned the requisites which are necessary to confer

the jurisdiction aforesaid upon the court or judge with whom the complaint or denuncia is filed in the form prescribed in section 4 of General Orders No. 58, i. e., by means of a sworn written statement that a person has been guilty of a designated offense. And if, in dealing with the crime of lesiones or any other public crime, the aggrieved person himself can, as long as he is able to give the oath in the legal form—ability which cannot be withheld from any person over 12 and under 21 years of age without proof to the contrary—complain of the crime committed against him or to his detriment, it is evident that a virgin over 12 and under 21 years of age cannot be deprived of the same right to file at her instance the complaint required by Act No. 1773 in order to institute the prosecution for the crime of seduction of which she might have been the victim.

Furthermore, in the second or last part of section 1 of Act No. 1773, it is provided, without making any distinction between the commencement of the prosecution for the crimes of adultery and seduction, that no prosecution for said crimes "shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents or guardian of such person." In case of adultery, if the offended husband or wife is below age, or below 21 and over 14 years old (age which, according to General Orders No. 68, gives the parties capacity to enter into a marriage contract), and attempt to accuse the unfaithful partner and to institute a prosecution against him or her for said crime, it is undeniable that, without the consent and even against the will of their parents, grandparents, or guardians and without being lawfully incapacitated by any of the other causes aforementioned restraining their juridical capacity, they themselves can file the corresponding complaint (denuncia) for the commencement of said prosecution. This right (to file a complaint) cannot be withheld from them because only upon complaint of the aggrieved party can the crime of adultery be instituted against the unfaithful partner. And it would be unreasonable and against the law to require them to wait until they reach the age of majority before they can file their complaint personally or to have their parents, grandparents or guardian (of whom they would be provided) file said complaint. Same thing should be said of a virgin over 12 years of age and under the age of majority trying to accuse for seduction the man who might have dishonored her, for the definite provision of the aforesaid section of Act No. 1773 does not make any distinction, as has been already said, between the offended persons in the crime of adultery and in the crime of seduction; but with the exception in the second case, i. e. dealing with the crime of seduction, that if the offended party who is under age does not file or does not want to file the complaint for the prosecution of her offender, her parents, grandparents or guardian being under obligation to render protection to those under their power and lawful guardianship and to represent them in the exercise of all the sections which may redound to their benefit, they, disjunctively and in the order they appear designated in said Act, can file said complaint. And it is more certain that such a construction should be given to the provision of the Act in question inasmuch as article 448 of the Penal Code only mentions the crime of seduction in its first paragraph providing that said crime shall not be prosecuted except at the instance of the aggrieved party, her parents, grandparents or guardian, i. e. under this provision the crime of adultery is not included, while section 1 of Act No. 1773 expressly mentions said two crimes when it provides that no prosecution for said crimes shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person. Wherefore, it is evident that the legislator's purpose in said Act No. 1773 is to establish the same procedure for the commencement of the prosecution for the crime of adultery as well as for seduction, in both cases conceding to the aggrieved person a preferential right i. e. placing him or her in the first rank for the filing of the complaint, although, he or she is not of age; and, in dealing with the crime of seduction with which we want to confine ourselves in this decision (for regarding adultery we do not believe it opportune to enter into extraneous matter) that preferential right of the offended woman is not exclusive of the right of her parents, grandparents, or guardian, as has been said above, if she does not exercise it before reaching the age of majority. And this interpretation is certainly not in conflict with the holdings of this court in the decisions aforementioned, rendered before Act No. 1773 went into effect. On the contrary, it is in harmony with said doctrine, because the legal incapacity of the offended person to file a complaint for the crime of seduction (whereby her parents,

grandparents or guardian are then in duty bound to file it), mentioned in the decisions aforementioned, is not, nor has it been expressly stated in those decisions, the incapacity by reason of non-age of the offended girl, but by reason of any other legal or physical impediment determinative (as has been already said) of the restriction of the juridical personality and civil capacity to appear at the trial.

In conclusion, a virgin over 12 years and below age having right, according to Act No. 1773, to institute the prosecution for the crime of seduction against her offender by filing the corresponding complaint personally, independent of her parents, grandparents or guardian, if she is not incompetent or incapable to do so by reason of any other legal motive—which does not appear in the case of the complaining witness, Marcela Sempio—and said complaint being lawful and valid, the Court of First Instance of Rizal has acquired jurisdiction and authority over the person of the accused in this case, Tomas Bautista, and the subject matter of the criminal action herein by virtue of the complaint filed by said woman on November 3, 1917, and the guilt of said accused as author of the crime with which he is charged having been proven beyond reasonable doubt.

We hold that there is no ground to dismiss said case as prayed for by counsel for the defense and the Attorney-General, and that the judgment appealed from is hereby affirmed with the costs of both instances against the accused and appellant. So ordered.

Arellano, C. J., Torres, Johnson, Street, Malcolm, and Avanceña, JJ., concur.

[1] Amended by section 2 of Act No. 2298 fixing the age of 18 as the maximum, except in case where the offended girl is a sister or descendant of the accused.

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