

SEGUNDA SURBANO, PETITIONER, VS. THE HONORABLE DIEGO GLORIA, JUDGE OF THE COURT OF FIRST INSTANCE OF TAYABAS, AND THE PROVINCIAL FISCAL OF TAYABAS, RESPONDENTS.*G.R. No. 28897. January 27, 1928*

Ponente: ROMUALDEZ, J.

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Segunda Surbano brings this action through her attorney, alleging that the Court of First Instance of Tayabas sentenced her in criminal case No. 3667, for the misdemeanor of slight insults without said court having jurisdiction, said misdemeanor having prescribed, for although the complaint is for grave insults, yet, the judgment of conviction is for slight insults, and she applies for a writ of certiorari praying, at the same time, that all proceedings for the execution of the said judgment be suspended *pendente lite*.

The respondents, namely, the Honorable Diego Gloria, Judge, and the Provincial Fiscal of Tayabas, answering the petition, which they pray be dismissed, allege that the misdemeanor, which is the subject matter of the judgment contested by the petitioner, has not prescribed.

While it might be maintained in this jurisdiction that once the Court of First Instance has acquired jurisdiction by virtue of the complaint for grave insults, said court did not lose said jurisdiction by declaring the grave insults charged to be slight (sec. 29, G. O. 58, and *U. S. vs. Mallari and Cueson*, 24 Phil., 366); although, according to some American cases, the general rule is that when the criminal act proven, which is lesser than the one charged, has prescribed the court has no jurisdiction (16 C. J., 224, par. 343, No. 3), yet, the fact is that in the present case it is unnecessary to solve this question, because, according to the facts and considerations hereinafter set forth, the slight insults referred to have not prescribed.

It appears that on December 27, 1926, a quarrel took place between the accused and the offended party, when the insults in question were uttered; that on the following day, December 28, 1926, the offended party denounced the act to the local justice of the peace court, where the proper preliminary investigation was held, and, on February 18, 1927, the complaint was dismissed for lack of evidence.

On March 15, 1927, the complainant filed a new complaint against the accused, but not in the court of the justice of the peace of her town, but in the Court of First Instance of the province, which referred the case to the justice of the peace of the provincial capital for the proper preliminary investigation, as a result of which the cause was forwarded to the Court of First Instance, he finding merits in the case. After the case was heard, the Court of First Instance, presided over by the respondent judge, rendered the judgment which is the subject matter of the present certiorari proceeding.

As may be seen, the act was denounced on the following day, December 28, 1926, in a complaint presented to that end, and dismissed on February 18, 1927. Therefore, the period of prescription was interrupted during the time included between these two said dates, because, according to the last paragraph of article 131 of the Penal Code, the period of prescription of felonies and misdemeanors is interrupted from the commencement of the proceedings

against the offender, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted.

In the present case the period of prescription only commenced to run again on February 18, 1927; and as only twenty-five days elapsed from this last mentioned date until March 15, 1927, when the offended party repeated her denunciation in the Court of First Instance of Tayabas, and not the two months constituting the period of prescription provided by the law (art. 131, par. 5, Penal Code) for misdemeanors, it is clear that the said misdemeanor has not prescribed.

Therefore, the petition which is the subject matter of these proceedings is groundless and it is therefore denied with the costs against the petitioner, and the suspension of the execution of the judgment here in controversy is set aside, which judgment is hereby declared valid and legally effective.

Johnson, Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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