

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GUMERSINDO DE LA SANTA, DEFENDANT AND APPELLANT.

G.R. No. 3181. October 10, 1907

Ponente: CARSON, J.

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CARSON, J.:

The complaint charges the defendant with the crime of seduction (estupro) of a woman over 12 and under 23 years of age, as denned and penalized in article 443 of the Penal Code, which is as follows:

"The seduction of a virgin over 12 and under 23 years of age, committed by any public authority, priest, servant, domestic, guardian, teacher, or by any person in charge of her education or guardianship, under any name whatsoever, shall be punished with the penalty of prision correctional in its minimum and medium degrees.

"Whosoever shall commit incest with his sister or descendant, even though she were older than 23 years of age, shall incur the same penalty.

"Seduction, when committed with fraud by any other person on a woman over 12 years of age, but under 23, shall be punished with the penalty of arresto mayor.

"Any other unchaste abuse committed by the same persons and under similar circumstances shall be punished with the same penalty."

It is alleged that the defendant seduced Teofila Sevilla under promise of marriage early in the year 1902, at which time she was less than 21 years of age. The complaint was not filed until February, 1906, when she was more than 24 though less than 25 years of age, and was signed, sworn, and submitted by one Esteban Sevilla, at whose "instance" these proceedings were had, he appearing as the private prosecutor and alleging that he is the father of the said Teofila Sevilla.

The facts as to the age of the woman were developed at the trial of the case and are not controverted.

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:

"Criminal proceedings for seduction can only be instituted on the complaint of the offended person or her parents, grandparents, or guardian.

"In order to proceed in cases of rape, and in those of abduction committed with unchaste design, the denunciation of the interested party, her parents, grandparents, or guardians, shall suffice even though they do not present a formal petition to the judge.

"If the person injured should, by reason of her age or mental condition, lack the requisite personality to appear in court, and should, besides, be wholly unprotected, not having parents, grandparents, brothers, or guardian of person or property to denounce the crime, the procurador sindico or the public prosecutor may do so, acting on the strength of public rumor.

"In all the cases of this article the express or implied pardon of the offended party shall extinguish penal action or the penalty, if it should have been already imposed on the culprit.

"The pardon shall never be presumed, except by the marriage of the offended party with the offender."

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 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, not 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 construed 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.

Under the provisions of the Civil Code, a woman 23 years old is of age. From that period she is in the full possession of her civil rights, save only in certain exceptional cases expressly prescribed in the code. The right to appear and prosecute or defend an action in the courts is not one of these exceptions and, indeed, it is inherent to the full exercise of civil rights. (For the purpose of this decision it is not necessary to consider the effect of American legislation as modifying this provision by reducing the number of years at which a woman becomes of age.)

Since the offended party in this case was over 23 but less than 25 years of age at the time when the complaint was filed, it may be well to add that article 321 of the Civil Code, which is as follows—

"* * * Daughters of the family who are of full age but less than 25 years old can not abandon the paternal roof without permission of the father or of the mother in whose company they live, unless it be to marry, or when the father or mother have contracted another marriage"— does not imply a limitation to the right of a woman of full age to appear and defend an action, nor confer authority upon the father to appear for and instead of his daughter

in legal proceedings, for this article, since it confers exceptional authority on the father, must be construed strictly and should not be extended beyond its own proper terms and the object and purposes indicated therein. (Decision of the supreme court of Spain, October 13, 1890.) Counsel for the prosecution insists that since no objection was made to the complaint in the court below, the appellant is not entitled to raise an objection thereto for the first time in this court, and should be held to have waived such objection by his failure to urge it in the trial court. In support of this contention, he cites the case of the United States vs. Sarabia (4 Phil. Rep., 566), wherein this court, adopting the general rule in the United States, that an objection to the complaint to be available in the appellate court must have been raised below, held "that no objection to a complaint based upon a defective statement, either in the matter of form or substance of

It is to be observed, however, that under the provisions of the above-cited article 448 of the Penal Code, jurisdiction over the crime of seduction is expressly denied the trial court unless such jurisdiction be conferred by one of certain persons specified in the law; in this case, as we have seen, by the offended person herself. The objection in this case is not, strictly speaking, to the sufficiency of the complaint, but goes directly to the jurisdiction of the court over the crime with which the accused was charged. It has been frequently held that a lack of jurisdiction over the subject-matter is fatal, and subject to objection at any stage of the proceedings, either in the court below or on appeal (Ency. of Pl. & Pr., vol. 12, p. 189, and large array of cases there cited), and, indeed, where the subject-matter is not within the jurisdiction, the court may dismiss the proceeding *ex mero motu*, (4 111., 133; [1] 190 Ind., 79; *Chipman vs. Waterbury*, 59 Conn., 496.)

Jurisdiction over the subject-matter in a judicial proceeding is conferred by the sovereign authority which organizes the court; it is given only by law and in the manner prescribed by law and an objection based on the lack of such jurisdiction can not be waived by the parties. Hence, the accused in a criminal case can not, by express waiver or otherwise, confer jurisdiction on a court over an offense as to which such jurisdiction has not been conferred upon such court by law. (*Harkness vs. Hyde*, 98 U. S., 476; *Nazos vs. Cragin*, 3 Dill (U. S.), 474; 3 Tex., 157; [1] 5 Mich., 331; [2] Ohio St., 223; [3] 82 Wis., 644; 91 111., 311. [4])

Counsel further contends that since the offended party appeared in court and testified, she may be said to have instituted the proceedings, as provided in article 448, although the complaint is signed and sworn to by her father. It may be sufficient answer to this contention to point out that there is nothing in the record to indicate that the proceedings were, in fact, had at the instance of the daughter rather than the father, the fact that she appeared and gave testimony not justifying such conclusion because, being duly subpoenaed, she would have been compelled so to do whether she appeared voluntarily or otherwise; but, as has been shown before, the provisions of article 448 are so explicit and so positive that even though it appears that she had, in fact, taken an active part in all the proceedings, this would not be sufficient unless the complaint was submitted and the action formally maintained by her. That this is the meaning of the provisions of the said article becomes clear upon a comparison of the language used as to proceedings for seduction and proceedings in a case of rape. In proceedings for seduction the language used expressly provides that they can only be instituted and maintained on the complaint (a instancia) of the persons therein mentioned; while in cases of rape and those of abduction committed with dishonest designs, the denunciation (la denuncia) of the interested party, or her parents, grandparents, or guardian, shall suffice, "though they do not present a formal complaint to the judge" (aunque no formalicen instancias). (*U. S. vs. Santos*, 4 Phil. Rep., 527.)

The judgment of conviction of the trial court should be, and is hereby, reversed and the complaint instituted in these proceedings should be, and is hereby, dismissed, with the costs *de oficio*. So ordered.

Arellano, C. J., Torres, Johnson, Willard and Tracey, JJ., concur.

[1] Wakeaeld vs. Goudy.

[1] Baker vs. Chisholm.

[2] Gamber vs. Kolben.

[3] Gilliland vs. Admrs. of Sellers.

[4] Fleischman vs. Walker, 91 111., 318, 321.

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