

APOLINARIO SAMILIN, PETITIONER, VS. THE COURT OF FIRST INSTANCE OP PANGASINAN, RESPONDENT.

G.R. No. 37376. October 16, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This is an original petition praying that a writ of prohibition issue to the respondent court commanding it to desist and refrain from further proceedings in criminal case No. 12004 entitled the People of the Philippine Islands vs. Apolinario Samilin, in which the defendant (petitioner here) is on trial for the crime of rape.

The said criminal case was commenced on April 16, 1931, by a complaint signed and filed by the chief of police of the municipality of San Manuel, Province of Pangasinan, before the justice of the peace, in conformity with the provisions of Act No. 1773 then in force. In due course, after a finding of probable cause, the case was sent to the respondent court and on June 11, 1931, the provincial fiscal signed and filed an information against the accused for the said crime of rape. On June 29, 1931, the petitioner was duly arraigned, and on his plea of not guilty the trial began on November 17, 1931, with the testimony of the alleged offended party. The trial was continued and set for hearing on January 13, 1932. On January 1, 1932, the Revised Penal Code (Act No. 3815) took effect. On the resumption of the trial on January 13, 1932, the accused through his counsel moved that the court dismiss the case for lack of jurisdiction, invoking article 22 in connection with articles 344, paragraph 2, 336 and 367 of the Revised Penal Code.

On February 9, 1932, the court denied said motion and on February 27, 1932, denied a motion for reconsideration.

Article 22 of the Revised Penal Code, in the Spanish text, which is the authoritative text, reads as follows:

"Retroactividad de las leyes penales.—Las leyes penales tienen efecto retroactivo en cuanto favorezcan al culpable de un delito, siempre que no sea un criminal habitual, seguin el articulo 62, regla 5.a de esteCodigo, aunque al publicarse aquellas hubiere recaido sentencia firme y el condenado estuviere cumpliendo la condena."

Article 344, paragraph 2, of the Revised Penal Code, the Spanish text, reads as follows:

"Tampoco puede procederse por causa de estupro, rapto, violacion o abusos deshonestos, sino en virtud de denuncia de la parte agraviada, o de sus padres, o abuelos o tutor, ni despues de haberse otorgado al ofensor, perdon expreso por dichas partes, segun los casos."

Section 1 of Act No. 1773, which took effect October 11, 1907, provides:

"Hereafter the crimes of adulterio, estupro, rapto, violacion, calumnia, and injuria, as denned 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 denned by said Penal Code or by the Acts of the Philippine Commission. * * *"

Act No. 1773 was expressly repealed by article 367 of the Revised Penal Code, saving, however, the cases covered by article 366 which reads as follows:

"Aplicacion de las leyes anteriores a esteCodigo.—Sin perjuicio de las disposiciones del articulo 22 de esteCodigo, los delitos y faltas, cometidos con anterioridad a la vigencia del mismo, seran castigados de acuerdo con el Codigo o las leyes vigentes en la fecha de su comision."

While Act No. 1773 was still in effect, the prosecution against the petitioner herein was begun by a complaint signed by the chief of police and an information signed by the provincial fiscal as above stated.

As to prosecutions for rape begun since January 1, 1932, the Revised Penal Code, article 344, paragraph 2, requires that the complaint shall be made by the offended party or her parents, grand-parents or guardian as the case may be.

The argument of the petitioner is that this is a jurisdictional requirement; that said requirement favors the petitioner; that, therefore, under article 22 of the Revised Penal Code, said requirement must be given a retroactive effect and relate back to the complaint filed in this case. As said complaint was not signed or filed by the aggrieved party (in this case a girl of 12 years), or her parents, grand-parents or guardian, the court was then and is now without jurisdiction to proceed with this prosecution.

Two questions are thus raised: First, does the requirement of article 344, paragraph 2, that the complaint must be made by the aggrieved party or her relatives favor persons charged with the crimes there mentioned? and second, if so, is the requirement jurisdictional in the sense that prosecutions in such cases, begun before January 1, 1932, and pending thereafter, must be dismissed if the complaints were not signed and filed by the offended party or her relatives as aforesaid? As we have had occasion, since the Revised Penal Code took effect, to consider the application of articles 22 and 344 of the Revised Penal Code, it may be convenient to review the cases decided by this court.

The case of *Clemente Laceste vs. the Director of Prisons*, No. 36886, promulgated on February 1, 1932,[1] which was an application for writ of habeas corpus, involved the following facts. The petitioner and one Lachica were convicted of rape. Shortly thereafter Lachica married the offended party and was released by virtue of section 2 of Act No. 1773 and article 448 of the Penal Code, but his accessory, the petitioner, was not released. On June 22, 1932, the petitioner invoked the new provisions of article 344 of the Revised Penal Code as follows:

"In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the coprincipals, accomplices and accessories after the fact of the abovementioned crimes."

The last sentence above quoted was not in the previous code. This court held that the petitioner, under article 22 of the Revised Penal Code was entitled to his immediate discharge. It is not to be overlooked that article 344 provides that marriage "shall extinguish the criminal action or remit the penalty already imposed upon him." It is obvious that the provision for the remission of all penalty upon marriage is favorable both to the principal and the accessory.

In case No. 36105, *People of the Philippine Islands vs. Dionisio Candido*, decided by the First Division of this court, promulgated July 26, 1932[1] the defendant was charged with the crime of abduction with consent (*rapto con anuencia*) upon an information signed and filed by the provincial fiscal on February 11, 1931. On August 28, 1931, the defendant was convicted and sentenced, and an appeal was filed in this court on September 8, 1931. On December 24, 1931, the appellant filed his brief in which it was argued that the trial court had no jurisdiction and the proceedings were null and void because the complaint was not signed, as required by article 344, paragraph 2, of the Revised Penal Code. The appellant did not invoke the retroactive provisions, of article 22 for the obvious reason that the Revised Penal Code was not then in effect. But, in the appellant's motion for reconsideration filed

July 30, 1932, he vigorously invoked article 22, and upon this new basis insisted that the complaint filed in February 1931, did not give jurisdiction to the trial court over the parties and the subject matter because it was not signed by the offended party, as required by article 344, paragraph 2, of the Revised Penal Code. The argument in effect was the same as that advanced by the petitioner in the present case. The motion for reconsideration was denied and the judgment of conviction affirmed by the First Division.

There can be no reasonable doubt that the respondent court in this case should proceed to final judgment in accordance with article 366 of the Revised Penal Code unless article 22 stands in the way. Article 22 makes the penal laws retroactive "en cuanto favorezcan al culpable de un delito * * *." In the case before us, just as in the Candido case above cited, counsel tacitly assume as their major premise, that article 344, paragraph 2, is favorable to persons charged with the crimes there indicated. But that premise cannot be taken for granted. In the instant case, just as in the case of United States and Igle vs. Hocbo (12 Phil., 304), we are confronted with the question "Is the new law favorable to the defendant?"

It was argued in the Candido case, *supra*, that article 344 made a private offense out of what was under the previous code a public offense. This seems to us a mere verbal distinction, for it is the government in both cases that conducts the prosecution and punishes the offender. Nor is it clear that a complaint is any less likely to be filed or any less likely to be vigorously prosecuted in the one case than in the other. It is not apparent that it can make any real difference to the accused whether he is tried on a complaint filed by the offended party or on one filed by the fiscal. Indeed, it is conceivable that the offended party might insist upon the filing and trial of a complaint which an experienced and impartial fiscal would be unwilling to file for technical reasons or for lack of sufficient evidence that would lead to conviction. A private individual might file a complaint out of malice or other improper motive, which would not ordinarily be imputable to the government or its officials. Moreover, it is patent that the provision requiring that the proceedings must be initiated upon complaint filed by the offended party or her relatives, was enacted out of consideration for the offended party and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial. It would be an insult to the Legislature to hold that article 344 was enacted with the intention of favoring seducers and rapists.

Without at this time passing on the question whether the requirement of article 344, paragraph 2 is jurisdictional as to prosecutions begun since January 1, 1932, we call attention to the decision of the Second Division of this court in case No. 36824, *People vs. Tolentino*, promulgated on August 1, 1932.[1] In that case, on December 11, 1931, the provincial fiscal filed an information in the Court of First Instance of Pangasinan, charging Tolentino with the crime of estafa of P152.50. On January 2, 1932, the court, on its own motion, ordered the dismissal of the case on the ground that since the Revised Penal Code had become effective and article 315, paragraph 4 thereof, prescribing a penalty of arresto mayor for estafa of any sum not exceeding P200, brought said crime within the jurisdiction of the justice of the peace, the Court of First Instance no longer had jurisdiction over the case. The fiscal appealed to this court, and we held that "it does not appear from the Revised Penal Code that it was the intention of the law to divest Courts of First Instance of jurisdiction over crimes already acquired; the contrary is clearly implied." The order of dismissal was set aside and the case remanded for trial.

Penal laws that relate to mere matters of form or procedure are colorless when examined to ascertain whether or not they favor the accused. They are all designed to secure to the defendant a speedy and impartial trial in accordance with law, without advantage either to the prosecution or to the defense. Viewed in this light, changes in procedure introduced by the Revised Penal Code are not to be given retroactive effect in the sense that all proceedings prior to January 1, 1932, which conform to the law in force at the time, must be overturned and new proceedings begun. Article 366 was enacted to avoid the havoc which would have resulted if said changes had been made retroactive.

The petition for writ of prohibition is denied with costs against the petitioner.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Hull, Vickers, and Imperial, JJ., concur.

VILLA-REAL, J.:

I concur in the result.

ABAD SANTOS, J.:

I concur in the result.

Petition denied.

[1] 56 Phil., 472.

[1]Page 968, post.

[1]P. 970, post.

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