

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO MIRANDA, DEFENDANT AND APPELLANT.

G. R. No. 38171. October 06, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a motion filed by the accused-appellant, Francisco Miranda, praying that the present cause be dismissed on the ground that the offended party has completely pardoned the offence against her, in accordance with article 344, paragraph 3, of the Revised Penal Code.

The movant was sentenced by the Court of First Instance of Rizal for the crime of qualified seduction according to article 443 of the old Penal Code, as amended by Act No. 1773.

Article 344 of the Revised Penal Code, amending article 443 of the old Penal Code as amended by Act No. 1773 provides:

"ART. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness.-The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

"The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

"The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

"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 above-mentioned crimes."

Paragraph 3 of the legal provision above quoted prohibits a prosecution for seduction, abduction, rape, or acts of lasciviousness, except upon a complaint made by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. It does not prohibit the continuance of a prosecution if the offended party pardons the offender after the cause has been instituted, nor does it order the dismissal of said cause. The only act that according to article 344 extinguishes the penal action and the penalty that may have been imposed, is the marriage between the offender and the offended party.

In *People vs. Infante*, G. R. No. 36270,[1] an adultery case, the first division of this court, interpreting article 344 with reference to that crime, declared in a decision rendered by Justice Malcolm, promulgated on August 31,

1932, that in order that the pardon of the aggrieved party may prevent the prosecution of the adulterers, it must be granted before and not after the penal action has been instituted.

In view of the foregoing considerations, we are of the opinion and so hold, that the offended party's pardon of the offender in a seduction case after the criminal action has been instituted does not extinguish said action according to paragraph 3, article 344, of the Revised Penal Code.

Wherefore, the motion for dismissal filed by the accused- appellant in this case is hereby denied; So ordered.

Avanceña, C. J., Malcolm, Villamor, Ostrand; Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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