

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RAYMUNDO TRINIDAD, DEFENDANT AND APPELLANT.

G.R. No. 38344. March 24, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a decision of the Court of First Instance of Laguna in which the defendant was sentenced for the crime of attempted rape.

It is alleged in the information that the offense was committed on or about the 26th of October, 1931. The information upon which the defendant was convicted was signed and filed by the provincial fiscal on July 30, 1932. The offended party did not sign the information (denuncia).

Appellant's first assignment of error is to the effect that the court below erred in not dismissing the information for want of jurisdiction, citing article 344, paragraph 3, of the Revised Penal Code, which 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."

On March 9, 1933, the Solicitor-General filed a motion in this court, confessing this error and praying the court to dismiss the case "without prejudice to the right of the offended party to file a formal complaint for attempted rape."

We are of the opinion that the information in the form presented to the court below is insufficient to confer jurisdiction on the court to hear and determine the charge therein made. (Cf. Samilin vs. Court of First Instance of Pangasinan, 57 Phil., 298.)

The appeal is sustained and the case is dismissed with costs de oficio.

We do not add to our judgment the words "without prejudice to the right of the offended party to file a formal complaint for attempted rape" for the reason that we do not wish to anticipate any defense which the accused may make if such a complaint is filed.

Avanceña, C. J., Ostrand, Abad Santos, and Vickers, JJ., concur.

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