

VICENTE TOLENTINO, PETITIONER, VS. SIXTO DE LA COSTA, JUDGE OF FIRST INSTANCE OF RIZAL, RESPONDENT.*G.R. No. 46038. August 10, 1938*

Ponente: DIAZ, J.

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By its title, the petition by which this case has been commenced is one for mandamus, but, as a matter of fact, by reason of its object, is for certiorari. Its object is to test the authority of the respondent judge to order, as he did, the prosecution of criminal case No. 10545 of the Court of First Instance of Rizal, entitled "People of the Philippines vs. Vicente Tolentino; for acts of lasciviousness", after having denied, without any legal ground, the motion for dismissal which petitioner, as accused in said case, had filed, based upon the defense proven by him and not questioned by said judge, that he had been twice put in jeopardy.

The established facts in connection with the said motion for dismissal and defense of jeopardy of the petitioner, are the following:

On August 29, 1936, the chief of police of the municipality of Cainta, Province of Rizal, filed a complaint with the justice of the peace of said municipality against petitioner, charging him with having committed the crime of acts of lasciviousness on the same day upon the person of a young woman named Angelita Zapanta by embracing and kissing her and touching her private parts. Upon the remand of the case, after the preliminary investigation, to the Court of First Instance of Rizal, the same was dismissed upon motion of the provincial fiscal for noncompliance with article 344, paragraph 3, of the Revised Penal Code by reason of the fact that the complaint was filed by a third person, and not by the offended party herself or her parents (Exhs. D, E and F).

Scarcely nine days after the dismissal of the case abovementioned, or on October 8, 1936, Zacarias Zapanta, father of Angelita Zapanta, filed another complaint against petitioner with the justice of the peace of Cainta, Rizal, charging him with the same crime and acts of lasciviousness with which he had been charged on August 29th, of the same year, by the chief of police of Cainta. Upon the remand of this case, in turn, to the Court of First Instance of Rizal, the judge who then presided said court, notwithstanding that petitioner, as accused therein, had already pleaded "not guilty", dismissed the same by order of June 22, 1937 without said petitioner's consent upon the ground that the complaint was not filed by the offended party who was then 19 years of age (the judge merely says more than 17 years), but by her father (Exhs. G, H and I).

Acting upon the suggestion in the last order of dismissal, the offended party herself filed immediately a complaint with the justice of the peace of Cainta which was later reproduced by the provincial fiscal in the Court of First Instance of Rizal on August 28th, of the same year, charging petitioner with exactly the same acts and crime for which he had been prosecuted on the two previous occasions aforementioned, with the result as stated.

When petitioner was apprised of the information filed by the provincial fiscal in the third case commenced against him, he reduced to writing his plea of "not guilty" and, at the same time, set up the defense that he had been twice put in jeopardy, with authentic proofs in support thereof. His evidence consisted in the records of the cases

brought against him for the same acts and offense. The respondent judge overruled petitioner's defense of jeopardy and ordered, as has been stated, the prosecution of the case.

Undoubtedly, the first dismissal was in accordance with law because the provision of the law that acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian is mandatory (article 344, paragraph 3, of the Revised Penal Code). The chief of police of Cainta was unquestionably a third person within the meaning of said provision. This, however, can not be said of the second dismissal or that which took place on June 22, 1937 because the case in which the order of dismissal was issued, was commenced by complaint sworn by Zacarias Zapanta, father of the offended minor Angelita Zapanta.

For the reason that our resolution dated June 9, 1937, rendered in case G. R. No. 45564, entitled "People of the Philippines vs. Victoriano L. Varela", decides clearly and fully the question raised herein, we deem it propitious to reiterate the same here:

"Article 344 of the Revised Penal Code which contains the provision that: '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', does not state or does not intend to state that the right of the offended party to file the complaint against the offender, in the cases mentioned, is hers exclusively in the sense that when she does not file the same, her parents, grandparents, or guardian cannot file it. What it means to say and what it in fact says is, that when the offended party is a minor and she does not file the complaint, this may be done by her parents, grandparents or guardian, in the order named. It has thus been interpreted by this court in the case of United States vs. Bautista and in that of People vs. Roa, already cited, it having been held in the first of said cases that the preferred right of the offended party to take action against the offender, by filing the necessary complaint, is not exclusive of that of her parents, grandparents, or guardian, if she does not exercise it before reaching the age of majority. The doctrine laid down in the case of United States vs. De la Santa (9 Phil., 22), cannot serve as an authority in support of the appellant's contention because there is no parity between the facts established therein and those established in the case at bar. The offended party in the case of De la Santa was seduced while she was a minor. This was in 1902. In 1906, while she was already of age, and, therefore, fully capacitated to protect her rights and interests, her father filed the complaint charging De la Santa with the crime of seduction. The court, with reason, resolved the question of jurisdiction raised by the latter in his favor, because it was shown that the alleged offended party in the aforesaid case did not file the complaint herself, she being, by reason of her age, the only one called upon to file the same; and she not being, as she was not then, incapacitated by any other cause."

We see no reason for altering this ruling, all the more so when it is considered that the offended party in the case under discussion is still a minor. She has not yet reached her 21 years at which majority begins, inasmuch as she was only 19 years on October 8, 1936 and, therefore, will not complete her 21 years until October, 1938. Alone, therefore, she is without capacity to protect herself, being, as she is, subject to the patria potestas and legal guardianship of her parents.

The complaint filed in the second case, that is to say, that of Zacarias Zapanta, father of the offended party Angelita Zapanta, was perfectly valid. Had the trial proceeded to its termination, the court which had jurisdiction to take cognizance of the same by reason of the subject matter and the imposable penalty, could have rendered a valid judgment, either convicting or acquitting the accused, according as to whether the crime was proven or not. But the trial did not proceed, not for the reason that petitioner sought the termination thereof, but because the court trying the case *motu proprio* so ordered, independently of the former's will. The termination or dismissal for whatever reason—says the law—without the consent of the accused, of a case tried before a competent court by virtue of a valid complaint or information or any other charge sufficient in form and substance to secure

conviction, after the accused has pleaded and before judgment, constitutes jeopardy which precludes the placing of the accused again on trial for the same offense, whether consummated, frustrated, or attempted. (Section 28, General Orders, No. 58.)

It, therefore, follows that the second dismissal ordered by the Court of First Instance of Rizal is a bar to the prosecution of the petitioner for the third time for the same crime of acts of lasciviousness. In other words, the complaint filed by Angelita Zapanta which gave rise to case No. 10545 of the Court of First Instance of Rizal, after the dismissal of the case commenced against petitioner by her father, Zacarias Zapanta, could not be maintained.

In view of all the foregoing, it being clear that respondent judge acted with grave abuse of discretion, the remedy sought by petitioner is hereby granted and the final dismissal of criminal case No. 10545 of the Court of First Instance of Rizal is ordered, with costs. So ordered.

Avanceña, C, J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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