

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ALBERTO AQUINO, DEFENDANT AND APPELLEE.*G.R. No. 46615. September 27, 1939*

Ponente: DIAZ, J.

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The question raised by the appeal taken by the fiscal from the order of the Court of First Instance of Bataan, which dismissed the information filed in criminal case No. 3903 of said court entitled "The People of the Philippines, plaintiff, vs. Alberto Aquino, defendant", on the ground of prescription of the crime imputed to the accused therein, is whether or not, under the circumstances of the case, the crime in question has in reality prescribed.

The case involved a crime of serious oral defamation committed, according to the information, on September 8, 1935, in the municipality of Abucay of the Province of Bataan, against Marcial Kasilag, who was then Assistant Director of Public Works and Commissioner for Mindanao and Sulu. It was expressly alleged in said information which, by the way, is a repetition of the complaint filed by the offended party on March 4, 1936, that the act complained of came to the latter's knowledge only on the last date above-mentioned. By reason of the involuntary absences of the complainant who had to go to Mindanao due to the exigencies of the office which he was then holding, the trial of the case had to be suspended and the provisional dismissal thereof later ordered, upon motion of the defendant. The court, however, resolved that said dismissal would be "without prejudice" to the fiscal to whom, in an order of January 21, 1937, it expressly reserved the right later to reproduce the same action. The dispositive part of the order in question stated as follows:

"Wherefore, the motion for continuance of these two cases is hereby denied, and for lack of evidence for the prosecution, the same are dismissed, with costs de oficio, without prejudice to their being brought again by the fiscal."

Twenty-three days after the dismissal of the case, the offended party Marcial Kasilag again filed in the justice of the peace court of Abucay, Province of Bataan, another complaint charging the appellee with the same crime with which he had previously been charged. In said court the appellee asked for the dismissal of the case, alleging, for the first time, the defense of prescription. His motion, however, was denied on March 13, 1937. Inasmuch as he later waived his right to a preliminary investigation, the justice of the peace court of Abucay gave due course to the case by forwarding it to the Court of First Instance, and the provincial fiscal, on June 10, 1937, filed an information, which is substantially the same as the complaint filed in the above-stated justice of the peace court, again charging the appellee with said crime of serious oral defamation committed to the dishonor and discredit of Marcial Kasilag.

At the trial, the appellee as accused set up the following two defenses: (1) That of double jeopardy, and (2) that of prescription, without failing, on the other hand, to make an absolute denial of all the charges filed against him. He later waived his defense of double jeopardy in order to insist solely on his defense of prescription. The Court of

First Instance of Bataan, deciding the¹ question, issued the order of dismissal from which the fiscal interposed the appeal now under consideration.

The period of prescription fixed for crimes of oral defamation is six months (art. 90, Revised Penal Code), and this period is computed from the day on which the crime is discovered by the offended party (art. 91, id.). In the case at bar, according to the facts undisputed by the parties, the offended party was informed of the oral defamation committed against him for the first time on March 4, 1936. This being so, the prescriptive period of six months was not to expire until about September 4, 1936. When the first complaint was dismissed by the court on January 21, 1937, it may be said that the period of six months did not even commence to run because the filing of the complaint on March 4, 1936, had the effect of interrupting, on that very day, the running of the period of prescription. This is so because it is ordered by said article 91 of the Revised Penal Code. The period of prescription in question commenced to run only from the above-mentioned date, January 21, 1937, and only twenty-three days elapsed from said date to February 13th of the same year. It is clear, therefore, that the appealed order is erroneous because it makes the computation from March 4, 1936, to February 13, 1937, the date of the filing of the last information, when such computation should have been made by it from January 21, 1937, to February 13th of said year.

The dismissal of the case on January 21, 1937, is in no way imputable to the complainant, because the paralyzation of the proceeding was not unjustified, this being shown by the very order of the court to the effect that the dismissal was without prejudice to the fiscal. Furthermore, it was the appellee himself who asked for such dismissal, and when the above-mentioned condition that the same would be "without prejudice" was imposed, he acceded to it, without filing, as he in fact did not file, any objection or protest.

For the foregoing reasons, the appealed order is reversed, and it is ordered that the proceeding take its ordinary course in the court of its origin until it is terminated, with the costs de oficio. So ordered.

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

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