

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. RICARDO M. ILARDE, IN HIS CAPACITY AS PRESIDING JUDGE, CFI OF ILOILO, BR. V, CECILE SANTIBAÑEZ AND AVELINO T. JAVELLANA, RESPONDE...

G.R. No. 58595. October 10, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for review on certiorari of the order of the then Court of First Instance (now Regional Trial Court) of Iloilo, Branch V, presided by the respondent Judge Ricardo M. Ilarde, granting the motion to quash the information in Criminal Case No. 13086, entitled, "People of the Philippines, plaintiff, versus Cecile Santibañez and Avelino T. Javellana, accused."

The information in Criminal Case No. 13086 was filed on March 4, 1981 by City Fiscal Ricardo P. Galvez. It reads:

"The undersigned City Fiscal upon sworn complaint originally filed by the offended party Efraim Santibañez, copies of which are thereto attached as Annexes 'A' and 'B' hereby accused CECILE SANTIBAÑEZ and AVELINO T. JAVELLANA of the crime of adultery, committed as follows:

"That on or about the 3rd day of November, 1980, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused Cecile Santibañez being lawfully married to Efraim Santibañez, which marriage at that time has not been legally dissolved, with deliberate intent, did then and there wilfully, maliciously and criminally have sexual intercourse with her co-accused Avelino T. Javellana, a man not her husband and who in turn knowing fully well that his co-accused was then lawfully married to Efraim Santibañez, did then and there wilfully, maliciously and criminally have sexual intercourse with her.

"CONTRARY TO LAW.[1]

Annex "A" referred to in the information is the sworn complaint for adultery filed by Efraim Santibañez against herein private respondents, Cecile Santibañez and Avelino T. Javellana, with the Integrated National Police, Iloilo Metro Police District, Iloilo City, on November 4, 1980, which complaint was immediately forwarded to the Office of the City Fiscal for preliminary investigation. Said complaint reads:

"COMPLAINT

"The undersigned accuses ATTY. AVELINO JAVELLANA, a resident of CPU Compound, Jaro, Iloilo City, and Cecile Santibañez, a resident of Candido Subdivision, Iloilo City, for the crime of adultery x x x

xxx xxx xxx

(Sgd.) EFRAIM SANTIBAÑEZ

(Signature of complainant)

"SUBSCRIBED AND SWORN to before me this 4th day of November, 1980 in the City of Iloilo.

(Sgd.) RICARDO P. GALVEZ

City Fiscal"

Annex "B" of the information is the affidavit-complaint dated November 6, 1980 executed by Efraim Santibañez, sworn to and filed before City Fiscal Galvez on November 7, 1980, wherein Santibañez recounted in detail the antecedents which brought about the apprehension in flagrante of private respondents. The same is quoted as follows:

"I, EFRAIM SANTIBAÑEZ, of age, married, and a resident of Fundidor, Molo, Iloilo City, after having been duly sworn to according to law depose and say:

"That I am legally married to Cecile Sorianosos in a Civil Marriage solemnized by Judge Vicente Santos, City Court of Pasay City on March 22, 1974 but subsequently remarried in a religious ceremony before Rev. Panfilo T. Brasil at the Parish Church of La Paz, Iloilo City on July 18, 1974, xerox copies of the aforesaid marriage contracts are hereto attached as Annexes 'A' and 'B', forming integral parts of this affidavit;

"After our marriage, I built a house for our permanent residence and as our conjugal home in Fundidor, Molo, Iloilo City and furnished it with all the comforts well within my means;

"At the start of our marriage, I was led to believe by my wife of her total concern, love and devotion to me and in turn I lavished her with all the material comfort at my command and even tried to build up her social status by sending her as a delegate to the Zonta World Conference at Washington, D.C. last July, 1980 without my company. As a token of my love and unflinching trust we went sight-seeing and on our second honeymoon to Hongkong only last month.

"Sometime during the last week of October, 1980, while I went on my normal work routine to Passi Sugar Millsite in Passi, Iloilo, my son Edmund took me aside in confidence and told me that he has some very delicate matters to take up with me which may be misinterpreted by me or may be taken by me in a wrong light; however, he said that the honor and dignity of the family is at stake and I have to know it whatever be the consequence. After I gave him the go signal, he narrated to me that my wife Cecile Sorianosos has been unfaithful to me and has been having illicit relationship with another man. Of course, I was taken aback and stunned so I asked him for the source of his information. He informed me that our maid Elsa Barios and our driver Loreto Reales had been aware of the illicit relationship and the man usually went to my house and even slept there whenever I was in Manila. I got angry and blamed our maid and the driver for not telling me but Edmund told me that they were afraid to tell because they were threatened. After I have calmed down, I commented that if I confront my wife about her illicit relationship, she will surely deny it. So I thought that the best way was to catch her red-handed in the act of infidelity so that she could not deny it anymore. I suggested to Edmund to think of a plan so we can catch my wife red-handed.

"After several days of planning we agreed to put our plan of action in operation on November 3, 1980 since I will be leaving for Manila in the morning of that day. Our problem was how to catch my wife in the very act of having sexual intercourse with her lover considering the fact that our master's room was air-conditioned with all windows framed by glass jalousies closed and covered by curtains. At first we thought of breaking down the main door with a sledge hammer so we could take them by surprise, later we abandoned the idea because of legal complications.

"Finally, I thought of removing a glass of the jalousy so the inside of the bedroom can be seen from the outside once the curtain can be brushed aside by means of a thin wire and the persons on bed could be seen clearly since the bed is on the same level as the opening of the window. After several experiments whenever my wife was out, I found out that my wife cannot notice the removal of the glass jalousy since our windows are

screened from the inside of our room.

"As pre-arranged, I removed one jealousy glass of the window of our master room so that the people inside our room could be seen actually from the outside and the moment my wife and her lover is seen in the act of sexual intercourse.

"Having completed all the plans to effect our plan of operation, I told my wife that I was leaving in the morning of November 3, 1980 for Manila and actually I took the plane for Manila on that day. I instructed my son Edmund to inform me immediately of the result of the plan of action as soon as possible.

"Almost midnight of November 3, 1980, I was informed by my daughter-in-law Rebecca that the operation was successful and resulted in the arrest of my wife and Atty. Bob Javellana inside our bedroom.

"I know Atty. Bob Javellana for quite a time and we have been close friends. As a friend he has come to our house at Molo, Iloilo City oftentimes to discuss matters about the court case between the Iloilo City Government and St. Therese Memorial Chapel which is a business which I have given to my wife Cecile. Atty. Javellana knew that Cecile Sorianosos is my legally married wife.

"When I returned to Iloilo City from Manila on November 4, 1980, I was shown the photographs taken inside our master bedroom and I am attaching hereto the photographs which are marked as Annexes "C", "D", "E", "F", "G", "H", "I" and "J".

"That I am formally charging my wife, Cecile Sorianosos and Atty. Bob Javellana of the crime of adultery and would request that this affidavit be considered as a formal complaint against them" (pp. 4-5, Original Records).

Sometime in January 1981, i.e., before the conclusion of the preliminary investigation then being conducted by the Fiscal's Office, Efraim Santibañez learned that he was sick of cancer and decided to leave for the United States for medical treatment. Before his departure, he executed a holographic will, dated January 10, 1981, a portion of which provided:

"I do hereby disinherit my second wife, Cecilia Sorianosos of any and all inheritance she is entitled under the law as my wife on the ground that she had given cause for legal separation by committing acts of adultery with Atty. Bob Javellana in the evening of November 3, 1980 in my con-jugal abode at Candido Subdivision and as a result of which I charged her and Atty. Bob Javellana for adultery with the Fiscal's Office and I filed a case of legal separation against her in Civil Case No. SP-11-309 of the Juvenile and Domestic Relations Court in Iloilo City for which act of infidelity, I can never forgive her." [2]

On January 15, 1981, after several requests for postponement, private respondents submitted their memo-randum to the Fiscal's Office; and on February 19, 1981, Fiscal Galvez issued a resolution finding the existence of a prima facie case for adultery against private res-pondents.

On February 26, 1981, Fiscal Galvez was informed by relatives of Efraim Santibañez that the latter had died in the United States on February 16, 1981. This notwithstanding, he prepared the information in question on March 3, 1981, and on the following day, filed the same with the Court of First Instance of Iloilo.

Private respondents filed a motion to quash the information on the ground that the court did not acquire jurisdiction over the offense charged, as the offended party had not filed the required complaint pursuant to the provisions of Article 344 of the Revised Penal Code and Section 4, Rule 110 of the Rules of Court to the effect that "the crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse."

Finding merit in the position taken by private respondents, respondent judge granted the motion and dismissed the case. The city fiscal moved for a recon-sideration, but the same was denied. Hence, the present recourse.

The sole issue to be resolved is whether or not there has been compliance with the requirement of Article 344 of the Revised Penal Code, reiterated in Section 4, Rule 110 of the Rules of Court, that "the crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended party."

We rule in the affirmative.

We are aware that in a long line of decisions,[3] this Court has maintained strict adherence to the requirement imposed by Article 344 of the Revised Penal Code.

It must be borne in mind, however, that this legal requirement was imposed "out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial." [4] Thus, the law leaves it to the option of the aggrieved spouse to seek judicial redress for the affront committed by the erring spouse. And this, to Our mind, should be the overriding consideration in determining the issue of whether or not the condition precedent prescribed by said Article 344 has been complied with. For needless to state, this Court should be guided by the spirit, rather than the letter, of the law.

In the case at bar, the desire of the offended party, Efraim Santibañez, to bring his wife and her alleged paramour to justice is only too evident. Such determination of purpose on his part is amply demonstrated in the dispatch by which he filed his complaint with the police [Annex 'A', supra]; the strong and unequivocal statement contained in the affidavit filed with the Fiscal's Office that "I am formally charging my wife Cecile Sorianosos and Atty. Bob Javellana of the crime of adultery and would request that this affidavit be considered as a formal complaint against them" [Annex 'B', supra]; his filing of a complaint for legal separation against Cecile Santibañez with the local Juvenile and Domestic Relations Court; and finally, in disinheriting his wife in his Last Will and Testament dated January 10, 1981.

In quashing the information, respondent judge relied upon Our decision in *People vs. Santos* [5] to the effect that a "salaysay" or sworn statement of the offended party, which prompted the fiscal to conduct a preliminary investigation and then to file an information in court, was not the complaint required by Article 344 of the Revised Penal Code.

The ruling in *Santos* is not applicable to the case at bar. In that case, the "salaysay" executed by complainant Bansuelo was not considered the complaint contemplated by Article 344 of the Revised Penal Code because it was a mere narration of how the crime of rape was committed against her. However, in the affidavit-complaint submitted by Efraim Santibañez, the latter not only narrated the facts and circumstances constituting the crime of adultery, but he also explicitly and categorically charged private respondents with the said offense. Thus -

"That I am formally charging my wife Cecile Sorianosos and Atty. Bob Javellana of the crime of adultery and would request that this affidavit be considered as a formal complaint against them."

Moreover, in *Santos*, this Court noted that the information filed by Rizal Provincial Fiscal Nicanor P. Nicolas "commenced with the statement 'the under-signed fiscal accuses Engracio Santos with the crime of rape,' the offended party not having been mentioned at all as one of the accusers." In the instant case, however, the information filed by the city fiscal of Iloilo reads as follows:

"The undersigned city fiscal upon sworn statement originally filed by the offended party Efraim Santibañez, xerox copies of which are hereto attached as Annexes 'A' and 'B' x x x."

Undoubtedly, the complaint-affidavit filed by Santibañez contains all the elements of a valid complaint, as "it states the names of the defendants, the designation of the offense by the statute, the acts or omission complained of as constituting the offense; the name of the offended party, the approximate time of the commission of the offense, and the place wherein the offense was committed." [6]

What is more, said complaint-affidavit was attached to the information as an integral part thereof, and duly filed with the court. As held in *Fernandez vs. Lantin*,^[7] the filing in court of such affidavit or sworn statement of the offended party, if it contains all the allegations required of a criminal complaint under Section 5, Rule 110 of the Rules of Court, constitutes sufficient compliance of the law. Thus:

"x x x in a case where the Fiscal filed an Information charging the accused with 'telling some people in the neighborhood that said Fausta Bravo (a married woman) was a paramour of one Sangalang, a man not her husband', and Fausta Bravo did not subscribe to the complaint, this Court held that the trial court had no jurisdiction over the case. It ruled that since the accused imputed to Fausta Bravo the commission of adultery, a crime which can-not be prosecuted de oficio, the Information filed by the Fiscal cannot confer jurisdiction upon the court of origin.

"It must be noted, however, that this error could be corrected without sustaining the motion to quash and dismissing the case. Pursuant to section 1 of paragraph (a) of Presidential Decree No. 77, under which the Assistant City Fiscal conducted the preliminary investigation, the statement of the complainant was sworn to before the aforesaid Investigating Fiscal. Assuming that the recitals in said sworn statement contain all those required of a complaint under the rules, a copy of said verified statement of the complainant should be filed with respondent Court in order to comply with the requirements of Article 360 of the Revised Penal Code; otherwise, the respondent Fiscal should file with said court a verified complaint of the offended party."

Upon these premises, We cannot but conclude that the adultery charge against private respondents is being prosecuted "upon complaint filed by the offended party."

WHEREFORE, the petition is hereby granted. The orders of the Court of First Instance of Iloilo, Branch V, in Criminal Case No. 13086, dated May 21 and September 14, 1981, are hereby set aside, and respondent judge is directed to proceed with the trial of the case on the merits. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Guerrero, Abad Santos, and Relova, JJ., concur.
Concepcion, Jr., J., on leave.
De Castro, J., on sick leave.

[1] p. 1, Original Records.

[2] pp. 92-93, Original Records.

[3] *U.S. v. Gomez*, 12 Phil. 279; *U.S. v. Narvas*, 14 Phil. 410; *U.S. v. dela Cruz*, 17 Phil. 139; *U.S. v. Castañares*, 18 Phil. 210; *U.S. v. Salazar*, 19 Phil. 233; *Quilatan and Santiago v. Caruncho*, 21 Phil. 399; *People v. Martinez*, 76 Phil. 559.

[4] *Samalin vs. CFI of Pangasinan*, 57 Phil. 298, 304.

[5] 101 Phil. 798.

[6] "SEC. 5. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the defendant; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. x x x "

[7] 74 SCRA 338, 343, 344.

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