

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FAUSTINA ORTIZ AND NUMERIANO REGALADO, DEFENDANTS AND APPELLANTS.

G.R. No. 6008. March 23, 1911

Ponente: MAPA, J.

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MAPA, J.:

The present cause for the crime of adultery was commenced and prosecuted through a complaint filed by the provincial fiscal. The offended husband did not formally file any complaint whatever. It is true that, in the written complaint, it is stated that the same was presented by the fiscal at the -instance of the offended party and that the latter, in testifying as a witness at the trial, stated that "he denounced" the crime to the fiscal and' asked him to file a complaint against his wife and the adulterer;" but this does not fulfill the requirement of section 1 of Act No. 1773 which prescribes that "no prosecution for the crimes of adulterio, estupro, or injuria committed against persons other than public officials or employees shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents or guardian of such person."

Interpreting this provision, we said in the decision rendered on November 9, 1909, in the case of the U. S. vs. Narvas (14 Phil. Rep., 410), that:

"* * * in order to give the court jurisdiction over the person of the defendant and the subject-matter of the action it is necessary in these cases (those of adulterio, estupro or injuria, mentioned in the said section), that the complaint * * * be made and executed in writing by the offended party personally, if that person be competent to do so, and, if not, then by one of the persons named in the section (referred to) in the order in which they are named therein."

The complaint, of course, is understood to be such as is defined by section 4 of General Orders, No. 58.

Owing to the absence, then, of a proper complaint by the offended party, the judgment appealed from is reversed and the case dismissed, with the costs of both instances de officio. So ordered.

Arellano, C. J., Carson and Moreland, JJ., concur.

Trent, J., concurs in the result.

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