

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS.. SEVERO DE UNGRIA, DEFENDANT AND APPELLANT.

G.R. No. 6201. August 12, 1911

Ponente: MAPA, J.

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MAPA, J.:

The defendant herein was sentenced in first instance to four months of *arresto mayor*, with the accessory penalties provided by law, for the crime of seduction, and appealed from that judgment to this court.

The offended person reported the crime to the justice of the peace of Morong,. and the consequent preliminary investigation was accordingly held. As a result thereof, the provincial fiscal, and not the offended person, drew up the formal complaint that served as the basis for the trial and the consequent judgment in the Court of First Instance, According to the charge of the injured person and the fiscal's complaint, and as was distinctly shown during the hearing, the criminal act occurred within the period between the years 1904 and 1906.

Had a formal complaint been presented by the offended person, the proceedings instituted and carried on by the fiscal in the Court of First Instance would have been entirely correct, if the cause fell within the scope of Act No. 1773, which was apparently the law taken into consideration by both the court and the fiscal in handling the case. Under that Act, the accusation of the offended person is sufficient for instituting proceedings for the crime of seduction; it is unnecessary for her to present a formal complaint, the fiscal and the courts being left unhampered to prosecute and punish the crime upon the mere accusation by the injured person or her legal representatives. But this Act was passed and went into effect on October 11, 1907, and can not therefore be applied to the crime here on trial, which was committed long before that date, that is, between the years 1904 and 1906, as stated above.

The law applicable to this case is article 448 of the Penal Code, which prescribes literally that "criminal proceedings for seduction can only be instituted on the complaint (a *instancia*) of the offended person or her parents, grandparents or guardian."

In the terminology of the code the word *instancia*, used in the passage just quoted, is equivalent to charge or complaint which, as is known, means or is more than a mere accusation (*denuncia*). In his work entitled "El Codigo Penal," Pacheco comments as follows on this passage:

"In the crime of seduction it is necessary that the formal complaint be made by the injured person, or her guardian, parents, or grandparents. No other person is admissible. It is necessary that those who are admissible file a charge, a formal accusation, a complaint. It is not sufficient that they accuse, that they make report. The law requires more, employing the strongest word * * *. In seduction there must be a complaint filed by the offended person, her parents, her grandparents, or her guardian." [Vol. III, p. 154.]

Commenting on the same provision, Viada says that:

"It provides that criminal proceedings arising from the crime of seduction * * * can only be instituted by the persons concerned (the seduced, her parents, grandparents, or guardian). From this it is inferred (he adds) that

the aforesaid persons, to the exclusion of everyone else, even the state prosecutors, are the only ones who can institute the proper proceedings for investigating the crime of seduction; and, moreover, a mere accusation (denuncia) to the judicial authorities will not suffice, but it is necessary that they institute the criminal procedure provided for the crime by means of the consequent charge or formal complaint (instancia o querella) ."

It is, then, necessary and indispensable, in proceedings for the crime of seduction committed before the passage of Act No. 1773, that a formal complaint instituting the consequent criminal action, and not a mere accusation, be presented by the injured person or her legal representatives, who are distinctly named, to the exclusion of all others, in article 448 of the Penal Code. There being no such formal complaint in this case, the trial court had no jurisdiction to try the crime charged; and, as a necessary consequence, all the proceedings in the present case are inherently null and void.

The judgment appealed from is reversed and the cause finally dismissed, with the costs in both instances de oficio. So ordered.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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