

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EDUARDO SALAZAR AND TARCILA PALACIO, DEFENDANTS AND APPELLANTS.

G.R. No. 6354. March 28, 1911

Ponente: TRENT, J.

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TRENT, J.:

The defendants were convicted in the Court of First Instance of the Province of Tarlac, Hon. Julio Llorente presiding, of the crime of calumny, and each sentenced to five months' *arresto mayor*, to pay a fine of 625 pesetas, with the corresponding subsidiary imprisonment in case of insolvency and to each pay one-half of the costs. They appealed, and now insist that the trial court erred:

- In permitting the trial to proceed upon the complaint of the provincial fiscal;
- In finding that the proofs presented established the guilt of the defendants of the crime of calumny beyond a reasonable doubt; and,
- In applying the provisions of paragraph 1, article 454, of the Penal Code.

From the record it appears that Trinidad B. Cruz, single, 22 years of age, and the defendants, who are husband and wife, were, during the months of May and June, 1909, traveling merchants or peddlers. The defendants desiring to go to the town of San Juan de Guimba for the purpose of selling their goods it was agreed that Trinidad stay over night at their house to take care of the children and to look after certain effects which were deposited in said house. In pursuance of this agreement, the defendants left on May 29, leaving Trinidad in charge of their house, where she remained until early the following morning when she left for Manila before the defendants' return. The defendants, on examining their trunk some two days later, found that a certain diamond ring was missing. On making this discovery they called on Emilia Lumutan, cousin of the offended party, and said that Trinidad had taken the ring. Emilia caused her cousin, who was still in Manila, to be notified of this charge. Trinidad returned home and the two defendants on June 22 went to the house where she was living and accused her, in the presence of three witnesses, of having taken the said ring. She protested against this accusation, declaring that she was innocent of such a charge, and went before the justice of the peace on the 24th of that month and filed a criminal complaint against her accusers, charging them with the crime of *injurias*. An investigation followed and the defendants were held to answer to this charge in the Court of First Instance. A new complaint was filed in the Court of First Instance by the provincial fiscal, charging the defendants with the crime of calumny. This new complaint was not signed by the offended party. The fiscal conducted the prosecution the same as in other cases.

Counsel for the defendants insists that calumny being a private crime can only be prosecuted on the complaint of the offended party, except in those cases wherein special provision is otherwise made, and in support of this proposition cites paragraph 2, article 467 of the Penal Code, which reads as follows:

"No one shall be punished for calumny or contumely unless on complaint of the offended party, except when the offense is directed against the public authority, corporations, or determined classes in the State, and in the cases prescribed in Chapter V of Title III of this book."

Under the Penal Code this contention of counsel appears to be well founded, as the case under consideration does not come within the exceptions.

The first section of Act No. 1773, passed October 11, 1907, provides:

"Hereafter the crimes of adulterio, estupro, rpto, violacion, calumnia, and injuria, as defined by the Penal Code of the Philippine Islands, shall be deemed to be public crimes and shall be prosecuted in the same manner as are all other crimes defined by said Penal Code or by the Acts of the Philippine Commission: Provided, however, 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."

The crimes mentioned in the foregoing section are now public offenses and are prosecuted in the same manner as are all other public offenses, except prosecutions for the crimes of adulterio and estupro; and for the crime of injuria, when this, latter crime is not committed against public officials or employees, can only be instituted upon the complaint of the aggrieved person, or the parents, grandparents, or guardian of such person. No such provision was made with reference to rpto, violacion, and, calumnia. These were made public offenses without any restrictions as to the manner in which they should be instituted. Calumny is now a public crime and can be prosecuted upon the complaint of the provincial fiscal, while injuria can only be prosecuted upon the complaint of the offended party, when such offended party is not a public official or employee. It was the intention of the legislative body that these two crimes be treated in this manner and the will of the Legislature, as clearly expressed in the above section, is now the law of the land.

The next question to be determined is whether or not the crime which the defendants accused the offended party of having committed is "grave" or "less grave."

Articles 6, 25, 452, and 454 of the Penal Code are as follows:

"Art. 6. Crimes are considered 'grave' which the law punishes by penalties which in any of their degrees are corporal.

"Crimes are considered 'less grave' which the law represses by penalties which in their maximum degree are correccional."

"Art. 25. The penalties which may be imposed according to this code, and their different classes, are those included in the following general scale:

"Corporal penalties. - Death; cadena perpetua; reclusion perpetua; relegacion perpetua; perpetual expulsion; cadena temporal; reclusion temporal; relegacton temporal; temporary explusion; presidio mayor; prision mayor; confinamiento; * * *

"Correctional penalties. - Presidio correccional; prision correccional; * * * arresto mayor."

"Art. 452. Calumny is the false imputation of a crime of those subject to prosecution at the instance of the Government (de oficio)."

"Art. 454. When the calumny is not made public and put into writing it shall be punished:

"1. With the penalties of arresto mayor in its maximum degree and a fine of from 625 to 6,250 pesetas if a grave crime be charged.

"2. With that of arresto mayor in its minimum degree and a fine of from 325 to 3,250 pesetas if a less grave crime be charged."

It is alleged in the complaint that the defendants did maliciously and falsely, with a view to dishonoring or holding up to contempt, Trinidad B. Cruz, charge her with the crime of robbery. According to articles 6 and 25, above quoted, robbery, as alleged in the complaint, is a "grave" crime.

While it is alleged in the complaint that the accused charged the offended party with the crime of robbery, the proofs do not support this allegation. According to the testimony of the offended party herself, the defendants charged her with having taken the ring. They did not charge her with having taken the ring by employing force. The defendants in their testimony state that on examining their trunk they found that the ring was missing. This testimony is uncontradicted and shows that no force was used in obtaining possession of the ring. From the whole history of the case it clearly appears that the defendants did knowingly and maliciously charge the offended party with having stolen the ring, and not with having obtained it by force. So the real crime imputed to the offended party was that of larceny and not robbery. The value of the ring is not known, but under the provisions of articles 517 and 518 of the Penal Code the highest penalty which can be imposed for the crime of larceny is correccional. The crime imputed to the offended party being less grave, under the provisions of the Code above quoted, the penalty set out in paragraph 2 of said article 454 must be applied.

The judgment appealed from is, therefore, reversed and each of the defendants is hereby sentenced to one month and one day arresto mayor, to pay a fine of 325 pesetas, to suffer the corresponding subsidiary imprisonment in case of insolvency, and to each pay one-half of the costs. So ordered.

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

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