

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIANA CRUZ AND RICARDO REYES, DEFENDANTS AND APPELLANTS.*G.R. No. 6821. October 19, 1911*

Ponente: TORRES, J.

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This is an appeal by the defendants from a judgment by the Hon. Simplicio del Rosario.

On June 7, 1910, a written and sworn information was filed with the court of the justice of the peace of the pueblo of Pasig, the governmental seat of the Province of Rizal, by Filemon Andres, charging his wife, Emiliana Cruz, and Ricardo Reyes, with the crime of adultery. After the required preliminary investigation the said justice of the peace, deeming that there were no grounds whereupon to proceed against the accused, ordered their release from custody, by an order of the 12th of the following month of July; but, on September 26th of the same year, a written complaint was presented against the accused by the provincial fiscal over the signature of the previous complainant, Filemon Andres, again charging them with the crime of adultery, inasmuch as Reyes, one day in December, 1908, knowing that Emiliana Cruz was the wife of the complainant and that their marriage had not been annulled, did lie with her.

The evidence adduced at the trial shows that, because the husband, Filemon Andres, warned his wife, Emiliana Cruz, that she should not allow Ricardo Reyes to enter her house when he (Andres) was absent therefrom, the wife separated from her husband and left the home. Three witnesses, Luisa Rojas, Esteban Cruz, and Juan Reyes, testified that, on different occasions, they each had seen the accused, Reyes, lying with the woman, Emiliana Cruz; the first occasion was early one morning of the month of April, 1908, in the kitchen of witness' house, where they were surprised sleeping together, wherefore witness ejected them from his house; the second occasion, one night of the month of February of that same year, on the azotea of the house of the said accused, Emiliana Cruz, and because witness was a relative of the offended party and of the accused Reyes, he did not wish to testify in the court of the justice of the peace, although he advised the husband to observe the conduct of the said accused; and the third time, the witness testified he surprised the defendants while they were sleeping together, between 1 and 2 o'clock in the afternoon one day of the aforesaid month of April, in the house of the offended party, and that, as he was a relative of the latter, and also of the accused Reyes, he was unwilling to testify before the justice of the peace.

The court, in view of the evidence adduced at the trial, and on January 3 of the present year, rendered judgment sentencing the defendants each to the penalty of two years four months and one day of prison correccional and to the payment of the costs, from which judgment they appealed.

The release of the two accused having been ordered by the justice of the peace, during the preliminary investigation, for the reason that he deemed that there were not sufficient reasons to warrant a continuation of the proceedings, the complaint that was afterwards filed in the Court of First Instance by the provincial fiscal, although it bore the signature of the aggrieved party, Filemon Andres, could not support the present prosecution

and confer jurisdiction upon the court. Section. 1 of Act No, 1773 prescribes:

"Hereafter the crimes of adulterio, estupro, raptio, 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."

All public offenses triable in Courts of First Instance or in courts of similar jurisdiction, must be prosecuted by the public prosecutor in the name of the United States, whether the cause originated by virtue of an information or was initiated upon complaint. (Sees. 2 and 3 of General Orders, No. 58.)

A cause instituted through an information filed by a private person, whether he takes part in the proceedings as the offended party, or does not, must be prosecuted by the public prosecutor, in the same manner as though the proceedings had been commenced upon an information by an official of the office of the public prosecutor, whose duty it is to prosecute all causes initiated by information or complaint.

Such is the general rule; but section 1 of Act No. 1773 further 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.

Owing to this special exception of the law the prosecution of the said crimes of adulterio, estupro, or injuria can not be originated by the public prosecutor, but must be instituted by the offended person, or by his legitimate representatives in case of his incapacity to take part in the trial, in order that the court or the judge may acquire jurisdiction over the persons of the accused and the subject matter of the action. It is, then, indispensable, with respect to these three said crimes, that the written information be presented by the offended party himself, or by one of the persons who represent him, in case of his incapacity, as prescribed by law, with the exception of the crime of injuria when committed against public officials or employees, which latter may be prosecuted by the public prosecutor.

It is true that the offended party, Filemon Andres, complained of the crime to the justice of the peace of Pasig; but this official, deeming that there was no proof of the commission of the crime complained of, ordered the release of the accused; such action is equivalent to a dismissal of the preliminary proceedings, and therefore, in order that the cause might again have been initiated, in the Court of First Instance of Rizal, it was indispensable that, in accordance with the law, a written information should have been presented by the offended party himself, Filemon Andres; this was not done, inasmuch as the complaint was filed by the provincial fiscal, and the provisions of law were not complied with by merely affixing the signature of Filemon Andres to the complaint, beside that of the said official, nor would it give the court jurisdiction to try the charge against the defendants for the crime of adultery. (U. S. vs. Narvas, 14 Phil. Rep., 410.)

Therefore, because of the failure to comply with the provisions of Act No. 1773, it is proper, in our opinion, to dismiss and we hereby dismiss the cause and declare all proceedings therein null and void. The costs are assessed de oficio.

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

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