

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. URBANO GARIBOSO, DEFENDANT AND APPELLANT.

G.R. No. 8130. August 30, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of seduction. The complaint was presented by Luisa Valdez, mother of Lorenza Sanchez, the offended person. The complaint alleged:

"That the said Urbano Gariboso, the above-named accused, on or about October 11, 1910, and on subsequent dates, in the township of Cervantes, subprovince of Lepanto, Mountain Province, P. I., did willfully, unlawfully, and criminally and by means of intimidation and deceit seduce and at various times have carnal relations with the girl Lorenza Sanchez, 15 years of age, daughter of the undersigned, said Lorenza then living in the house of the said accused and under his care, and as a result of these carnal relations the said Lorenza gave birth to a female child on June 21, 1911; in violation of article 443 of the Penal Code.

"Cervantes, June 19, 1912.

(Sgd.) "LUISA VALDEZ."

Upon said complaint the defendant was duly arrested and arraigned. Upon arraignment he pleaded not guilty.

After hearing the evidence, the Honorable Charles S. Lobingier, judge, found that the defendant was guilty of the crime charged and sentenced him to be imprisoned for a period of one year eight months and twenty-one days of prison correccional, to endow the offended party in the sum of P1,000, in case of insolvency to suffer subsidiary imprisonment in accordance with the law, to support the offspring¹ resulting from said illicit relations, and to pay the costs. From that sentence the defendant appealed to this court and made the following assignments of error;

"1. The court erred in denying the motion for dismissal presented by the counsel for the defendant on the ground of said court's lack of Jurisdiction.

"2. The trial court erred in holding that it had jurisdiction to hear and decide the case.

"3. The court's decision is erroneous in so far as it attributes the paternity [of the child] of the alleged offended party to the herein defendant-appellant.

"4. The court likewise erred in finding the defendant guilty of the crime under prosecution.

"5. Consequently the court erred in not acquitting the defendant of the crime imputed to him."

The first and second assignments of error we think may be considered together. They each relate to the jurisdiction of the lower court. At the time the prosecution rested, the attorney for the defendant presented a motion asking the court to dismiss the case on the ground of lack of jurisdiction over the person of the accused and the subject matter, because the complaint was not signed, filed, and presented by the father of a minor, the offended party, but by the mother. That motion was overruled by the lower court. The ruling of the lower court on

said motion is now assigned as error here. The lower court in his decision denying said motion, among other things said, that inasmuch as the fact that the complaint had not been presented by the father appeared upon the face of the complaint, the objection should have been raised by demurrer, and that, inasmuch as it had not been raised by demurrer, the defendant had gone to trial upon said complaint, and it was too late to raise the objection that the court was without jurisdiction. The question of the jurisdiction of a court may be raised at any time. (U. S. vs. Castaiiares, 18 Phil. Rep., 210; U. S. vs. Narvas, 14 Phil. Rep., 410; U. S. vs. De los Santos, 21 Phil. Rep., 404; U. S. vs. Asuncion, 22 Phil. Rep., 358.) If the court is, in fact, without jurisdiction, it cannot render a valid judgment or sentence in the premises. The objection of the jurisdiction of the court may be raised at any time, even after the close of the trial.

Under the law (Act No. 1773) the complaint for the crime of seduction must be presented by the aggrieved person, or by the parents, grandparents, or guardian of such person. Said provision seems to be mandatory. If the complaint is not presented by one of such persons, the court acquires no jurisdiction. (U. S. vs. Narvas, 14 Phil. Rep., 410; U. S. vs. De la Cruz, 17 Phil. Rep., 139; U. S. vs. Castaiiares, 18 Phil. Rep., 210; U. S. vs. Arzadon, 19 Phil. Rep., 175; U. S. vs. Cruz and Reyes, 20 Phil. Rep., 363; U. S. vs. De los Santos, 21 Phil. Rep., 404.)

The contention of the appellant in the present case is that the mother had no right or authority to present the present complaint, inasmuch as the father was still living. While the basis of the contention is not made very clear by his argument, we assume that the same is based upon the patria potestad under the Spanish law. It will be noted, however, that under section 1 of Act No. 1773, the complaint must be presented by the aggrieved party, her parents, her grandparents, or her tutor. A simple reading of said article would indicate that any one of said persons, including either of said parents or grandparents, could present the complaint. There is no indication in said article that the complaint must be presented by the father, if living, and if not, then by the mother. If we take, for instance, the case of the grandparents, there might be four persons living who are included in the law who might present the complaint. There is no indication that one of the grandparents is preferred over another. It would seem to be clear, under the provisions of said section, that any one of the grandparents, in the absence of the parents, might present the complaint for the crime mentioned in said section. This would also seem to be true as to the parents. The law (Act No. 1773) does not give any preference to one parent over the other. Act No. 1773, in its provisions relating to the person who must present the complaint in case of the offense of seduction, has not changed the rule under the Spanish Penal Code (art. 448.) Under the Spanish Penal Code (art. 448) the offense of seduction should not be prosecuted, except upon a complaint filed by and in the name of the offended party, or her parents, grandparents, or guardian. See also decisions of the supreme court of Spain of the 25th of November, 1896 (3 Viada, 312, 313); May 3, 1881; November 9, 1881; October 22, 1883 (3 Viada, 150-155). In the present case the father and mother were both living. The father, however, when he learned of the unfortunate circumstance described in the complaint in the present cause, left his home and apparently was absent at the time of the commencement of the present action. Because of the absence of the father, according to the declaration of the mother, the latter presented the complaint. There is nothing in the law which we have been able to find and no rule has been called to our attention which would prohibit the mother, under such circumstances, from presenting the said complaint. We do not desire to be understood as having decided in this case, more than that under the circumstances of the present case the complaint was properly presented by the mother and the court obtained jurisdiction of the case thereby.

The third and fourth assignments of error may be discussed together. They all relate to the sufficiency of the proof. From an examination of the record, the following facts seem to have been proven beyond a reasonable doubt:

- That the defendant, Urbano Gariboso, was the uncle of the said Lorenza Sanchez; that the wife of Urbano

Gariboso was the sister of the mother of Lorenza Sanchez.

- That Urbano Gariboso was a man of about 45 years of age; that his wife, according to his statement, was "very old, sick, and ignorant."

- That when the said Lorenza Sanchez was about 7 years of age Urbano Gariboso took her from the home of her parents to his home, in order that she might be a companion for his wife; that Lorenza Sanchez continued to live in the house of Urbano Gariboso until she was about 15 years of age, and until after the commission of the crime described in the complaint.

- That Urbano Gariboso, by means of deceit, threats, and promises of marriage, had induced the said Lorenza Sanchez to permit him to have illicit and adulterous relations with her, as a result of which illicit relations a child was born to her in the month of June, 1911.

- That when the defendant, Urbano Gariboso, discovered that Lorenza Sanchez was in a delicate condition resulting from his illicit relations with her, he attempted, through a representative, to have the matter settled and compromised with the family of the said Lorenza Sanchez.

We are persuaded from a careful reading of the proof adduced during the trial of the cause and brought to this court, that the defendant is guilty of the crime charged. We find no reason for modifying the sentence of the lower court. The same is, therefore, hereby affirmed, with costs.

Arellano, C. J., and Torres, J., concur.

CONCURRING

CARSON, J.,

I concur with the conclusion on substantially the same grounds as those indicated in the concurring opinions of Justices Trent and Moreland, but I wish expressly to dissent from any intimation in the opinion which might be construed as denying the preferential right of the father in the matter of filing complaints in this class of cases. Such a holding would inevitably lead to confusion and conflicts of authority, which it was the purpose of the law to avoid. The true ground for the decision in the case at bar is well stated in the decision of the supreme court of Spain in a case wherein a similar state of facts arose, in its judgment of November 25, 1896, published in the *Gaceta*, of December 26, page 434, as it is set forth in *Viada* (vol. 7, p. 313):

"In order to proceed in cases of rape and abduction, executed with unchaste designs, shall it suffice that the denunciation be made by the mother, in whose company the minor female lives, although such minor has a father, if the mother instituted the action not only without contradiction from the father, but also with his tacit consent? The supreme court has decided affirmatively: 'We hold that even though the right to denounce the crimes of rape and abduction is successive with reference to the persons to whom it is especially conceded in the second paragraph of article 467 of the penal code for Cuba and Porto Rico, and therefore the father's is previous and preferential to the mother's, yet when it has been exercised by her, in whose company the minor female lived, not only without contradiction from him, but also with his tacit consent, especially when after being notified of the institution of the action he merely renounced participation therein and in the indemnity for damages, without including in such renunciation desistance from exacting the penal responsibility, it must be admitted that said denunciation was legally sufficient to require and set in motion the action for prosecution and punishment of the crime committed.'"

CONCURRING**MORELAND, J.,**

I agree upon the ground that the father having abandoned his home and family immediately after the commission of the crime and having thereby, for the time at least, relinquished the rights and declined the obligations of his paternity, the mother was left, temporarily at least, to exercise those rights and assume those obligations and could, for that reason, present the complaint in this case.

CONCURRING**TRENT, J.,**

I concur on the ground that, as the father had left his house and the neighborhood, thereby neglecting his daughter's interests, the mother can present the complaint.

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