

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. HENEDINO P. EDUARTE, IN HIS CAPACITY AS ACTING PRESIDING JUDGE OF THE RTC, BR. 22, CABAGAN, ISABELA; ELVINO AGGABAO AND VILLA SUR...

G.R. No. 88232. February 26, 1990

Ponente: CORTES, J.

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CORTES, J.:

Assailed in this petition is the order of the Regional Trial Court of Cabagan, Isabela, Branch 22, dismissing the criminal information for concubinage filed against private respondents, on the ground of lack of jurisdiction. The antecedent facts are as follows:

Upon complaint by Alma T. Aggabao, the Office of the Provincial Fiscal of Cabagan, Isabela filed on July 25, 1986 with the Regional Trial Court of Cabagan, Isabela, Branch 22, an information against private respondents Elvino Aggabao and Villa Suratos for the crime of concubinage [Annex "A" to the Petition; Rollo, p. 17.] allegedly committed in September 1983. Upon being arraigned, private respondents entered a plea of not guilty [Annex "B" to the Petition: Rollo, p. 19.] The complainant was represented before the trial court by a private prosecutor. During the trial, private respondents filed a motion to dismiss on the ground of lack of jurisdiction. They argued that concubinage, under Art. 334 of the Revised Penal Code (RPC) is punishable with prison correccional in its minimum and medium periods, which is equivalent to imprisonment of six (6) months and one (1) day to four (4) years and two (2) months, well within the exclusive original jurisdiction of the Municipal Trial Court, and not of the Regional Trial Court. The prosecution filed an opposition to the motion contending that the Regional Trial Court has jurisdiction over the crime of concubinage because destierro, the imposable penalty on the concubine [Art. 334, RPC] has a duration of six (6) months and one (1) day to six (6) years [Art. 27, RPC]. The trial court sustained private respondent's position and granted the motion to dismiss.

Private prosecutor, together with the assistant provincial prosecutor of Ilagan, Isabela, filed on June 16, 1989 the instant petition assailing the order of the trial court granting the motion to dismiss the criminal information against private respondents. In a resolution dated July 17, 1989, this Court denied the petition due to late payment of docket and legal research fund fees and for lack of merit. The Solicitor General filed a motion for reconsideration of the order of the Court denying the petition. Subsequently, the private prosecutor filed a separate motion for reconsideration. In these motions, the Solicitor General and the private prosecutor submitted additional arguments to support their position that the Regional Trial Court has jurisdiction over the crime of concubinage.

At the outset, it must be stated that the petition is defective since it was not filed by the Solicitor General. Instead, it was filed by the private prosecutor and the assistant provincial prosecutor of Ilagan, Isabela, with the offended party, Alma T. Aggabao, being named co-petitioner of the People of the Philippines. The Court has already ruled that while it is the fiscal who represents the People of the Philippines in the prosecution of offenses before the trial courts, when such criminal actions are brought to the Court of Appeals or to the Supreme Court, it is the Solicitor

General who must represent the People of the Philippines, not the fiscal [City Fiscal of Tacloban v. Espina, G.R. No. 83996, October 21, 1988, 166 SCRA 614] nor the private prosecutor, even with the conformity of the assistant provincial prosecutor [People v. Dacudao, G.R. No. 81389, February 21, 1989.] Nevertheless, considering that the Solicitor General has intervened in this case by filing a motion for reconsideration of the Court resolution dated July 17, 1989 denying the petition, the Court has decided to forego technicalities and to resolve the issues raised. Moreover, since it is now apparent that the only petitioner in this case is the People of the Philippines as represented by the Solicitor General payment of the legal fees is not necessary in accordance with Rule 141, Sec. 16 of the Revised Rules of Court.

Petitioner first contends that private respondents are estopped from raising the issue of jurisdiction after the prosecution has rested its case and the defense has started to present its evidence. Furthermore, petitioner complains that "it took two (2) years and six (6) months before anyone to take (sic) notice of the jurisdictional infirmity" [Petition, p. 5; Rollo, p. 12.] Hence, according to petitioner, private respondents are barred from raising the issue of jurisdiction, estoppel having already set in.

The contention is without merit. In our legal system, the question of jurisdiction may be raised at any stage of the proceedings (Rule 117, Sec. 8, Revised Rules on Criminal Procedure; U.S. v. Castanares, 18 Phil. 210 (1911).] It is true that in Vera v. People, G.R. No. L-31218, February 18, 1970, 31 SCRA 711 and in People v. Munar, G.R. No. L-37642, October 22, 1973, 53 SCRA 278, cases cited by the Solicitor General and private prosecutor in their pleadings, the Court held that jurisdiction cannot be raised for the first time on appeal. However, these cases can readily be distinguished from the case at bar by the fact that the issue of jurisdiction was raised only on appeal. In the instant case, the private respondents made the jurisdictional challenge pending the trial and before the trial court has rendered any judgment on the merits.

Moreover, the ruling in Vera v. People and People v. Munar that jurisdiction may not be raised for the first time on appeal, is the exception rather than the general rule.

The doctrine in those cases was first enunciated in Tijam v. Sibonghanoy, G.R. No. L-21450, April 15, 1968, 23 SCRA 29, 35-36, where the Court stated that:

... a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated — obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court . . . And in Littleton vs. Burges, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

In Calimlim v. Ramirez, G.R. No. L-34362, November 19, 1982, 118 SCRA 399 [See also Dy v. NLRC, G.R. No. 68544, October 27, 1986, 145 SCRA 211], the Court held that the ruling in Tijam v. Sibonghanoy is an exception to the general rule that the lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. The Court stated further that Tijam v. Sibonghanoy is an exceptional case because of the presence of laches. The Court said:

A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the

jurisdiction of a court over the subject-matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of *Sibonghanoy*. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstance involved in *Sibonghanoy* which justified the departure from the accepted concept of non-waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in *Sibonghanoy* not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.

In *Sibonghanoy*, the defense of lack of jurisdiction of the court that rendered the questioned ruling was held to be barred by estoppel by laches. It was ruled that the lack of jurisdiction having been raised for the first time in a motion to dismiss filed almost fifteen (15) years after the questioned ruling had been rendered, such a plea may no longer be raised for being barred by laches. As defined in said case, laches is "failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert has abandoned it or declined to assert it."

The circumstances of the present case are very different from *Tijam v. Sibonghanoy*. No judgment has yet been rendered by the trial court in this case. And as soon as the accused discovered the jurisdictional defect, they did not fail or neglect to file the appropriate motion to dismiss. Hence, finding the pivotal element of laches to be absent, the Court holds that the ruling in *Tijam v. Sibonghanoy*, *Vera v. People* and *People v. Munar* does not control the present controversy. Instead, the general rule that the question of jurisdiction of a court may be raised at any stage of the proceedings, must apply. Private respondents are not estopped from questioning the jurisdiction of the trial court.

Having disposed of the procedural issue, the Court will now proceed with the main issue of whether or not the Regional Trial Court has original jurisdiction over the crime of concubinage.

The crime of concubinage is penalized by Art. 334 of the Revised Penal Code which reads as follows:

Art. 334. Concubinage. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place shall be punished by prision correccional in its minimum and medium periods.

The concubine shall suffer the penalty of destierro. (*Italics supplied.*)

According to Sec. 32 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts (hereinafter referred to as the inferior courts) shall exercise "[e]xclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than four thousand pesos, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof" On the other hand, the "Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal, or body" [Sec. 20, B.P. Blg. 129.]

The penalty imposable on the husband who commits concubinage is prision correccional in its minimum and medium periods, which ranges from six (6) months and one (1) day to four (4) years and two (2) months. Hence, as regards the husband, there is no question that concubinage is within the exclusive original jurisdiction of the inferior courts. The problem concerns the concubine upon whom the imposable penalty is destierro.

The Solicitor General and the private prosecutor point out that the duration of destierro, which is between six (6) months and one (1) day to six (6) years [Art. 27, RPC], is beyond the jurisdiction of the inferior courts to impose. Thus, they conclude that either (1) the Regional Trial Courts and the inferior courts have concurrent jurisdiction over the crime of concubinage [Solicitor General's Motion for Reconsideration, p. 11; Rollo, p. 52]; or (2) the Regional Trial Courts and the inferior courts have "split jurisdiction," the latter having jurisdiction over the crime as regards the husband and the former as regards the concubine (Private Prosecutor's Motion for Reconsideration, p. 3; Rollo, p. 58.)

These propositions are both untenable. It has already been held by the Court in *Uy Chin Hua v. Dinglasan*, 86 Phil. 617 (1950) and *People v. Santos*, 87 Phil. 687 (1950) that a crime punishable with the penalty of destierro is within the jurisdiction of the inferior courts. This is so because in the scale of penalties outlined in Art. 71, destierro comes after *arresto mayor*.[*] And since under the Judiciary Act of 1948 [Republic Act No. 296], crimes punishable with *arresto mayor*, are within the jurisdiction of the inferior courts, it follows that crimes punishable with destierro are also within the jurisdiction of such courts. In explaining its conclusion that destierro is lighter than *arresto mayor* and therefore cognizable by the inferior courts, the Court, in *Uy Chin Hua v. Dinglasan*, supra at p. 619, stated the following:

Destierro is not a higher penalty than *arresto mayor*. *Arresto mayor* means imprisonment or complete deprivation of liberty, whereas destierro means banishment or only a prohibition from residing within a radius of 25 kilometers from the actual residence of the accused for a specified length of time. The respective severities of *arresto mayor* and destierro must not be judged by the duration of each of these penalties, but by the degree of deprivation of liberty involved. Penologists have always considered destierro lighter than *arresto mayor*. Such criterion is reflected both in the old Spanish Penal Code and in our Revised Penal Code. In the graduated scale of article 71 the lawmaker has placed destierro below *arresto mayor*. There is, therefore, no basis in fact or in law for holding that destierro is a higher penalty than *arresto mayor* and that an offense penalized with destierro falls under the jurisdiction of the court of first instance.

The Court is well-aware of the fact that *Uy Chin Hua v. Dinglasan* and *People v. Santos* were decided under the Judiciary Act of 1948 pursuant to which justices of the peace and judges of municipal courts of chartered cities had original jurisdiction over "all offenses in which the penalty provided by law is imprisonment for not more than six months" [Sec. 87 (b)] while Courts of First Instance had original jurisdiction "in all criminal cases in which the penalty provided by law is imprisonment for more than six months" [Sec. 44 (f).] There being no mention in said Act of crimes for which the penalty is not imprisonment, these aforesaid cases were decided on the premise that "there exists a gap in the law as to which court shall have original jurisdiction over offenses penalized with destierro or banishment" [*Uy Chin Hua v. Dinglasan*, supra, at p. 620.]

Under the Judiciary Reorganization Act of 1980 (B.P. Blg. 129), the inferior courts shall exercise exclusive original jurisdiction over "all offenses punishable with imprisonment of not exceeding four (4) years and two (2) months [Sec. 32 (2)] while the Regional Trial Courts shall have exclusive original jurisdiction" in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body" [Sec. 20.] Ostensibly, Sec. 20 of B.P. Blg. 129 would grant to the Regional Trial Courts jurisdiction over crimes punishable with destierro, such as concubinage, since destierro is not an offense punishable with imprisonment of not exceeding four (4) years and two (2) months. However, the Court, after a careful reading of B.P. Blg. 129, is of the considered opinion that there was no intention to overturn the doctrine laid down in *Uy Chin Hua v. Dinglasan* and *People v. Santos*. It is quite evident that among the important factors considered in the allocation of jurisdiction between the Regional Trial Courts and the inferior courts are the gravity of both the offense and the imposable penalty. It is not, therefore, unreasonable to state that the legislature granted to the Regional Trial Courts jurisdiction over crimes whose penalties are harsher than those vested in the inferior courts. And since it is already a settled rule that

destierro, by its nature, is a lighter penalty than imprisonment [Uy Chin Hua v. Dingalasan, supra], it follows that even under the Judiciary Reorganization Act of 1980, jurisdiction over crimes punishable with destierro is vested not in the Regional Trial Courts but in the inferior courts.

More particularly in this case, the crime of concubinage has two penalties, one for the husband and another for the concubine. The penalty for the husband, prision correccional in its minimum and medium periods, which ranges from six (6) months and one (1) day to four (4) years and two (2) months, is unquestionably within the jurisdiction of the inferior courts. Considering that Art. 344 of the Revised Penal Code states that "(t)he offended party [in the crime of concubinage] cannot institute criminal prosecution without including both the guilty parties," it is clearly in the interest of the orderly administration of justice that the concubine be tried with the erring husband before the inferior courts. The legislature could not have intended to allow the absurd situation wherein the inferior court has jurisdiction over the crime of concubinage only as regards the husband while the Regional Trial Court has jurisdiction over the same crime with respect to the concubine.

In fine, the Court, after a careful consideration of the pertinent laws, as well as the jurisprudence on the matter, holds that the crime of concubinage is within the exclusive original jurisdiction of the inferior courts. The Regional Trial Courts have no original jurisdiction over the said crime. Hence, the court a quo committed no reversible error in dismissing the criminal information against private respondents. At any rate, considering that the dismissal of the case by the court a quo on the ground of lack of jurisdiction is not a bar to another prosecution for the same offense [Rule 117, Secs. 6 and 7, Revised Rules on Criminal Procedure] and considering further that the crime has not yet prescribed [See Art. 90, RPC], the offended wife is not precluded from initiating the filing of another criminal information against private respondents before the proper court.

WHEREFORE, the Court Resolved to DENY the petition for lack of merit. The reimbursement of the legal fees paid by the private prosecutor for the filing of this petition is hereby ORDERED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[*] Art. 71 of the Revised Penal Code provides for graduated scales of penalty Scale No. 1 of which states:

SCALE NO. 1

1. Death
2. Reclusion perpetua
3. Reclusion temporal
4. Prision mayor
5. Prision correccional
6. Arresto mayor
7. Destierro
8. Arresto menor
9. Public censure
10. Fine

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