

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. SATURNINO CAPILO AND PETRONA PADUGA, DEFENDANTS AND APPELLEES.

G.R. No. 9279. March 25, 1915

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal by the United States from a decision of the Court of First Instance of Manila, dismissing this case upon a motion of the defendants, which was in substance and effect a demurrer to the information. The information is as follows:

"The undersigned accuses Saturnino Capillo and Petrona Paduga of the crime of exposing a legitimate child to lose his civil status, committed as follows:

"That on or about the 12th day of August, 1913, in the city of Manila, Philippine Islands, the said defendants Saturnino Capillo and Petrona Paduga, conspiring and confederating together and helping one another, did then and there willfully, unlawfully, and feloniously expose a child, 1 month old, the legitimate son of the accused Saturnino Capillo and his wife Vicenta Umanbang to lose his civil status in the following manner to wit: That the defendant Saturnino Capillo, with intent to cause his legitimate child to lose his civil status and in cooperation with the defendant Petrona Paduga, took the said child without the permission of his mother Vicenta Umanbang or the authority of the courts of this city and agreed with one Chua Pue Tee to deliver to him the said child and never to claim it again, asking the said Chua Pue Tee at the same time to lend them the sum of P150 to defray the expenses incurred by the defendant Saturnino Capillo during the last sickness and death of his wife Vicenta Umanbang, and received from said Chua Pue Tee the sum of P106 of which P50 corresponded to the defendant Saturnino Capillo and P56 to defendant Petrona Paduga. That the living of said child under such circumstances in the possession of said Chua Pue Tee and his wife Sio Suat King exposes said child to lose his civil status, to wit, that of the legitimate son of the said defendant Saturnino Capillo and his wife Vicenta Umanbang to that of an unknown and nameless child or at the most to that of the child of one Chua Pue Tee and his wife.

"That in the commission of this crime the aggravating circumstance of price should be taken into consideration."

To the above information the defendants pleaded not guilty on August 21, 1913. On September 1, 1913, the defendant's counsel filed a motion, in the nature of a demurrer and argument, a translation of which is substantially as follows:

"Now appears the undersigned attorney, on behalf of defendants, and respectfully prays:

"That the above-entitled case be dismissed, basing his contention upon the fact that the information fails to show facts of sufficient weight to constitute a cause of action, that is, that the facts stated do not constitute a crime. Article 468 of the Penal Code in force, paragraph 2 of which is mentioned by the prosecuting attorney, does not define as a crime the acts attributed to defendants. Nor is it inferred from the historical precedents that the facts which gave rise to this case constitute a crime. The hypothesis of the legislator as to the meaning of

said paragraph 2 is the fact of concealing or exposing a legitimate child with intent to cause such a child to lose his civil status, when this act is done by the person to whom the child is intrusted for its nursing or for some other lawful purpose. This crime is rather applicable to Spain only, where nursing children are usually given to wet nurses, living out in the country, who are not able to move their residence to the city where the child's parents live. In the Philippines the children are usually nursed by their own mother, and, if they are given to a wet nurse, the latter goes to live at the house of the child's parents."

In its decision the court remarked:

"Although the presentation of this motion is out of the ordinary course of procedure, in view of the fact that its determination is conclusive of the case, the court will consider it as a demurrer, and, for the purpose of its consideration, the plea of not guilty will be considered withdrawn."

The court thereupon decided that the complaint did not state facts sufficient to constitute the crime charged. The court held that the motion of the defendant must prevail and the case was dismissed with the costs de officio.

The offense which the prosecution contends is charged in the information is that defined and penalized in the second paragraph of article 468 of the Penal Code. That article is as follows:

"La suposicion de partos y la sustitucion de un nino por otro seran castigadas con las penas de presidio mayor y multa de 625 a 6,250 pesetas.

"Las mismas penas se impondran al que ocultare o expusiere un hijo legitimo con animo de hacerle perder su estado civil."

The English version of this article, as found in the English translation of the Penal Code edited by the Attorney-General and printed by the Bureau of Printing in 1911, is as follows:

"The simulation of births, or the substitution of one child for another, shall be punished by presidio mayor and a fine of not less than six hundred and twenty-five and not more than six thousand two hundred and fifty pesetas.

"The same penalty shall be imposed upon any person who shall conceal or abandon any legitimate child with intent to cause such child to lose its civil status."

The contentions of the parties on this appeal turn upon the meaning which should be given to the word "expusiere" as found in the original Spanish version.

The verb "exponer" is given various meanings in "El Diccionario de la Lengua Castellana por la Real Academia Espanola," 12th edition. Among others "arriesgar, aventurar, poner una cosa en contingencia de perderse" (to risk, to adventure, to put a thing in danger of being lost) ; and also "dejar a un nino recién nacido a la puerta de una iglesia o casa o en otro paraje publico, por no tener con que criarlo sus padres o porque no se sepa quienes son" (to leave a recently born baby at the door of a church, or a house or other public place, the parents not having means to support it, or the parents being unknown).

Having in mind the qualifying phrase which provides that the offense is committed when the child is exposed "con animo de hacerle perder su estado civil" (with intent to expose it to lose its civil status), the word must be held to have been used by the authors of the code in the sense of to "abandon," in some such manner as is indicated in the last of the above cited meanings given the word in the "Diccionario"; that being the clear, definite and well understood signification of the word when used by the Spanish authors of the code with relation to infants or children, as it manifestly is in this article.

The contention of the prosecution is that the true meaning of the language of the statute is that the prescribed

penalties are to be imposed upon "one who conceals, or exposes or subjects to danger of loss of civil status, a legitimate child, with intent to cause it to lose its civil status."

But without the addition of the qualifying phrase "with intent to cause it (the infant) to lose its civil status," the transitive verbs "ocultare" and "expusiere" convey no thought of loss of civil status, and in construing the verb "exponer" to mean "to expose or subject to danger of loss of civil status," the prosecution gives to it a meaning which is not found in any dictionary.

It is worthy of observation, furthermore, that the transitive verb "expusiere" (shall expose) is joined in grammatical construction with the verb "ocultare" (shall conceal) and, like it, has for its sole object the word "child" (hijo), and sound principles of grammatical construction forbid the attempt to import into one of these verbs a meaning from the common qualifying phrase which it is manifestly impossible to give to the other.

The practice of abandoning new-born infants and very young children at the door of hospitals, churches and other religious institutions was formerly so well known in Spain that, as will be seen from the definition above cited from the dictionary of the "Real Academia," it gave rise to the use of the verb "exponer" (to expose) in a peculiar and special sense with reference to this practice, when the grammatical object of the verb is an infant or small child. We are well satisfied that it is in this sense that the word is used in the article of the code under consideration, and that in this connection it may and should be construed in both Spanish and English by its substantial equivalent to "abandon."

We are confirmed in our conclusion that the true meaning of the word "expusiere" (shall expose) in this article of the code involves the idea of abandonment by an examination of the commentaries of the learned Spanish law-writers upon the corresponding article in the Spanish Criminal Code.

Thus Groizard says (5 Groizard, 460) : "The exposition which is caused by abandoning a new-born child in a place where it cannot be easily assisted, intending that it should perish and save the honor of the mother, is a crime against life. The exposition of a child and the abandonment thereof in a place where it may not be in danger may be a crime against the safety of persons. Only that which has for its purpose the deprivation of the newborn child's civil status is what constitutes the present crime. In order that it may be so, it is necessary therefore that the acts committed by the guilty party plainly show his intent. The fact that one abandons, in the midst of a lonely forest, an unfortunate child that needs all kinds of assistance during the first moments of coming into the world cannot be admitted as intent to destroy its civil status, but as an attempt against its life. On the contrary, he who places at the door of a charitable person, a new-born child which is in condition to stand the first inclemencies of the weather, is supposed to do it in order that it may be taken up and protected, and therefore the legal presumption must be that he does not act with any other purpose than to cause the loss of any trace as to the filiation of the child."

And Viada says (vol. 3, p. 270): "Finally, the same penalty is imposed upon anyone who conceals or exposes a legitimate child with the intention of making him lose his civil status. It must be remembered that by the word child must be understood a fully developed and living being, as the child born not capable of living has no status, nor can he transmit any rights whatever. It is, therefore, an essential condition of this crime, that the child who has been exposed or concealed shall have been born alive, and therefore, the clandestine burial of a child who was born dead is not included within the provisions of the last paragraph of this article, although it may be included within the provisions of article 349 of this Code. It must be noted, furthermore, that the exposition or concealment must be of a legitimate child and done with the intention of making him lose his civil status, that is, his inherent rights as a legitimate child; and therefore, were he illegitimate, or, were the intentions of the one who concealed or exposed the child different, the act may constitute a crime against liberty and security, but certainly not an attempt

against the civil status of the child."

Examining the information we find no facts which allege an abandonment of a child in the sense indicated, and the ruling of the court below sustaining the demurrer to the information must therefore be sustained.

It is manifest from the information itself, and from the argument of counsel on the demurrer, that the real object sought to be attained by the prosecution is to penalize, under the provisions of article 468 of the code, the conduct of the father in turning over his newborn child to the Chinaman and his wife, with a promise not to reclaim it, taking from the Chinaman for so doing money by way of loan or otherwise. But it is very clear that it was not the intention of the authors of the code to penalize such conduct by the provisions of the article relied upon by the prosecution.

It is urged that the transaction set forth in the information was in truth and effect a heartless sale of his own flesh and blood by the accused for one hundred and odd pesos, and that he should not be permitted to go unpunished. It is not necessary for us to consider and decide, at this time, under what circumstances, if any, a father, left with a motherless child, may turn it over to others with or without an agreement to reclaim it, or whether, in the event that he does turn the child over to others, he would ever be permitted to receive money or other consideration from those who adopt the child. Our ruling at this time is merely that the offense defined and penalized in article 463 of the Penal Code is not the unlawful sale of a child by its father, and that such conduct cannot properly be penalized under its provisions. If the accused has been guilty of conduct constituting an offense of this kind, in violation of the laws of the Philippine Islands, he should be charged with and tried for the offense actually committed, so that the penalty to be imposed upon conviction may be adjudged by the courts in accord with the provisions of the statute defining and penalizing the crime of which he is found guilty.

Let judgment be entered affirming the judgment entered in the court below, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, Trent, and Araullo, JJ., concur.

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